

AN UNUSUAL SITUATION

For Tasmanian planner **Charles Badenach**, considering an appropriate strategy for one of his clients suffering severe injuries sustained from a motor vehicle accident, meant thinking outside the box.



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Scenario

- The client, Jack (not his real name), suffered severe injuries from a motor vehicle accident when he was eight-years-old.
- As a result of the accident, Jack continues to experience a number of symptoms that interfere with daily living activities.
- Jack received a compensation settlement of \$4 million.
- Jack is 20-years-old.

The client

The client's lawyer contacted me whilst Jack's damages claim was being negotiated, and I was able to work through with both Jack's lawyer and his parents to model the future cash flows for him. This assisted Jack's lawyers in negotiating a sustainable long-term settlement sum for him.

As a result, Jack received compensation from the accident in the form of a monetary settlement of approximately \$4 million. Jack is now 20 years of age and still suffers from the effects of the motor vehicle accident, and is still receiving intensive medical treatment.

The default position was that the money was managed by the State Government controlled Public Trustee, so the first step in the process was to make an application to the Guardianship and Administration Board seeking an order that would allow his parents to manage this money on Jack's behalf.

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To achieve this, I:

- prepared the documentation for the Guardianship and Administration Board hearing. This involved making submissions (both written and oral) before the hearing and addressing the Board on why the parents were suitable administrators; and
- adhered to the ongoing reporting requirements outlined by Section 63 of the Guardian and Administration Act 1995.

After the hearing, Jack's parents were appointed as administrators of their son's affairs for a period of three years subject to a number of stringent conditions, including the appointment of myself to assist in managing the monies.

The strategy

In considering the strategy for Jack, this was quite an unusual situation in that given the significance of the injuries, superannuation was not an option under the personal injuries provision. Payments arising from personal injuries can be contributed to superannuation and are excluded from the non concessional cap. However, to enable the exclusion to apply, it was necessary for me to satisfy a number of steps in relation to the type and administration of the payment.

The requirements are set out in Section 292-95 of the *Income Tax Assessment Act 1997* for this strategy.

It was also important to note that as the claim was for both compensation for personal injury and for other remedies (such as administration costs etc), only the amount of the payment that related to compensation or damages for the personal injury and identified in the court order as such, could be contributed.

However, given the significance of any potential error with the contribution caps, I worked with the lawyers to ensure that Jack met the requirements of Section 292-95 of the *Income Tax Assessment Act 1997* as follows:

1. As the contribution must be made within 90 days of the later of the following:
 - a. The day on which the client received the personal injury payment.
 - b. The day on which the agreement for settlement of the personal injury payment was entered into.

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- c. The day on which the court order for the personal injury payment was made.

In this instance, the court order was made in December, the money paid in February but the Guardianship and Administration Board hearing was not until March. So to avoid any potential issue, I obtained a legal opinion confirming that the 90 day period ran from 31 March 2012.

2. With regard to the breakdown of the payment, a letter of advice was received from the lawyers acting for Jack confirming the breakdown of the payments.

In order to further protect Jack from an unlikely contributions cap, the monies were deposited to superannuation as follows:

- Personal injury sum \$3.4 million.
- Non concessional contributions:
 - \$150,000 before 30 June 2012.
 - \$450,000 in July 2012.

By making the non concessional contributions over two financial years, I was able to bring forward the averaging provision.

Given Jack's medical condition, he was able to obtain two reports from medical practitioners confirming that "because of the personal injury, it is unlikely that Jack can be gainfully employed in a capacity for which he is reasonably qualified because of education, experience or training". By meeting a condition of release once the funds were contributed to superannuation, he was able to access these monies. A regular income stream was set up in the form of an account-based pension to meet Jack's income needs. This money was paid to Jack as a tax-free income stream.

The account-based pension was paid into a cash management account in Jack's name and from this account a regular weekly allowance was paid. Any large lump sum medical bills were paid from the cash management account held outside of superannuation. This had the added advantage of providing a consolidated record of Jack's expenditure, which could then be forwarded to the Guardianship and Administration Board in accordance with the regular reporting requirements.

Benefits of the advice

This strategy allowed Jack to:

1. Receive a regular and sustainable income stream from the superannuation environment as a 'tax-free' pension;
2. Minimise the amount of tax which he paid by using the most tax effective structure available to Jack;
3. Have his parents control the compensation monies by replacing the Public Trustee. This significantly reduced the fees payable by Jack and allowed the asset allocation to be tailored to suit Jack's unique personal situation. The default asset allocation provided by the Public Trustee's managed fund was an issue that seriously concerned Jack's parents.
4. Diversified the asset base and provide the opportunity to invest in direct property and other assets that were not available under the default position.
5. Have access to a cash management account outside of superannuation which provided a consolidated record of Jack's expenditure requirements. This was administratively simple and also met the requirements as required by the Guardianship and Administration Board.

Charles Badenach CFP® was the Tasmanian state runner-up in the 2012 CFP® Professional Best Practice Awards.

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