

Understanding Family Law debt accounts – for ESSS DB Fund Members

This fact sheet explains how the family law debt works for ESSS DB Fund Members (with or without an accumulation account) who have been subject to a Family Law split.

How Family Law debts occur

Commonwealth Family Law legislation allows for superannuation interests to be treated and included like any other asset in a property settlement. By agreement between the parties to the marriage and their legal representatives, or by order of the Family Court, the superannuation interest can be split between the parties (member spouse and non-member spouse). The split can either be a specific amount or a percentage of the member spouse's superannuation.

For members with an accumulation account, these accumulation monies can be used within the court order or superannuation agreement to reduce (or even remove) the family law debt relating to the ESSSuper defined benefit fund.

For ESSSuper members, a split is applied by serving ESSSuper with a valid superannuation agreement or a Family Court splitting order.

How the Family Law debt is calculated

The *Family Law (Superannuation) Regulations 2001* set out the methods of valuing superannuation interests, the way in which the payment split is to be put into effect and the information that the trustees have to provide.

The law surrounding Family Law can be complex. For this reason, it's important that you contact us so we can provide the information you need to have your benefit valued correctly.

Once the superannuation split has been determined, this split will be applied to the value of the superannuation benefit as determined under the Family Law regulations.

Example:

John, an ESSSuper member, is aged 45. His benefit has been valued under the *Family Law (Superannuation) Regulations 2001* at \$361,972.18. This is calculated as FAS of \$92,600.30 X 6.20610 (taxed multiple) X 0.62986 (discount factor as per schedule 2).

The agreed split is 50%. So, John's non-member spouse's entitlement is calculated to be \$180,986.09 (i.e. \$361,972.18 x 50%).

It is important to note that the Family Law Valuation may differ markedly to the withdrawal benefit depending upon the age of the member. In this example, the withdrawal value is \$497,199.72.

How the Family Law debt is adjusted

Once the value of the split has been determined, this amount is paid to the non-member spouse and a debt account for the relevant value is created in your name in the Fund from the operative date of the split.

This debt, is indexed to Average Weekly Ordinary Time Earnings (AWOTE) + 2.5% from the operative date, until the earlier of your defined benefit becoming payable to you or until you reach your maximum benefit multiple.

ESSSuper has no discretion as to the manner in which the approved method of benefit reduction is applied. This method was approved following consideration of member's interests by the Fund Actuary, the Board and the Assistant Treasurer as well as Commonwealth Family Law legislation.

Example

John's non-member spouse was entitled to \$180,986.09 on 30 June 2010. On 1 July 2010 a debt account is created in John's name for the amount of \$180,986.09.

John retired on 1 July 2014, so his Family Law debt would be calculated as:

- \$180,986.09 + (AWOTE +2.5%) compounded each year at 1 July 2011, 2012, 2013 and 2014 as follows:
- \$180,986.09 x 8.30% = \$196,007.94 x 6.30% = \$208,356.44 x 6.90% = \$222,733.03 x 7.30% = **\$238,992.54**

The amount of \$238,992.54 would then be deducted from John's retirement benefit calculated at 1 July 2014.

Family Law Debt – cap and repayments

The Assistant Treasurer has approved the abolition of indexation (AWOTE + 2.5%) for members who have attained their maximum accrued benefit (8.4) in the fund. Once attaining the maximum accrued benefit, the family law debt will be frozen and will be deducted at the time of claim.

Members are able to repay their outstanding Family Law debt amount at any time, therefore reducing the impact on their final superannuation benefit entitlements.

The minimum amount of any repayment is \$5,000.00 (unless the total debt is less than \$5,000.00. In that case the full balance of the debt account will need to be repaid).

Repayments made toward the Family Law Deduction account are reported to the Australian Taxation Office and count towards your non-concessional contribution cap in the financial year the repayment is made.

We're here to help

The regulations surrounding Family Law can be complex. Our team of Family Law Administrators are here to help. Before entering into a superannuation splitting arrangement, please call our Member Service Centre on 1300 650 161. For further information and resources, please visit our website at esssuper.com.au/family-law

Proudly serving our members

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