Prepare for Life

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CHRISTMAS SHOPPING

PROTECTING YOURSELF ONLINE

By Mark Teale, Retirement Strategies and Solutions
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As we get closer to Christmas, our thoughts turn to shopping for the holidays.

As a modern and technologically advanced society, a large percentage of our Christmas shopping will be done online - depending if we start early and allow enough time for our purchases to be delivered.

The Australian Competition and Consumer Commission (ACCC) have issued guidelines to protect your rights and hard-earned savings.

The following is an extract from their website, outlining your rights and tips when it comes to purchasing gifts over the internet:

These tips to protect your rights when shopping online:

1. Only consider buying from online sellers in Australia or overseas that have a good reputation, show clear instructions on how to return and refund items and display business details such as phone number and address

2. Ensure products and services meet Australian safety regulations

3. Before buying, check terms and conditions carefully so you know what you're paying for and that there are no hidden costs or restrictions

4. Before you start, ensure your computer, tablet or phone is secure by installing or updating security and anti-virus software

5. Shop around. Ask questions and ask for pictures so you know what you are getting. Compare prices on different sites

6. Before paying:

a. beware of sellers asking for your bank PIN or password. Never buy from these sellers. Report them to the ACCC

b. check that the site is secure. It should have a padlock symbol and an address starting with https://

c. consider using a third-party escrow agent to pay for valuable items as they'll hold the payment in trust until you receive and accept the item

7. Keep copies of all documents, including electronic records of auction bids, item descriptions, emails and receipts in case there is a problem later.

8. If there is a problem, email the seller outlining the issue and how you want it resolved.

9. If you paid by credit card and you did not receive the product or service, contact your bank and ask them to reverse an unauthorized charge.

I am not saying that if you follow this advice your purchases will be completely worry free, but the steps should reduce the risk and some of the worry. By following these tips, all you would have to concern yourself with is, "how do I pay for the purchases?" or "did I remember everyone's present?!".

If you are looking for more information on your rights as a consumer, the ACCC's Consumer Rights Guarantees may be helpful.

WHO GETS YOUR SUPER?

By Peter Kelly, Retirement Strategies and Solutions
Centrepoint Alliance

While it is often uncomfortable to think about our mortality, thinking about how we would like our wealth transferred to our loved ones after we die is something that deserves a little thought.

We are all aware of the importance of making a Will and keeping it up to date, however, our superannuation, which is often the largest asset a person has apart from their home, also deserves some attention.

Despite misconceptions to the contrary, money held in superannuation may not automatically pass to your estate on death to be dealt with under your Will. This can result in superannuation death benefits passing to the wrong people.

Let's address some of the common questions that arise when it comes to conversations around superannuation death benefits.

What happens to my super when I die?

Superannuation law requires a member's benefit to be paid as soon as practicable following the death of a member.

However, this may take some months as it is often necessary to sell down investments so a death benefit can be paid. In addition, before paying a superannuation death benefit, the trustees of the superannuation fund must identify the person or people they will pay the benefit to.

How can super benefits be paid?

When a member of a superannuation fund has passed away, their benefit may be paid as a lump sum or in certain circumstances, as a pension or regular income stream.

Who can a death benefit be paid to?

A superannuation death benefit can be paid to:

- one or more of the member's 'dependants',
- the member's 'legal personal representative', or
- where there is no dependants or legal personal representative – to another person.

A dependant includes the spouse of the deceased, children of the deceased, and any person who was in an interdependency relationship with the deceased member immediately before their death.

A spouse includes a person the deceased was legally married to or, if not legally married, lived in a genuine domestic relationship (e.g. a de facto partner). A spouse may include a same-sex partner.

Generally, a former spouse (i.e. divorced and not merely separated), parents, brothers and sisters, nephews, nieces and grandchildren of the deceased are not dependants for superannuation purposes. However, they may be if some other form of financial dependency exists. For example, a grandchild living with and being financially supported by their grandparents may be a dependant for super purposes.

The legal personal representative is the trustee or executor of the deceased's estate.

How does a super fund determine who a death benefit should be paid to?

While superannuation funds are bound by superannuation law, they are also subject to specific conditions contained in their governing rules which include the super fund's trust deed. While there may be some commonality between super funds, it is important to appreciate that not all funds deal with death benefits in the same way.

In many instances, superannuation fund trustees will exercise their discretion when determining to whom and in what form a member's death benefit will be paid.

This involves the trustees undertaking a claim-staking process to identify all possible dependants of the deceased before making a final decision regarding the payment of a death benefit. This can be a time-

> *“ ... our superannuation, which is often the largest asset a person has apart from their home, also deserves some attention. ”*

consuming exercise and may lead to considerable delays when paying out a death benefit.

While trustee discretion has been, and remains common, many superannuation funds have inserted specific conditions that govern the payment of death benefits into their governing rules. That is, the trust deed removes the discretionary powers of the trustee when it comes to paying death benefits.

It is becoming increasingly more common for superannuation fund trust deeds to require the trustees to pay a deceased member’s benefit as a lump sum directly to the legal personal representative. Where this exists, a superannuation death benefit automatically passes to the deceased’s estate.

How can I have some certainty about who will receive my super?

Most, if not all, super funds allow their members to nominate beneficiaries to receive their benefit in the event of death.

The types of nominations available will vary between super funds however the most common ones include:

• Binding death benefit nomination – remains valid for a maximum period of three years and must then be renewed. A binding death benefit nomination may be revoked by the member at any time. Provided a binding death benefit nomination is valid at the time of death, i.e. it complies with the legal requirements, the trustees of the super fund must pay the death benefit to the nominated beneficiaries.

• Non-lapsing death benefit nomination – a non-lapsing death benefit nomination is binding on the trustees of the super fund but, unlike a binding death benefit nomination that expires after three years, this nomination does not require renewal. That is, it doesn’t lapse.

• Non-binding nomination a nomination that is not binding on the trustees of the fund. On the death of the member, the trustees will exercise their discretion in determining who a death benefit will be paid to. However, it does provide the trustees with guidance as to the member’s wishes.

• Reversionary nomination – only applies where a member is in the pension phase. When a reversionary beneficiary – usually the member’s spouse – is nominated, the pension seamlessly continues to be paid to the reversionary beneficiary on the death of the primary member.

At the outset, I mentioned that a superannuation death benefit does not automatically pass to a deceased member’s estate. But in certain situations, it will, particularly where the super funds governing rules prescribe that death benefits are to be paid to the legal personal representative, or where a binding or non-lapsing death benefit nomination direct the benefit to be paid to the legal personal representative.

Making a valid death benefit nomination can deliver certainty on how superannuation death benefits will be handled. However, it is important to understand exactly how superannuation death benefits will be paid and ensure it fits within your overall estate plan. That is, the Will and superannuation benefits must be viewed collectively, and not in isolation of each other. We recommend that readers seek the assistance of a qualified adviser when considering their estate planning objectives.

THE TAX ADVANTAGES OF SUPER

By Peter Kelly, Retirement Strategies and Solutions
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One of the attractions of superannuation is the fact that super funds are very favourably taxed.

If we invest money in our personal name, any investment earnings are taxable in our hands. Our personal tax rate will dictate the actual amount of tax we will pay. This may be anywhere from 0% to 45%, depending on our total taxable income.

However, if we have money invested in the superannuation system, the earnings our super fund receives are generally taxed at a maximum rate of 15%. On the other hand, if our super is held in what's known as the 'retirement phase', the super fund will generally pay no tax on its investment earnings.

Consider a simple example – we have a superannuation account that is in the accumulation phase (that is, it is not paying a pension to the member). The fund invests our super savings and the fund receives income (dividends, interest or rent, depending on how the money is invested). The investment earnings are included as income of the super fund and the fund will pay tax at a rate of 15%.

In reality, most super funds will actually pay less than 15% tax as the fund may be entitled to tax deductions for expenses and may receive 'franking credits', where the super fund has invested in Australian shares.

Let's take the same example but this time we will assume the super fund is now paying pensions to its members.

The income the super fund earns on the investments supporting pension payments is tax free to the super fund.

But it gets even better that that.

Where the super fund paying pensions invests in Australian shares, the fund will also receive a cash refund of the franking credits.

Let's assume a super fund receives a dividend of $1,000 from an investment it holds in an Australian company. For the sake of this exercise, we will assume the dividend is 'fully franked'. This means that the company has already paid $428 tax on its profit before paying the dividend.

When our pension paying super fund receives its $1,000 dividend, it will also receive a 'franking credit' of $428. When the super fund lodges its tax return it will declare total income of $1,428. The fund pays tax on $1,428 but receives a tax credit of $428 to use to offset the tax otherwise payable.

> *"If we invest money in our personal name, any investment earnings are taxable in our hands."*

In this example, the super fund will not only pay no tax because it is in the retirement phase, but it will also receive a refund from the tax office of $428, thereby further enhancing the returns available to its pension members.

I realise this sounds too good to be true – but it reflects the way taxation of super funds works in Australian today.

However, this may not always be the case!

The Federal Opposition has announced they intend to make changes to cash refunds of excess franking credits. How individual taxpayers will ultimately be affected will depend on any exemptions, and the ultimate direction any legislative changes take.

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