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Edited version of your written advice

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Ruling

Subject: Death benefits dependants

Question

Are Person One (the First Beneficiary), Person Two (the Second Beneficiary) and Person Three (the Third Beneficiary) death benefits dependants of a person (the Deceased) in accordance with section 302-195 of the *Income Tax Assessment Act 1997* (ITAA 1997) by virtue of being in an interdependency relation with the Deceased under section 302-200 of the ITAA 1997 just before the Deceased's death?

Answer

Yes

This ruling applies for the following periods:

Income year ended 30 June 2016

The scheme commences on:

1 July 2015

Relevant facts and circumstances

The three Beneficiaries are children of the Deceased aged over 18 years at the time of the Deceased's death.

Each Beneficiary is entitled to one third of the Deceased's estate.

The Beneficiaries did not reside with the Deceased. Rather, the Beneficiaries lived with their parent.

The Beneficiaries did not receive any financial support from their parent.

The Deceased provided the Beneficiaries with ongoing financial support including the following:

- regular payment of tertiary education course fees for the First Beneficiary;
- provision of supplementary income to the Second Beneficiary for living expenses; and
- provision of supplementary income to the Third Beneficiary for living expenses.

Without the financial support the Deceased provided, the First and Second Beneficiaries have been unable to continue their tertiary studies

The Third Beneficiary had taken a gap year and was reliant on the Deceased for supplementary income.

Relevant legislative provisions

Income Tax Assessment Act 1997 Section 302-60

Income Tax Assessment Act 1997 Section 302-195

Income Tax Assessment Act 1997 Section 302-140

Income Tax Assessment Act 1997 Section 302-145

Income Tax Assessment Act 1997 Section 302-200.

Income Tax Assessment Regulations 1997 Regulation 302-200.01.

Reasons for decision

Summary

The three beneficiaries are death benefits dependants of the Deceased because they were dependants of the Deceased, as defined under section 302-200 of the ITAA 1997, just before the Deceased died.

Therefore, in accordance with section 302-60 of the ITAA 1997, the lump sum payment of superannuation death benefits is not assessable and is not exempt income, that is it is tax free.

Detailed reasoning

Section 302-60 of the ITAA 1997 states:

A *superannuation lump sum that you receive because of the death of a person of whom you are a *death benefits dependant is not assessable income and is not exempt income.

Subsection 302-195(1) of the ITAA 1997 defines a 'death benefits dependant' of person who has died as follows:

- (a) the deceased person's *spouse or former spouse; or
- (b) the deceased person's *child, aged less than 18; or
- (c) any other person with whom the deceased person had an interdependency relationship under section 302-200 just before he or she died; or
- (d) any other person who was a dependant of the deceased just before he or she died.

To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

As the Beneficiaries are all children of the Deceased aged over 18, paragraphs 302-195(1)(a) and (b) of the ITAA 1997 do not apply in this case. Therefore, to find that the Beneficiaries are death benefits dependants of the Deceased, it must be established that the Beneficiaries were in an 'interdependency relationship' with the Deceased, or that they were each a 'dependant' of the Deceased just before the Deceased died.

What is an interdependency relationship?

Subsection 302-200(1) of the ITAA 1997 states that two persons (whether or not related by family) have an ***interdependency relationship*** if:

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

Subsection 302-200(3) of the ITAA 1997 provides that matters and circumstances that are, or are not, to be taken into account in determining whether two persons have an interdependency relationship under that section may be specified in the regulations.

To that effect, regulation 302-200.01 of the *Income Tax Assessment Regulation 1997* (ITAR 1997) states that in considering paragraph 302-200(3)(a) of the ITAA 1997, matters to be taken into account are all relevant circumstances of the relationship between the persons, including (in this case):

- (a) the duration of the relationship; and
- (b) the degree of mutual commitment to a shared life; and
- (c) the degree of emotional support; and
- (d) the extent to which the relationship is one of mere convenience; and
- (e) any evidence suggesting that the parties intend the relationship to be permanent.

A close personal relationship, as specified in subsection 302-200(1) of the ITAA 1997, would not normally exist between parents and their children because there would not be a mutual commitment to a shared life between the two. In addition, an adult child's relationship with their parents would be expected to change significantly over time as the child moves out of home and obtained independence.

However, where unusual and exceptional circumstances exist, a relationship between a parent and an adult child may be treated as an interdependency relationship for the purposes of subsection 302-200(1) of the ITAA 1997.

In this case, the facts do not indicate that a situation of unusual and exceptional circumstances existed. The Beneficiaries were adult children who did not reside with the Deceased. There is nothing to indicate a level of commitment to a shared life or a level of care above what would normally be expected between an adult child and their parent.

Consequently, while it is accepted that the Beneficiary and the Deceased had a close parent/child relationship, it is not considered that a close personal relationship existed between the Beneficiary and the Deceased as contemplated in paragraph 302-200(1)(a) of the ITAA 1997.

As all the conditions of subsection 302-200(1) of the ITAA 1997 must be satisfied for an interdependency relationship to exist, an interdependency relationship between the Beneficiary and the Deceased did not exist because it has not been established that the Beneficiary and the Deceased had a close personal relationship just before the Deceased died.

Even if it could be argued that the Beneficiaries and the Deceased did, in fact, have a close personal relationship for the purposes of paragraph 302-200(1)(a) of the ITAA 1997, based on the information provided, it is our view that they did not have an interdependency relationship because just before the Deceased died:

- (a) the Deceased was not living with the Beneficiaries;
- (b) the Beneficiaries and the Deceased did not provide domestic support and personal care to one another.

It must now be established whether any of the Beneficiaries were dependants of the Deceased for the purposes of subparagraph 302-195(1)(d) of the ITAA 1997.

Are the Beneficiaries dependants of the deceased?

Relevantly, ATO Interpretative Decision 2014/22 *Income Tax: death benefits dependant- adult child caring for a terminally ill parent* (ATOID 2014/22) considered the scope of paragraph 302-195(1)(d), stating:

The definition of death benefits dependant in paragraph 302-195(1)(d) does not stipulate the nature or degree of dependency, but it is generally accepted that this refers to financial dependence and it is a condition that must exist in relation to the taxpayer at the time of the deceased's death.

In the case of *Malek (as Trustee for the Estate of Antoine Malek) v Federal Commissioner of Taxation* 99 ATC 2294 (Malek) Senior Member Pascoe considered the level of dependence which must exist at paragraph 10:

Firstly, the question of support is not, in some way, limited to some notional calculation of "necessities" of life which, at best, required an amount of subjective judgement. In my view, the relevant financial support is that required to maintain a person's normal standard of living and the question of fact to be answered is whether the alleged dependant was reliant on the regular continuous contribution of the other person to maintain that standard.

The facts indicate that the Beneficiaries were financially dependent on the Deceased at the time of the Deceased's death. The Beneficiaries were reliant on the regular continuous contributions of the Deceased to maintain the standard of living to which they were accustomed.

Consequently, the Beneficiaries are death benefits dependants of the Deceased for the purposes of section 302-195 of the ITAA 1997.

Taxation of a death benefits payment paid to the trustee of a deceased estate

As the Beneficiaries are death benefits dependants of the Deceased, the superannuation lump sum received from the deceased's superannuation fund is not assessable and is not exempt income in accordance with section 302-60 of the ITAA 1997. That is, the benefit is tax free.

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