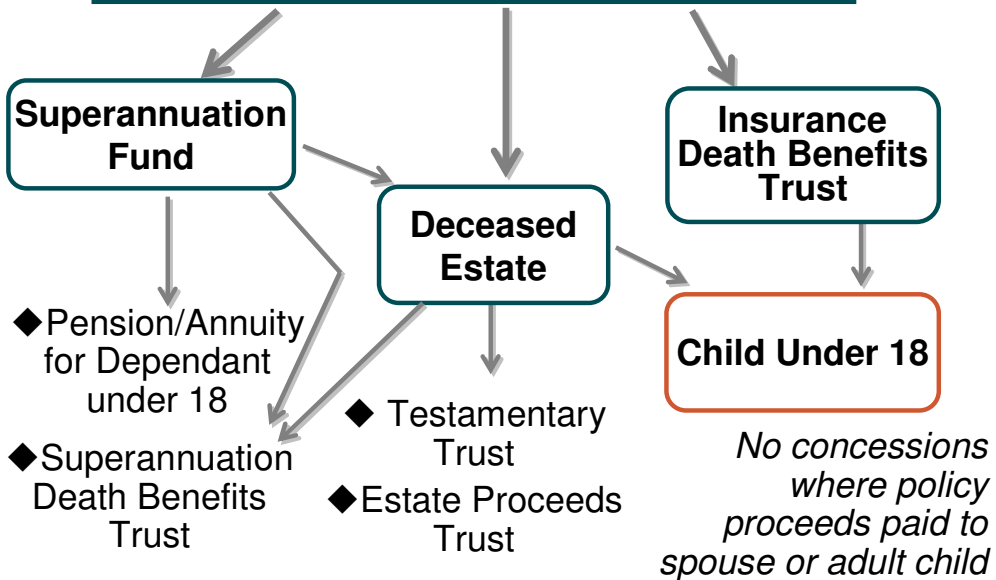


## Life Insurance & “Excepted” Income



### **Why is Excepted Income an Important Issue?**

The income tax payable on a minor's excepted income will be significantly lower (ie taxed at nil or 15% on the first \$30,000 each year) than if the income were to be taxed in the hands of an adult such as the surviving spouse of the deceased.

#### **Pensions and Annuities**

Excepted under s102AE of *ITAA 1936* and can qualify for a 15% income tax offset so that a child under 18 years with no other income can receive \$36,000 of pension or annuity income free of income tax (other than Medicare Levy). Pensions and annuities need either the cooperation of the trustee (this is not always forthcoming) or a suitable binding death benefit nomination to have been put in place.

#### **Superannuation Death Benefits Trusts (Deed or Will – Fixed or Non-Fixed)**

Excepted under s102AG of *ITAA 1936* – must be funded by a direct payment by the trustee of the superannuation fund to the trustee of the death benefits trust established after the member's death. Alternatively the payment can be made to the executor of an estate and via the deceased's Will into such a trust. In both cases, the beneficiaries must only be one or more "death benefits" dependants of the deceased.

#### **Deceased Estates and Testamentary Trusts**

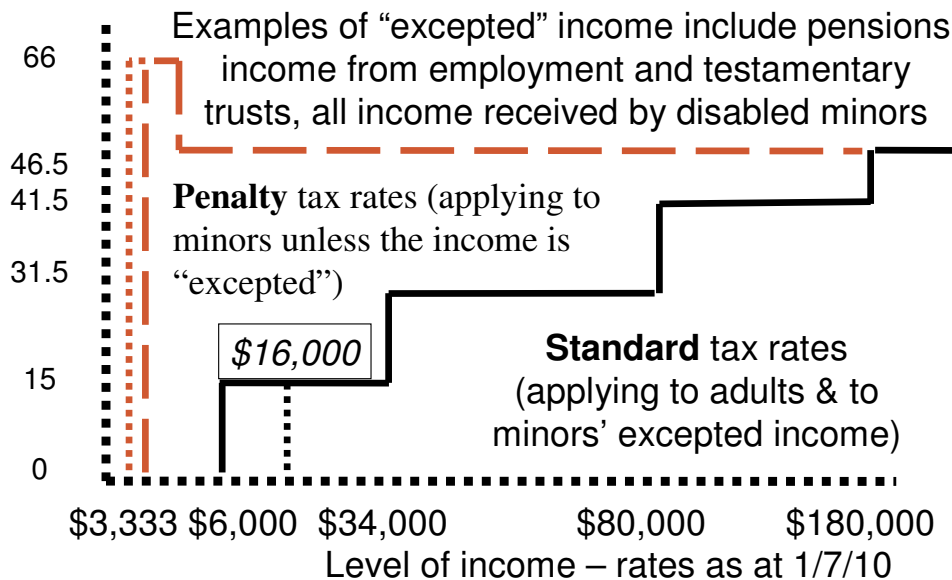
Excepted under s102AG, but are only of relevance if the Will has provided for a suitable fixed or non-fixed testamentary trust or the laws of intestacy mean that the "Will-less" deceased's assets will be held on trust for a child under 18 years.

#### **Fixed Insurance Death Benefits and Estate Proceeds Trusts**

Excepted if they satisfy the requirements of s102AG, eg the minor beneficiary must have a fixed entitlement to all trust capital.

# Income Tax & Children Under 18

% rate of tax (see notes)



## Taxation of Income Received by Minors – 2010 Financial Year

Special penalty rates apply to minors still under 18 years at the end of a financial year in receipt of income in excess of \$416 (\$3,333 if the low income tax offset in s159N of the *ITAA 1936* is taken into account), unless the income is:

- Received from any sources (including family trusts) by a minor who is an excepted person under **s102AC**, eg a person in full time employment; a person whose carer is eligible for a Centrelink a disability allowance;
- Excepted under **s102AE**, eg employment and pension income;
- Excepted trust income under **s102AG**, eg income from a deceased estate, a testamentary trust, a superannuation death benefits trust, an estate proceeds trust, an insurance proceeds trust or a child support (maintenance) trust - see separate pocket summaries at [www.mooreslegal.com.au](http://www.mooreslegal.com.au).

### Income Tax Offsets (Do Not Apply to Medicare Levy)

Minors with excepted income qualify for the low income tax offset, effectively raising their excepted income tax free threshold from \$6,000 to \$16,000. If the income is from a superannuation pension or an annuity not funded by life insurance proceeds, a separate 15% income tax offset can mean that a minor with in excess of \$40,000 of income in a financial year is income tax free. Anti avoidance provisions can apply to restrict eligibility for these concessions, eg interest income funded by loans may need to be no greater than at arm's length rates. Note that rates quoted in the above diagram including standard Medicare Levy.

### Capital Gains

A 50% discount on capital gains applies to assets held on fixed or non-fixed trust for a minor.

## Life Insurance & Excepted Income – Further Reading

**Australian Master Estate  
Planning & Succession  
Guide – Chapter 38**

**You Can't Take It  
With You –  
Chapter 19**

The latest version of this Pocket Summary is at  
[www.mooreslegal.com.au/services/epss/pocket-summaries](http://www.mooreslegal.com.au/services/epss/pocket-summaries)

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### **Further Reading**

- The 1<sup>st</sup> edition of the **Australian Master Estate Planning and Succession Guide** by Allan Swan is scheduled to be published by **CCH** in 2011.
- The 1<sup>st</sup> edition of **You Can't Take It With You** by Andrew Simpson was published by **Wrightbooks** in 2009.
- The 5<sup>th</sup> edition of **Tax Issues in Family Law Property Settlements** – The Difference Between Hacking and Carving by Peter Szabo was published by **MOORESLEGAL** in 2008.

### **About the Author of the Pocket Summaries – Allan Swan**

In addition to his main role as a principal of the **MOORESLEGAL** estate planning team (working in the areas of **Asset Protection, Trusts, Superannuation, Tax and Estate Planning**) Allan is also the principal of **APTSTEP**, a provider of training and materials. Allan's current presentation topics are:

- Asset Protection Planning
- Blended Families (includes pages 1-2 of this Pocket Summary)
- Business Structures Overview (2)
- Estate Planning – Key Cases and Rulings
- Estate Planning – Practical Case Studies for 2010
- Estate Planning – Tax and Strategic Issues (1-2)
- Funding Estate Planning
- Ruling from the Grave (1-2)
- SMSFs – Planning Issues
- Superannuation Death Benefits (1)
- Superannuation Overview
- Testamentary Trusts (2)
- Trusts – Income and Capital Distributions
- Trusts – The A-Z (2).

Contact Allan 03 9843 2153 for further information regarding on the content of the topics, the fees charged and to schedule a presentation, workshop or seminar.