

# TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

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## 124 | SIS v Tax Dependants

SIS v tax dependants is a confusing topic because the definitions overlap with a few gaps around the edges.

### SIS v Tax Dependants

The SIS Act and its definition of SIS dependency determines who can get your super directly from your super fund without it going through your estate. Tax dependency determines who pays tax on the taxable component of any such payment.

In this episode Gordon Mackenzie of UNSW discusses all this in more detail. Here is what we learned.

#### SIS Dependency

The SIS Act defines a dependant in s10. And there it says:

*dependant, in relation to a person, includes the spouse of the person, any child of the person and any person with whom the person has an interdependency relationship.*

So a SIS dependant is a spouse, child and interdependency relationship.

Financially dependant is not mentioned in s10. So you might think that a person financially dependant on you but not living with you in an interdependency relationship could not be your SIS dependant, but they can.

Because s10 of the SIS Act just says 'includes' a spouse, child etc, it doesn't say nobody else can be a dependant. And so somebody financially dependant on you is also a SIS dependant.

A SIS dependant can only be a person. It can't be an animal, object or legal entity like a company or trust.

#### Tax Dependency

The official term for a tax dependant is death benefit dependant. That is the term used in the Income Tax Assessment Act 1997. But tax dependant is shorter and easier to remember, so tax dependant is a common term used to describe a death benefit dependant.

A death benefit dependant is defined in s302-195 ITAA97.

*s302-195 (1): A death benefits dependant, of a person who has died, is (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 person just before he or she died.*

So your spouse is a tax dependant. Including any former spouse. All your children under 18 are. And anybody financially dependent or in an interdependency relationship with you is as well. But your financially independent adult children are not.

### **Overlap With Gaps**

So SIS and tax law overlap to some extent but with gaps. The two significant differences relate to adult children and former spouses.

Under tax law only children under 18 are your tax dependants. Children at 18 or older are not, unless ...they are financially dependent on you or had an interdependency relationship with you. Under SIS law all your children are your dependants. No matter what age or financial situation.

Under tax law former spouse are specifically included. Under SIS law they aren't.

### **SIS But Not Tax Dependiant**

Your financially independent adult children are your SIS dependant, but not your tax dependants.

### **Tax But Not SIS Dependiant**

A former spouse is not your SIS dependant – assuming they are not financially dependant on you and don't live with you. But the tax law specifically lists a former spouse as a tax dependant.

So your former spouse is your tax dependant, but not your SIS dependant. Your former spouse can only receive your super through your estate, but if they do, then it would be tax-free.

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