

SUPER DEATH BENEFIT

ATO rules adult child is not a dependant despite disability

Adult children are not usually dependants for tax purposes. A recent private ruling shows that even a serious disability may not be enough for an adult child to satisfy dependancy. In the private ruling the adult child had severe medical conditions from childhood and needed 24-hour support for life. They saw their parent every week or two and the two took trips together. Even so, the ATO found the child was not the parent's dependant, so the taxable component of the parent's super death benefit was taxed.

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.

Understand why dependant status matters

A super lump sum death benefit paid to a tax dependant is tax free. A non-dependant pays up to 15% on the taxed element of the taxable component and up to 30% on any untaxed element. The 2% Medicare levy also applies.

A spouse, former spouse or child under 18 is automatically a dependant. An adult child has to show financial dependence or an "interdependency relationship" with the parent.

What were the circumstances

The child lived in private accommodation with support workers on hand 24 hours a day. They needed help with everything from showering and dressing to medication, meals and money.

The parent's own medical conditions limited the care they could give. After a seizure from a fall, the parent was diagnosed with further life-threatening conditions. Before the parent died, the child visited them in palliative care with two support workers.

The parent and child were close. The parent gave emotional support when the child's health suffered and gifted the child money in a term deposit. The ATO also had booking confirmations for trips they organised together.

The parent's SMSF paid the death benefit to the estate, to be held for the child.

Why did the ATO say the child was not an interdependant

An interdependency relationship needs four things: a close personal relationship, living together, financial support, and domestic support and personal care. If either person has a disability that stops them meeting any of the last three, the law can set those aside. A close personal relationship is always required.

The ATO accepted the term deposit as financial support. But it saw a typical parent and child relationship, with no evidence of a mutual commitment to a shared life.

The ATO noted that children are not generally expected to be in an interdependency relationship with their parents. The child's lifelong care needs did not change that view.

Reminder

A private ruling only binds the ATO for the person who asked for it, but it shows how the ATO approaches these cases. A disability on its own won't make an adult child a dependant for tax purposes. The relationship has to go well beyond the usual parent and child bond, and there has to be evidence to prove it. If you have an adult child with a disability, talk to us about how your super would be taxed if it is paid to them as a death benefit.

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