

Update: 12 October 2007 Avoiding the Super “death duty”



Fleming Muntz
Solicitors



Summary

Recent changes to superannuation have meant that it is probable large sums will be held in many superannuation funds at the time of death of a fund member, with the prospect of significant tax being paid as benefits pass to non-dependent beneficiaries.

This “death duty” can be avoided with careful planning.

What’s changed?

Previously, there were limits on the amount of superannuation contributions, strict requirements to “cash out” benefits in retirement, and adverse tax consequences if benefits were received by a “working retiree”.

All that has changed. Generous contribution allowances in recent years mean that amounts held in superannuation funds are now measured in billions of dollars. Also, from 1 July 2007 persons over 60 can withdraw superannuation benefits tax free **before death**.

What are the benefits?

Retirees will now be tempted to leave large amounts of money in superannuation, because of the favourable taxation position. For most people approaching or enjoying retirement, they have never had a better “deal” than at present.

What are the problems?

Superannuation benefits paid out after death to non-dependent beneficiaries will incur significant taxation on the taxable component of the member’s benefits – the likely rate is 16.5% (including the Medicare Levy).

In our opinion, many simplistic approaches trying to “fix” the death benefits problem (such as a simple power of attorney or undated notices of redemption) will not be effective.

How can Fleming Muntz help?

We have recently finalised a strategy which will ensure that the “death duty” can be avoided. Our approach involves a series of steps which simplify the process of redemption and, most importantly, ensure that assets still held in a fund at death are treated as being assets of the member (and therefore not taxable).

The strategy is supported by the opinion of Queens Counsel, who has also affirmed that our approach will not breach Part IVA of the *Income Tax Assessment Act*.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

We resent unwanted email as much as anyone – if you would prefer not to receive any further updates, please telephone us on (02) 6021 2222 or email to fmlaw@flemingmuntz.com.au.

For more information, about this subject, please contact:



Paul Muntz
Dip Law (SAB)
Accredited Specialist Business Law
Principal
Telephone: (02) 6021 2222
Email: prm@flemingmuntz.com.au

**Solicitors for New South Wales
and Victoria**

568 Kiewa Street
Albury New South Wales
Australia

PO Box 910
Albury NSW 2640

fmlaw@flemingmuntz.com.au
www.flemingmuntz.com.au

Facsimile (02) 6041 1804
Telephone (02) 6021 2222

