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Technically Speaking: Re-visiting superannuation contribution fundamentals and opportunities

Written by Fabian Bussoletti, Technical Manager, SMSF Association

Superannuation and change often go hand in hand and in recent years there have been significant developments regarding the acceptance and taxation treatment of contributions.

Nonetheless, the tax concessions for contributing to superannuation continue to provide an incentive to save for one's retirement.

Of course, the changes that took effect from 1 July 2017 impacted the contribution caps that affect all individuals, and by linking an individual's capacity to make contributions to their Total Superannuation Balance (TSB) introduced even more restrictive rules.

However, from 1 July 2022, some of these contribution rules were simplified, creating greater opportunities for all SMSF members, to grow their retirement savings, in particular individuals over the age of 67 who previously were unable to contribute if they were retired.

Although contribution caps and an individual's TSB continue to limit the inflow of money to superannuation funds (including SMSFs), the prevailing contribution rules coupled with the increase to both the concessional and non-concessional contribution caps from 1 July 2024, still provide ample opportunity for individuals to maximise their retirement savings. This is expected to continue to be the case for most, even in a post Division 296 tax environment which threatens to tax a proportion of earnings on superannuation balances above $3 million.

While recent Technically Speaking bulletins have focussed on providing a deeper understanding of the contribution caps, as well as navigating the options available when caps are exceeded, this bulletin aims to provide an overview of some contribution fundamentals in relation to how and when contributions can be made.

We will also identify some strategic opportunities for individuals to maximise the value of the benefits accumulated in their SMSF.

What is a contribution?

It is important to identify 'what' constitutes a contribution to determine whether an SMSF trustee can accept the amount and to ensure that a contribution is treated accordingly.

While the importance of this will be discussed in more detail later, as a general starting rule, if an amount increases a member's balance in the fund, on face value it will be a superannuation contribution. Of course, the obvious exceptions to this include earnings on investments (including capital gains), and rollovers from other superannuation funds.

Despite the significant level of changes in recent years, what constitutes a contribution has remained largely unaffected – with TR 2010/1 continuing to be the primary source of guidance from the ATO on the definition of a contribution, as well as when and how contributions can be made.

TR 2010/1 confirms that the ordinary meaning of a contribution in the superannuation context:

> *"is anything of value that increases the capital of a superannuation fund provided by a person whose purpose is to benefit one or more particular members of the fund or all of the members in general."*

However, not every increase in the capital of a fund is a contribution.

According to TR 2010/1:

> *"the increase in the capital of the fund must be provided by a person whose purpose is to benefit one or more particular members of the fund or all of the members in general".*

Therefore, the Commissioner considers that, for example, an increase in the fund's capital due to income, profits and gains arising from the use of the fund's existing capital will not, generally, be derived from someone whose purpose is to benefit one or more particular members of the fund.

Amounts which are income, profit or gain from a superannuation fund's investment activities, including an entitlement to income or capital from a trust in which the superannuation fund has an interest will generally not be a contribution. An exception to this relates to distributions from discretionary trusts to SMSFs which the ATO considers to be a contribution as it cannot be characterised as income, profit or gain from the use of the existing capital of the SMSF.

In the vast majority of cases, contributions are made by a transfer of cash or equivalent from a person or entity into a superannuation fund.

However, contributions can also be made by the transfer of an approved asset into a superannuation fund, where the fund either pays no consideration or consideration that is less than the market value of the asset transferred into the fund.

In these situations, historically, the value of the contribution reflected the difference between the consideration paid by the fund trustee(s) (if any) and the market value of the asset transferred into the fund.

This concept of an 'in-specie' or 'in-kind' contribution to an SMSF is not a new concept, nor of itself is it a complex concept, but before proceeding with an 'in specie' contribution, it is important to have a firm understanding of:

- Any associated tax consequences, including capital gains tax (CGT) and stamp duty
- The relevant contribution rules
- The applicable contribution cap, and
- The need to meet the superannuation investment rules, particularly the acquisition of assets from members and related party restrictions.

In July 2021, the ATO published [LCR 2021/2](). This Ruling confirmed the ATO's view on the application of the non-arm's length income provisions in relation to in-specie contributions where parties are not dealing with each other at arm's length.

This view is currently mirrored in Draft TR 2010/1, in which the ATO states that where an SMSF trustee acquires an asset under a contract for less than market value, this can no longer simply be deemed an in-specie contribution.

That is, only where there is clear evidence of a contract that stipulates the fund is only acquiring ***part*** of an asset and receiving an in-specie contribution for the ***remaining interest*** in the asset, will the Commissioner accept that there is an in-specie contribution.

At all other times, the non-arm's length expenditure provisions will apply to the purchase of either all, or a part, of the asset and all the income derived from that asset will be NALI, including any capital gains from the subsequent disposal of the asset.

NOTE

An updated draft of TR 2010/1 was released in 2021 to reflect the changes made to the contribution rules applicable from 1 July 2017, and the non-arm's length income provisions applicable from 1 July 2018. As at the date of this publication, this ruling has not yet been issued as a final ruling.

It is our understanding that the ATO's revised view on the treatment of in-specie contributions, will take effect from the date this Ruling is finalised.

A contribution can also arise where an expense of the fund is paid by a third party such as an employer or member and is not reimbursed by the fund. Although it is the ATO's preferred position that an SMSF trustee meets all its liabilities, it is accepted that a third party can satisfy the liability of an SMSF. Therefore, it is not uncommon to treat such amounts as a contribution by way of a journal entry.

Example: Contribution – Paying fund expenses (modified from TR 2010/1)

Jane has a self-managed superannuation fund of which she is the sole member. During the 2022-23 income year Jane arranged accounting and audit services to ensure the fund met its income tax and regulatory obligations for the year ended 30 June 2022.

Jane paid the accounting and audit fees for the fund from her own money. Jane did not reimburse her outlay from fund monies.

By satisfying a liability of the fund Jane has indirectly increased the capital of the fund. Jane's purpose in paying the liability of the fund without reimbursement was to increase the benefits she would ultimately receive from the fund. Therefore, Jane made a contribution to the fund when she paid the accounting and audit fees.

A contribution can also arise where an SMSF enters into a loan arrangement and the loan is forgiven by the lender. For instance, although the SIS Act generally prohibits a fund trustee from borrowing money, the value of any debt forgiven in relation to a Limited Recourse Borrowing Arrangement (LRBA) may be treated as a contribution.

Furthermore, where an SMSF enters into an LRBA which involves a personal guarantee, a default on its payment requiring the guarantor to satisfy the loan obligation could also give rise to a contribution.

It is the ATO's view that:

> *"If a guarantor makes a payment to the lender under an arrangement where they have foregone their usual rights of indemnity against the principal debtor (the SMSF trustee) for*

the guarantee, this is a contribution to the SMSF if it satisfies a liability of the SMSF. This might happen, for example, if the guarantor paid the borrowing and the acquirable asset was transferred to the SMSF trustee under the arrangement.

In contrast, there is no contribution if the SMSF trustee has exercised a right to walk away from the arrangement (and has lost the acquirable asset to the lender) and has no further liability, but the lender still exercises a right to call on the guarantee for a shortfall after disposal of the original asset."

Contributions can also be made by actions taken by the members or trustee where the value of an asset already owned by the SMSF increases in value. This could arise where, for example, a fund member makes capital improvements to a fund asset, such as a property, and the cost of that improvement is not reimbursed, in full or in part, to the member.

In these situations, the value of the contribution will be the amount of the increase in the value of the underlying fund asset (not the amount of foregone reimbursement or the value of the materials).

Table 1: Summary of amounts treated as contributions

Transaction	Contribution?
Interest/dividends received	No: Does not have the purpose of a contribution. The payment is made as a return on the fund's investments.
Fixed trust distribution	No: The distribution is made as a return on the fund's investment in the unit trust.
Cash contribution	Yes: Is made for the purpose of increasing retirement savings.
In-specie contribution of permitted asset(s)	Yes: Provided parties are dealing at arm's length and the contract clearly stipulates that the fund is only acquiring part of an asset and receiving an in-specie contribution for the remaining interest in the asset. Note: The acquisition of assets from a related party is generally prohibited, albeit with some exceptions.
Debt forgiveness	Yes: A contribution arises where an SMSF loan is forgiven by the lender.
Increasing the value of fund assets	Yes: A contribution arises where the costs of capital improvements to an asset are not reimbursed.
Rollover of benefits between Australian funds	No: The definition of 'contribution' specifically excludes benefits that have been rolled over or transferred to the superannuation fund.

When is a contribution made?

The timing of when a contribution is made is important as it will determine:

- When the contributor can claim a deduction for the contribution
- How the contribution is treated for the purposes of Superannuation Guarantee (SG)
- When and whether excess contributions arise, and
- When the contribution is taxed in the fund.

TR 2010/1 confirms that a contribution is made to a fund when it is received in money or its equivalent, or there is an increase in its capital value. Generally, a contribution is made to an SMSF when it is received by the fund.

Where the contribution is made in cash, either in Australian or foreign currency, a contribution will be taken to have been made at the time that the cash is received by the superannuation fund.

Where there is an electronic transfer of funds to the SMSF, the contribution will be taken to have been made on the day that the amount is credited to the fund's bank account – irrespective of when the request to transfer the money was made.

Further, where contributions are made via a clearing house, an employer's SG obligation will not necessarily be satisfied when the contribution monies are received by the clearing house. Rather, the contribution will only be considered to have been made when the amount is received by the superannuation fund, not when the amount left the employer or was received by the clearing house – unless the employer is using the Small Business Superannuation Clearing House.

Example: Salary sacrifice and using a clearing house

Stacey entered into an effective salary sacrifice arrangement with her employer who pays all superannuation contributions via the ATO's Small Business Superannuation Clearing House (SBSCH).

On 28 June 2024, the clearing house accepts a payment from Stacey's employer valued at $25,000, made up of $2,500 of SG contributions and a salary sacrificed amount of $22,500. Stacey's SMSF receives the contribution on 2 July 2024.

For SG purposes, Stacey's employer satisfies their SG obligations on the day the contribution is accepted by the SBSCH. However, in accordance with TR 2010/1, it is not until 2 July 2024, when the amount is credited to the SMSF's bank account, that the contribution has been made for Stacey. This means that the contribution will be counted against Stacey's concessional contribution cap in 2024/25.

A contribution by way of a bank cheque, or money order deposit, will be considered to have been made when it is received by the SMSF trustee – provided it is not dishonoured.

Similarly, a contribution by way of a personal cheque will be considered to have been made when the cheque itself is received by the SMSF trustee, even if it takes several days for the funds to clear, so long as it is promptly banked and not dishonoured.

A post-dated cheque is slightly different in that the contribution will be made on the later of the day that the cheque is received and the day that payment is demanded.

According to TR 2010/1, the ATO will treat a promissory note from a related party in a similar manner to a personal cheque. Therefore, where a promissory note is payable on demand, the contribution will be made when the note is received by the fund, so long as it is promptly dealt with and honoured. For a promissory note which is payable on a date later than the date that the fund receives it, the contribution will be made on the later of the day the note is received and the day that payment can be demanded.

NOTE

Refer to TA 2019/10 where the ATO outlines the Commissioner's concerns with SMSFs using promissory notes, where the intention is to honour the note after a significant period of time has passed.

Where an in-specie transfer of assets is made as a contribution to the SMSF, receipt of the contribution depends on several factors including the type of transaction and the particular asset involved.

Further, the ATO acknowledges that for a particular type of asset:

> *"the legal ownership of which is evidenced by a system of formal registration (for example shares in a publicly listed company or Torrens System land), legal ownership will pass when the superannuation provider is registered as the owner. However, beneficial ownership may be transferred earlier.*
>
> *A superannuation provider acquires the beneficial ownership of real property when the provider obtains possession of a properly executed transfer that is in registrable form together with any title deeds and other documents necessary to procure registration of the superannuation provider as the legal owner of the land."*

For instance, where the contribution involves an in-specie transfer of real estate property, the contribution is considered to have been made when the SMSF trustee receives all the necessary transfer forms relating to the property from the transferring party (the vendor).

Where shares in a listed company are transferred to the SMSF using an Off-Market Share Transfer Form, the contribution is considered to have been received by the fund when a properly completed off-market share transfer form has been obtained from the contributor.

Example: Off-market share transfer

Connie wants to make an arm's length, in-specie contribution to her SMSF of ASX-listed shares she owns personally. The following key events take place:

- Connie completes a properly executed off-market share transfer form on 1 May. The form is dated 1 May.
- The SMSF trustees meet and determine to proceed with the acquisition and accept the transfer on 5 May.
- The share registry receives all the necessary completed paperwork on 8 May.

In accordance with TR 2010/1, it is not until 5 May that the fund trustees can be said to have obtained beneficial ownership. That is, there can be no change in beneficial ownership of the shares until such time as the trustees agree to proceed with the acquisition.

Therefore, Connie's contribution will be 'made' on 5 May.

To ensure the transaction is conducted at arm's length, the relevant valuation date for the shares should be 5 May.

TIP

When planning an off-market share transfer, it is important to factor in potential increases in the share price that may occur between the member signing the transfer form and when beneficial ownership transfers to the SMSF, to avoid any excess contributions.

Table 2: Contribution methods and receipt by funds

Payment method:	Contribution made when:
Cash payment	Received by the fund
Electronic transfer	Credited to the fund bank account
Money order/bank cheque	Received by the fund, unless it is dishonoured
Personal cheque (not post-dated)	Received by the fund, so long as promptly banked and is honoured
Personal cheque (post-dated)	When able to be banked and provided it is honoured
Related party promissory note, payable in cash on demand	Received by the fund, so long as payment is demanded promptly and the note is honoured
Related party promissory note, payable in cash on a future date	Payment is able to be demanded, so long as demand is made promptly and the note is honoured
A forgiven debt or payment of fund liabilities	Debt is forgiven, expense paid or payment of liability is discharged
In-specie transfer	Fund is formally registered as owner, or the trustee becomes the beneficial owner, under a contract.

NOTE

Where a contributed amount is held in an "unallocated holding account" (often referred to as a contribution reserve), the contribution is deemed to have been made in the year that it was received, in accordance with the rules discussed above.

However, the contribution will only be counted toward that member's contribution cap(s) in the year the amount is allocated to them – which may be in the following financial year.

Who can contribute to superannuation?

First and foremost, to make a contribution, an individual must typically be a member of the SMSF.

Furthermore, a trustee will only be able to accept superannuation contributions for a member if the 'acceptance rules' are met.

Historically, there were two reference points for a trustee to determine if they could accept a contribution. That is, the trust deed and the SIS Regulations (specifically, SIS Regulation 7.04). However, as alluded to earlier, from 1 July 2022, the SIS Regulations were significantly simplified, following the removal of the work test.

As a result, since 1 July 2022, individuals have been permitted to make superannuation contributions until they turn 75 – regardless of their employment status. This means an SMSF trustee no longer needs to consider the work test at the time they accept a member contribution.

NOTE

Effective 1 July 2022, the work test (which applied to people aged between 67 and 75) was transferred to the Tax Act and now operates as a pre-condition to claiming a tax deduction for any personal super contributions.

It is always important to review the trust deed of an SMSF as the deed may impose greater restrictions on a trustee's ability to accept superannuation contributions, compared to the superannuation law.

Fundamentally, determining whether a contribution can be made means asking the following questions:

Question 1	• What type of contribution is it?
Question 2	• What is the age of the member?
Question 3	• Can the trustee accept the contribution?

Question 1: Contribution type

Superannuation contributions will generally be classified according to who made the contribution and why.

Broadly, the types of contributions which can be made include:

- Compulsory employer contributions – e.g. compulsory SG contributions and contributions made in accordance with a certified agreement or award. These are also known as mandated employer contributions.
- Voluntary employer contributions – e.g. salary sacrifice employer contributions and voluntary contributions the employer makes over and above the compulsory SG amount.
- Member contributions – these are contributions (whether deductible or non-deductible) made by an individual personally, or certain contributions made on their behalf including:
  - Personal contributions
  - Spouse contributions
  - Government co-contribution amounts
  - Amounts from the sale of small business assets that qualify for certain concessions under the CGT rules
  - Personal injury (structured settlement) contributions
  - Downsizer contributions, or
  - COVID-19 re-contributions

Question 2: Member's age

Mandated employer contributions made in accordance with the law, e.g. contributions made to meet an employer's SG obligations or in accordance with an industrial award, can be made at any time, irrespective of the member's age or whether they are working.

Similarly, eligible downsizer contributions can be made at any age (above the minimum eligibility age of 55), regardless of whether a member is working.

The acceptance rules for non-mandated contributions apply differently and are dependant on a member's age at the time that a fund receives the contributions. That is, a fund trustee can accept non-mandated contributions from all members up to the age of 75, regardless of their employment status. There is no longer a need to establish a work link for the trustee to accept the contributions.

Once a member reaches age 75, aside from downsizer contributions, a trustee can generally only accept mandated employer contributions. This means an SMSF trustee is generally not permitted to accept personal contributions once the member reaches this age, including transfers from outside of the Australian super system. All member contributions must be received by the fund on or before 28 days after the end of the month in which the member turns 75.

NOTE

Where an individual is making a spouse contribution, the contributing spouse can be of any age and employment status. However, the receiving spouse must be aged under age 75.

What is the current day relevance of the 'work test'?

Since 1 July 2022, the work test is no longer relevant to determine whether a trustee can accept a contribution. It is only relevant where a member is seeking to claim a tax deduction for personal contributions.

That is, where an individual wants to claim a tax deduction for a personal contribution, made after they turn 67 years of age, they will need to meet the work test – in order to satisfy the deductibility requirements.

This test can be satisfied at any time during a financial year in which the individual makes the personal contribution, meaning that the test can be satisfied after the contribution has already been received and accepted by the fund trustee.

However, where a member aged between 67 and 75 makes a personal contribution but fails to meet the work test during that financial year, this will not be sufficient reason for a trustee to reject the contribution made by the member. The contribution will need to be accounted for and dealt with accordingly. Due to the member's failure to meet the work test, the member will not be eligible to claim the intended tax deduction for that contribution – resulting in the contributing being treated as a non-concessional contribution instead.

To meet this work test, members must be "gainfully employed". Gainful employment is defined to include employment or self-employment of any kind, that is undertaken for gain or reward.

Gainful employment does not include employment that is not undertaken for gain or reward, such as unpaid voluntary work, regardless of the time spent in that voluntary role. It also would not cover receipt of passive income from a trust, estate or investment property or equities (rent, dividends or distributions). For example, where the person is a share-market investor, the ATO is likely to consider their income returns as largely passive in nature so their time spent investing would generally not count towards the 'work test'.

NOTE

Members aged 67 to 75 with a TSB of less than $300,000 can access a one-year exemption from the work test. A member's TSB will be assessed at the end of the financial year in which the member last met the work test.

The work test exemption is only available in relation to one financial year, which means that a member will not be able to use the exemption in one year, then meet the work test in the next year and access the exemption again the year after.

Question 3: Can the trustee accept the contribution

Since 1 July 2022, a trustee can accept most employer and personal contributions made on behalf of a member.

While the instances are fewer, it's worth remembering that where a fund becomes aware that it has accepted contributions in breach of the contribution acceptance rules, it must return the amount within 30 days of becoming aware of the breach to ensure there is no contravention. However, even where 30 days have passed, it is the ATO's view that the SMSF trustee is still obligated to return any inconsistent part of a contribution to the member.

For instance, a fund must return contributions in the following circumstances:

- The member did not satisfy the work test: Only relevant for contributions made before 1 July 2022 for a member aged 67 but less than 75 where the 'work test' was not satisfied;
- The member was older than 75: Contributions (except for mandated employer and eligible downsizer contributions) received by the fund more than 28 days after the end of the month in which the member turned 75 cannot be accepted;
- Member has not quoted their TFN: The SMSF trustee can only accept member personal contributions, including contributions made on behalf of a spouse, if the fund holds the contributing member's TFN. This is uncommon for an SMSF as the TFN is required when the fund lodges its notice of election to become a regulated fund.

NOTE

Employer contributions can be accepted without a member's TFN, however additional tax of 32% known as no-TFN contributions tax, may apply. Where a member subsequently provides their TFN to the fund within three years of the end of the income year in which the no-TFN contributions were made, the fund can claim a tax offset.

Additional matters a trustee needs to consider when accepting contributions include:

- Accepting contributions made after the relevant period: The SMSF trustee may accept contributions for a member if the trustee is reasonably satisfied that the contributions are in relation to a period during which the fund may accept contributions or could have accepted contributions for the member, even though the contribution was in fact after that period.
- Contributions from, or on behalf of, income stream members: Where the SMSF member is fully in pension phase and they receive a contribution or a rollover of benefits from another fund, this 'money in' cannot be added to their pension account. Coming into the fund as accumulation monies, a new account-based pension would need to be commenced with these monies to move the contribution or rollover amount into the pension phase.
- Receiving contributions for Non-Resident Members: If any SMSF member becomes a non-resident for tax purposes, accepting contributions on behalf of a non-resident member can cause the SMSF to become a non-complying fund should it fail the 'Active Member' Test – which broadly requires that at least 50% of the total value of assets attributable to contributing members relates to Australian resident contributors.
- Recording contributions: Best practice is for SMSF trustees to record in writing in the trustee meeting minutes, which member the contribution relates to, the type of contribution being made and the tax treatment to apply to the contribution.

NOTE

It is widely appreciated that an individual's Total Superannuation Balance (TSB) may impact the amount they are able to contribute. Contributions made by those with large TSB's may result in adverse tax outcomes – if the contribution exceeds their respective contribution cap(s).

However, an individual's TSB has no bearing on the trustee's ability to accept the contribution. Equally, simply because an individual exceeds their contribution cap(s) is not a valid reason for a trustee to reject or refusing to accept, a contribution for that member.

How are contributions taxed?

In addition to contributions being categorized based on their source, there is a further categorisation of contributions based on the tax treatment and tax deductibility of the contributions – dividing contributions into contributions made from before-tax or after-tax income and contributions for which a tax deduction has been claimed and not been claimed.

For tax purposes, contributions made either by, or for, the member must be classified as either:

- Concessional Contribution (CC): employer and tax-deductible personal contributions; or
- Non-Concessional Contribution (NCC): non-deductible personal member contributions.

Table 3: Understanding Concessional and Non-Concessional contributions

Contribution	Concessional Contributions (CC)	Non-Concessional Contributions (NCC)
Description	Contributions from before-tax income, or for which a tax deduction has been claimed, that form part of an SMSF's assessable income.	Personal contributions from after-tax income, for which no deduction is claimed, that do not form part of the SMSF's assessable income.
Typically includes	• Compulsory employer contributions e.g. Super Guarantee or Award contributions • Salary sacrifice contributions • Personal contributions for which a tax deduction has been claimed.	• Personal member contributions for which a tax deduction has not been claimed • Contributions in excess of an individual's CC cap (unless appropriately released from super) • Spouse contributions

NOTE

The following amounts do not form part of a SMSF's assessable income, but are excluded from the NCC cap:

- Downsizer contributions
- Government co-contributions
- CGT small business concession contributions
- COVID-19 re-contributions
- Personal injury (structured settlement) contributions

Each type of contribution has its own contribution cap that applies. The standard contribution caps are outlined in the table below.

Table 4: Standard contribution caps

Contribution cap[1]	2023-24	2024-25
Standard concessional contribution cap	$27,500	$30,000
Standard Non-concessional contribution cap	$110,000	$120,000

[1] The amount of cap available to an individual may be higher than the standard contribution caps included in this table, depending on their personal circumstances and Total Superannuation Balance (TSB) of the member in question.

A detailed discussion on the operation of both these contribution caps is available in one of our earlier Technically Speaking bulletins (see below).

1. Technically Speaking: Dealing with excess concessional contributions
2. Technically Speaking: Dealing with excess non-concessional contributions

After having given due consideration to the tax treatment of contributions, there are many reasons why individuals might seek opportunities to maximise their contributions. These include, albeit are not limited to the following:

- Achieving an increased superannuation account balance, which is then available to provide exclusive or supplementary support to an individual in their retirement.
- Achieving an improved personal taxation position either via a salary sacrifice arrangement or by making personal tax-deductible contributions.
- Achieving an improved overall taxation position by transferring funds from a higher (personal) tax environment to a lower concessionally taxed superannuation environment.
- Maximising the capital supporting the payment of a pension to provide for a tax effective income stream in retirement.
- Asset protection considerations, broadly relating to creditor risk, family law risk and death benefit challenge risks.

Equalisation of member balances – Members of a couple

Since 1 July 2017, following the introduction of the transfer balance cap to limit how much superannuation can be used to fund an income stream in retirement, and the impact of an individual's TSB on various superannuation measures, it has become increasingly important for members of a couple to review their member balances, especially where balances are uneven.

In addition to managing the TBC and TSB of individual members, the equalisation of member balances (across members of a couple), can have a number of other benefits, including but not limited to:

- transferring contributions from a spouse with a high balance to a spouse with a smaller balance, allows a larger aggregate tax-exempt amount to support the payment of income streams under their combined transfer balance caps (currently up to $3.8m),
- further, from a TBC perspective, equalising balances allows the maximum amount to be retained in superannuation following the death of either spouse,
- transferring contributions from a younger spouse to an older spouse provides the older spouse with the opportunity to access the funds tax-free earlier,
- transferring contributions from an older spouse to a younger spouse (who is below Age Pension age) may help to extend the asset-test exempt status of superannuation benefits, for Centrelink purposes.

NOTE

While transferring contributions from one spouse to another can be advantageous, consideration needs to be given to the relative age difference of the parties. If the 'receiving' spouse is significantly younger, there is not only the loss of access to the benefit which needs to be considered, but also the risk of potential legislative change which might impact on the 'receiving' spouse's ability to access the resulting benefits as they are currently structured.

TIP

At the time of writing, the Government had introduced legislation to parliament that, if passed, will result in additional tax being levied on the “superannuation earnings” of individuals with a Total Superannuation Balance above $3 Million.

Strategies that assist with equalising member balances across members of a couple, may assist individuals to remain below this key threshold for the purposes of the proposed Div 296 tax.

The equalisation of member benefits can be achieved in a number of ways, including:

- Spouse contributions,
- Contributions splitting, and/or
- Re-contribution strategies.

Contribution splitting

Contribution splitting typically involves the spouse with the higher balance splitting their CCs between their own account and their spouse’s account.

A member can split up to 85% of their CCs each year which can assist to equalise superannuation balances if implemented over the longer term.

An SMSF member may apply to split contributions in:

- the financial year immediately following the year the contribution(s) were made, or
- the financial year in which the contributions are made — but only if the member’s entire benefit is to be rolled over or transferred in that year to another fund or to commence an income stream.

However, a member’s application to split contributions will be invalid if, at the time of the contribution, the member’s spouse:

- is aged 65 years or more, or
- is aged between their preservation age and 65 years and has satisfied the ‘retirement’ condition of release.

NOTE

Amounts split will continue to be counted towards the contributing spouse’s concessional contribution cap in the year that the contribution is made.

Where the contributing spouse is eligible to access any unused concessional contributions cap, from up to five previous financial years, up to 85% of these extra contributions can also be split.

A trustee that accepts a member’s application to split contributions must roll over, transfer or allot the amount within 90 days of receiving the application.

The splitting of a member’s contributions with their spouse will have the following consequences:

- a new superannuation benefit is created for the spouse,
- the new superannuation benefit is effectively treated as a rollover if rolled over to another fund or if transferred to an account in the existing fund in the spouse's name. That is, it is not treated as a contribution to the receiving spouse's fund,
- the new benefit consists entirely of a taxable component, and
- a contributions-splitting amount rolled over or transferred for the benefit of a member's spouse is a minimum benefit and is deemed to be a preserved benefit.

Re-Contribution Strategy

Another way to implement an equalisation strategy is by using "a re-contribution strategy".

Subject to a member satisfying a condition of release with nil cashing restrictions, the re-contribution strategy first involves the withdrawal of a lump sum, or pension from an income stream, including a transition to retirement income stream.

Subsequently, this withdrawn money is redirected back into superannuation as a NCC. This contribution could either be a personal contribution or used to fund a spouse contribution. For example, it may be possible to cash out some of the benefits from an account belonging to a spouse with a higher balance, and re-contributing to the other spouse's account as a NCC.

NOTE

A re-contribution strategy is also often used to increase the tax-free portion of a member's superannuation interest and is typically undertaken just prior to the member commencing a pension.

When used in this way, the main objective of the re-contribution strategy is to convert all or part of a member's taxable component into a tax-free component as a way to minimise tax payable on either super benefits paid before the age of 60 or paid to a beneficiary after the death of the member.

Although this strategy may appear simple, there are a few considerations to be wary of:

- The member needs to satisfy a condition of release in order to withdraw the lump sum from super. Typically, this means they must have either reached preservation age and have retired and the trustee is reasonably satisfied the member never intends to work full-time again, they have ceased an employment arrangement on or after turning 60, or they have turned 65.
- Where the member is under age 60 but over their preservation age, care needs to be taken to ensure that the lump sum low-rate threshold is not exceeded (in 2023-24 the low-rate cap amount is $235,000).
- Where a member is under age 60, the lump sum withdrawal will be treated as assessable income and although tax free up to the low-rate threshold it may affect other entitlements such as co-contributions.
- The fund needs to have sufficient liquidity in order to pay out the lump sum benefit, with potential CGT considerations if the fund is required to sell assets.
- Avoiding excess contributions by adhering to the TSB restrictions and ensuring that the relevant NCC cap is not exceeded when the amount is re-contributed.
- Recognising that the new contribution is subject to the preservation rules.

- The new contribution cannot be added to a member's pension interest.

NOTE

From 1 July 2024, preservation age will increase to 60. This means individuals will only reach their preservation age once they turn 60.

Also, once an individual turns 60 their superannuation benefits are generally tax-free (upon meeting a relevant condition of release).

Due to this alignment between preservation age and age 60, the low-rate cap (i.e. $235,000 in the 2023-24 financial year) previously applicable to lump sum withdrawals made by individuals between preservation age and age 60, will no longer be relevant.

TIP

Members who reach their preservation age (i.e. age 60), but who have not met a condition of release, may consider commencing a TRIS to withdraw some of their superannuation tax-free (up to the permitted 10% maximum), to subsequently recontribute.

CPD quiz

Please click here to access the CPD quiz.

If you have difficulties accessing the quiz via the above link, please copy and paste this URL into a new browser: http://web.smsfassociation.com/smsfassociationcom-ah3t2/pages/bd75820ab02eef11840b000d3ad27112.html?PageId=bd75820ab02eef11840b000d3ad27112