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DEEP DIVE 3

Into the Sunset: Forward Contribution Planning and Strategies to maximise super

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Forward Contribution Planning and Strategies to Maximise Super

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1. Contribution Landscape

Over the past few years, we have seen some substantial beneficial outcomes from a contribution perspective as introduced by the federal Government:

1. Removal of the work test from age 65 to age 67 from 1 July 2021
2. Extension of the bring forward non-concessional contribution provisions up to the year an individual attains age 67 for the 2020/2021 and 2021/2022 financial years
3. Further removal of the work test for salary sacrifice and non-concessional contributions to age 75 from 1 July 2022
4. Extension of the bring forward non-concessional contribution provisions up to the year an individual attains age 75 from 1 July 2022
5. Reduction in the downsizer contribution age to 60

This is in addition to the medium to long-standing rules in place:

1. Carry forward concessional contributions since 1 July 2018
2. Contribution “reserving”
3. Withdrawal and recontribution strategies.

With the reduction in values of many superannuation accounts as at 30 June 2022 due to the current global economic landscape, these provisions give rise to many strategies in the 2022/2023 year and beyond.

In this paper and workshop, the following will be addressed:

1. What does the change in the work test actually mean?
2. The practical implications of a withdrawal and recontribution strategy
3. Total superannuation balance strategies and implications
4. Getting bring forward periods correct
5. Downsizer and what is and isn’t covered
6. Carry-forward concessional contributions – opportunities and planning.

2. Work test

Pursuant to reg 7.04(1) SISR, since 1 July 2022 there is no requirement for a work test to be met in the SIS legislation:

(1) A regulated superannuation fund may accept contributions only in accordance with the following table and subregulations (1A), (2), (4) and (6).

Item	***If a member ...***	***the fund may accept contributions made in respect of the member that are ...***
1	*is under 60*	*(a) employer contributions; or* *(b) member contributions*
2	*is not under 60, but is under 75*	*(a) employer contributions; or* *(b) member contributions (including downsizer contributions)*
3	*is not under 75*	*(a) mandated employer contributions; or* *(b) downsizer contributions*

(1A) Despite items 2 and 3 of the table in subregulation (1), the fund may also accept contributions made in respect of a member, and received on or before the day that is 28 days after the end of the month in which the member turns 75, that are:

(a) employer contributions other than mandated employer contributions; or

(b) member contributions other than downsizer contributions.

Note: Other rules may be relevant to making certain contributions in respect of a member. For example:

(a) downsizer contributions are limited to persons aged 60 or over (see paragraph 292-102(1)(a) of the 1997 Tax Act); and

(b) there are rules about deducting personal contributions to a superannuation fund (see Subdivision 290-C of the 1997 Tax Act). In particular, work test conditions apply to deducting certain contributions made from age 67 until the day referred to in subregulation (1A) (see subsection 290-165(1A) of the 1997 Tax Act).

The above clarifies that where a member makes a contribution and they are over age 75 at that time, they are still able to make such a contribution up to 28 days after the end of the month that they turn age 75.

Prior to 1 July 2022, if an individual made a contribution to superannuation and they didn't meet the work test, then that was an opportunity for the fund to refund the contribution as it was contrary to the rules in SISR 7.04. However, this provision (SISR 7.04(4) only now applies where:

(a) a TFN is not provided for the member
(b) the contribution is made after 28 days after the month that the member attains age 75
(c) if the individual is over age 75, the contribution is not mandated employer contributions or downsizer contributions.

With the effective removal of the work test from SIS, we need to exercise care with respect to contributions to superannuation, as now the work test is applicable from a tax perspective, and has been moved to ITAA97 section 290-165(1A):

Work test condition for ages 67 to 75

290-165(1A) If you made the contribution during the period starting on the day you turn 67 and ending on the day that is 28 days after the end of the month in which you turn 75:

*(a) you must have been *gainfully employed for at least 40 hours in any period of 30 consecutive days during the income year in which the contribution was made; or*

(b) if you do not satisfy paragraph (a) — you must satisfy the following requirements:

i. you were gainfully employed for at least 40 hours in any period of 30 consecutive days during the income year (the previous income year) ending before the income year in which the contribution was made;

*ii. you had a *total superannuation balance of less than $300,000 at the end of the previous income year;*

iii. you have not deducted a contribution in the previous income year or any earlier income years on the basis of satisfying the requirements in this paragraph;

*iv. no contribution made by you, or in respect of you, in the previous income year or any earlier income years, was accepted by a *superannuation fund or an *RSA under a prescribed provision of regulations made for the purposes of the Superannuation Industry (Supervision) Act 1993 or the Retirement Savings Accounts Act 1997.*

Maximum age condition

290-165(2) You cannot deduct the contribution if it is made after the day that is 28 days after the end of the month in which you turn 75.

ITAA97 section 995-1 defines gainful employment:

> ***gainfully employed*** means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

Accordingly, the work test now determines whether a contribution can be claimed as a deduction, not whether the contribution can be accepted by the superannuation fund. This has implications where contributions are made where the intention is to claim a deduction, but because the work test hasn't been met, instead of the contribution having to be rejected (between age 67 and 75), it would be classified as a non-concessional contribution, which then may be excessive.

The above in 290-165(1A)(1) also clarifies that the work test doesn't need to have been met before the contribution is made, only that it is met during the relevant income year.

Remember also, the work must be gainful employment for gain or reward – charity work does not meet the criteria. The work doesn't have to be at the prevailing market rate for that particular work, but does have to be paid. Further, watch out for some contrived arrangements.

3. 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. 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 from 1 July 2021 will apply to contributions in the years that that was 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 30 June 2022 for present purposes, they can make a more substantial contribution this financial year.

This is of benefit where:

- the individual has sold an asset and made a substantial capital gain that they wish to manage
- they haven't been working for the past few years and
- their business was in start-up phase where no contributions were made, and now they are starting to generate some reasonable profits
- they have only recently moved to Australia, and wont' have used the cap over the first few years that the rules have applied as they weren't resident at that time. Just because they weren't a resident at that time doesn't mean that they can't avail themselves of the provisions.

Remember, they must have less than $500,000 (this is NOT an indexed threshold) in their total superannuation balance prior to the 30 June in which they wish to use this provision. As this is also fluid, depending upon their balance, if in one year they go over this threshold (say at 30 June 2021) but then they fall underneath the threshold in a subsequent year (say 30 June 2022), then they can avail themselves of the provision.

TRAP – Remember that Division 293 tax is incurred on your low tax contributions, which is effectively any concessional contributions not in excess of the concessional cap. If an individual has some carry forward contributions available, they may be subject to Division 293 tax if they are over the threshold, and so that needs to be factored into any strategy.

<u>Strategy to reduce the TSB to assist in this regard –</u> spouse super contribution splitting – splitting 85% of the previous years' concessional contributions made.

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 2018/2019 financial year."

EXAMPLE

Ned and Maude moved to Australia from the UK in February 2020 (just before COVID). Ned was on a two year secondment with the international oil and gas company he worked for. He has now been trapped here since, and he and Maude are staying put!!

Ned's employment arrangement is that he receives 10% super contributions on his $220,000 salary (plus super), provided the SG requirements are satisfied.

Accordingly, his contributions since February 2020 have been as follows (paid by the employer mid each month):

		Contribution Cap $
February 2020 to 30 June 2020	9,166.67	25,000
1 July 2020 to 30 June 2021	22,000.00	25,000
1 July 2021 to 30 June 2022	22,000.00	27,500
Total	**53,166.67**	**77,500.00**

Based on the period of time that Ned and Maude have been in the country, he has some unused cap available of $24,333.33.

Further, Ned has available the caps from the 2018/2019 and 2019/2020 year of an additional $50,000.

Therefore, in the 2022/2023 financial year, provided Ned's total superannuation balance in Australia is less than $500,000, he is able to make a concessional

contribution of $74,333.33 in addition to the $27,500 limit that applies for the 2022/2023 year itself.
It is worthwhile exercising some caution here where Ned might be looking to transfer benefits from a foreign pension to his superannuation in Australia – such a transfer to superannuation would then form part of his total superannuation balance at the end of that relevant year.

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. Since 1 July 2021 it has therefore been four times the indexed concessional cap of $27,500, so $110,000.

There is a provision available for taxpayers under age 75 since 1 July 2022 that allows individuals to bring forward two future years of their non-concessional contribution limit and make a large one-off contribution up to $330,000.

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

- the non-concessional contributions for the first year exceed three times the concessional contributions cap; and

- the individual is under age 75 at any time in the first year.

The important element of the above is "the individual is under age 75 at any time in the first year". This means that where that is satisfied, the individual can make a $330,000 NCC, even though they would be bringing forward their contributions for the year they are 76 and 77, both years when no contributions are permitted to be made save for mandated SG or downsizer.

However, in the change to the legislation of moving this age to 75, Treasury did confirm that that was the intention, notwithstanding that the Explanatory Memorandum says others.

THEREFORE – an individual who is 74 on 1 July 2022 can make a $330, 000 NCC on that date, even if their 75th birthday is 2 July 2022. In fact, they have until 28 August to make that contribution

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:

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

5. 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 since 2021/2022) in superannuation, the total superannuation balance test is also benchmarked to this general transfer balance cap value. However, that is as far as their association ends – it is important to note that just because someone has fully used their transfer balance cap, that doesn't mean that they can't make a NCC if their TSB falls below the TSB threshold.

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).

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 (currently), 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 75 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

(b) 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 are as follows in the 2022 /2023 financial year, 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 was at the prior 30 June, 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 75, it can prove difficult.
- This is particularly the case with the new rules, as there is no mechanism to reject a contribution where the work test is not met. If the individual goes over their contribution cap, the fund has limited circumstances where it can reject the contribution and must refund it only through the excess contribution refunding provisions.

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

It is also 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.

EXAMPLE – Homer Scenario One

- Homer: DOB 18 October 1954
- Benefits in super at 30 June 2022:

	Pension #1	Pension #2	Pension #3	Total $
Tax-Free Component	150,000	45,000	250,000	445,000
Taxable Component	250,000	535,000	206,000	991,000
Total	**400,000**	**580,000**	**456,000**	**1,436,000**

Contribution History	NCC	TSB at prior 30 June	TSB Date
2017/2018	100,000	1,548,000	30 June 2017
2018/2019	180,000	1,489,548	30 June 2018
2019/2020	0	1,795,000	30 June 2019
2020/2021	120,000	1,395,000	30 June 2020
2021/2022	110,000	1,685,000	30 June 2021

Can Homer make any contributions in the 2022/2023 financial year?

- What is the impact of:
  - His current total super balance?
  - His contribution history?
  - The $120,000 contribution in 2020/2021?
- What else is relevant to Homer in 2022/2023?
- Considerations for Homer:
  - Homer is about to turn 68
  - No longer relevant up to age 75 for making non-concessional contributions even if not meeting the work test
  - Current TSB is $1,436,000 – so, is less than $1.48M, meaning that the $330,000 cap could be available
  - Homer's contribution history is that he made a $120,000 in 2020/2021:
    - Did he trigger a bring forward period in that year?
    - Was he still serving the bring forward period for the contribution made in the 2018/2019 year?
    - The bring forward period available to an individual is based on their total super balance in the year of the contribution made that is greater than the single year contribution
    - For Homer, that TSB in 2018/2019 was $1,489,548
    - That means that he would only be eligible to make a two year contribution in 2018/2019, and have a two year bring forward period
    - Therefore the two year period would have expired at 30 June 2020
    - The $120,000 contribution made in 2020/2021 would be a new period
    - As Homer's TSB at 30 June 2020 was less than $1.4M, he triggered a BF period of three years in 2020/2021
    - Therefore, in 2022/2023 he has available a contribution amount of $70,000, being the three year BF amount from 2020/2021 of $300,000, less the relevant contributions of $120,000 in 2020/2021 and $110,000 in 2021/2022

OUTCOME: $70,000 contribution available in 2022/2023.

CHECK THE FULL CONTRIBUTION HISTORY BEYOND THE CURRENT YEAR AND TWO PRIOR……

EXAMPLE – Homer Scenario Two

- Homer: DOB 18 October 1954
- Benefits in super at 30 June 2022:

	Pension #1	Pension #2	Pension #3	Total $
Tax-Free Component	150,000	45,000	250,000	445,000
Taxable Component	250,000	535,000	206,000	991,000
Total	**400,000**	**580,000**	**456,000**	**1,436,000**

DIFFERENT Contribution History	NCC	TSB at prior 30 June	TSB Date
2017/2018	100,000	1,548,000	30 June 2017
2018/2019	180,000	1,389,548	30 June 2018
2019/2020	0	1,795,000	30 June 2019
2020/2021	120,000	1,395,000	30 June 2020
2021/2022	110,000	1,685,000	30 June 2021

In light of the above, what are Homer's options in 2022/2023?

- The $180,000 contribution in 2018/2019 would have been subject to a TSB consideration of $1,389,548 at 30 June 2018
- As that was less than $1.4m, then Homer would have triggered a three year BF period in 2018/2019
- The contribution in 2020/2021 could therefore be serving out that period to make the full $300,000 over the period from 1 July 2018 to 30 June 2021
- As his TSB at 30 June 2020 was less than $1.6m, then he would be eligible to make the $120,000 top-up
- In any event, if he hadn't made that top-up, or his TSB was more than $1.6m at 30 June 2020 then the three year period would have still ceased at 30 June 2020
- The contribution in 2021/2022 of $110,000 would then be a fresh contribution period
- As it was not more than the single NCC threshold, it wouldn't have triggered a BF period
- Accordingly, the 2022/2023 financial year Homer can avail himself of the three year BF amount of $330,000 as his TSB is less than $1.48m at 30 June 2022.

TRAP – when a pension is reversionary, it automatically continues to be paid to the reversionary beneficiary. That immediately becomes their pension account, even though it may not be assessed towards their TBC for 12 months. Therefore, it will form part of the TSB immediately!! Watch for implementing strategies that consider TBC in 12 months but not TSB immediately.

6. 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.

Such strategies have become more attractive given the extension of the bring forward period all the way up to age 75, whereby in the year that the individual is under age 75 they can make a three year bring forward contribution, provided they make the contribution within 28 days after the end of the month of their 75th birthday.

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 is of benefit for the following reasons:

- 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, and any changes since then have been more generous regarding contributions, not more restrictive. 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. This also assists in hedging against future legislative risk.

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 (less of an issue these days given the preservation age is nearly at 60, so not that common to see individuals looking to implement this strategy under age 60 as they can't access their super in any form until 60)
- 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 75 and triggering bring-forward periods inadvertently

- 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, although less relevant these days), or to benefit the financially independent children in the future
- considering the total superannuation balance provisions for non-concessional contributions
- 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
- Further, if the intention is to straddle two financial years with the strategy, a multiple cash transfer strategy is not going to work as the money needs to be out of the fund by 30 June to reduce the TSB, and then contributed in July
- 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 (legislative hedging, using both TBCs).

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

EXAMPLE – Scenario Three

- Homer: DOB 18 October 1954
- Benefits in super at 30 June 2022:

	Pension #1	Pension #2	Pension #3	Total $
Tax-Free Component	150,000	45,000	250,000	445,000
Taxable Component	250,000	535,000	206,000	991,000
Total	**400,000**	**580,000**	**456,000**	**1,436,000**

Contribution History	NCC	TSB at prior 30 June	TSB Date
2017/2018	100,000	1,548,000	30 June 2017
2018/2019	180,000	1,389,548	30 June 2018
2019/2020	0	1,795,000	30 June 2019
2020/2021	120,000	1,395,000	30 June 2020
2021/2022	110,000	1,685,000	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 2022/2023?

- Homer could consider a withdrawal and recontribution, with a few items to confirm:
- Is he eligible to make a withdrawal?
  - He is over age 65, so yes
- How much can he contribute?
  - As previously established, he can contribute up to $330,000, given his previous bring forward period reset on 1 July 2021, and in 2021/2022 he only contributed $110,000
  - His TSB at 30 June 2022 is less than $1.48m

- From which account should a withdrawal be made from?
  - Pension #2 – has the highest Taxable component
- 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
  - Will need to report the partial commutation and new pension to ATO on TBAR
  - Even though his balance at 30 June 2022 was $1,436,000 and then with a $330,000 contribution he may not be much over the TBC, his actual TBA will depend on the TBCredits from when his pensions commenced / 1 July 2017
  - The TSB per the table of $1,548,000 is likely indicative of the TBA
  - Unused proportion of 4%, so his personal TBC would be $1,604,000
  - He would have available a remaining amount up to his TBC of $56,000
  - So, the TSB at 30 June 2022 of $1,436,000 is irrelevant to the TBC position, as if it wasn't a partial commutation then a $330,000 contribution would only be eligible to have $56,000 held in retirement pension phase
- What else does Homer need to be aware of?
  - What are Homer's minimum pension requirements re the Pension #2 account?
  - Still 2.5% on $580,000
  - Could classify some of the payment out as part of that minimum, which will reduce the partial commutation amount
  - Homer needs to take out pro-rated minimum on new Pension #4 account
- How will Homer practically implement this strategy?
  - Assets to be transferred?
  - Is there enough cash?
  - Is it over a few transactions in cash?

7. 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 60 (reduced from age 65 from 1 July 2022)
- May be unable to satisfy a work test
- Are downsizing their principal residence, so releasing some capital

The downsizer contribution operates as follows:

- It is ONLY available where the contribution is made after age 60
- The contribution has to be made within 90 days of receipt of the proceeds (settlement)
- 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, or the proceeds from the sale of the relevant property. So, at most $600,000 between spouses
- The threshold amount of $300,000 is not subject to indexation
- 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 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
- 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.

EXAMPLE – BACK TO Homer Scenario One

- Homer: DOB 18 October 1954
- Benefits in super at 30 June 2022:

	Pension #1	Pension #2	Pension #3	Total $
Tax-Free Component	150,000	45,000	250,000	445,000
Taxable Component	250,000	535,000	206,000	991,000
Total	**400,000**	**580,000**	**456,000**	**1,436,000**

Contribution History	NCC	TSB at prior 30 June	TSB Date
2017/2018	100,000	1,548,000	30 June 2017
2018/2019	180,000	1,489,548	30 June 2018
2019/2020	0	1,795,000	30 June 2019
2020/2021	120,000	1,395,000	30 June 2020
2021/2022	110,000	1,685,000	30 June 2021

- Homer has just sold his home of 25 years, where he is expecting to receive net proceeds of $800,000 (after buying a new property)
- The property will settle in August 2022
- Homer can use the downsizer of $300,000, provided the contribution is made within 90 days of settlement
- Homer is over age 60, he is eligible to make the contribution
- In 2022/2023 it was determined that he could only contribute $70,000, so with that, and the $300,000 downsizer, he is able to contribute up to $370,000 of the $800,000
- If Homer had a spouse, then they could avail themselves of the $300,000 also.

- What If: Homer releases NO capital from the downsizing of his home?
- He can use the opportunity to undertake a withdrawal and recontribution strategy, as he has the ability to do $370,000 worth of contributions.

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