Boomerang children?

EXEMPT FROM SUPERANNUATION DEATH TAX?

THE FIRST ADMINISTRATIVE APPEALS TRIBUNAL DECISION RELEASED THAT HAS EVER BEEN ON-POINT EXAMINES WHEN AN INTERDEPENDENCY RELATIONSHIP EXISTS BETWEEN ADULT CHILDREN AND PARENTS.

WORDS
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Given the rising cost of housing, adult children are living with their parents for longer and parents have more in superannuation than ever before. Because adult children might have moved out and then returned, such children are sometimes referred to as 'boomerang children'. An important question is whether, when their parents die, do such 'boomerang children' get an important exemption from superannuation death tax.

The answer is possibly yes. Instead of paying at least 15 per cent income tax on the taxable component of their parents' superannuation death benefits, 'boomerang children' might be able to receive death benefits income tax free. This will occur if a 'boomerang child' is in an interdependency relationship with their parent as at death.

Although the laws on interdependency relationships have existed for 11 years now, we have only just received the first Administrative Appeals Tribunal consideration of them in the income tax context: *TBCL and Commissioner of Taxation* [2016] AATA 264. The implications of the decisions are quite important.

FACTS OF *TBCL*

A son was born in approximately 1991. He was an only child and lived with his parents consistently until 2007 when he moved to Melbourne to study a pilot's course at Swinburne University.

He returned to live with his parents in 2009 and he continued to live with his parents until his death.

His parents paid $40,000 towards the total cost of the deceased's course, accommodation of $250 per week and living expenses of $1000 per month while he lived in Melbourne. Further, the parents bought the son various items and paid for expenses such as a computer, TV, pilot's gear and a motor vehicle.

In 2013, the son was working as pilot and tragically died in a motor vehicle accident. The son also paid various expenses for his parents.

The parents and son shared their living expenses (such as $350 per week for food, $850 for electricity per quarter, council rates of $3000 per year and water charges of $1600 per year) equally. The parents provided the son with domestic support in the form of preparing meals, doing laundry, cleaning, and a number of other tasks. In turn the son helped his parents by performing tasks around the house.

In relation to personal care, the parents and the son provided each other with love, care, affection and psychological assistance.

At the time of the son's death, the parents had just begun to convert their garage into a private living space for their son. Approximately $1000 was spent on the conversion prior to their son's death and at least a further $7000 was spent after the son's death as work had already commenced and needed to be completed.

TAL Superannuation and Insurance Fund paid a benefit $500,000 to the son's Estate in May 2014.

In August 2014, the parents made an application for a private ruling that the sum was not assessable because they were each a 'death benefits dependant' of the son (naturally, a 'death benefits dependant' includes someone in an interdependency relationship).

In November 2014 the Commissioner issued a Notice of Private Ruling to the parents containing a ruling that they were not death benefits dependants.

The parents asked the Administrative Appeals Tribunal to review this decision.

KEY LEGISLATION

At the risk of oversimplifying to the point of being slightly misleading, the key legislation includes that:

Two persons (whether or not related by family) have an interdependency relationship under this section if:

a | They have a close personal relationship
b | They live together
c | One or each of them provides the other with financial support
d | One or each of them provides the other with domestic support and personal care.

There is other relevant legislation too, which in the interests of simplicity, I haven't extracted here. However, the legislation is conveniently extracted in *TBCL and Commissioner of Taxation* [2016] AATA 264.

WHAT THE AAT FOUND

On first glance, the parents appear to be a 'shoe in' to have had an interdependency relationship. However, the AAT reiterated that it can only consider the facts as originally put and the AAT can't go on an additional fact finding expedition. Accordingly, based on the facts as stated above, there was not enough evidence to establish an interdependency relationship.

AAT remitted the matter back to the Commissioner of Taxation to request the parents to make another application for a private ruling, presumably with more facts.

STRATEGIC IMPLICATIONS

Although not expressly stated, I suspect that where an adult child only has a 'regular' relationship with their adult parents and they only live together for reasons of commercial convenience, then an interdependency relationship will not exist. This is consistent with the explanatory statement that introduced this law in 2005, which stated that '[g]enerally speaking, it is not expected that children will be in an interdependency relationship with their parents.'

However, based on the ATO's approach in ATO ID 2014/22, I suspect that an interdependency relationship may well exist if either: a terminally ill parent has moved into an adult child's home; or if an adult child has moved back into their terminally ill parent's home, so that the adult can care for the parent. Naturally though extra elements should also be present if the conclusion of an interdependency relationship is to be reached. Interestingly, the relevant regulations state that the existence of a statutory declaration confirming such a relationship is a relevant consideration.

This raises a number of interesting questions:

- Could this be a subtle encouragement via tax policy for adult children to be the primary care givers for aged parents and thus relieve the pressure on aged care facilities?
- If an aged parent lives in a detached 'granny flat' on the same title, would this satisfy the requirement of 'live together'? (I suspect it wouldn't, but I do acknowledge that there's an argument that it could satisfy the requirement of 'live together')

Given the potential impost of the superannuation death taxes that exist, these are issues that advisers may well wish to make their clients aware of. ■