Part 2: Future Proofing an SMSF – The Value of Regular Reporting

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But first....what you need to know

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Today's Agenda …

- A quick recap
- The importance of the Total Super Balance
- Contribution strategies
- Case Study 1
- Benefits of regular reporting – NCCs
- Benefits of regular reporting – Death Benefits
- Case Study 2
- Questions

A quick recap - Why the need for regular reporting

- Number of factors and issues come into play when deciding if we need a more regular reporting cycle
- TBAR, BAS, rollover and other regulatory issues
- SMSF strategy advice and implementation
- Accurate recording of contribution caps
- Monitoring of pension minimums
- Review and implementation of Investment Strategies
- Changing demographic of SMSF establishments – technology savvy audience

The importance of the Total Super Balance

- Eligibility for unused concessional contributions cap carry forward
- Eligibility for the non-concessional contributions cap and the bring forward of non-concessional contributions
- Eligibility for the government co-contribution
- Eligibility for the tax offset for spouse contributions
- For SMSFs and SAFs, eligibility to use the segregated assets method when calculating ECPI

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Contribution strategies

Catch-up Concessional Contributions

- Unused portion of CC cap carried forward on a rolling 5 year period
- Effective from 1 July 2018 (2019/20 first catch-up opportunity)
- Not a bring forward entitlement
- *Must have less than $500k in "Total Superannuation Balance"*
- *Measured at 30 June of prior year catch-up is used*

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Contribution Strategies – Catch-up Concessionals

	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24
Concessional contributions	$10,000	$10,000	$10,000	$10,000	$10,000	$40,000*
Available unused cap	$15,000	$15,000	$15,000	$17,500	$17,500	$0

$27,500 cap for 2023/24 + $12,500 unused cap from 2018/19

Must have less than $500k in total super as at 30 June 2023

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Case Study 1 – Catch-up Concessional Contributions

- Frank, age 69 - retired in June 2019
- Made no contributions since then
- In 2024/25 has ordinary income of $40,000, including $5,000 from casual work with the Australian Electoral Commission (AEC)
- Sells a property in the same year resulting in $175,000 assessable capital gain after discount

Poll Question 1

Can Frank eliminate the tax on the Capital Gain?

a) Yes
b) No
c) It depends

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Case Study 1 – Catch-up Concessional Contributions

	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Concessional contributions	$0	$0	$0	$0	$0	$160,000
Available unused cap	$25,000	$25,000	$27,500	$27,500	$27,500	$0

$27,500 cap for 2024/25 + $132,500 unused cap from 2019/20 – 2023/24.

Must have less than $500k in total super as at 30 June 2024

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Case Study 1 – Catch-up Concessional Contributions

	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25
Concessional contributions	$0	$0	$0	$0	$0	$175,000
Available unused cap	$25,000	$25,000	$27,500	$27,500	$27,500	$0

$27,500 cap for 2024/25 + $132,500 unused cap from 2019/20 – 2023/24 + $15,000 Contribution June 2025 "reserved".

Must have less than $500k in total super as at 30 June 2024

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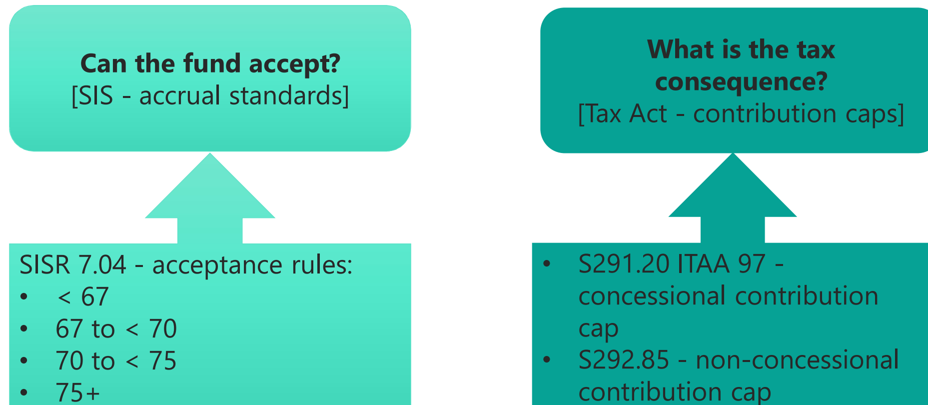
Benefits of Regular Reporting – NCCs

Contributions – acceptance versus caps



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Benefits of Regular Reporting – NCCs

Just because the cap is zero…

- Client over age 67 (<75) with TSB >$1.7m
- Met 'work test'
- Made $80k NCC (previously re-contributed pension payment)

Clearly, they are not able to make the contribution?

Can this be treated as a mistake?

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Poll Question

Poll Question 2

Can this client make an $80k NCC to super?

a) Yes
b) No
c) It depends

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Benefits of Regular Reporting – NCCs

Acceptance rules resolve excess NCC

- 77 yo makes $70k NCC - met work test (not downsizer)
- Prior 30 June TSB > $1.7m
- Reported in Member section F of SMSF Annual Return
- Waiting for ATO to issue excess NCC determination
- Should the SMSF have reported the NCC in section F?
- Should the fund have accepted the contribution?
- Is there an excess?

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Poll Question

Poll Question 3

Should the fund have accepted the contribution and are they able to refund it?

a) Yes
b) No
c) It depends

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Benefits of Regular Reporting – NCCs

Acceptance rules resolve excess NCC

- SISR 7.04(4):
- If fund receives amount not per acceptance rules
- Must refund the amount within 30 days of becoming aware
- Even if outside 30 days - still return:
  - ATO ID 2009/29
  - Withdrawn 1/7/2017 due to removal of 7.04(3) (fund capped rule)

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Benefits of Regular Reporting – NCCs

- Example in QC 21807:
- Contribution was not refunded within 30 days
- Trustee claimed they were not aware it was in excess
- It is not reasonable for the trustee/member to be unaware the contribution was not allowed:
    - Contribution must be still be refunded
    - Penalty of 20 units applied by the ATO
    - 20 x $210 = $4,200

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Benefits of Regular Reporting – Death Benefits

- ECPI only applies to assets used to pay an income stream
- Usually ceases when the income steam ceases
- Unless a death benefit commences to be paid ‘as soon as practicable’
- No defined timeframe, but understood to be 6 months from date of death
- If paid ‘as soon as practicable’, ECPI exemption continues
- AND the benefit/s will still be separate superannuation interests
- AND earnings on benefits will be in the same tax-free/taxable proportions
- This can have distinct benefits to the fund and beneficiaries

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Case Study 2 – Death benefits and regular reporting

- Bill, 61, was in receipt of two non-reversionary pensions – one 100% tax free and one 100% taxable
- Tax Free Pension $500,000 (50%)
- Taxable Pension $500,000 (50%)
- Fund asset cost base is $500,000 ($500,000 unrealised gain)
- Bill passed away on 1 July 2021

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Case Study 2 – Death benefits and regular reporting

- Bill's wife, Wendy, Bill's executor, decides to pay the 100% tax free pension as a cash lump sum to their adult child Mark
- Wendy decides to take Bill's 100% taxable pension as a death benefit pension
- *The two pension remain separate superannuation interests*
- *See Income Tax Assessment Amendment (Superannuation Measures No.1) Regulation 2013*
- Assets are sold within the Fund to allow for the cash lump sum to Mark
- The fund earns 10% from the date of Bill's death until the benefits are paid

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Case Study 2 – Death benefits and regular reporting

- If the benefit is paid 'as soon as practicable', the assets sold to fund the tax free lump sum to Mark will be included in Exempt Current Pension Income (no CGT)
- Earnings on the assets used to pay pensions will be in the same proportion of tax free/taxable components
- Also the superannuation interests remain separate superannuation interests and can be dealt with separately

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Case Study 2 – Death benefits and regular reporting

- BUT…
- If the fund does not pay the benefit 'as soon as practicable', then CGT will apply to the sale or transfer in-specie of assets:

Sale Price	$550,000
Less: Cost Base	($250,000)
Net Capital Gain	$300,000
Less: CGT discount	($100,000)
Assessable Capital Gain	$200,000
CGT Payable by SMSF	($30,000)
Net Amount	$520,000

- Remember half the assets are sold to pay the lump sum death benefit to Mark

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Case Study 2 - Death benefits and regular reporting

- If the benefit is paid as soon as practicable, earnings on the assets will be in the same proportion as the superannuation interests (i.e. either tax free or taxable):
- Tax Free Pension $550,000 (50%)
- Taxable Pension $550,000 (50%)
- If the benefit is not paid as soon as practicable the Fund will consist of *one accumulation account*
- *The two separate superannuation pension interests merge*
- Earnings on an accumulation interest will all be a taxable component

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Case Study 2 – Death benefits and regular reporting

- If we have an accumulation interest only, all earnings will be a *taxable component*:
- Tax Free Component $500,000 (45.45%)
- Taxable Component $600,000 (54.55%)
- Therefore Mark would receive a benefit that was part tax-free/taxable:
- Tax Free Component $243,158 (45.45%)
- Taxable Component $291,842 (54.55%)

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Case Study 2 – Death benefits and regular reporting

- If the benefits are not considered within the death benefits period:
- Net amount received by Mark = $550,000 - $15,000 - $49,613 = $485,387
- The separate superannuation interests would cease on death
- Assets sold to fund the lump sum to Mark in accumulation mode and subject to CGT
- Earnings on the assets would be a taxable component

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Case Study 2 – Death benefits and regular reporting

- If the benefit is within the death benefits period and paid 'as soon as practicable':
- The two pension interests can be dealt with separately
- Mark receives the tax-free superannuation interest as a death benefit lump sum
- Net amount received by Mark = $550,000 (a difference of $64,613)
- *The superannuation interests remain separate superannuation interests*
- Assets sold to fund the lump sum will be included in Exempt Current Pension Income
- Earnings on the assets will be the same proportion as the superannuation interests

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Question Time

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