



# Guide to super death benefits

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# Guide to super death benefits

**This guide outlines the rules relating to super death benefits, including who can receive a death benefit and the payment options available to different beneficiaries.**

## Introduction

A super death benefit is a payment made upon the death of a super member. Generally, the benefit can be paid to one or more of the deceased's dependants and/or to their legal personal representative (LPR). For many clients, their super not only represents a substantial part of their total wealth, but it can also help ensure their beneficiaries are looked after in the event of death.

The options and rules applying to the payment of death benefits from a super fund can be complicated. Considerations include how to structure beneficiary nominations to ensure it is paid to the intended beneficiaries in the event of death and how to manage transfer balance cap (TBC) limits for death benefit pensions.

In this guide, we explain the key technical issues, eligibility requirements, payment options and advice opportunities when considering super death benefits.

## Who can receive a super death benefit?

A super death benefit can only be paid to a SIS dependant of the deceased or to the member's LPR<sup>1</sup>. Super does not automatically form part of a deceased estate<sup>2</sup>. However, a member can direct their benefit to their estate by nominating their LPR as the recipient of any death benefit.

There are two definitions of dependant that are relevant for super death benefit purposes. The SIS or super definition determines who can be paid a death benefit and the tax definition determines the taxation of the death benefit (refer to Table 1).

When a death benefit is directed to an estate (ie LPR), the benefit is distributed in accordance with the member's Will. Super proceeds *may* form part of an estate where:

- a valid binding nomination is made in favour of the estate
- the trust deed or fund rules requires payment to an estate (eg where the trust deed requires a payment to the estate where there is no valid binding nomination is in place), or
- the trustee exercises discretion to pay the death benefit to the estate (eg where the trustee has discretion if there is no valid binding nomination, when a nomination is non-binding or if the deceased has no SIS dependants).

Certain SIS dependants have the option to receive the death benefit as a pension (refer to Death benefit income streams on page 12).<sup>3</sup>

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<sup>1</sup> An exception to this rule applies under SISR 6.22(3) where the deceased has no SIS dependants. A super trustee is permitted to make a payment to an individual who is not a SIS dependant where reasonable enquiries are made, and the trustee cannot find SIS dependants or an LPR.

<sup>2</sup> Special rules apply in NSW where super death benefits form part of the notional estate in the event of a challenge.

<sup>3</sup> SISR 6.21

The definition of a dependant for SIS and tax purposes is outlined in Table 1.

**Table 1 – SIS and Tax dependants**

<b>Dependant</b>	<b>SIS</b>	<b>Tax<sup>4</sup></b>
Spouse	Yes	Yes
Former spouse	No	Yes
Child, under age 18	Yes	Yes
Child, aged 18 or over	Yes	No*
Financial dependant (may include an adult child)	Yes	Yes
Interdependency relationship (may include an adult child)	Yes	Yes
Individual who receives a super lump sum because the deceased died in the line of duty as a member of the defence force, Australian Federal Police, state or territory police force or as a protective service officer.	No, unless they satisfy one of the above	Yes

\* Unless financially dependent or interdependent.

## Spouse

A 'spouse' is a person:

- to whom another person is legally married, or
- of the same or opposite sex who is registered as the spouse under State or Territory legislation, or
- of the same or opposite sex who lives with the person on a genuine domestic basis in a relationship as a couple. It will be determined on the circumstances of each case. There is no minimum timeframe, however the duration of the relationship will be one factor considered.

Former spouses are dependants for tax purposes but not for super purposes. Consequently, a former spouse can receive a super death benefit via an estate, however, a super trustee cannot pay the benefit directly to the former spouse unless the former spouse falls into another SIS dependant category (eg financial dependant) or the trustee cannot find any SIS dependants or LPR. If a client wants their super death benefit to be paid to a former spouse, they may need to review their super beneficiary nominations and Will. There is a risk that an instrument may cease to be valid following a relationship break down.

## Child

A 'child' includes:

- a biological child
- a child of a spouse
- a stepchild
- an adopted child, or
- a child as defined in the Family Law Act.

It also includes children of a de facto spouse.

A dependant for tax purposes only includes a child aged 18 or over if they meet the financial dependant or interdependency definitions.

The term 'stepchild' traditionally refers to a child from a previous relationship being brought into a new relationship by one of their biological parents. In these circumstances, the stepchild is a child of the non-biological parent only for as long as the relationship lasts. Therefore, either legal divorce, separation or death of the biological parent ends the parent/stepchild relationship with the non-biological parent<sup>5</sup>.

<sup>4</sup> ITAA97 s302-195

<sup>5</sup> ATO ID 2011/77

A death benefit nomination made by the non-biological parent in favour of a step-child may be valid after the end of the natural parent/non-biological parent relationship breakdown if the step-child is an adopted child or is financially dependent or in an interdependency relationship with the non-biological parent at their time of death. Otherwise, the non-biological parent can direct their death benefit to their estate and cater for the former stepchild via their Will.

## Financial dependant

The term financial dependant is not expressly defined in super or tax legislation and traditionally there has been a misalignment between the Commissioner of taxation and the Courts. Generally, a person is financially dependent where the level of support provided was substantial and relied upon to maintain their normal standard of living. This may be difficult for an adviser to determine.

### Advice tip

The super fund trustee will determine tax dependency (including financial dependency) when deciding whether to withhold tax from a lump sum super death benefit paid directly to a beneficiary. Where a super death benefit is paid to the estate, the legal personal representative will determine tax dependency.

SMSF trustees and legal personal representatives may seek their own taxation advice and/or apply to the ATO for a [private binding ruling](#).

Where a beneficiary nomination relies on financial dependency, the trustee will determine financial dependency following death of the member. If the beneficiary is not found to be financially dependant on the deceased immediately prior to death, the nomination will become ineffective or invalid. Consider the death benefit process of the fund and whether a contingency in the Will may assist. The client should seek legal advice.

## Interdependency relationship

A person may be in an interdependency relationship<sup>6</sup> if two people:

- have a close personal relationship, and
- they live together, and
- one or each of them provides the other person with financial support, and
- one or each of them provides the other with domestic support and personal care.

If two people satisfy the close personal relationship requirement but cannot satisfy the other requirements, they can still satisfy the interdependency relationship if:

- either or both of them suffer from a physical, intellectual or psychiatric disability, or
- they are temporarily living apart (eg overseas or in jail).

Trustees consider the following factors when determining if an interdependency relationship<sup>7</sup> exists:

- the circumstances of the relationship including (where relevant):
  - duration of relationship
  - whether or not a sexual relationship exists
  - ownership, use and acquisition of property
  - degree of mutual commitment to a shared life
  - care and support of children
  - reputation and public aspects of the relationship
  - degree of emotional support
  - extent to which the relationship is one of mere convenience
  - any evidence suggesting that the parties intend the relationship to be permanent
- a statutory declaration signed by one of the persons to the effect that the person is or was in an interdependency relationship with the other person.

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<sup>6</sup> SISA s10A

<sup>7</sup> SISR 1.04AAAA

Not all the listed circumstances must be satisfied for an interdependency relationship to exist. Each factor is given the appropriate weighting depending on the circumstances. Two people do NOT have an interdependency relationship where domestic support and personal care is provided:

- under an employment contract or a contract for services, or
- on behalf of another person or organisation such as a Government agency, a body corporate or a benevolent or charitable organisation.

Generally, it is not likely that children have an interdependency relationship with their parents, but it is possible. [ATO ID 2014/22](#) determined a child and parent were in an interdependency relationship where the child (over 18) had given up work to care for the terminally ill parent and received no financial support from anyone, other than the parent, during that time.

#### Advice tip

Where SIS and tax dependency relies on interdependency, the trustee will decide whether an interdependency relationship existed. Check with the super fund what evidence is required. If the trustee determines that an interdependency relationship did not exist, the beneficiary nomination will become ineffective or invalid. Consider the death benefit process of the fund and whether a contingency in the Will may assist. The client should seek legal advice.

Where a super death benefit is paid to the estate, the legal personal representative will determine tax dependency (including interdependency).

SMSF trustees and legal personal representatives may seek their own taxation advice and/or apply to the ATO for a [private binding ruling](#).

## Death benefit nominations

A death benefit nomination can be reversionary for a pension and binding or non-binding for all super interests. Beneficiary nominations (including reversionary) are only valid at the time of death if the nominated person is eligible to receive the benefit (ie qualifies as a SIS dependant). A member is not required by law to nominate a beneficiary.

When assessing which type of nomination is appropriate, you should consider each client's specific circumstances, including their need for flexibility and other factors such as grandfathering of an ABP for social security purposes and the ability to amend the type of nomination without having to restart the income stream. Certain funds may offer an option to add and remove reversionary nominations without having to cease and restart an existing pension.

For more information, please refer to our '[When should you use a reversionary beneficiary?](#)' and '[Super beneficiary nominations: options, opportunities and obstacles](#)' article.

## Death benefits and social security

Clients must notify Centrelink/DVA within 14 days of a change of circumstances, including the death of a spouse. If a member of a couple dies, the date a reversionary beneficiary will be entitled to payments from the income stream will be based on the provider's rules (eg providing a death certificate). The income stream is assessed for social security purposes when they become entitled to the income stream, which may be a different day from date of death.

In all other cases, a super death benefit should not be assessed against the surviving partner until the time the trustee decides to pay or commences to pay the death benefit to that person. Practically, this is either at the time the trustee:

- has made a decision to pay a death benefit lump sum to the beneficiary, or
- verifies the beneficiary is entitled to a death benefit pension.

The same rules apply for any other beneficiary of a super death benefit, who also receives a payment or benefit from Centrelink or DVA. Re-directing one's interest in a deceased estate or interest in a super fund will generally trigger the gifting and deprivation provisions.

If a super death benefit is paid to the estate, Centrelink [generally accepts that it may take up to 12 months](#) for an estate to be administered. However, if a person can receive their entitlement at an earlier time, it is at this point that Centrelink/DVA must be notified and re-assess the person's entitlement to benefits.

## Compulsory cashing of death benefits

Death is a compulsory cashing event<sup>8</sup> where the death benefit must be paid as soon as practicable after the member dies. The death benefit must be paid as a:

- single lump sum, or
- an interim lump sum and a final lump sum, or
- death benefit income stream to an eligible beneficiary<sup>9</sup>, or
- a combination of lump sum and income stream.

Subject to a fund's governing rules, a lump sum death benefit can be made as cash or as an in-specie payment. An in-specie payment is made using the fund's assets (eg listed shares) instead of money. CGT may be payable on the disposal of the assets by the super fund, to the extent that the asset is not supporting a pension. Death benefit pension payments can only be paid in cash.

### Death benefit lump sums

#### Directly to beneficiary

If there is a valid binding nomination to a SIS beneficiary, trustees can make lump sum payments directly to the nominated beneficiary.

If a non-binding nomination, an invalid nomination, or no nomination is listed, the rules of the fund determine how the death benefit is paid. Some trustees:

- Exercise their discretion and decide which SIS dependants receive payments. The trustee may also decide to pay to the estate.
- Other trustees may make automatic payment to the LPR (deceased member's estate), where no trustee discretion applies.

Where a super death benefit is paid to the estate, there is no option for a death benefit pension. It is important to understand the rules of individual funds.

#### Payment to the estate or legal personal representative

Where the super death benefit is paid to the deceased's estate it is distributed according to the Will (or under the intestacy rules if applicable).

When a super benefit is paid to the estate, it becomes an 'estate asset' and should the estate be challenged, it may form part of the asset base subject to challenge. This may include any life insurance proceeds from any policies held within the fund<sup>10</sup>.

If the client intends to establish a testamentary trust, it is necessary for the super death benefit to be paid to the estate. The beneficiaries of the testamentary trust would normally be family (eg children and grandchildren). Super death benefits directed into a deceased estate or consequently to a testamentary trust will be taxable to the extent that a non-tax dependant may benefit. Specialist legal and tax advice should be sought to ensure that the Will provides adequate provision for the establishment of a trust and to ensure the structure of any trust provides tax effective outcomes for the beneficiaries.

### Death benefit income streams

Beneficiaries<sup>11</sup> eligible to receive a death benefit as a pension are limited to a:

- spouse
- child under 18 years of age
- child aged 18 to less than 25 who is financially dependent
- disabled child
- financial dependant (other than a child), and
- a person in an interdependency relationship with the deceased (other than a child).

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<sup>8</sup> SISR 6.21(1)

<sup>9</sup> SISR 6.21(2A)

<sup>10</sup> Special rules apply in NSW where super death benefits, including those paid directly to beneficiaries, can be challenged under the notional estate.

<sup>11</sup> SISR 6.21.

The beneficiary's TBC<sup>12</sup> restricts how much can be received as a death benefit pension. The balance must be paid as a lump sum death benefit, leaving the super environment.

Where a new death benefit pension is paid (ie a non-reversionary pension), a pro-rated minimum pension payment is calculated for the remainder of the financial year based on the beneficiary's age at the commencement date. It is then calculated every 1 July thereafter based on age and minimum pension payment factors. Any pension payments received by the deceased in the year of their death don't count towards meeting the minimum pension for the new death benefit pension.

Where a valid reversionary nomination exists, a pension that was payable to the deceased at the time of death continues to be paid to the reversionary beneficiary. A reversionary pension is a continuation of the original pension and may allow faster processing of a death benefit claim. The minimum pension payment is not recalculated until the following 1 July based on the beneficiary's age.

## Rollover death benefits

Death benefits paid may be rolled over to another fund to commence a death benefit pension.

Rolling over death benefits may be appropriate where the beneficiary wants to commence a death benefit pension with another provider or to combine multiple death benefits into a single death benefit pension. Before rolling over, consider whether a reversionary pension is grandfathered, the tax components of various benefits, along with the desire for ease of management.

Death benefits cannot be consolidated with a beneficiary's own member benefits (nor be held in accumulation phase).

## Taxation of super death benefits

The taxation of super death benefits depends on:

- whether the payment is taken as a lump sum or an income stream
- whether the beneficiary is a dependant for tax purposes
- if taken as a death benefit pension, the age of the deceased at death or the beneficiary's age at payment, and
- the underlying tax components of the interest.

A lump sum paid from a death benefit pension is always treated and taxed as a lump sum death benefit.

## Determining tax components of the interest

A death benefit may comprise a taxable component and a tax-free component. Any death benefit payment made reflects the proportions of the tax components of the deceased member's interest. The tax components of the death benefit reflect:

- the components of the interest at the time of a lump sum payment paid from accumulation phase
- for a reversionary pension, the components of the pension fixed at the time the deceased initially commenced their pension, or
- for a non-reversionary pension, the tax components of that interest, which commences to be paid as a death benefit pension.

## Taxation of death benefit lump sums

### Lump sums paid directly to tax dependants

If a death benefit is paid as a lump sum to a tax dependant it is tax free. This includes payments from both the tax-free and taxable (taxed and untaxed) components.

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<sup>12</sup> A TBC between \$1.6m and \$2m applies (25/26), depending on the client's situation.

## Lump sums paid directly to non-tax dependants

Refer to the following table for tax payable on a super death benefit paid as a lump sum to a non-tax dependant:

**Table 2 – Tax payable by non-tax dependants on lump sum death benefits**

Component	Maximum rate of tax payable (excluding Medicare levy)
Tax free	Nil
Taxable	Taxed element: 15%* Untaxed element: 30%*

\* Plus Medicare levy/surcharge (if applicable) unless paid to the deceased's estate or a non-resident for tax purposes.

If the death benefit is paid from the super fund directly to a non-tax dependant, the fund must withhold tax at the lump sum tax rate plus Medicare levy. The taxable component is added to the person's assessable income, taxed at up to the maximum rate (either 15% or 30% plus Medicare) and a credit is applied for the tax withheld by the super fund trustee.

The additional income may impact other measures that are based on assessable or taxable income (eg Family Tax Benefit, Government co-contributions or the Low Income Tax Offset).

An untaxed element (derived by a formula<sup>13</sup>) may arise if a death benefit lump sum contains life insurance proceeds and the trustee claimed a deduction<sup>14</sup> for the premiums.

### Calculating an untaxed element

**Untaxed element** = taxable component – taxed element

**Taxed element** = (lump sum super death benefit × service days / (service days + days to retirement)) – tax-free component

**Days to retirement** = number of days between date of death and the deceased's last retirement date (generally when the client would have been age 65)

**Service days** = number of days from the member's eligible service date to date of death.

Eligible service date is the earlier of:

- the date the member joined the fund, or
- if a rollover amount is received, the eligible service period of the rollover, or
- the employment commencement date where the employer contributed to the fund.

The untaxed element broadly reflects the future service period of the death benefit. An earlier service date (eg rolling funds with an earlier start date into a super fund with insurance) effectively increases the taxed element and decreases the untaxed element.

## Lump sums paid to the estate

A super fund does not withhold any tax when a death benefit is paid as a lump sum to the estate. Instead, the lump sum is taxed in the hands of the executor of the estate in the same way as it would have been if paid directly to the person(s) intended to benefit from the super death benefit.

To the extent that the super death benefit is part of the tax-free component or to the extent a tax dependant will benefit from the super death benefit, no tax is payable by the estate. To the extent that a non-tax dependant will benefit from the taxable taxed or untaxed element, the component is taxed at a maximum 15% and 30% respectively (no Medicare applies). A net benefit is paid to the beneficiaries (the amount is not included in the beneficiary's assessable income).

<sup>13</sup> ITAA97 S307-290.

<sup>14</sup> A fund (generally restricted to eligible SMSFs) that DOES NOT claim a tax deduction for insurance premiums paid in the financial year that a death or disability amount is paid can claim a deduction for future liability to pay benefits (ITAA 1997 S295.470).

## Super proceeds that flow into a testamentary trust

If the super death benefit flows from the estate into a discretionary testamentary trust, the tax withheld by the estate on the death benefit depends on whether or not **all** the beneficiaries of the trust are dependants for tax purposes.

If **all** beneficiaries are tax dependants, the amount is not taxed, as would have been the case if paid to the beneficiary by the fund directly, or if the executor had directed the proceeds to the beneficiary in their individual capacity.

If **any** of the beneficiaries of the trust are non-tax dependants, the executor is required to withhold tax on the entire taxable component as if the benefit was paid to a non-tax dependant<sup>15</sup>. An exception may exist if the executor can determine the amount of the death benefit that flows via the testamentary trust for the benefit of a tax dependant.

### **Advice tip**

Specialist legal advice should be provided in relation to the Will and upon the death of the individual to ensure that the Will contains the required provisions to bring support to any testamentary trust arrangement and, that upon establishment, the trust deed will sufficiently support this arrangement.

## Taxation of death benefit income streams

### Taxed funds

The table below summarises the taxation of death benefit income streams paid from a taxed super fund.

**Table 3 – Tax payable on pension payments from death benefit income streams**

<b>Age of deceased at death / beneficiary at time of payment</b>	<b>Component</b>	<b>Tax treatment</b>
<b>Either aged 60 or over</b>	Tax Free	Tax-free
	Taxable – taxed element	Tax-free
<b>Both under age 60</b>	Tax Free	Tax-free
	Taxable – taxed element	Taxed at marginal rate less 15% pension tax offset (when recipient turns 60, becomes tax-free)

<sup>15</sup> [Private binding ruling \(PBR\) 1051920326857](#)

## Capped defined benefit income streams

The table below summarises the taxation of defined benefit income streams paid following death benefit income streams paid from a super fund.

<b>Table 3 – Tax payable on defined benefit payments from death benefit income streams</b>			
<b>Age of deceased at death / beneficiary at time of payment</b>	<b>Component</b>	<b>Tax treatment – Amount below *DB income cap</b>	<b>Tax treatment – Amount above *DB income cap</b>
<b>Either aged 60 or over</b>	Tax Free		
	Taxable – taxed element	Tax-free	50% taxed at MTR
	Taxable – untaxed element	Taxed at MTR less 10% tax offset	Taxed at MTR
<b>Both under age 60</b>	Tax Free	Tax-free	
	Taxable – taxed element	Taxed at MTR less 15% tax offset	
	Taxable – untaxed element	Taxed at MTR	

\*Defined benefit (DB) income cap is \$125,000 (2025/26) and may be reduced in certain circumstances. Cap applies first to tax free component, followed by taxable (taxed) then taxable (untaxed).

For additional information refer to the [ATO](#).

### **Advice tip**

Commutations withdrawn from a death benefit pension are always treated as a super lump sum death benefit and are received tax-free.

## Pensions to minor children

Death benefit pension payments paid to minor children are not taxed at the penalty rates for minors (ie it is excepted income and taxed at adult rates). A death benefit pension paid to a child (who is not disabled) of a deceased member can only continue until the child reaches age 25.<sup>16</sup> At this age, the pension must be commuted and any residual capital is paid as a tax-free lump sum.<sup>17</sup> An exception applies to a disabled child in which case, the pension can continue indefinitely.

Some product providers don't allow partial withdrawals on a death benefit pension paid to a minor.

### When does a non-reversionary pension cease?

If the deceased member was in receipt of an income stream and there was no auto-reversionary death benefit nomination in place at the time of their death, the pension continues until a death benefit is paid and any earnings (including realised capital gains) supporting the pension continue to be tax free.<sup>18</sup> Any investment earnings from date of death until the death benefit is paid are allocated in the same proportion of tax-free and taxable component as at pension commencement.<sup>19</sup>

## **Transfer balance cap**

The value of a death benefit pension (excluding children) is a credit against the beneficiary's personal transfer balance account (TBA) and counts toward their transfer balance cap (TBC<sup>20</sup>).

Before implementing death benefit strategies, advisers need to consider:

- the beneficiary's personal TBC
- the value of the beneficiary's TBA
- any available TBC space
- when the credit of the death benefit pension arises in the beneficiary's TBA

<sup>16</sup> This applies to death benefit income streams commenced on or after 1 July 2007.

<sup>17</sup> ITAA97 s303-5.

<sup>18</sup> TR 2013/5: Income tax: when a super income stream commences and ceases.

<sup>19</sup> ITAR 307-125.02

<sup>20</sup> A TBC between \$1.6m and \$2m applies (2025/26), depending on the client's situation.

- requirement, if any, to commute an amount or the entire balance of the beneficiary's existing retirement phase pension to avoid accruing an excess transfer balance, and
- the fact that a death benefit cannot be rolled into accumulation phase, however, can be rolled over to another super fund to be immediately received as a new death benefit pension (including the timing of debits and credits associated with the transaction).

The ability of a child to receive a death benefit pension may be limited further by the operation of the modified TBC rules that apply to child beneficiaries. The following sections explain the advice considerations and options available for implementing death benefit strategies.

### Advice tip

Advisers need to consider the benefits of a death benefit pension (with tax free investment returns on assets supporting the pension) against using up all or part of the transfer balance cap and reducing future indexation. Particularly, younger clients who use their TBC will not fully avail of TBC indexation at retirement. They are also at a greater risk of legislation change.

For more information, please refer to our article [Guide to the transfer balance cap.](#)

## Non-reversionary pension

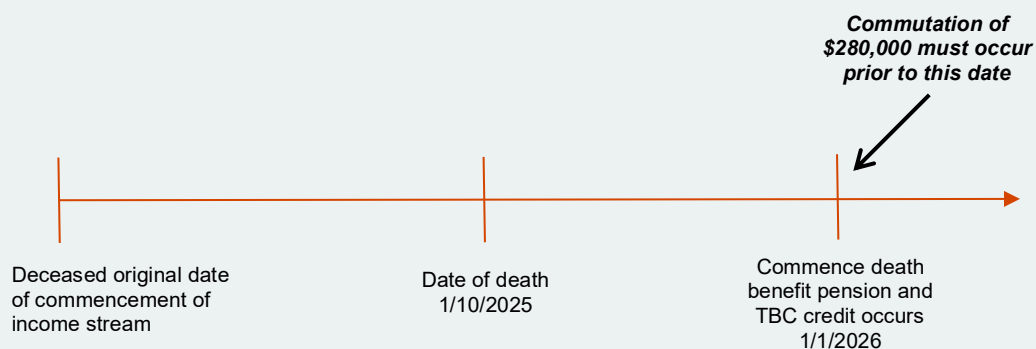
The commencement value of a non-reversionary pension<sup>21</sup> is a credit for the beneficiary's TBA at the time of commencement.

### Example 1: TBA credit applied on commencing a non-reversionary death benefit pension

Zoey died on 1 October 2025 with an ABP valued at \$250,000. Zoey had previously made a valid binding death benefit nomination to her husband Zac. Zac elects to take the death benefit as a pension which commences for Zac on 1 January 2026 when the account balance increased through investment growth to \$280,000.

The credit to Zac's TBA is equal to the commencement value of \$280,000 and is credited 1 January 2026.

If Zac has an ABP balance of \$2m, no room under his transfer balance cap (ie available cap space is nil) and he wishes to take Zoey's death benefit as an income stream and retain all funds in the super/pension environment, he would need to ensure that a partial commutation of \$280,000 is made from his own ABP to create a debit against his TBA before the death benefit is commenced on 1 January 2026. The partial commutation is rolled back to accumulation.



<sup>21</sup> This includes a death benefit pension commenced from the deceased accumulation interest or an income stream paid to the deceased which did not have a valid reversionary nomination.<sup>22</sup> A debit applies to TBA equal to the amount of the contribution made under a structured settlement.

## Reversionary pension

For a reversionary pension, the date of death balance is a credit to the TBA, credited 12 months from the date of death of the member.

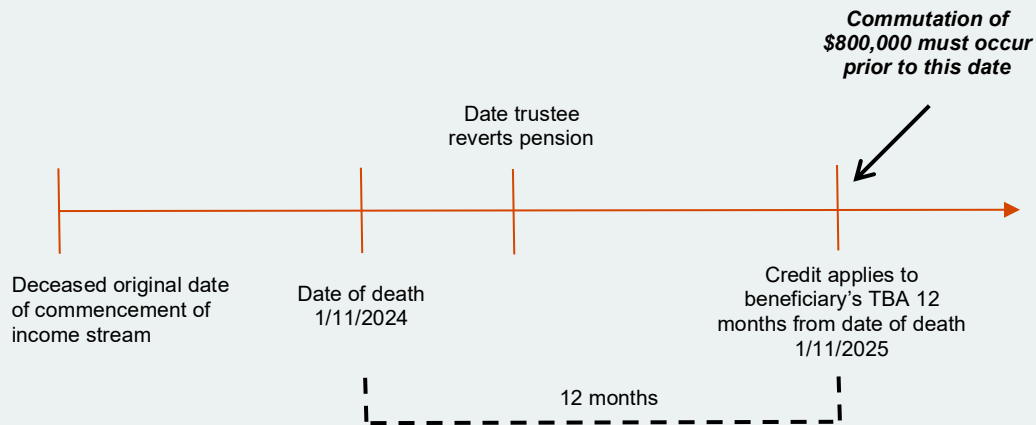
This may afford the beneficiary (ordinarily the surviving spouse) additional time to seek advice to ensure that an excess transfer balance amount does not occur. Where inaction will result in the TBC being exceeded, a commutation close to 12 months from date of death can help maximise the period that assets remain in the tax free pension environment.

### Example 2: TBA credit applied to a reversionary pension

William died on 1 November 2024 holding an ABP with a balance of \$1m at the time of death. The pension reverted to his wife Wendy. During the next 12 months the pension balance grew to \$1.1m through investment earnings.

On 1 November 2025, Wendy's TBA received a credit of \$1m (not the actual value of \$1.1M) in respect of the reversionary pension, being the value of the pension at date of death.

If Wendy has an ABP balance of \$1.5m, room under her \$1.7M transfer balance cap (ie available cap space) of \$200,000 and she wishes to retain as much as possible in the super/pension environment, she will have had to commute \$800,000 (transfer balance cap credit of \$1,000,000 less the available cap space of \$200,000) of her own ABP back to the accumulation phase. The commutation must have occurred before 1 November 2025 (ie 12 months after the date of death) to avoid breaching her personal TBC.



As the credit for the reversionary pension does not count towards Wendy's TBA until 12 months from the date of the death, she can continue to receive both income streams for close to 12 months prior to making a partial commutation to make room under the transfer balance cap.

### Example 3: Beneficiary has an account based pension

Wayne and Jane are married. Both commenced account based pensions in January 2018 with \$1.6m each and made reversionary nominations to each other. Wayne passed away on 1 August 2024, when his pension was valued at \$1.6m. After the trustee completed the death benefit process, the reversionary pension commenced in favour of Jane. On 1 August 2025, a credit of \$1.6m arose in Jane's TBA, which was the value of the pension on the day Wayne died.

On 25 July 2025 (just before 12 months from the date of death), Jane fully commutes her existing ABP. At this time:

- Jane's own pension balance has decreased to \$1.5m, and
- the value of the reversionary death benefit is \$1.55m.

Jane's transfer balance cap is \$1.6m (she used her TBC in full in 2017/18, therefore her TBC is not indexed).

The following table illustrates her TBA credits and debits.

Date and Event	Credit	Debit	TBA	Explanation
1/1/2018 Jane commenced an account based pension	\$1.6m	-	\$1.6m	Credit is equal to commencement value
1/8/2024 Wayne died and \$1.6m pension reverted to Jane	-	-	\$1.6m	Pension reverted to Jane, however, no credit applies to her TBA at that time as pension is reversionary
25/7/2025 Jane fully commutes her own account based pension back to accumulation phase	-	\$1.5m	\$100,000	Debit value equals amount commuted. Jane's TBA is \$100,000 (credit of \$1.6m less debit of \$1.5m)
1/8/2025 \$1.6m credit applied for reversionary death benefit	\$1.6m	-	\$1.7m	The credit applied is equal to the pension value at date of death, despite the fact the current pension value has decreased to \$1.55m. Jane has exceeded her TBC by \$100,000.

**Outcome:** As Jane has fully commuted her own pension, she will need to commute an additional \$100,000 lump sum from the reversionary pension. For every day she has a transfer balance excess, she will need to commute an additional amount which will reflect notional earnings on the excess amount. She will also be liable for excess transfer balance tax.

## Child death benefit pensions

Death benefit pensions payable to eligible child beneficiaries are also subject to the TBC rules. The amount of the TBC applied to a child death benefit pension is referred to as a TBC increment. However, this does not impact the child's individual TBA when they commence their own pensions at retirement in the future.

### Transfer balance cap increment

A separate TBC increment applies to each parent's death benefit pension commenced for the child. The cap increment is calculated based on whether the:

- child pension commenced prior to 1 July 2017 or after
- deceased parent had a TBA or not
- child is the sole beneficiary of the death benefit or one of many, and
- deceased parent had an excess transfer balance at the time of death.

A child's total cap includes the sum of cap increments in respect of the death of one parent, the death of both parents, and/or their own member pension (from permanent incapacity proceeds or from structured settlement contributions).<sup>22</sup>

Child death benefit pensions must be fully commuted once they turn 25 (unless disabled) with any remaining capital paid as a tax-free lump sum.<sup>23</sup> At this point, the modified TBC is extinguished. If the death benefit pension balance is exhausted prior to 25, the modified TBC ceases at the earlier time.

If the child is disabled, the modified TBC continues beyond 25 until the balance of the pension is extinguished. This ensures that the child's own personal TBC is preserved and not eroded by the receipt of a death benefit pension.

<sup>22</sup> A debit applies to TBA equal to the amount of the contribution made under a structured settlement.

<sup>23</sup> ITAA97 s303-5

### Advice tip

An amount of a death benefit payable to a child may be forced out of the super environment based on the structure (accumulation or pension phase) or value of their deceased parent's super benefit as explained below.

Advisers should communicate to clients the responsibilities that a guardian has when acting as trustee for a child that has received an amount from a super death benefit or through a deceased estate. The trustee will need to invest the proceeds and distribute the capital and income to the child in accordance with the deceased's wishes, any fund rules and legislative requirements.

Mindful of the TBC limitations, it is important for advisers to discuss with clients:

- how much of a super benefit should be directed to SIS dependants directly?
- how much of a super benefit should be directed to their estate?
- should provisions for a testamentary trust be included or updated in the client's Will?

Also remember the child will have control of the ABP from age 18 and can make decisions regarding access to capital from that age. From age 25, the child death benefit pension must generally cease, and any remaining capital paid out. Given these elements, clients should consider whether they wish for children to have access to capital from age 18 and, if not, explore alternative estate planning strategies, such as a testamentary trust which may also offer additional capital protection.

### Child death benefit pensions commenced prior to 1 July 2017

The child TBC increment is \$1.6m for child death benefit pensions that commenced prior to 1 July 2017. This was equal to the general TBC on that date. Any excess above \$1.6m was required to be cashed out of super before 30 June 2017. Scenarios for child death benefit pensions that commenced since 1 July 2017 are covered below.

### Deceased did not have a transfer balance account

A deceased parent does not have a TBA at the time of their death if they never commenced a retirement phase income stream (excludes transition to retirement income streams).

The child's TBC increment is:

- the general TBC (\$2m in 2025/26), if the child is the sole beneficiary, or
- the child's proportionate share of the deceased's super interests multiplied by the general TBC, if the child is not the sole beneficiary.

That is the **child TBC cap increment** = child's % share of accumulation interest x general TBC

### **Example 4: No transfer balance account, benefit wholly from accumulation**

#### Sole beneficiary

In December 2025, Mary (44) passes away leaving her super accumulation interest of \$2.2m to her daughter Rita (16) as the sole beneficiary. As Rita is the sole beneficiary her TBC increment is the general TBC of \$2m.

Rita can commence a death benefit pension up to \$2m and take \$200,000 (the amount that exceeds the cap increment) as a lump sum death benefit.

#### Multiple beneficiaries

If Rita was entitled to 50% of Mary's accumulation interest (\$1,100,000), with the other 50% payable to her father Tom, her cap increment would be calculated as follows:

50% x general TBC = \$1,000,000.

Rita could therefore commence a pension with \$1,000,000 of her \$1,100,000 entitlement and would need to take the remaining \$100,000 as a lump sum death benefit.

## Deceased with a transfer balance account

If a deceased parent had a TBA, a death benefit to a child beneficiary may either be paid:

- wholly from a pension interest
- wholly from an accumulation interest, or
- partially from accumulation and pension interests.

A child's TBC increment is determined by their percentage share of the deceased parent's retirement phase income streams. This means once a parent has a TBA, generally any death benefit pension commenced from the parent's accumulation interest will result in an excess transfer balance cap.

### **Example 5: Parent had TBC, benefit wholly from pension**

Alex passes away in October 2025. At the time of his death he has an ABP valued at \$4m. He does not have an excess transfer balance amount. His children, Paula (14) and Liam (11) both beneficiaries of Alex's pension interest in equal proportions (ie 50% each). Alex's pension interest grows to \$4.2m and each child is paid a child death benefit pension of \$2.1m each. Each child's cap increment is:

$$= 50\% \times \$4.2\text{m} = \$2.1\text{m}.$$

If Alex had instead passed away without a TBA and the interest was paid wholly from accumulation, each child would only have a cap increment of \$1,000,000 (as per example 4). This means the maximum amount that they could hold in death benefit pensions would be \$1,000,000 each. The remaining \$1,100,000 each would be paid as a lump sum death benefit to each of the children.

## TBC increment where both parents die

Where both parents die, the child's TBC increment is the sum of amounts worked out in relation to each parent. This involves:

- calculating their available cap increment for each parent
- adding the available cap increments together, and
- adding to that any personal TBC increment the child has in respect of their own member pension (from permanent incapacity proceeds or from structured settlement contributions).

## **Options for amounts exceeding TBC**

### Investing amounts exceeding TBC

If a client exceeds their TBC upon receiving a death benefit pension (or 12 months after death for a reversionary pension), they must commute an amount from retirement phase (special rules apply to defined benefit pensions). As death benefits cannot be rolled back to accumulation phase, clients can consider commuting the excess amount from their own member pension(s) as these amounts can be rolled back to accumulation. In this situation, if clients wish, they can maximise the amount held in super.

Alternatively, an amount can be withdrawn from the super system. If taken from the death benefit, it is tax free to the beneficiary (as a person who is eligible to receive a death benefit pension is also a tax dependant). If the beneficiary is less than age 60 or has an untaxed fund, withdrawals from the beneficiary's own interest may be taxed. However, maintaining the excess amount in the accumulation phase of super may not always provide an optimal outcome.

Investing an amount outside of super for people with low assessable income levels may result in that client paying less tax. Assessable income from assets held in super accumulation phase is taxed up to a maximum rate of 15%. The availability of the personal income tax-free threshold and various personal tax offsets means the non-super option could provide a better tax outcome for some clients.

When determining whether to invest an amount inside or outside of super, consider the client's overall financial circumstances and objectives. A client may wish, regardless of the tax outcome, to hold as much of their investments as possible inside super for estate planning and asset protection purposes. For additional information on super and protection from bankruptcy refer to our article [\*\*'Is super safe from bankruptcy?'\*\*](#).

## Withdraw death benefit and retribute to super

A dependant beneficiary may wish to withdraw all or part of a death benefit and retribute to super (the retribution strategy) if:

- they are eligible to make non-concessional contributions (NCCs)
- they wish to convert taxable component to tax-free component to reduce any future tax payable for non-dependent beneficiaries
- tax on their personal assessable income exceeds the super tax rate of 15% and therefore they are subject to a lower tax rate by investing inside super, or
- an amount held in accumulation phase is not assessable for social security entitlements if the person is under age 67 and they wish to apply for or are receiving Disability Support Pension or JobSeeker Payment.

The retribution strategy may have to be in the financial year the death benefit is received if their total super balance at next 30 June will prohibit them from making future NCCs.