LUMP SUM SUPERANNUATION DEATH BENEFITS TAX RATES

COMPONENT	DEPENDANT	NON-DEPENDANT
Taxable element – taxed	Tax-free	The lower of marginal tax rate or 15%
Taxable element – untaxed	Tax-free	The lower of marginal tax rate or 30%
Tax-free	Tax-free	Tax-free

WHO IS A DEATH BENEFITS DEPENDANT?

For tax purposes, a 'death benefits dependant' of a person who has died is:

- the spouse or former spouse of the deceased
- a child of the deceased aged under 18
- any other person with whom the deceased had an interdependency relationship (see below) just before he or she died
- any other person who was a dependant of the deceased person just before he or she died (see below).

(Section 302-195 of the ITAA 1997)

INTERDEPENDENCY RELATIONSHIP

Two persons, whether or not related, have an interdependency relationship if all of the following are satisfied:

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

(Section 302-200 of the ITAA 1997)

QUALIFYING AS A DEATH BENEFITS DEPENDANT WHERE INTERDEPENDENCY CANNOT BE ESTABLISHED

A person must demonstrate that they were financially dependent on the deceased person just before they died. Establishing 'financial dependency' is not clear cut and it would be prudent for an LPR to apply to the ATO for a private ruling.

FOREIGN RESIDENT TAX RATES

Interest, unfranked dividends, royalties and managed investment trust income

INCOME TYPE	TREATY COUNTRY	NON-TREATY COUNTRY
Interest	10% or refer to DTA	10%
Unfranked dividends	15% or refer to DTA	30%
Royalties	15% or refer to DTA	30%

**DTA – Double Tax Agreement*

INCOME TYPE	EFFECTIVE EXCHANGE OF INFORMATION (EOI) AGREEMENT	NO EFFECTIVE EOI AGREEMENT
Managed investment trust payments	15%	30%

Note: Tax is withheld at source by the payer.

All other income for individuals, estates and testamentary trusts

TAXABLE INCOME	TAX PAYABLE
0 - $120,000	32.5% for each $1
$120,001 - $180,000	$39,000 + 37% on excess over $120,000
$180,001 and over	$61,200 + 45% on excess over $180,000

Medicare levy does not apply.
Note: If a non-resident beneficiary is presently entitled to income of a resident trust, the executor is required to pay tax on behalf of the beneficiary at non-resident rates. A separate notice of assessment will be raised against the trustee on behalf of the non-resident beneficiary. The beneficiary will also be required to lodge their own income tax return.

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RESIDENT TAX RATES

Adult individuals and deceased estates for first 3 years

TAXABLE INCOME	TAX PAYABLE
0 - $18,200	Nil
$18,201 - $45,000	Nil + 19% on excess over $18,200
$45,001 - $120,000	$5,092 + 32.5% on excess over $45,000
$120,001 - $180,000	$29,467 + 37% on excess over $120,000
$180,001 and over	$51,667 + 45% on excess over $180,000

Testamentary trusts and deceased estates after 3 years

TAXABLE INCOME	TAX PAYABLE
0 - $416	Nil
$417 - $670	50% on excess over $416
$671 - $45,000	Entire amount from $0 taxed at 19%
$45,001 - $120,000	$8,550 + 32.5% on excess over $45,000
$120,001 - $180,000	$32,925 + 37% on excess over $120,000
$180,001 and over	$55,125 + 45% on excess over $180,000

Medicare levy applies to testamentary trusts (but not to estates) at 2%.

DO YOU NEED TO LODGE PERSONAL RETURNS FOR THE DECEASED?

The legal personal representative of a deceased person is responsible for lodging any outstanding tax returns and settle any liabilities owing to the ATO. Check the deceased's personal TFN prior to finalising the estate.

For smaller and less complex estates, refer to PCG 2018/4 published by the ATO regarding the liability of a legal personal representative of a deceased person.

DO YOU NEED TO LODGE AN ESTATE TAX RETURN?

An estate tax return would generally be required for a year of income, if any of the following apply:

- an estate TFN has been issued by the ATO
- all executors are non-residents
- in any of the first 3 years after date of death the net income of the estate is more than $18,200
- the deceased passed away more than three years ago
- the estate received franked dividends
- tax was withheld on estate income
- the estate made capital gains for example, as a result of the sale of estate assets
- the estate carried on a business
- a beneficiary is presently entitled to estate income
- one or more beneficiaries is a non-resident.

MINOR BENEFICIARIES

Where a minor beneficiary is presently entitled to trust or estate income, the trustee is required to pay tax on behalf of the beneficiary's share of net income. The beneficiary will need to lodge a personal income tax return in order to claim any franking credit refund. They will also receive a tax credit for any tax paid by the trustee.

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CAPITAL GAINS TIPS AND TRAPS

A FULL MAIN RESIDENCE EXEMPTION APPLIES TO THE ESTATE WHERE:

- the dwelling was the main residence of the deceased and non-income producing at date of death
- land surrounding the dwelling was less than 2 hectares, and
- settlement occurred within two years of the deceased's date of death (or such further time as the Commissioner may allow). Alternatively, a full exemption may be available if the property was the main residence of the deceased's spouse or an individual who had a right to occupy it under the deceased's Will.

Where the property has been sold and settled more than two years after the deceased's date of death, refer to PCG 2019/5 to determine whether safe harbour conditions are satisfied.

CHOOSING TO TREAT A DWELLING AS MAIN RESIDENCE (E.G., WHERE DECEASED MOVED TO AGED CARE):

- If a choice is made to treat the deceased's former dwelling as their main residence while they were in aged care, a full main residence exemption may apply for an indefinite period provided the home was not used to produce income.
- If the property was income producing for less than six years whilst the deceased was in aged care, the full main residence exemption may still apply if a choice is made.
- If the property was income producing for more than six years, a partial main residence exemption could apply.

REMOVAL OF MAIN RESIDENCE EXEMPTION IF DECEASED WAS AN EXCLUDED FOREIGN RESIDENT

From 1 July 2020, a trustee (or beneficiary) of a deceased estate will no longer have access to the main residence exemption if the deceased had been a foreign resident just before their death for a continuous period of more than six years.

Further, there is no cost base step-up to market value for a dwelling that was a deceased's main residence if, at the time of death, the deceased had been a foreign resident for more than six years.

CAPITAL GAINS AND NON-RESIDENT LPRS

If the LPR is a non-resident (and the estate a non-resident trust), capital gains and losses from non-taxable Australian property (including that which the deceased owned) are not included in the net (taxable) income of the estate.

But if an amount attributable to the capital gain is paid to a resident beneficiary, it will be fully assessable – that is, it can't be reduced by the CGT discount or capital losses. (TDs 2017/23 and 2017/24).

WHERE AN EXEMPT ENTITY IS A BENEFICIARY UNDER A WILL

If an exempt entity is a beneficiary under a Will and is presently entitled to an amount of estate income, you should ensure that the amount is paid or the entity notified that they have an entitlement within two months of the end of the income year. If not, the trustee will be assessed. (Section 100AA of the ITAA 1936).

Consider whether there is a discrepancy between an exempt entity's entitlement to income and 'adjusted net income'. If so, the LPR may need to apply to the Commissioner for an exercise of discretion to avoid an assessment of the trustee under section 100AB.

Consider the tax consequences if post-CGT assets pass to a non-resident beneficiary or tax-exempt entity (unless it is a deductible gift recipient) as the estate may need to pay tax on any gain to the date of death.

LIFETIME LIMIT SUPERANNUATION TRANSFER BALANCE CAP UPDATE FROM 1 JULY 2021

From 1 July 2017, a $1.6 million 'transfer balance cap' (TBC) places a limit on the total amount of superannuation that can be transferred and held in the tax-free retirement phase.

Individuals who start their first retirement phase income stream on or after 1 July 2021 will have a personal transfer balance cap of $1.7 million.

Particular care should be taken as clients approach these limits in order to mitigate any potential exposure to 'excess transfer balance tax'.