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**WHY CONTRIBUTING ABOVE YOUR
CONCESSIONAL CAPS HAS CHANGED TO
BE A GO-TO STRATEGY FOR FAMILIES –
SOME LIVE CASE STUDIES TO SHOW
HOW IT WORKS**

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**Game Changer: Excess
Concessional Charges are
gone!!!!**

Part 2—Repeal

Superannuation (Excess Concessional Contributions Charge) Act 2013

13 The whole of the Act

Repeal the Act.

Part 3—Application

14 Application

The amendments made by this Schedule apply in relation to excess concessional contributions for a financial year starting on or after 1 July 2021.

Introduction

Making excess concessional contributions is one of my favourite go to tax strategies which has been turbo charged thanks to Pauline Hanson forcing through a repeal of the excess concessional contributions charge – thanks Pauline.

The key features of understanding the strategy are as follows:

1. Excess concessional contribution are not taxed directly – only indirectly – see 2.
2. Any excess concessional contribution is added back to the superannuation fund members' taxable income by way of an amending assessment issued by the Commissioner of Taxation.
3. Any excess concessional contribution carries with it an automatic 15% tax offset which means for low taxable incomes nil or small amounts of tax will be paid.
4. Any excess concessional contribution is also a non-concessional contribution so be careful not to exceed the NCC cap.
5. *There are no longer any excess concessional contributions charges levied on the excess concessional contributions.*
6. The member, at the time of the Commissioner making an amended assessment may withdraw up to 85% of their excess concessional contribution so it is not preserved superannuation benefits unless the member chooses to leave them in the Fund.

The dropping of the excess concessional contributions charge is a vital change to advanced tax and super strategy making for a family. Consider the following four cases below:

1. JIM JONES - SIMPLE CASE STUDY

Jim Jones is 60 years old, earns approximately \$100,000 per annum and is a successful business consultant with limited ability to shift income. He jumps on the ATO website and sees that for the 2022 income year he will have to pay \$24,967, which will come out in BAS payments throughout the year.

BUT you come along as an expert tax and super adviser and tell him about the ability to make personal deductible super contributions into the Jones Family Super Fund (the family SMSF), which has a balance of \$450,000 to his benefit (he was a late starter). Importantly you have found out that just after his birthday, Jim went and worked part time for a client for a period of four months and has since left that employment – 1 June 2021. As an expert you know that, despite Jim running his business full time, he is retired.¹

Jim needs \$7,000 per month for mortgages, cars and other living expenses. You advise that this will come from direct withdrawals from his superannuation as Jim is retired and over age 60. His current balance of \$450,000 will be moved into an account-based pension with a separate investment strategy – currently it is in cash. Importantly, as we will see with catch up concessional contributions, since 1 July 2018 Jim has contributed only \$30,000 into his super fund.

IMPORTANT: *There is NO TAX on the monthly \$7,000 pension withdrawal.*

STRATEGY: *Jim directs all of his invoice collections into his super for 2022 income year – which amounts to \$100,000 and lives off his super alone.*

1. Jim's Tax Position

Step One – Personal Deductible Contribution - \$100,000

For the current income year 2021 – 2022 Jim *makes a personal tax-deductible contribution of \$100,000*. At the outset this would reduce Jim's taxable income to \$0 and his tax liabilities for the year ended 30 June 2022 to \$0². However, there are adjustments to come for excess concessional contributions – see later.

Step Two – Contributions Tax in the Fund

From the Fund's perspective the \$100,000 contributions would be assessable to the Trustee of the Jones SMSF as taxable contributions per section 295-160. Potential tax payable on these contributions (i.e contributions tax) is $\$100,000 \times 0.15 = \$15,000$. But we need to reduce that with some smart tax effective investments.

Contributions Tax Minimisation Strategy: It is important for the Trustee of the Fund to seek to reduce the contributions tax liability in the Fund and for that the Trustee could do one or more of the following:

¹ See SIS Regulation 6.01(7) meaning of retired = ceasing one form of gainful employment post age 60.

² section 290-150 of the ITAA 97 provides that any personal contribution made by a taxpayer to a complying superannuation fund is tax deductible. There is no limit on the deduction and it still applies even where the taxpayer is in receipt of employer contributions.

- Invest for franking credits – to get \$15,000 of franking credits the Fund to wipe out the tax the Trustee would need to receive approximately \$43,000 of fully franked dividends. According to the Motley Fool, Fortescue pays a 10% yield fully franked, ANZ a 4.6% yield fully franked and JB HiFi a 5.3% fully franked. If the Trustee of Jim's fund used the \$450,000 being used to fund his pension and receives a 5% fully franked dividend this would generate \$9,640 of franking credits to apply against the \$15,000 in contributions tax.
- A great alternative is if the Trustee of the Fund invests \$75,000 in an Early Stage Innovation Company (see later) then the Trustee receives a tax offset of 20% of the amount invested, or \$15,000. This would clear any contributions tax liability and if you are not aware of the governments ESIC scheme – go to <https://www.ato.gov.au/Business/Tax-incentives-for-innovation/In-detail/Tax-incentives-for-early-stage-investors/>

Step Three – Add back Excess Concessional Contributions to Jim's personal taxes

Jim's personal income taxation position is as follows:

- 2021-2022 concessional contributions threshold: \$27,500
- Catch up concessional contributions for unused concessional caps to 30 June 2021 is \$75,000 - \$30,000 (already contributed) = \$45,000.³
- Jim's excess concessional contributions for the 2021-2022 income year is \$100,000 - \$27,500 - \$45,000 = \$27,500.
- *Any excess concessional contribution is a non-concessional contribution using Jim's NCC cap of \$110,000 for 2021-2022 income year.*
- Jim lodges his personal return in March 2023 showing a nil income return of \$0.
- The trustee of the Jones Super Fund lodges its tax return in May 2023 showing concessional contributions for Jim of \$100,000.
- An amended Assessment issued by the ATO to Jim personally once the Fund's and the personal income tax returns are married up in order to tax the excess concessional contribution at Jim's marginal tax rate. There will be an add back of the Excess Concessional Contribution of \$27,500 *but NO ECC Charge on any tax payable.*
- The Amended Tax Assessment for Jim on \$27,500 taxable income is \$2,317.
- BUT section 291-15(b) of ITAA 97 provides a 15% tax offset on the \$27,500 of taxable income which is \$4,125.
- *So total tax payable on the \$100,000 contribution is \$0!!!⁴*

2. MAX JONES – JIM'S 40 YEAR OLD SON

³ See section 291-25 which enables members with less than \$500,000 to carry forward unused concessional contributions caps.

⁴ *BUT watch out for the contributions tax liability which is why it is crucial to minimise it in the Fund.*

Jim's son Max is 40 years of age and works with an accounting firm on a package of \$120,000. His wife is a stay at home mum, they have a \$1M property with a mortgage of \$350,000 and \$200,000 cash in an offset account.

Max is a member of Jim's super fund and has a small balance of \$150,000. He and his wife need \$8,000 per month to live on. For 2022 Jim expects to pay \$31,867 in taxation (without any deductions). Since 1 July 2018, only \$28,000 of SGC contributions have been made into Max's member account in the Jones Family Super Fund.

As adviser to the family, you suggest that Max contributes all of his salary by way of salary sacrifice to his superannuation fund and draws down cash from his offset account to live on. Although we will top that up later.

Let's see how this works.

Max's Tax Position

Step One – Employer Deductible Contribution - \$120,000

For the current income year 2021 – 2022 Max's employer makes a *tax-deductible contribution of \$120,000 pursuant to an employment agreement*. At the outset this would reduce Max's taxable income to \$0 and his tax liabilities for the year ended 30 June 2022 to \$0. However, as with Jim there are important adjustments to come for excess concessional contributions – see later.

Step Two – Contributions Tax in the Fund

From the Fund's perspective the \$120,000 contributions would be assessable to the Trustee of the Jones Family Super Fund as taxable contributions per section 295-160. Potential tax payable on these contributions (i.e. contributions tax) is $\$120,000 \times 0.15 = \$18,000$. But we need to reduce that with some smart tax effective investments. See some of the tax reduction alternatives detailed above for the Jones Family Super Fund.

Step Three – Add back Excess Concessional Contributions to Max's personal taxes

Max's personal income taxation position for 2021-2022 is as follows:

- 2021-2022 concessional contributions threshold: \$27,500
- Catch up concessional contributions for unused concessional caps to 30 June 2021 is \$75,000 - \$18,000 (already contributed) = \$57,000.
- Max's excess for the 2021-2022 income year is $\$120,000 - \$27,500 - \$57,000 = \$35,500$.
- *Any excess concessional contribution is a non-concessional contribution using Max's NCC cap of \$110,000 for 2021-2022 income year.*
- Max lodges his personal return in March 2023 showing a nil income return of \$0.
- The trustee of the Jones Super Fund lodges its tax return in May 2023 showing concessional contributions of \$120,000 for Max.
- The Amended Tax Assessment for Jim on \$35,500 taxable income is \$3,997 with Medicare and NDIS levy.

- BUT section 291-15(b) of ITAA 97 provides a 15% tax offset on the \$35,500 of taxable income which is \$5,325⁵.
- So total tax payable on the \$120,000 contribution is \$0!!!

☆☆☆☆☆ Important Strategy Super Access Plan

At the time of making the amended assessment, Max may ask the ATO to withdraw up to 85% of his excess contributions. As such Jim can obtain a payment of $\$35,500 \times 0.85 = \$30,175$ from the fund. This can be reduced to pay off the mortgage. Of course, he can leave the money in the fund and pay the additional tax bill outside.

3. JULIE SMITH – JIM’S SUCCESSFUL BUSINESS DAUGHTER

Jim’s daughter Julie is 50 years of age and has a successful clothing company. She is divorced with two adult children and lives in a \$1M property with no mortgage. The company has cash of \$300,000 and is expected to earn \$250,000 of taxable income for the 2022 income year.

Julie is a member of Jim’s super fund and has a super balance of \$650,000. She needs \$6,000 per month to live on. Normally Julie takes salary of \$100,000.

As adviser to the family, you suggest that Julie contributes all of the company’s profits to the superannuation fund and draws down cash from equity in the home to live on.

Let’s see how this works.

Julie’s Tax Position

Step One – Employer Deductible Contribution - \$250,000

For the current income year 2021 – 2022 Julie’s employer makes a *tax-deductible contribution of \$250,000 pursuant to an employment agreement*. At the outset this would reduce Julie’s and the company’s taxable income to \$0 and her tax liabilities for the year ended 30 June 2022 to \$0. However, as with Jim there are important adjustments to come for excess concessional contributions – see later.

Step Two – Contributions Tax in the Fund

From the Fund’s perspective the \$250,000 contributions would be assessable to the Trustee of the Jones SMSF as taxable contributions per section 295-160. Potential tax payable on these contributions (i.e. contributions tax) is $\$250,000 \times 0.15 = \$37,500$. But we need to reduce that with some smart tax effective investments. See some of the tax reduction alternatives detailed above for the Jones Family Super Fund.

Step Three – Add back Excess Concessional Contributions to Julie’s personal taxes

Julie’s personal income taxation position for 2021-2022 is as follows:

- 2021-2022 concessional contributions threshold: \$27,500

⁵ Unfortunately, surplus tax offsets cannot be carried forward.

- No catch up concessional contributions as her superannuation balance is over \$500,000.
- Julie's excess for the 2021-2022 income year is \$250,000 - \$27,500 = \$222,500.
- First Personal Assessment in March 2023 based on nil income return is \$0.
- The trustee of the Jones Super Fund lodges its tax return in May 2023 showing concessional contributions of \$250,000 for Julie.
- The Amended Tax Assessment for Julie on \$222,500 taxable income is \$75,792.
- BUT section 291-15(b) of ITAA 97 provides a 15% tax offset on the \$222,500 of taxable income which is \$33,375.
- So total tax payable on the \$250,000 contribution is \$42,417.

☆☆☆☆☆ Important Strategy Super Access Plan

At the time of making the amended assessment, Julie may ask the ATO to withdraw up to 85% of her excess contributions if \$222,500.

4. MUM GWEN SMITH – JIM'S SPOUSE AND JULIE'S MOTHER

Jim's spouse Gwen is 63 and is retired. She is a member of the Jones Family Super Fund and has a super balance of \$250,000. No contributions have been made on behalf of Gwen for more than ten years.

STRATEGY NOTE: Gwen is the X Factor as she can take money from super tax free and has plenty of contributions capacity, including concessional contributions. We love Gwen because:

1. Her catch up concessional contributions including the 2022 income year is \$102,500.
2. Gwen can be employed by Julie for \$102,500 provided she does do work – even though she may not be worth it. The Commissioner has ruled this is not subject to Part IVA following Michael Ryan v Commissioner of Taxation [2004] AATA 753.
3. Gwen will have no excess concessional contributions and no personal income taxation.
4. Julie's concessional contributions will be reduced from \$250,000 to \$147,500 and could go lower as Gwen has capacity to use up her tax free threshold. For example, if concessional contributions for Gwen were \$150,000 meaning she has excess concessional contributions of \$47,500 her tax payable is \$6,854 but her 15% tax offset is \$7,125 so she will not be paying any tax.
5. If we contribute \$150,000 to Gwen, then this reduces Julie's concessional contribution to \$100,000 and company taxable income of \$0. For Julie her excess concessional contribution for the 2022 income year is now \$72,500 with tax payable on this in June 2023 being \$16,029. However, the 15% offset comes in at \$15,000 so her total tax bill is \$1,029.
6. Personally, I would go higher on Gwen to get her to a zero and that would make Julie as zero as well.

Summary

As you can see there is now a lot more fun playing around with Family Super Funds and the abolition of the excess concessional contributions charge. With six member SMSFs in play,

no excess concessional contributions charge it is time for SMSFs to regain some of their glory.

P.S. A lot of accountants, administrators and planners still believe that you cannot go over the concessional caps. And that ignorance is one of the greatest wealth generating tools you will have for the next five years until the strategies become mainstream.

P.P.S. Apart from our great super and tax work there is a lot, a heck of a lot of asset protection in the Jones family that is needed – look at all those homes with large amounts of equity. That is stage two of our exercise.

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