Curly Contribution Considerations

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2021
Technical Summit

Table of Contents

1. Work test **2**
2021/2022 Federal Budget 2
2. Carry forward unused concessional contributions **3**
3. Excess Concessional Contributions Charge **5**
Background 5
Legislation 6
From 1 July 2021 7
4. Non-concessional contributions **8**
Total superannuation balance and bring-forward provisions 9
Non-concessional contributions cap in second or third year of bring-forward 13
Example: Homer 13
Extension of BF period to under age 67 15
Extension of BF period to under age 75 15
5. Withdrawal and recontribution **17**
Areas to watch – withdrawal and recontribution 17
Example: Homer 18
6. Downsizer contribution **21**
7. Contribution Reserves **23**
ID 2012/16 and TD 2013/22 – contribution reserves 24
Reserving part of a contribution 25
Example – Homer 25
Inclusion in assessable income 26
Reserving strategies in practice 27
8. Contribution Splitting **29**
9. Contributions for Minors **30**
10. Disclaimer **31**

1. Work test

Pursuant to reg 7.04(1) SISR, under age 67, no work test applies to superannuation contributions, and accordingly a superannuation fund trustee can accept a contribution for a member regardless of their work status. After age 67 and up to age 75 the work test for a fund to accept a superannuation contribution is 40 hours of gainful employment in a consecutive 30-day period (reg 7.01(3) SISR).

The work test applies in the year the contribution is made. The conditions for this test to be met are:

- the work must be gainful employment for gain or reward – charity work does not meet the criteria;
- the work test must be met before a contribution is made.

APRA *Superannuation Circular I.A.1 Contribution and Benefit Accrual Standards for Superannuation Funds* provided APRA's view with respect to a fund accepting a contribution prior to the work test being met:

> "Paragraph 21.
>
> The trustee cannot take prospective employment into account – the member must have worked at least 40 hours in the financial year before the trustee can accept the contribution."

APRA replaced Superannuation Circular I.A.1 with Prudential Practice Guide SPG 270 – Contribution and Benefit Accrual Standards for Superannuation Funds in November 2013. SPG 270 no longer contains this absolute requirement. There is no legislative requirement to meet the work test before a contribution is made; however, it is prudent to ensure that no adverse circumstances occur that may result in the fund being unable to accept the contribution.

Over age 75, the only contributions that can be accepted by a superannuation fund are:

- super guarantee for a member;
- downsizer contributions.

That restriction in itself can provide some challenges when people are wanting to avail themselves of the CGT cap for example, as they have to satisfy the contribution acceptance provisions to actually have the contribution remain in superannuation.

2021/2022 Federal Budget

In the 2021/2022 federal Budget it was announced to remove the work test for individuals up to age 75, which would apply to non-concessional contributions and salary sacrifice contributions. If a taxpayer wanted to make a personal deductible contribution they would still need to satisfy the work test in the relevant year between age 67 and 74. This measure, along with the proposed extension of the bring forward period for NCC to age 74 will enable more taxpayers to make contributions to superannuation.

2. Carry forward unused concessional contributions

Since 1 July 2018, individuals have been able to carry forward their unused concessional contributions cap over a rolling six-year period where their total superannuation balance as at 30 June of the year prior to the contribution is less than $500,000 (NOT indexed). The ability to carry forward only applies to an individual's unused cap from 1 July 2018.

On the basis that the total superannuation balance is less than $500,000 at the 30 June prior to the contribution where someone wants to avail themselves of the provision, the below table shows the operation of the unused concessional cap provisions, including how the increase in the concessional contribution cap since 1 July 2021 will apply to contributions in the years that that is unused.

2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Cap $25,000	Cap $25,000	Cap $25,000	Cap $27,500	Cap $27,500	Cap $27,500
Cont* $10,000	Cont $10,000	Cont $10,000	Cont $10,000	Cont $10,000	Cont $107,500
Unused $15,000	Unused $30,000	Unused $45,000	Unused $62,500	Unused $80,000	No excess
2018-19	**2019-20**	**2020-21**	**2021-22**	**2022-23**	**2023-24**
Cap $25,000	Cap $25,000	Cap $25,000	Cap $27,500	Cap $27,500	Cap $27,500
Cont $10,000	Cont $10,000	Cont $40,000	Cont $10,000	Cont $50,000	Cont $37,500
Unused $15,000	Unused $30,000	Unused $15,000	Unused $32,500	Unused $10,000	No excess
2018-19	**2019-20**	**2020-21**	**2021-22**	**2022-23**	**2023-24**
Cap $25,000	Cap $25,000	Cap $25,000	Cap $27,500	Cap $27,500	Cap $27,500
Cont $0	Cont $0	Cont $0	Cont $0	Cont $0	Cont $157,500
Unused $25,000	Unused $50,000	Unused $75,000	Unused $102,500	Unused $130,000	No excess

* Cont = Contribution

Accordingly, where someone has not fully utilised their concessional contributions cap in the prior years since 1 July 2018, and they have less than $500,000 in superannuation at the prior 30 June, they can make a more substantial contribution in a particular year. This may apply where the individual has sold an asset and made a substantial capital gain that they wish to manage, that is, the combination of their ability to claim a tax deduction, as well as a carry-forward amount would enable them to add to their superannuation and assist in managing their CGT position.

The relevant legislative references are as follows, from section 291-20 ITAA97:

> "291-20(3) However, your concessional contributions cap for the financial year is increased in accordance with subsection (4) if:

(a) your concessional contributions for the year would otherwise exceed your concessional contributions cap for the year; and
(b) your total superannuation balance just before the start of the financial year is less than
$500,000; and
(c) you have previously unapplied unused concessional contributions cap for one or more of the previous 5 financial years.

291-20(4) Apply your unapplied unused concessional contributions cap for each of the previous 5 financial years to increase your concessional contributions cap (but not by more than the excess from paragraph (3)(a)).

291-20(5) For the purposes of increasing your concessional contributions cap under subsection (4), apply amounts of unused concessional contributions cap for previous financial years in order from the earliest year to the most recent year.

Your unused concessional contributions cap

291-20(6) You have unused concessional contributions cap for a financial year if the amount of your concessional contributions for the year falls short of your concessional contributions cap for the year. The amount of the unused concessional contributions cap is the amount of the shortfall.

291-20(7) However, you do not have unused concessional contributions cap for a financial year earlier than the 20182019 financial year."

3. Excess Concessional Contributions Charge

From 1 July 2021, with the passage of legislation on the cusp of the end of the 30 June 2021 financial year, where a member has excess concessional contributions from 1 July 2021, they will not be subject to a excess concessional contributions charge.

Background

Since 1 July 2013, taxpayers who exceed their concessional contributions cap automatically have had that amount added back to their assessable income and taxed at their marginal tax rate, less the 15% contributions tax.

The legislation operates as follows:

- all concessional contributions in excess of the relevant limit will be added back to the taxpayer's assessable income and taxed at their marginal tax rate (with a rebate for the 15% contributions tax payable by the fund);
- the individual can request that the excess concessional contribution (net of contributions tax) is refunded by the superannuation fund to the ATO, who will deduct the additional tax, any interest / charges, and refund the balance to the taxpayer;
- a refund from the superannuation fund of the excess is optional (not compulsory);
- where a refund is not sought, the gross excess concessional contribution will be assessed towards the individual's non-concessional cap;
- pursuant to s 292-90(1A) ITAA97, the gross excess concessional contributions are assessed towards the individual's non-concessional cap, with an adjustment made for the grossed-up released excess concessional contribution amount;
- a charge applies to the tax differential between the contributions tax and the tax that the individual would pay on the income if it was not contributed to superannuation – the excess concessional contributions charge. This ensures that the individual is not benefitting from any timing differences in terms of the tax payable:
    - the rate to apply will be the shortfall interest charge; and
    - the charge applied from the start of the financial year of the excess contributions until the first notice of assessment for the taxpayer.
- The timing for the release of funds is very important, as not meeting the time frames could still result in excess non-concessional contributions tax applying:
    1. the taxpayer has 21 days from the receipt of the amended notice of assessment to provide to the ATO confirmation that they wish to receive a refund of the excess contributions;
    2. on receipt of the election, the ATO will request payment of the amount direct from the fund; and
    3. the fund will have seven days from the receipt of the request from the ATO to pay the amount.

Legislation

The above treatment of concessional contributions in excess of the concessional contribution limit is contained in section 291-25 ITAA97:

“291-25(1)

The amount of your concessional contributions for a financial year is the sum of:

(a) each contribution covered under subsection (2); and
(b) each amount covered under subsection (3).

291-25(2)

A contribution is covered under this subsection if:

(a) it is made in the financial year to a complying superannuation plan in respect of you; and
(b) it is included in the assessable income of the superannuation provider in relation to the plan, or, by way of a roll-over superannuation benefit, in the assessable income of a complying superannuation fund or RSA provider in the circumstances mentioned in subsection 290-170(5) (about successor funds) or subsection 290-170(6) (about MySuper products); and
(c) it is not any of the following:
    (i) an amount mentioned in subsection 295-200(2);
    (ii) an amount mentioned in item 2 of the table in subsection 295-190(1);
    (iii) a contribution made to a *constitutionally protected fund.

291-25(3)

An amount in a complying superannuation plan is covered under this subsection if it is allocated by the superannuation provider in relation to the plan for you for the year in accordance with conditions specified in the regulations.

291-25(4)

Disregard Subdivision 295-D for the purposes of paragraph (2)(b).”

What is included in non-concessional contributions is referenced under s 292-90, with the inclusion of subs (1A) to exclude excess concessional contributions refunded:

“292-90(1A)

However, if:

(a) you make a valid election under section 96-5 in Schedule 1 to the Taxation Administration Act 1953 in relation to excess concessional contributions you have for the financial year; and
(b) a superannuation provider pays an amount in relation to the release authority issued under section 96-10 in that Schedule in relation to that election;

the amount paid is first increased, by dividing it by 85%, and the increased amount is applied to reduce the amount of excess concessional contributions mentioned in paragraph (1)(b) of this section."

From 1 July 2021

With the above background in mind, the change that passed Parliament from 1 July 2021 was the repeal of the *Superannuation (Excess Concessional Contributions Charge) Act 2013*. What this means is that there will no longer be a charge applied to the tax difference on the contribution, per the above commentary:

- *a charge applies to the tax differential between the contributions tax and the tax that the individual would pay on the income if it was not contributed to superannuation – the excess concessional contributions charge. This ensures that the individual is not benefitting from any timing differences in terms of the tax payable:*
    - *the rate to apply will be the shortfall interest charge; and*
    - *the charge applied from the start of the financial year of the excess contributions until the first notice of assessment for the taxpayer.*

Given the fact that such a charge was imposed on the tax difference with respect to the excess contribution and not on the excess contribution itself, it wasn't a substantial amount of funds, however did contribute to some substantial administrative considerations for both the taxpayer and the ATO.

This is a welcome measure, and could give rise to some strategic considerations, particularly if a taxpayers has exceeded their NCC and they have the taxable income to support claiming a contribution as a tax deduction:

- they may consider making that claim
- they have an excess concessional contribution
- it gets added back to their taxable income, so is then a timing difference in terms of when the tax gets paid
- it gets released from superannuation (provided the election process is undertaken correctly)
- it can mitigate any excess non-concessional contributions charge, which is much more substantial.

Obviously every situation is different, but could be an option to have in the toolkit for managing contribution strategies where available.

4. Non-concessional contributions

Non-concessional contributions are contributions made to superannuation from after tax money and are not subject to a tax on contribution to superannuation or withdrawal. The definition of a non-concessional contribution is outlined in s 292-20(2) ITAA97:

- section 292-90(1) ITAA97 – contributions that will not be included in the assessable income of the fund:
- undeducted contributions;
- capital gains tax amounts that exceed the CGT cap;
- included non-assessable amount from an overseas transfer;
- does not include co-contributions or "roll-over superannuation benefits";
- spouse contributions are included in receiving spouse's cap;
- s 292-90(1A) ITAA97 – contributions in excess of the concessional contributions cap where a refund is not sought will be included in non-concessional contributions (refer above for additional details regarding the refunding provisions).

The annual non-concessional contributions cap is four times the concessional contributions cap (four times $27,500 in 2021/2022 is therefore $110,000). As the concessional contributions cap is indexed, so too will the non-concessional contributions cap.

There is a provision available for taxpayers under age 67 (recently passed through Parliament to increase to age 67 from age 65) that allows taxpayers to bring forward two future years of their non-concessional contribution limit and make a large one-off contribution up to $330,000 (from 2021/2022).

Section 292-85(3) to (4) ITAA97 would apply instead of the four times concessional contributions cap if:

(1) the non-concessional contributions for the first year exceed three times the concessional contributions cap; and
(2) the individual is under age 67 at any time in the first year.

Section 292-85(4) outlines the three-year period that applies that will allow an individual to bring forward two future years of contributions.

The non-concessional contributions cap for the first year and for the following two financial years is as follows:

(1) the cap for the first year is three times the non-concessional contributions cap;
(2) the cap for the second year is:
    (a) if the non-concessional contributions for the first year are less than the cap for the first year (under (1) above), the shortfall; or
    (b) otherwise – nil;
(3) the cap for the third year is:
    (a) if the non-concessional contributions for the second year are less than the cap for the second year (under (2) above), the shortfall; or
    (b) otherwise – nil.

Contributions in excess of the relevant non-concessional contributions cap will be subject to excess non-concessional contributions tax of 47%.

Any excess non-concessional contributions can be refunded to the contributor, with any deemed "associated earnings" on the excess over the relevant period being taxed at the marginal tax rate of the individual, with an offset. This has therefore enabled the 47% tax rate on excess non-concessional contributions to be mitigated.

Total superannuation balance and bring-forward provisions

With the intention that members only receive tax-exempt benefits on retirement pensions of up to the transfer balance cap ($1.7m in 2021/2022) in superannuation, the total superannuation balance test is also benchmarked to this general transfer balance cap value.

Section 307-230 ITAA97 defines "total superannuation balance", which is in the context of accumulation accounts in superannuation, as well as a member's pension accounts in superannuation, including the value of account-based pensions, market-linked pensions and any defined benefit income streams:

"**307-230 Total superannuation balance**

(1) Your ***total superannuation balance***, at a particular time, is the sum of the following:
- (a) if you have one or more superannuation interests that are not in the retirement phase – the accumulation phase values, at that time, of each such interest;
- (b) if you have a transfer balance account – the transfer balance of the account at that time (but not less than nil);
- (c) the amount of each roll-over superannuation benefit:
  - (i) paid at or before that time; and
  - (ii) received by the complying superannuation plan, or the entity from which the superannuation annuity is being purchased, after that time; and
  - (iii) not reflected in the value in paragraph (a) or the balance in paragraph (b).

Modification for structured settlement contributions

(2) However, if a structured settlement contribution is made at or before a time in respect of you, your ***total superannuation balance*** at that time is modified by:
- (a) if you do not have a transfer balance account – reducing the sum worked out under subsection (1) by the sum of any such structured settlement contributions; and
- (b) if you have a transfer balance account:
  - (i) first, working out the transfer balance mentioned in paragraph (1)(b) disregarding the operation of item 2 of the table in subsection 294-80(1); and
  - (ii) then, reducing the sum worked out under subsection (1) (having regard to subparagraph (i) of this paragraph) by the sum of any such structured settlement contributions.

Modification for account-based income streams

(3) For the purposes of working out the transfer balance mentioned in paragraph (1)(b):

(a) if a transfer balance credit has arisen, at or before that time, in your transfer balance account in respect of a superannuation income stream covered by subsection (4) – disregard the operation of the following provisions in relation to the superannuation income stream:
  (i) items 1 and 2 of the table in subsection 294-25(1);
  (ii) items 1, 3, 4, 5 and 6 of the table in subsection 294-80(1); and
(b) if, at that time, you have a superannuation interest that supports a superannuation income stream covered by subsection (4) of this section – increase the amount of that balance by the total amount of the superannuation benefits that would become payable if:
  (i) you had the right to cause the superannuation interest to cease at that time; and
  (ii) you voluntarily caused the superannuation interest to cease at that time.

(4) This subsection covers a superannuation income stream that is any of the following:
(a) an allocated annuity;
(b) an allocated pension;
(c) an allocated pension (within the meaning of the *Retirement Savings Accounts Regulations 1997*);
(d) an account-based annuity;
(e) an account-based pension (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*);
(f) an account-based pension (within the meaning of the *Retirement Savings Accounts Regulations 1997*);
(g) a market linked annuity (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*);
(h) a market linked pension (within the meaning of the *Superannuation Industry (Supervision) Regulations 1994*);
(i) a market linked pension (within the meaning of the *Retirement Savings Accounts Regulations 1997*)."

RULE OF THUMB:

Despite all of the above modifications, where the member DOESN'T have any defined benefit interests, it is the value of their accounts in superannuation at the previous 30 June.

It is important to consider:

1. when a pension reverts, it becomes the reversioner's own benefit, so would form part of their TSB, even though there is no Transfer Balance Credit until 12 months from the date of death;
2. when using a reserving strategy, the disclosure in the SMSF annual return will include the reserved amount, which would then be reported for TSB purposes. It may be appropriate (if the member is close to any of the relevant thresholds) to lodge a separate TSB report for the member, given the member statement is not accurate in this regard.

Where a member's total superannuation balance as at 30 June of the prior year is equal to or greater than the general transfer balance cap, s 292-85(2)(b) ITAA97 operates such that the individual is unable to make any non-concessional contributions to superannuation without the amount being excessive:

> "292-85(2) Your ***non-concessional contributions cap*** for a financial year is:
> (a) unless paragraph (b) applies – the amount (the ***general non-concessional contributions cap*** for the year) that is 4 times your concessional contributions cap under subsection 291-20(2) for the year; or
> (b) if, immediately before the start of the year, your total superannuation balance equals or exceeds the general transfer balance cap for the year – nil."

Where the taxpayer has superannuation under $1.7m, and more importantly between $1.48m and $1.7m, s 295-85(3) through (7) ITAA97 provides modified provisions with respect to a taxpayer's available non- concessional contributions cap.

> "292-85(3) Despite subsection (2), work out your ***non-concessional contributions cap*** for a financial year (the ***first year***) under subsection (5), and your ***non-concessional contributions caps*** for the following 2 financial years (the ***second year*** and ***third year***) under subsections (6) and (7), if:
> (a) your non-concessional contributions for the first year exceed the general non-concessional contributions cap for that year; and
> (b) paragraph (2)(b) does not apply to you in relation to the first year; and
> (c) you are under 67 years at any time in the first year; and
> (d) a previous operation of subsection (6) or (7) does not determine your non-concessional contributions cap for the first year; and
> (e) the difference (the ***first year cap space***) between the general transfer balance cap for the first year and your total superannuation balance immediately before the start of the first year exceeds the general non-concessional contributions cap for the first year.
>
> 292-85(4) However, do not work out your non-concessional contributions cap for the third year under subsection (7) if the first year cap space does not exceed an amount equal to twice the general non-concessional contributions cap for the first year.
>
> 292-85(5) Your non***-concessional contributions cap*** for the first year is an amount equal to:
> (a) if the first-year cap space does not exceed an amount equal to twice the general non- concessional contributions cap for the first year – twice the general non-concessional contributions cap for the first year; or
> otherwise – 3 times the general non-concessional contributions cap for the first year.
>
> 292-85(6) Your ***non-concessional contributions cap*** for the second year is:
> (a) if:
> (i) your total superannuation balance immediately before the start of the second year is less than the general transfer balance cap for the second year; and
> (ii) your non-concessional contributions for the first year fall short of your cap for the first year (worked out under subsection (5));
> that shortfall; or
> (b) otherwise – nil.

292-85(7) Your ***non-concessional contributions cap*** for the third year is:

(a) if:

(i) your total superannuation balance immediately before the start of the third year is less than the general transfer balance cap for the third year; and
(ii) your non-concessional contributions for the second year fall short of your cap for the second year (worked out under subsection (6));
that shortfall; or

(b) if

(i) your total superannuation balance immediately before the start of the third year is less than the general transfer balance cap for the third year; and
(ii) your cap for the second year is nil; and
(iii) your non-concessional contributions for the first year fall short of your cap for the first year (worked out under subsection (5));

(c) otherwise – nil."

In summary, the non-concessional contributions that are able to be made depending on the total superannuation balance were as follows in **2020/2021 and prior years**:

Total superannuation balance at 30 June of the prior year	Bring-forward available $	Bring Forward Period
Under $1.4m balance	300,000	Three years
Between $1.4m and $1.5m	200,000	Two years
Between $1.5m and $1.6m	100,000	One year
Greater than $1.6m	nil	nil

For the 2021/2022 financial year (and going forward until our next round of indexation), the thresholds are as follows:

Total superannuation balance at 30 June of the prior year	Bring-forward available $	Bring Forward Period
Under $1.48m balance	330,000	Three years
Between $1.48m and $1.59m	220,000	Two years
Between $1.59m and $1.7m	110,000	One year
Greater than $1.7m	nil	nil

The total superannuation balance is very important in determining an individual's non-concessional contributions cap for a particular year. The issues with this criterion include:

- at the time a contribution is desired to be made, the individual may not know what their total superannuation balance is, particularly in light of:
  - the balance of multiple superannuation accounts; and
  - where they have an SMSF, and the financial statements and therefore member balances for the prior year have not been finalised; and
- if the member does not know their total superannuation balance given the circumstances above, and they are approaching age 67 and would not meet the work test at the time of the contribution, it can prove difficult.

RULE OF THUMB:

It is important to note that it is **not** the value of the contribution that is made that determines the bring forward period, but the TSB at the 30 June of the prior year.

Therefore, if someone contributed $200,000 in 2019/2020, but their TSB at 30 June 2019 was $1.05m:

1. they DO NOT have a two year bring forward that has now re-set.
2. they triggered a three-year bring forward period by contributing more than the single year cap, and their TSB was less than $1.4m
3. Therefore, provided their TSB at 30 June 2021 is less than $1.7m, they can “serve out” that BF period by contributing $100,000 in 2021/2022
4. They can’t contribute $330,000 in 2021/2022 without incurring an excess as they are still serving that BF from 2019/2020.

Non-concessional contributions cap in second or third year of bring-forward

It is important to note that, where a taxpayer triggers a bring-forward period in the first year and does not fully utilise the amount, if they seek to fully utilise the remaining bring-forward amount in a subsequent financial year, their total superannuation balance as at 30 June of the prior year would also need to be assessed, however it is only the upper threshold that is relevant.

Further, If they triggered a BF period in a year prior to 1 July 2021 (pre indexation), in serving out that BF period (by making the top-up contribution), they are unable to avail themselves of the indexed amount.

Example: Homer

- Homer: DOB 18 October 1956 (65 now)
- Benefits in super at 30 June 2020:

30 June 2020	Pension #1	Pension #2	Pension #3	Total $
Tax-Free Component	150,000	45,000	250,000	445,000
Taxable Component	250,000	435,000	106,000	791,000
Total	**400,000**	**480,000**	**356,000**	**1,236,000**

- Very quick off the mark, benefits in super at 30 June 2021 (where his benefits have all appreciated by 25%):

30 June 2021	Pension #1	Pension #2	Pension #3	Accum'n $	Total $
Tax-Free Component	187,500	56,250	312,500	120,000	676,250
Taxable Component	312,500	543,750	132,500	30,000	1,018,750
Total	**500,000**	**600,000**	**445,000**	**150,000**	**1,695,000**

- Contribution history:

	NCC $	TSB at prior 30 June	TSB date
2016/2017	180,000	N/A	N/A
2017/2018	100,000	1,548,000	30 June 2017
2018/2019	300,000	1,489,548	30 June 2018
2019/2020	-	1,795,000	30 June 2019
2020/2021	120,000	1,236,000	30 June 2020
2021/2022	TBC	1,695,000	30 June 2021

- Homer made a $120,000 contribution to super in 2020/2021:
  - Although he had contributed $300,000 in 2018/2019, as his TSB at 30 June 2018 was between $1.4m and $1.5m, he only had available a $200,000 BF amount
  - Therefore, he had a $100,000 excess
  - That meant that his BF period reset at 1 July 2020
  - With a TSB of less than $1.4m at 30 June 2020, he made NCC of $120,000 in early 2020/2021 before he reached age 65
- Homer now wants to maximise his contributions
- Considerations:
  - How much could he potentially contribute?
    - By contributing more than the single year NCC cap, he triggered a BF period
    - As he was under age 65 at 30 June 2020, he was eligible to use the BF provisions
    - His TSB at 30 June 2020 was less than $1.4m
    - Therefore, the BF period that Homer triggered was three years
    - With a $300,000 cap, he has $180,000 remaining to contribute
  - Is he eligible to contribute based on his age?
    - Yes – he is under age 67 now, so doesn't need to meet a work test for the fund to accept his contributions

- Is he eligible to top-up his contributions?
  - It depends………. on his TSB
- How does the TSB impact?
  - Substantially
  - Needs to have less than $1.7m at 30 June 2021 to make the top-up
  - He is just under…….
  - So, can make the $180,000
- The caps were indexed, is that relevant?
  - As Homer triggered the BF in 2020/2021, there is no benefit of indexation
  - Only the fact that the upper TSB threshold was indexed is of benefit – if it was not, or if it was the upper TSB threshold in the year he triggered the BF period that applied, then he wouldn't be able to top-up as would have greater than $1.6m at 30 June 2021
- THEREFORE – apply the thresholds wisely……..

Extension of BF period to under age 67

Finally, on the cusp of the end of the 30 June 2021 year, the Parliament passed the extension of the BF period to those people under age 67 at 30 June.

This is of benefit in the 2021/2022 financial year for those who were 65 or 66 at 30 June 2021 to use the BF period if they are otherwise eligible (based on their TSB). This is now aligned with the work test provisions.

Extension of BF period to under age 75

In the 2021/2022 federal Budget it was announced that from 1 July 2022 it was intended to extend the BF period to those up to age 75. At the time of writing there was no legislation in draft to consider, however it is worthwhile outlining some details in this regard regarding how these measures are intended to operate.

Firstly, it is once again worthwhile considering the operation of the current bring forward period, which is that if you are under age 67 at the start of a financial year you can use not only the NCC cap for that year, but that for the following two years. Even if you are age 66 at the start of the year and use the BF provisions, and you wouldn't ordinarily be able to make a NCC due to the work test, if you did satisfy the work test then you would have been eligible.

This is distinct from the situation where if you were to make a $330,000 in the year that you are age 74 at the commencement of that year, you are using the contribution cap for future years when you would be eligible to make contributions if the work test was satisfied.

Accordingly, it is expected that the operation of this provision will overlay the inability for contributions to be accepted beyond age 75 (save for SG and downsizer), such that the following would apply (with the overlay of the total superannuation balance):

Age at commencement of the financial year	BF period available	BF contribution available
72	Three years	330,000
73	Two years	220,000
74	One year	110,000

The devil will be in the detail, but it is worthwhile being aware that the above is how the new provisions may operate.

Ultimately, if a member is age 74 at the commencement of a financial year, it is not intended that they can contribute more than their one-year cap, so won't be able to undertake a proper bring forward strategy.

However, for those members aged between 67 and 72, from 1 July 2022 this is a very positive provision. With the interaction of these provisions with the opportunity to undertake a withdrawal and recontribution strategy (outlined below), we may see more members avail themselves of the bring forward provisions to mitigate the risk of future legislative changes, equalise more readily between spouses, as well as the manage the taxation position for their children upon their passing.

5. Withdrawal and recontribution

A withdrawal and recontribution strategy can be incredibly beneficial for both the pensioner and their children. It involves the withdrawal of benefits from superannuation that comprise taxable components and (more often than not) some tax-free components in proportion to the components of the benefit, and the subsequent contribution of the amount withdrawn as a non-concessional contribution, thereby being classified as a tax-free component.

Accordingly, it is the conversion of some taxable component to the tax-free component, which then has the longer-term benefit of reducing the taxable component and the amount that is subject to tax upon the passing of a member and the ultimate beneficiaries are not death benefits dependents.

However, to get the full benefit, it needs to be implemented correctly. It is most effectively implemented:

- where there are no adverse taxation implications of withdrawing the money from superannuation; and
- when the contribution limits are appropriately considered, as any amount recontributed to superannuation would be a non-concessional contribution and therefore subject to the caps.

Any amounts withdrawn from superannuation accumulation benefits are subject to the proportioning rule under s 307-125 ITAA97. Therefore, a member is unable to specifically withdraw taxable components only; they must withdraw a proportionate amount of taxable and tax-free components from the relevant account.

A withdrawal and recontribution strategy can assist in hedging against any future legislative risk of the introduction of taxing superannuation fund income stream payments after the age of 60. By having the benefits as a tax-free component, it would be quite difficult for these to subsequently be taxed like a taxable component may be. This would only occur if such a drastic change was made to superannuation, which is unlikely when considering the substantial changes made to superannuation in the 2016-17 federal Budget. However, it could be on the agenda in the future.

The other benefit of a withdrawal and recontribution strategy is that it provides the mechanism for couples to try and equalise their superannuation benefits to then fully utilise their respective transfer balance cap amounts.

Areas to watch – withdrawal and recontribution

When undertaking a withdrawal and recontribution strategy, you need to be aware of a number of issues:

- the taxation implications of a withdrawal if under age 60 – and whether there is any low-rate cap remaining;
- the account that the withdrawal/payment is made from – there is little point in making a withdrawal from the pension account that is 75% tax-free already, rather than the account that is a 50% taxable component;

- withdrawing funds that cannot be recontributed where the non-concessional contributions cap may have been exhausted already;
- getting the timing wrong in terms of leading up to age 67 and triggering bring-forward periods inadvertently (under the current non-concessional contribution provisions – proposed to change from 1 July 2022 as outlined above)
- contributing the funds prior to a pension being commenced with the remaining accumulation balance, as the benefits would be aggregated from a proportioning rule perspective which then defeats some of the purpose of undertaking the strategy
- commuting and combining pensions each year without the consideration of components – the benefit of a withdrawal and recontribution strategy is reshuffling the components around for an immediate tax saving (if under age 60), or to benefit the financially independent children in the future;
- considering the total superannuation balance provisions;
- considering the assets within the fund that need to be transferred out. The easiest means to undertake such a strategy is with cash. However, if there is insufficient cash available, you may need to consider a lump sum payment (provided a lump sum can be paid – the member could be in transition to retirement phase and therefore ineligible to take out a lump sum). Alternatively, you could look at multiple cash transfers. However, this does require additional administration which may not be able to be easily processed, depending on the software system and administrator;
- taking out additional pension payments may adversely impact those members who are in receipt of the Commonwealth Seniors Health Card and any pension payments could be assessed towards their income test for eligibility (if they are subject to the rules from 1 January 2015);
- once aged 60, the main benefit is estate planning for non-dependent children, although as above there are other benefits;

TIP / RULE OF THUMB – maximise any contribution of assets from sources outside superannuation to superannuation before undertaking any withdrawal and recontribution.

Example: Homer

- Homer: DOB 18 October 1955 (66 now)
- Benefits in super at 30 June 2021:

30 June 2021	Pension #1	Pension #2	Pension #3	Total $
Tax-Free Component	150,000	45,000	250,000	445,000
Taxable Component	250,000	435,000	106,000	791,000
Total	**400,000**	**480,000**	**356,000**	**1,236,000**

- Contribution history:

	NCC $	TSB at prior 30 June	TSB date
2016/2017	180,000	N/A	N/A
2017/2018	100,000	1,548,000	30 June 2017
2018/2019	300,000	1,489,548	30 June 2018
2019/2020	-	1,795,000	30 June 2019
2020/2021	-	1,436,000	30 June 2020
2021/2022	TBC	1,236,000	30 June 2021

- Homer has exhausted all avenues to contribute funds from outside super in;
- He has three adult, independent children:
    - Bart: 40
    - Lisa: 38
    - Maggie: 30
- What strategies could Homer consider in 2021/2022?

- Homer could consider a withdrawal and recontribution, with a few items to confirm:
    1. Is he eligible to make a withdrawal?
        - He is retired, and over age 65, so yes
    2. How much can he contribute?
        - Given his contribution history, and TSB at 30 June 2021, he can contribute up to $330,000 in 2021/2022
    3. From which account should a withdrawal be made from?
        - Pension #2 – has the highest Taxable component;
    4. How should any withdrawal be treated?
        - Partial commutation – so when the money is recontributed into the fund, he can start Pension #4 with 100% tax-free component;
        - If you look at his contribution history, the value of the account at 30 June 2017 is likely to be his reportable accounts for Transfer Balance Cap purposes;
        - Plus, we know that he made a contribution in 2018/2019 and in all likelihood commenced a new pension given that he only has pension accounts in place now
    5. Will need to report the partial commutation and new pension to ATO on TBAR;
        - If the strategy is implemented now, would need to be by 28 October 2021
    6. What else does Homer need to be aware of?
        - What are Homer's minimum pension requirements re the Pension #2 account?
        - Still 2% on $480,000;
        - Could classify some of the payment out as part of that minimum or even minimum for the rest of the fund for the year, which will reduce the partial commutation amount;

  - Homer needs to take out pro-rated minimum on new Pension #4 account;

7. How will Homer practically implement this strategy?
    - Assets to be transferred?
    - Is there enough cash?
    - Is it over a few transactions in cash?

6. Downsizer contribution

Since 1 July 2018 a new contribution has been in place – the downsizer contribution. This contribution is aimed at boosting the superannuation savings for those taxpayers who:

- Are over age 65 (to be reduced to age 60 under federal Budget 2021/2022 announcements from 1 July 2022);
- May be unable to satisfy a work test;
- Are downsizing their home (although that doesn't have to actually be what occurs), so releasing some capital;

To July 2019, in excess of $1 Billion was contributed to superannuation under this provision. So, since then, could be another $2 Billion.

The downsizer contribution operates as follows:

- It is ONLY available where the contribution is made after age 65 (per above, to be reduced to age 60 from 1 July 2022);
- The contribution has to be made within 90 days of receipt of the proceeds;
- There will be no work test or total superannuation balance test applied with respect to the contribution;
- The amount of the downsizer contribution will be the lesser of $300,000 for each spouse (unindexed), or the proceeds from the sale of the relevant property. So, at most $600,000 between spouses;
- The spouse is eligible to make the contribution, even if property was not in their name;
- The property has to have been owned for at least 10 years;
- The property sold **doesn't** have to be the primary residence of the individual at the time of the sale
    - the requirement is that the main residence exemption is available for a portion of the capital proceeds from the sale of the property
    - therefore, the individual could be selling a current investment property, however at some stage over the ownership period for the property the individual's utilised the property as their primary residence such that a portion of the gain is eligible for that concession
    - this has wider implications in that the designation of this property as the primary residence for a period of time would mean that another property wouldn't be able to satisfy that requirement over that period.
    - this should be considered in detail before this is applied to the sale of an investment property;
- Once only contribution for the taxpayer making the contribution;
- No actual downsize of a property is required – the taxpayer could choose not to acquire a new property, or they could be upsizing, and have the available capital to make the relevant contribution;
- Provided the SISA requirements are met with respect to the acquisition of assets from related parties, it doesn't have to be the proceeds from the sale of the property, or indeed cash to make the contribution

- The ability to utilise this provision does not interrupt any other contribution provisions that may apply to a particular taxpayer. That is, if the taxpayer is also eligible to make non-concessional contributions under the general provisions, they are able to do that also;
- If no actual additional capital is realised from the sale, could be a prompt for a withdrawal and recontribution strategy.

Section 292-102 ITAA97 is the relevant section where these provisions are contained.

7. Contribution Reserves

Contributions reserves were often used quite historically (for those who remember) to assist in RBL and surcharge management, whereby contributions to superannuation were reserved, preventing the taxing point for surcharge and the additions to a member's accounts from an RBL perspective. In the 2004 Budget, the rules were changed such that a contribution to super for a member had to be allocated to their member account within 28 days after the end of the month of the contribution (reg 7.08(2) SISR). The use of contributions reserves therefore generally ceased as they could no longer be used for surcharge or RBL management purposes.

With the introduction of the Simpler Superannuation regime and the punitive tax on excess contributions, contributions reserves were once again a possible means to strategise and manage superannuation. This occurs in the circumstances where a contribution is made to superannuation in June, and if it results in excess contributions for the member for that particular financial year, it could be "reserved" and allocated to the member's benefit in July. This results in the contribution being counted under the cap in the following financial year and therefore not excessive in the current year.

Section 292-90(4) ITAA97 provides that a non-concessional contribution allocated to a member from a contributions reserve would be counted in the year of allocation.

The issue that arises with this strategy however is the application of the definition of a contribution, under for example s 292-90 ITAA97 (with respect to non-concessional contributions):

> "292-90(2) A contribution is covered under this subsection if:
> (a) it is made in the financial year to a complying superannuation plan in respect of you; and
> (b) it is *not* included in the assessable income of the superannuation provider in relation to the superannuation plan …"

A similar consideration occurs with respect to concessional contributions in s 291-25(3) and (1)(a) ITAA97.

If a member makes a contribution to superannuation in June 2021, for example, it may be difficult to argue that the contribution was not made "in respect of them" in the 2020/2021 financial year, particularly with an SMSF, as there is a limited number of members. Therefore, despite the use of a reserve the contribution made in June may still be included in the cap for 2020/2021, rather than 2021/2022.

However, the ATO has provided its opinion on this strategy – whether the contribution would be included in the cap in the financial year when the contribution is made in June, or the following financial year when the contribution is allocated (from the June 2009 NTLG Superannuation Sub-committee meeting):

> "Where a non-concessional contribution is allocated to a member's account in a later financial year than the year the contribution was made, it will count towards the member's non-concessional contributions cap for the financial year during which it is allocated to the member's account.

> To avoid double counting of non-concessional contributions the ATO will interpret the specific provision (paragraph 292-90(4)(a) of the ITAA97) as applying rather than the general provision (subsection 292-90(2) of the ITAA97). The ATO believes this interpretive approach is necessary because to give subsection 292-90(2) precedence over paragraph 292-90(4)(a) would make paragraph 292-90(4) nugatory."

Therefore, despite s 292-90(2) (and s 291-25(1)(a)), the ATO will allow the use of a contributions reserve to prevent the incurrence of excessive contributions. In this regard, the establishment of a reserve may not actually be required; the amount could be held in a suspense account to be allocated to the member's account. The ATO also stated that the allocation of the reserve in July would not affect the deductibility of the contribution (see ID 2012/16 and TD 2013/22, outlined in more detail below).

It is important to note that this strategy will generally only work if a contribution is made in June, due to the requirement to allocate the contribution by the 28th day of the month after the month of the contribution. However, reg 7.08(2) SISR states:

> "the trustee must allocate the contribution to the member of the fund:
> (a) not later than 28 days after the end of the month; or
> (b) if it is not reasonably practicable to allocate the contribution to the member of the fund not later than 28 days after the end of the month – within such longer period as is reasonable in the circumstances."

Regulation 7.08(2)(b) SISR therefore allows for the allocation at a later date, however it may be difficult to argue the basis for a later allocation. To ensure compliance with the provision, it is generally only contributions made in June where this strategy may be available, as they are able to be allocated to the member's account in July, accordingly being counted toward the member's contributions cap in the financial year of allocation.

If a contributions reserve is used, it is important to note that the subsequent allocation of the amount from the reserve to the member's account will not be caught by the 5% unreasonable reserve allocation provisions in reg 292-25.01(4) ITAR97:

- reg 292-25.01(2) ITAR97 provides that if an amount is allocated from a reserve under Div 7.2 SISR (reg 7.08), and the amount is included in the assessable income of the fund, the amount allocated will be assessed towards the concessional contributions cap in accordance with s 291-25(3) ITAA97; and
- reg 292-90.01(2) ITAR97 provides that if an amount is allocated from a reserve under Div 7.2 SISR, the amount is not included in the assessable income of the fund, the amount allocated will be assessed towards the non-concessional cap in accordance with s 292-90(4) ITAA97.

ID 2012/16 and TD 2013/22 – contribution reserves

On 5 March 2012, the ATO released ID 2012/16 (since withdrawn as it does not apply after the 2012-13 year), which considered the treatment from a contributions cap perspective of a contribution made to superannuation in June but allocated to the member's benefit in July. The conclusion by the ATO was that the amount is assessed towards the contributions cap in the year that it is allocated to the member, not the year of the contribution, provided the conditions within SIS are met.

The interpretative decision also confirmed that the deductibility of contributions made to superannuation occurs in the year that a contribution is made, not when the contribution is allocated to the member's account.

The above position was further clarified on 13 November 2013 with the release of TD 2013/22, whereby the Commissioner stated at para 27:

> "27. It is the Commissioner's view, therefore, that the amount of a contribution made to a complying superannuation fund for a member of the fund and allocated under Division 7.2 of the SISR to an accumulation interest of the member, is included in the member's concessional contributions under subsection 291-25(3) of the ITAA 1997 for the financial year in which the allocation of the amount to the member's accumulation interest has effect, where the amount is included in the assessable income of the fund under Subdivision 295-C of the ITAA 1997 and is not an amount mentioned in paragraph 292-25.01(3)(a), (b) or (c) of the ITAR 1997.
>
> In such circumstances, the amount of the contribution is not also included in the member's concessional contributions under subsection 291-25(2) of the ITAA 1997 for the financial year in which the contribution was made to the fund."

Reserving part of a contribution

Regarding the above, the ATO has accepted the strategy whereby a contribution made in June of a particular financial year can be "reserved" so that it is not allocated to the member's account until July in the following financial year. One question remained outstanding with respect to such a strategy, which was whether it was possible to reserve part of a contribution.

For example, if $5,500 of BHP shares is contributed in specie on 25 June 2021, would it be possible to reserve $27,500 and allocate this amount in the next year?

There is nothing in the legislation that either permits or prohibits this from occurring.

In the June 2012 NTLG Superannuation Sub-committee meeting, the ATO confirmed its view on this. It indicated that the provision in reg 7.08(2) SISR that allows for the reserving strategy states that "the trustee must allocate ***the*** contribution to the member of the fund". ***<emphasis added>***

As the provision deals with "the contribution", it does not allow for that contribution to be split – either the whole contribution is reserved or none of it.

Example – Homer

Homer (52) is self-employed, and in June 2021 made a single contribution of $52,500 to superannuation.

- Homer intends to claim a deduction for the $52,500.
- Given that the amount is $25,000 greater than his contributions cap, $27,500 of the contribution is to be reserved.
- Would this be acceptable?

As per the ATO's view as expressed in the June 2012 NTLG Superannuation Sub-committee meeting, Homer would be unable to reserve part of the contribution and would have to reserve the entire amount or none of it. Either scenario would not achieve his objectives. If Homer had made the intended reserved contribution of $27,500 separately, provided that was in June 2021, it would be able to be reserved, and Homer's objectives would be met (with respect to claiming a deduction in 2020/2021 and being able to use two years' caps in 2020/2021 and 2021/2022).

Inclusion in assessable income

Another common question concerning contributions reserving is the inclusion of the amount in the assessable income of the fund – is it included in the year of the contribution, or in the year the contribution is allocated to the member's account?

A review of ITAA97 ss 295-160 and 295-190 state:

> "295-160 The assessable income of an entity includes contributions or payments as set out in this table for the income year in which the contributions or payments are received.
> …

Item	Assessable income of this entity:	Includes:
1	CSF N-CSF that is an *Australian superannuation fund for the income year *RSA provider	Contribution to provide *superannuation benefits for someone else (except a contribution that is a *roll-over superannuation benefit)"

> "295-190(1) The assessable income of an entity includes amounts as set out in this table.
> …

Item	Assessable income of this entity:	Includes:
1	CSF *RSA provider	A contribution: made to the CSF or *RSA; and covered by a valid and acknowledged notice given to the *superannuation provider of the CSF or RSA under section 290-170"

Accordingly, the contribution would be included in the assessable income of the SMSF in the year that the fund receives the contribution, whether it is an employer contribution or a personal deductible contribution. This lends further argument against the ability to utilise a reserve with respect to the contributions caps, as s 291-25 states:

> "291-25(1) The amount of your concessional contributions for a financial year is the sum of:
> (a) each contribution covered under subsection (2); and
> (b) each amount covered under subsection (3).
> …
> 291-25(2) A contribution is covered under this subsection if:
> (a) it is made in the financial year to a complying superannuation plan in respect of

you; and
(b) it is included in the assessable income of the superannuation provider in relation to the plan, ….”

Where a contribution is included in the assessable income of the fund and is made “in respect of you”, it is considered to be a concessional contribution. However, the concept of “in respect of you” is considered to be on the contribution being allocated to the member’s benefit.

Following Homer’s example above (if he had made two separate deposits totalling $52,500 in June 2021), despite the $27,500 being allocated to Homer’s member benefit in 2021/2022, it would be included in the assessable income of the fund in 2020/2021.

The only circumstance where the fund does not include the amount in the assessable income of the year of the contribution is where the fund receives the s 290-170 notice from the individual after the fund has lodged their tax return. When this occurs, the fund includes the amount in their assessable income for the year in which the notice is received.

In this regard, the fund must receive the notice from the individual within the required time frames:

- if the individual has lodged their tax return within the year after the relevant financial year, the day the return is lodged;
- all other circumstances – by 30 June of the year after the relevant financial year.

Reserving strategies in practice

As outlined above, it has been accepted for some time that superannuation contributions made in June of a particular year can be “reserved”, and subsequently allocated to the members’ account in July and be assessed towards their relevant contribution limit in the second year. This was confirmed by the ATO in several forums (as above):

- an NTLG Superannuation Sub-committee meeting in 2009;
- ID 2012/16 (since withdrawn as it no longer reflects the current law from 2012-13); and
- TD 2013/22.

With respect to the implementation of a reserving strategy, the disclosure of the amount in the fund’s annual return and how it is reported to the ATO need to be undertaken correctly.

The ATO requires that all contributions that are being reserved are disclosed as a contribution for the relevant member in the year of the contribution (the first year), rather than the year of allocation (the second year). Such a disclosure results in a timing anomaly which the ATO has addressed through the contemporaneous lodgment of NAT 74851 with the fund’s annual return in the year of the contribution (but not the year of the allocation).

Therefore:

- amounts to be reserved will now also be disclosed in sections F, A and B of the annual return in the first year (the year of the physical contribution);
- such reserve amounts will subsequently be assessed towards the member’s

contributions cap in that first year;

- with the annual return, NAT 74851 should also be lodged, which enables taxpayers to "request to adjust concessional contributions". This will ensure that the reserving strategy is recognised by the ATO at the time of lodgment of the annual return to prevent excess concessional contributions from arising; and

It is important to consider that although we are referring to the above strategy as a "contribution reserving strategy", the ATO does not consider that it is in fact a reserve. Pursuant to the SMSF Regulator Bulletin (SMSFRB 2018/1) from March 2018, it is considered that such "reserves" are more akin to a suspense account, and not a reserve account that would generally be considered. However, we continue to refer to it colloquially as a "contribution reserving strategy".

Further, from a practical perspective utilising this strategy requires future thinking and considerations:

1. you can only double-dip in the first year – as the taxpayer is using the next year's contribution limit in the current year, then in the next year they can't make any contributions throughout the year without them potentially being excessive;
2. it may be appropriate to consider SG contributions that are likely to be made throughout the following year in terms of whether it is worthwhile undertaking such a strategy;
3. however, the following June the member could look to undertake the strategy again, and use the cap for the following year
4. with the interaction of this measure and the carry-forward concessional contribution cap, there could be some opportunities for client /taxpayers:
    a. if they have a particularly good year and can carry-forward unused caps, plus undertaking a reserving strategy;
    b. where they sell an asset and make a substantial capital gain, there is an opportunity to assist in managing such a gain.

8. Contribution Splitting

Contribution splitting, which is the exercise of 85% of a member's concessional contributions made over the course of a financial year being split with their spouse (the 85% factors in the 15% tax on the contribution), is gaining some more prominence as a strategy in recent years. This is due to the growing disparity between superannuation benefits, particularly

- where one member of a couple spends time out of the workforce to care for children, and / or
- couples want to maximise their combined transfer balance cap position and fully utilise the available thresholds in the future.

In order for concessional contributions to be split, the criteria that needs to be met is as follows (SISR 6.44):

- intention to claim a deduction for a contribution is completed before contribution splitting application (NAT 71121);
- NAT 15237 – contributions splitting application form; and
- receiving spouse is less than 65 and has not met a condition of release
- the contributions can either be split after the end of the relevant financial year, or where the member's entire benefit is rolled over, transferred or cashed in.

Australian Prudential Regulation Authority (APRA) Superannuation Circular I.A.1, Contribution and Benefit Accrual Standards for Regulated Superannuation Funds outlined the circumstances where an application to split a contribution would be acceptable under reg 6.44(3) SISR. This is applicable where the receiving spouse is between preservation age and 64 and may have ceased working or may have never worked:

- the receiving spouse is aged between preservation age and 64 years and is currently gainfully employed for 10 or more hours per week;
- the receiving spouse is aged between preservation age and 64 years, is not currently employed for 10 or more hours per week but does not have the intention never to resume gainful employment of 10 or more hours per week; or
- the receiving spouse is aged between preservation age and 64 years and has never been gainfully employed for 10 or more hours per week.

However, it is noted that, in November 2013, this circular was superseded by Prudential Practice Guide SPG 270 – Contribution and Benefit Accrual Standards. In this guide, the above consideration of the retirement condition of release is not referenced at all. Accordingly, where you have clients who are considering splitting with their spouse, and their spouse is between preservation age and 64 years of age and may never have worked or has ceased working, it is worthwhile considering the applicability of the satisfaction of the retirement condition of release according to the requirements in reg 6.44 SISR.

9. Contributions for Minors

From a tax planning perspective, it is often queried whether income can be distributed to children from a discretionary trust to ultimately be contributed to superannuation where a deduction is claimed. The intention being that the limitation on distributions to minors is obfuscated due to the contribution occurring.

However, the only means that a contribution can be made for a minor is as follows:

1. Non-concessional up to their NCC cap, factoring in their own TSB (if a minor has more than $1.48m in super, it would be incredibly surprising);
2. Where they have income that is derived from (ITAA97 s 295-165):
    a. Carrying on a business; or
    b. Attributable to activities, or circumstances, that result in them being treated as an employee for the purposes of SG (SGAA section 12).

Note, section 28 of the *Superannuation Guarantee Administration Act 1992* (SGAA) excludes salary or wages paid to a part-time employee who is under age 18 for the purpose of calculating the employer's SG obligations. For the purposes of the SGAA, "part-time employee" means working not more than 30 hours per week (SGAA section 6).

Accordingly, the availability for a minor to make concessional contributions would be as follows:

1. Where they wanted to contribute to superannuation via salary sacrifice from an employer;
2. If they wanted to make a personal deductible contribution of their earned income in a particular year – subject to the deduction being capped at those earnings. In this regard:
    a. technically the wording of s 295-165 ITAA97 is that they must have derived some income from a business or being an employee, therefore whether such a deduction is limited to that income, or whether a minor amount of income in that regard enables an amount to be distributed to them to subsequently be contributed to superannuation with a deduction claimed.
    b. In any event such a distribution that would then be contributed to superannuation would be subject to preservation and unable to be accessed until at least age 60 (probably later for that generation where the rules change).
    c. If the child contributed their "earned" income to superannuation and claimed a tax deduction, then that doesn't enable a higher amount of trust income to be distributed, as that would still be unearned income, taxed at higher tax rates.

The main issue with making such contributions is the preservation of the benefits – the child can't access for many years. Although it can be invested for their benefit, which will mean that at age 60 / 65 / 70 they will have the benefit of decades of earnings, that overall positive is unlikely to be substantially compelling to lock up any capital at this early stage.

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