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SUPER CONTRIBUTION OPTIONS IN 2019-20

David Barrett

From a legislative development perspective, the Federal Government election result on 18 May 2019 has provided a more stable outlook for financial services professionals, at least over the short term. It is timely then to take stock of the current state of superannuation contribution options for clients now that the changes proposed by the Australian Labor Party are off the agenda.

Concessional contributions

Indexation

The concessional contributions cap (CC) remains at $25,000 for the 2019-20 income year.

The annual CC cap is indexed with Average Weekly Ordinary Times Earnings (AWOTE), but only when the accumulated indexation exceeds $2,500. An increase in the cap is unlikely to occur in the 2020-21 income year. An average increase in the AWOTE rate of 2.5% per annum will be required for the CC cap to increase to $27,500 in 2021-22.

Carry-forward of unused CC capacity

The 2019-20 income year is the first year a client's CC cap can be increased by the unused CC cap from previous years. The unused CC cap from the 2018-19 and subsequent income years will be carried forward for up to five years if the client's total superannuation balance (TSB) is less than $500,000 just before the start of the income year in which the increased CC cap is to apply. The 2018-19 income year is the first year the unused CC cap can be carried forward.

For example, if a client's CCs were $15,000 in 2018-19, that client may contribute CCs of up to $35,000 in 2019-20, or in a following year up to and including 2023-24, if their TSB is less than $500,000 just before the start of the year the contribution is made.

Deductibility of personal contributions

Personal contributions may generally (subject to age and notification requirements) be claimed as a tax deduction after the removal of the 'maximum earnings (10%)' test from 1 July 2017.

This measure allows employees to fully utilise their CC cap each year without entering into a salary sacrifice arrangement with their employer. Employers are able to focus purely on meeting their superannuation guarantee (SG) obligations, potentially without the additional administration burden associated with offering salary sacrifice arrangements. Employees can target their CC cap more precisely by making personal contributions up to the CC cap in late June, hopefully with full knowledge of their employer's SG payments to date.

Non-concessional contributions

As the annual non-concessional contributions (NCC) cap is based on four times the CC cap, it remains at $100,000 in the 2019-20 income year. If the CC cap increases to $27,500 in 2021-22 (AWOTE

of at least 2.5% per annum is required), the annual NCC cap will increase to $110,000 in that year.

The annual NCC cap is available to any client who is eligible to contribute to superannuation and has a TSB of less than $1.6 million just before the start of the income year. Clients are eligible to contribute if their age is less than 65 years at the time of the contribution or, if more than 65 years, they meet the 'work test' and make the contribution before the 28th day after the end of the month in which their 75th birthday occurs.

Work test

The work test generally applies from a client's 65th birthday. To satisfy the test, a client must have been gainfully employed for 40 hours in 30 consecutive days prior to making a contribution. Mandated employer contributions (ie. award or superannuation guarantee contributions) and downsizer contributions are exempt from this requirement.

From 1 July 2019, clients aged 65 to 74 are exempt from the work test in the income year following their retirement if their TSB just before the start of that income year is less than $300,000 and they satisfied the work test in the year of retirement.

NCC bring-forward rule

Generally, clients who are eligible to contribute to superannuation may contribute up to three times the annual NCC cap (ie. up to $300,000) if the contribution is made in or before the income year of their 65th birthday.

However, a client's TSB and whether they have triggered the bring-forward rule in either 2017-18 or 2018-19 will impact on their capacity to use the bring-forward rule.

The interaction of these three criteria (age, TSB and previous triggering of the bring-forward rule) is complex, and is summarised in Figure 1.

Further age limit extensions

In the Federal Budget 2019 the previous government announced that it would amend the superannuation law to allow clients aged 65 and 66 to contribute to superannuation without meeting the work test. Coupled with this, the government also proposed extending the bring-forward rules by two years, possibly meaning that the option to trigger the bring-forward rule may apply until 30 June following a client's 67th birthday.

These measures were proposed to be effective from 1 July 2020. If passed by Parliament, contribution planning for clients hoping to maximise their assets in superannuation should be based on triggering the bring-forward rule in the year of the client's 67th birthday.

Example – Jennifer

Jennifer is currently age 62 and is retired. She has significant assets in her personal name after receiving an inheritance. She hasn't previously made any substantial NCCs and hasn't triggered the bring-forward rule. She wishes to maximise the amount held in superannuation.

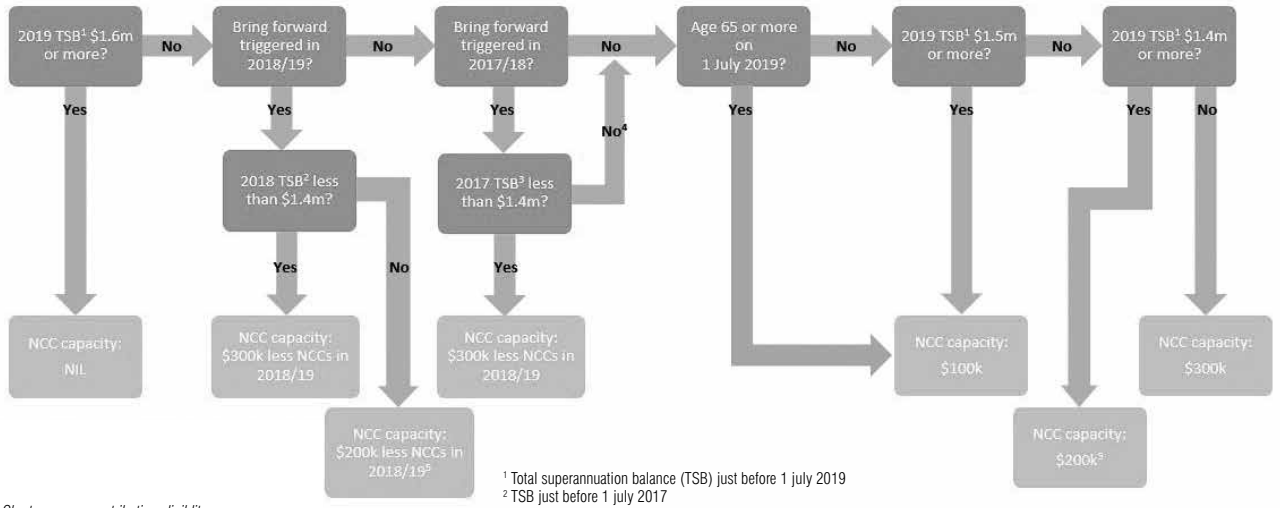
One possible NCC plan is to contribute the maximum in 2019-20, which would preclude any further NCCs before the 2022-23 income year.

Income year	*2019-20*	*2020-21*	*2021-22*	*2022-23*	*2023-24*
Age at end of income year	63	64	65	66	67
NCC	$300,000	-	-	330,000*	-

The quote

It is timely to take stock of the current state of superannuation contribution options for clients.

Figure 1. NCC capacity in 2019-20



[1] Total superannuation balance (TSB) just before 1 july 2019
[2] TSB just before 1 july 2017
[3] TSB just before 1 july 2018
[4] NCC cap of $200k for 2 year bring forward period. Bring forward period ended in 2018/19
[5] Bring forward period cover 2 years (including year bring forward is triggered)

Note: Chart assumes contribution eligiblity requirements met (eg age limitations and work test)

Source: Macquarie Banking and Financial Services, 2019.

The quote

Despite attempts by legislators to simplify the superannuation contribution rules over the last two decades, they remain complex.

An alternative plan for Jennifer is to aim to maximise NCCs in 2023-24 (possibly the last year Jennifer may be able to contribute) and plan the other NCCs around that timing.

Income year	*2019-20*	*2020-21*	*2021-22*	*2022-23*	*2023-24*
Age at end of year	63	64	65	66	67
NCC	$100,000	$300,000	-	-	330,000*

This strategy results in an extra $100,000 contributed by age 64, and $730,000 in total.

* Assumptions:

- The work test applies from age 67 and Jennifer makes a contribution in 2023-24 before her 67th birthday.
- AWOTE of at least 1.66% per annum, resulting in the annual NCC cap increasing to $110,000 by 2022-23.
- Jennifer's TSB does not exceed the threshold (currently $1.4 million) for full use of the NCC bring-forward rules on 30 June 2019, 30 June 2020, 30 June 2022 or 30 June 2023.

Spouse contributions

Spouse contributions can be an important aspect of a contribution plan for a couple. Equalising each spouse's superannuation entitlements may help target the $1.6 million transfer balance cap for each spouse.

In addition, the spouse contribution tax offset is more broadly applicable after the spouse income test thresholds were raised from 1 July 2017. Prior to that date, no offset was available if spouse income[1] exceeded $13,800—the threshold is now $40,000, with the full $3,000 tax offset available if spouse income doesn't exceed $37,000 and certain other criteria are met.[2]

Currently a spouse contribution can be made prior to the spouse's 70th birthday, but the work test applies after the spouse's 65th birthday. The previous government also announced in the Federal Budget 2019 that it would amend the superannuation law to extend the maximum age that a spouse contribution can be made to age 74. It appears this measure will apply from 1 July 2020.

Spouse contribution splitting

Many financial services professionals are recommending that couples engage in spouse contribution splitting on an annual basis where one spouse has a significantly higher superannuation balance than the other, or one spouse is attempting to remain within a TSB threshold; for example the $500,000 threshold for carrying forward the unused CC cap.

Generally, a spouse may apply to transfer 85% of their concessional contributions in the 2018-19 income year to their spouse's superannuation account—the application must be lodged with the transferring spouse's fund by 30 June 2020.

The transfer is not counted against the transferee spouse's CC cap or NCC cap, but that spouse must be under age 65 and not be 'retired' if they have reached their preservation age.

Downsizer contributions

Downsizer contributions of up to $300,000 per person became available from 1 July 2018 for clients who are age 65 and over and meet the eligibility criteria [3].

Importantly, there are no maximum age, work test or TSB limitations when making a downsizer contribution, and the contribution is not counted towards either the CC cap or the NCC cap.

Clients can make downsizer contributions even if they have fully exhausted their transfer balance cap. If the latter applies, the downsizer contribution funds could be only be held in an accumulation account.

Key criteria for downsizer contributions are:

- the disposal of a property located in Australia
- the property was owned by the client (and/or their spouse or former spouse) for at least 10 years, and
- a full or partial main residence CGT exemption applies, or would apply if the property is a pre-CGT asset[4] or owned by a spouse or former spouse.

A downsizer contribution must be made within 90 days of the property settlement, and is only available in relation to the disposal of one property.

Small business CGT concession contributions

The small business CGT concession contribution (SBCC contribution) still remains as a significant opportunity to make very large superannuation contributions. The SBCC contribution lifetime cap was indexed to $1.515 million from 1 July 2019.

In particular, clients who dispose of small business assets which meet the criteria for the 15-year exemption may be able to contribute the entire proceeds (cost base and capital gains) from the sale of the asset to superannuation. Where the small business retirement exemption applies instead to an asset, a lifetime cap of $500,000 applies, limiting the SBCC contribution potential unless another asset qualifies for the 15-year exemption.

Strict criteria apply to the timing and documentation applicable to the contribution, including:

- if the contribution results from the sale of an asset owned by an individual, the contribution must be made by the later of:
  - the day of lodgement of the individual's tax return lodgement or
  - 30 days from the receipt of the capital proceeds
- if the contribution results from the sale of an asset owned by a company or trust, the contribution must be made within 30 days of the payment to CGT concession stakeholder
- the choice to treat the contribution as a SBCC contribution must be made using the relevant ATO form no later than the time of the contribution.

As the disposal of business real property may trigger a SBCC contribution opportunity, financial services professionals may wish to review their small business clients and alert them to the possible opportunity.

Summary

Despite attempts by legislators to simplify the Australian superannuation contribution rules over the last two decades, they remain complex. Clients may miss out on valuable superannuation concessions if they are not receiving appropriate advice from financial services professionals about the range of contribution strategies available. **FS**

Notes

1. *Spouse income for spouse contribution tax offset purposes includes assessable income, reportable fringe benefits and reportable employer superannuation contributions.*
2. *Refer to the Macquarie Big Black Book for other eligibility criteria.*
3. *Refer to the Macquarie Big Black Book for eligibility criteria.*
4. *Purchased prior to 20 September 1985.*