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Conundrum over death benefit discrepancy

A lack of clarity persists over the implementation of a $1.6 million transfer balance cap on superannuation, particularly as the government has failed to explain why standard death benefits taken as income streams (DBIS) will not receive any exemption from the existing laws.

Speaking to financialobserver, IOOF technical services manager Josh Rundmann said that current laws prohibited the rollover of death benefits to super accumulation accounts within “the prescribed period” – either six months from the date of death or three months from a grant of probate.

However, while the government’s second tranche of exposure draft legislation on super has given a six-month leeway for reversionary DBIS recipients – before they are counted towards the individual transfer balance cap – the legislation inexplicably indicates that standard DBIS will not be exempt from the current rules.

While reversionary pensioners are afforded time to consider how best to manage their affairs to avoid being subject to tax penalties under the proposed legislation, the new rules will hold particular consequences for child beneficiaries of deceased pension interests, Rundmann added.

“Children will be subject to the transfer balance cap in one way or another through the death benefits income streams,” Rundmann said.

“But the government haven’t come out with a statement to explain why they’re treating it this way … and it wasn’t in their explanatory memorandum.”

Currently, child death benefit pension rules exist to effectively limit the amount a child can receive as a DBIS, with the $1.6 million cap applying if a death benefit pension is received by the child before 1 July 2017 under the new draft legislation.

“If the deceased does have at least one pension interest, the cap for the child is the value of the pension on the date of the death,” Rundmann said.

“This is the case even if a death benefit pension is commenced with both pension and accumulation funds from the deceased – and such a pension would likely result in an excess transfer balance for the child.”

Rundmann also noted that the new laws eliminated a previous technical ambiguity allowing retirees to elect for payments from a transition to retirement pension to be taxed as lump sums, reducing the tax payable while preserving their pension benefit. “The amendments remove the ability to elect for a superannuation pension to be treated as a lump sum … going forward, pension payments will be taxed as an income stream benefit and superannuation lump sums can only be paid as per the existing definition,” he said.

The government is expected to announce the remaining laws as part of the final tranche of its exposure draft legislation in the coming weeks.