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Beyond the contribution caps

While exceeding the contribution caps will generally lead to negative financial outcomes for members, there are particular circumstances where additional contribution strategies may be relevant and beneficial

DESPITE THERE being no laws preventing fund members from making unlimited contributions, most understand that there can be significant financial consequences associated with exceeding those caps. It is important to remember that there are specific measures that allow for contributions beyond the usual maximum amounts permitted. These can present important planning opportunities which may otherwise be overlooked.

The general contribution caps

The applicable caps for the two major contribution types are:

- ***Concessional contributions*** - $25,000 per annum. These include employer contributions, salary sacrifice and personal contributions claimed as a deduction.
- ***Non-concessional contributions*** - $100,000 per annum and only available if the total superannuation balance of the member is below $1.6 million.

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Consequences of exceeding the contribution caps

Briefly, the consequences of exceeding the contribution caps can be summarised as follows:

- ***Excess concessional contributions*** – the excess contributions will be taxed at the member's marginal tax rate, and there is generally an additional charge which is effectively interest on the additional tax payable. Up to 85 per cent of the excess contributions can be withdrawn from the fund and any excess amounts not withdrawn will be treated as non-concessional contributions with possible flow-on effects from excess non-concessional contributions.
- ***Excess non-concessional contributions*** – there are basically two options here: (a) elect to withdraw the excess, in which case 85 per cent of the associated earnings on the excess amount will be added to the member's personal taxable income and taxed at their marginal rate of tax; or (b) elect not to release the excess and have the full amount of the excess taxed in the fund at the highest marginal tax rate of 47 per cent.

Measures that allow contributions beyond the general caps

There are a number of specific measures that allow for contributions beyond the usual maximums, and these can be incorporated into strategies with significant benefits to the member. Here are some examples:

Example 1 – Utilising the five-year catch-up provisions for concessional contributions

Fred is employed on a salary of $86,000 p.a. and has had employer contributions of $8,170 made each year from 1/7/2018. His current total superannuation balance is $250,000. Towards the end of the 2022–23 financial year, Fred sells an investment property and makes a gross capital gain of $200,000. His accountant advises that he will be up for additional tax of around $39,300.

Fred could consider a concessional contribution to his superannuation fund of up to $84,150, which is the amount of his unused concessional cap since 1/7/2018. This would reduce the additional personal tax to $6,000, and after allowing for the 15 per cent contribution tax on the $84,150 into the fund, Fred's net saving would be around $20,600.

Example 2 – Claiming two years concessional contributions using a contribution reserving strategy

Katie is self-employed and for the year ended 30/6/2019 estimates her net business income at $180,000. She has planned for some time to take a year off and travel, and has arranged this to commence in the following year and so is unlikely to have any significant income for that year. Katie currently has $750,000 in her SMSF and is about to sell an investment property which is expected to realise a gross capital gain of $100,000. The additional net capital gain will attract tax of around $23,500.

Katie decides to contribute two amounts of $25,000 to her superannuation fund, one in December 2018 and one in mid-June 2019. The effect of this will be to reduce Katie's personal tax by $23,500, and after allowing for the 15 per cent contribution tax in the SMSF, her net saving is $16,000, which is double the amount saved if she simply contributed the $25,000 cap amount.

Note that there are several essential elements for this strategy to be effective:

- The second contribution of $25,000 has to be made in June as the SMSF will have to "reserve" this amount for a maximum period of 28 days — i.e. when the contribution is received in June, it is allocated to a contributions reserve and then allocated to Katie's account in the fund in early July.
- Katie will need to complete a "Request to adjust concessional contributions" form to ensure that the ATO does not treat the additional $25,000 as an excess concessional contribution.
- Generally, this strategy can only be used by those who have an SMSF.

Example 3 – Using the CGT contributions limit for proceeds from the sale of a small business and combining with the home downsizer contributions and other measures

Rose took over the family farm 25 years ago and, having reached the age of 66, decides to sell up and move to the coast to be near her family. The farm is sold for $2.5 million and after taking advice, Rose decides to move the maximum amount possible into a newly established SMSF. Settlement of the farm is expected in May and she would like all the financial arrangements to be in place by 30 June.

Rose's goal of achieving the maximum possible superannuation balance in the specified time frame could be achieved using a combination of available strategies as follows:

- Make non-concessional contributions of $300,000 utilising the three-year bring-forward option (now available to those aged 65 and 66).
- Make a CGT contribution up to the maximum allowed for 2018–19 of $1.48 million.
- Make a "downsizer contribution" of $300,000 (in relation to Rose's home which was part of the farm). Note that these contributions are not treated as non-concessional and are not subject to the usual total super balance cap restriction.
- Make a concessional contribution of $25,000.
- Make a second concessional contribution of $25,000 (as per example 2).
- Total amount contributed is therefore $2,130,000.
- Rose then commences a retirement phase pension with a balance of $1.6 million, leaving $530,000 in accumulation phase.

Take-out point

Even though there are basic defined caps for the main contribution types, as well as the general overriding total super balance cap of $1.6 million restriction, there are specific measures that may suit particular circumstances where additional contribution strategies may be relevant and beneficial. Always consider the particular circumstances of the individual and look beyond the basic contribution caps. ◆