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WHEN THE RUBBER HITS THE ROAD

MINIMISING SUPER CONTRIBUTION MISTAKES & COMPLAINTS

Peter Kelly

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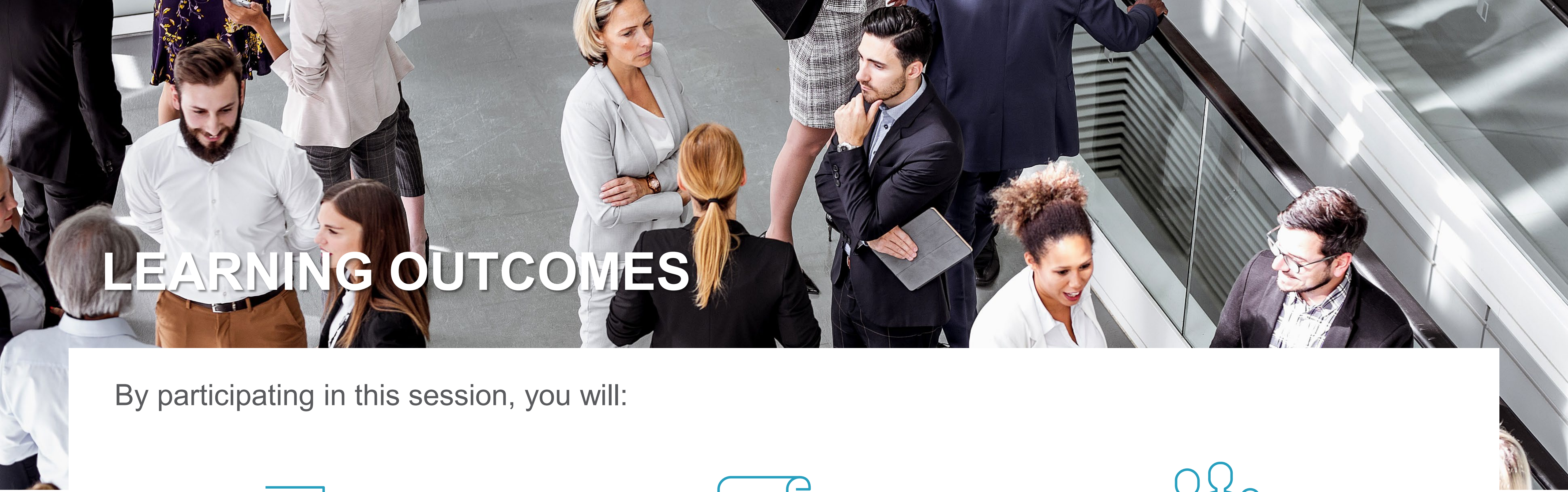
AGENDA

1. Potential risk areas
2. Breaching the NCC cap
3. Claiming a personal tax deduction
4. Downsizer contributions



LEARNING OUTCOMES

By participating in this session, you will:

Understand the potential risks when making contributions

Be able to explain the consequences of breaching caps and contribution rules

Understand how to mitigate contributions risks

POTENTIAL RISK AREAS – BASED ON WHAT WE SEE

1. Failing to account for previous contributions
2. Overlooking the total super balance
3. Inadvertently triggering the three-year bring forward cap
4. Ineligibility to claim a personal tax deduction
5. Making contributions to manage CGT liabilities
6. Incorrectly classifying contributions
7. Failure to lodge a contribution election notice (e.g. small business CGT, downsizer etc.)
8. Missing contribution cut-off dates.

BREACHING THE NCC CAP

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CASE STUDY 1

Background

- Client made a NCC of $200,000 in 21/22 – unknown to the adviser
- In 2023/24 recommendation was made to make a NCC of $330,000.

2021/22	2022/23	2023/24
$200,000	$0	$330,000

Result

- B/f cap for 21/22 was $330,000
- Remaining cap = $130,000
- Resulted in an excess NCC of $200,000
- Excess NCC + 85% of associated earnings to be released from super
- Associated earnings taxed at MTR (with 15% tax offset)

Associated earnings is based on GIC
Current annualised rate ~11.4%

CASE STUDY 1 – MITIGATING RISK

- Check NCC history using My.Gov and/or super fund records
- Verify the ability to use 3 year bring forward cap (i.e. must be 74 or younger on previous 1/7)
- 3 year bring forward period ended on 30 June 2024. Provided TSB on 30/6/24 was <$1.66m, a NCC of up to $360,000 could be made from 1/7/24 (subject to age restrictions)

TIP – NCCs ON TURNING 75

- Contributions[1] can be accepted up to the 28th day of the month following that in which a person turns 75.
- Subject to a members total superannuation balance, the three year bring forward cap can be accessed provided the member was aged 74 or younger at the start of the financial year.
- TSB recap:

FY 25	
TSB	NCC Cap
>$1.90m	$0
$1.78m - $1.90m	$120,000
$1.66m - $1.78m	$240,000
<$1.66m	$360,000

FY26	
TSB[2]	NCC Cap
>2.00m	$0
$1.88m - $2.00m	$120,000
$1.76m - $1.88m	$240,000
<$1.76m	$360,000

[1] 75 year age limit does not apply to mandated employer contributions or downsizer contributions.
[2] Assuming the general transfer balance cap is indexed to $2.00m from 1 July 2025

INTERACTION BETWEEN TURNING 75, AND THE 3 YEAR B/F CAP

Background

- Seeking to maximise NCC in FY26
- TSB 30 June 2025 = $800,000
- 3 yr b/f not triggered in FY 24 or 25
- **Turns 75 on 15 July 2025**

Outcome

- Aged 74 on 1 July 2025
- Can access 3 yr b/f in FY26
- NCC of up to $360,000 must be made by 28 August 2025

Background

- Same as for example 1, however
- **Turned 75 on 15 June 2025**

Outcome

- Cannot access 3 yr b/f in FY26
- NCC of up to $120,000 must be made by 28 July 2025

POLLING QUESTION 1

Millie will turn 75 on 15 February 2025.

What is the latest date she can make a non-concessional contribution?

a. 15 February 2025
b. 28 February 2025
c. 28 March 2025
d. 30 June 2025

POLLING QUESTION 2

Millie will turn 75 on 15 February 2025.

If Millie's TSB was $1,750,000 on 30 June 2024, what is the maximum NCC she can make in FY25?

a. $120,000
b. $240,000
c. $360,000
d. $0

CLAIMING A PERSONAL TAX DEDUCTION

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TYPICAL SCENARIOS

1. Failing to lodge a notice of intent (s.290-170 notice)
2. Notice being invalid
3. Notice lodged but unable to claim deduction
4. Timing of taxable income – e.g. to manage a CGT event

CASE STUDY 2

Background

- Client's assessable income $115,000
- Member made a NCC of $300,000 in FY24
- Available CC cap was $40,000 (including c/f)
- NOI for $300,000 was lodged
- Then commenced an ABP

Result

- Entire contribution subject to cons tax.
- Assessable income $115,000
- Maximum tax deduction $115,000 (but will trigger a $75,000 excess CC)
- Variation of NOI can't be lodged (because pension had commenced)

Contributions tax	$300,000 @ 15%	$45,000.00
Income tax saving	$115,00 @ MTR = $30,142.00	($30,142.00)
Tax on excess contribution	$75,000 @ MTR = $14,842.00 Less 15% offset = $11,250.00 $ 3,592.00 Plus Medicare $ 1,500.00 $ 5,092.00	$ 5,092.00
Net loss to client		**$ 19,950.00**

CASE STUDY 2 – MITIGATING RISK

- Ensure the Notice of Intent accurately reflects the correct amount of tax deduction to be claimed – this may result in deferring the commencement of a pension or rolling super over

- Understand the circumstances when a NOI can be varied

- Ensure your client discusses the strategy and any actions taken with their accountant or tax agent.

DOWNSIZER CONTRIBUTIONS

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DOWNSIZER CONTRIBUTIONS – WHAT COULD POSSIBLY GO WRONG?

- Complying with age limits (i.e. only available for people aged 55+)
- Contributions are preserved unless a CoR has been met
- Former home owned for less than 10 years
- Former home owned by a trust or company
- Subdivision and aggregation of titles
- Timing for making contributions
- Once only opportunity
- Downsizer contribution into superannuation form – NAT 75073

CASE STUDY 3

Background

- Couple are aged 85 and 83
- Sold an eligible dwelling
- Wish to contribute $300,000 each as a downsizer contribution
- Contribution is made electronically, and the election notice is mailed to the super fund on the same day
- The election is received the day after the contribution is received.

Result

- Contribution fails as a downsizer contribution.
- Treated as a NCC and assessed against the NCC cap.
- Clients NCC cap is $0 due to their age
- Contribution is treated is an excess NCC.
- Associated earnings will be taxed at MTR

POLLING QUESTION 3

Bert is 78.

He sold his eligible dwelling for $800,000.

He lodged his election form informing the super fund he was making a downsizer contribution of $250,000.

However, he contributed $300,000

Will the additional $50,000 be treated as a:

a. Downsizer contribution,
b. Concessional contribution
c. Non-concessional contribution
d. Excess non-concessional contribution?

WRAP UP

LICENSEE REQUIREMENTS

In the event of a potential error or mistake arising:

- Notify your licensee
- Provide all relevant information to your licensee
- Don’t admit liability

CONSEQUENCES OF ERRORS

1. Time consuming – attempting to rectify, dealing with a complaint
2. Costs money – time spent managing rectification, compensating for loss, PI insurance excess or adviser contribution[1]
3. Stressful – anxiety and uncertainty
4. Licensee and/or ASIC response to a breach
5. Financial Services and Credit Panel written reprimand
6. Reputational damage – press and social media coverage

[1] PI Insurance may not cover administrative errors.

TECHNICAL ADVICE TEAM CONTACT

technical@cpal.com.au

Mel – 02 8987 3068
Peter – 07 5668 1100