



TERMINAL ILLNESS & SUPERANNUATION

In the 2015 Federal Budget, the Government announced that it would relax the rules around individuals with terminal illness accessing their superannuation savings. As a consequence, Tax and Superannuation Laws Amendment (Terminal Medical Conditions) Regulation 2015 was registered on 29 June 2015. The changes apply from 1 July 2015.

Background: Terminal illness payments from superannuation

The superannuation rules generally prohibit access to your superannuation savings unless a condition of release is satisfied (eg. attaining 'preservation age' and retiring). Preservation age depends on your date of birth and ranges from age 55 to 60.

However, a member with a **'terminal medical condition'** can draw down their superannuation benefits regardless of their age - even though the member may not have met an alternative condition of release.

Without this condition of release, terminally ill members below 'preservation age' would generally be unable to access their superannuation benefits to

assist with medical costs - even though they may no longer be able to work (exceptions apply).

A 'terminal medical condition' exists if:

- Two registered medical practitioners have certified a person is likely to die within 24 months from a terminal illness or injury; and
- One or both of the medical practitioners specialise in the illness or injury suffered.

Furthermore, the certificate must not have expired when the superannuation benefits are accessed. If a member's terminal illness or injury is certified as outlined above, they can access superannuation savings regardless of their age or current work status.

How is the payment taxed?

To relieve the tax burden on the individual and their family, the tax laws state that a superannuation lump sum paid to a member with a terminal medical condition is tax free.

More specifically, the superannuation payment received by a terminally ill member will be tax free if the individual has a terminal medical condition either at the time they receive the benefit or within 90 days of the benefit being received.

The tax free status of the payment applies regardless of the source of the superannuation benefit (eg. whether it is

paid from a large superannuation fund, SMSF or public sector superannuation fund).

WARNING

A payment made due to a terminal medical condition will only be tax free if it is paid as a lump sum. In contrast, a pension payment to a terminally ill member will not be tax free (unless another exception applies, such as the member attaining age 60).

EXAMPLE

Sonya, aged 36, has been diagnosed with breast cancer. Both her doctor and a specialist certify that Sonya's condition is likely to result in her death within 24 months of the certificate. Sonya can access her superannuation benefits as a tax free lump sum even though she has not yet reached 'preservation age' and retired.

SPEEDING DRIVER BOOTED FROM HIS SMSF

The superannuation law requires SMSF trustees to maintain high standards, even outside of their superannuation dealings. This is because the system is entrusting you to be of good character and stick within the rules when managing your superannuation. Failing to meet these standards could result in you being barred from being a trustee of an SMSF.

This happened recently, whereby a speeding driver (Mr Shaw) falsely nominated relatives on multiple occasions, leading to a court conviction. After being disqualified as trustee, he was unable to convince the Tribunal to reinstate him as a trustee of his SMSF.

So, what happened to the speeding driver?

After accumulating excessive demerit points from six speeding offences over a two-year period, Mr Shaw elected to be on a good behaviour bond for 12 months instead of losing his license.

He was then caught speeding another six times in six months and made false statutory declarations that other relatives (including his wife) were driving the car at the time of the speeding offence. He did this to avoid his license being suspended.

After being caught making false declarations, a Court convicted Mr Shaw on five counts of conspiracy. As the offence involved dishonest conduct, it resulted in him becoming a disqualified person and being unable to act as trustee of his SMSF.

He then asked the ATO if they could waive his disqualification status, and allow him to remain a trustee of his SMSF.

The ATO refused to allow Mr Shaw to remain a trustee of his SMSF because it considered that Mr Shaw 'knowingly and systematically' made false declarations, which is contrary to the standards expected of a trustee.

On appeal, the Tribunal member was not convinced Mr Shaw had mended his ways, and accordingly agreed with the ATO that he should not be allowed to be trustee of his SMSF.

As can be seen from Mr Shaw's example, being an SMSF trustee carries a fair degree of responsibility. Accordingly, individuals who are convicted of an offence involving dishonesty cannot be trustee of an SMSF (exceptions apply). The law also excludes other individuals from being trustee, such as undischarged bankrupts.

In addition, the ATO can also disqualify you from being an SMSF trustee if it believes you have a poor attitude to complying with the superannuation laws.

Implications of being disqualified

Being disqualified from acting as an SMSF trustee generally means you need to restructure your superannuation savings, as follows:

- **Cease acting as trustee:** You must immediately discontinue acting as trustee. As all members must be trustees, your benefits must be transferred out of the fund, or an approved trustee appointed to the fund. Note, if you satisfy an

appropriate condition of release you can cash out your superannuation benefits from your SMSF.

- **Notify the ATO:** The remaining trustees must notify the ATO of the trustee change within 28 days.

TIP

Although the disqualified member must cease acting as trustee immediately, the superannuation laws allow six months for the fund to restructure as outlined in the bullet points above (eg. by rolling over the disqualified member's balance to a new fund).

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