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# SMSF Update

16 May, 2023

# Today’s Speakers

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# Agenda

- Legislate Changes – What made it through
- Legislation in Parliament
- Rulings & Announcements
- Cases

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# Budget Announcements & Progress (if any)

# NALE Changes

- Amend the non arm's length income (NALI) provisions which apply to expenditure incurred by superannuation funds by:
  - limiting income of self managed superannuation funds and small Australian Prudential Regulation Authority (APRA) regulated funds that are taxable as NALI to twice the level of a general expense. Additionally, fund income taxable as NALI will exclude contributions (probably not reportable now)
  - exempting large APRA regulated funds from the NALI provisions for both general and specific expenses of the fund
  - exempting expenditure that occurred prior to the 2018 19 income year

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# SG Payment Frequency

- From 1 July 2026, employers will be required to pay their employees' SG entitlements on the same day that they pay salary and wages

# $3 Million Cap

- From 1 July 2025
  - Income on accounting earnings on the proportion of funds in excess of $3 million will attract a tax of 15%
  - The tax is payable by the member
  - Notice issued to the member
  - The member can release funds from super to pay the liability
  - Negative earnings can be carried forward
  - Treasury will consult further on the appropriate treatment for defined benefit interests
  - Yes you are paying tax on unearned income

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# Formula

- Earnings equals
- TSB (30 June this year) minus
- TSB (1 July this year) plus
- Withdrawals less
- Net Contributions

- $4,500,000 minus
- $4,000,000 plus
- $100,000 plus
- Nil
- = **$600,000**

# Proportion of Earnings

- Proportion of Earnings equals
- TSB (30 June this year) minus
- $3,000,000  divided by
- TSB (30 June this year)

- $4,500,000 minus
- $3,000,000 ($1,500,000) ÷
- $4,500,000
- = **33.33%**

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# Tax Liability

- Tax Liability equals
- 15% times
- Earnings time
- Proportion of Earnings

- 15% x
- $600,000 ($90,000) x
- 33.33%
- = $**30,000**

# Examples

- Warren is 52 with $4 million in superannuation at 30 June 2025. He makes no contributions or withdrawals. By 30 June 2026 his balance has grown to $4.5 million
- This means Warren's calculated earnings are:

  **$4.5 million - $4 million = $500,000**

- His proportion of earnings corresponding to funds above $3 million is:

  **($4.5 million - $3 million) ÷ $4.5 million = 33%**

- Therefore, his tax liability for 2025-26 is:

  **15% × $500,000 × 33% = $24,750**

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# Examples

- Carlos is 69 and retired. His SMSF has a superannuation balance of $9 million on 30 June 2025, which grows to $10 million on 30 June 2026. He draws down $150,000 during the year and makes no additional contributions to the fund
- This means Carlos's calculated earnings are:

  **$10 million - $9 million + $150,000 = $1.15 million**
- His proportion of earnings corresponding to funds above $3 million is:

  **($10 million - $3 million) ÷ $10 million = 70%**
- Therefore, his tax liability for 2025-26 is:

  **15% × $1.15 million × 70% = $120,750**

# Examples

- Louise is 40 and working. At 30 June 2026, she has a balance of $2 million in an APRA-regulated fund, and a balance of $3 million in an SMSF. At 30 June 2025, the balance of her APRA-regulated fund was $1.9 million and the balance of her SMSF was $2.9 million. She does not meet a condition of release, so she has no withdrawals during the year. She makes $20,000 of concessional contributions into her SMSF. Her contributions net of tax on contributions is $17,000

# Examples

- This means Louise's calculated earnings are:

  **$5 million - $4.8 million - $17,000 = $183,000**

- Her proportion of earnings corresponding to funds above $3 million is:

  **($5 million - $3 million) ÷ $5 million = 40%**

- Therefore, his tax liability for 2025-26 is:

  **15% × $183,000 × 40% = $10,980**

- Louise elects to pay $5,000 from her APRA-regulated fund and $5,980 from her SMSF

# Carry Forward Earnings Loss

- Dave is 70 and has two APRA-regulated funds and one SMSF. At 30 June 2025, his TSB across all funds was $7 million. During 2025-26, he withdraws $400,000 from his SMSF and makes no contributions. At 30 June 2026, his TSB across all funds is $6 million

# Carry Forward Earnings Loss

- This means Dave's calculated earnings are:

  **$6 million - $7 million + $400,000 = - $600,000**

- His proportion of earnings corresponding to funds above $3 million is:

  **($6 million - $3 million) ÷ $6 million = 50%**

- The earnings loss attributable to the excess balance is $300,000. Dave can carry forward the $300,000 to offset future excess balance earnings

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# Carry Forward Earnings Loss

- At 30 June 2027, Dave’s funds make earnings on his excess superannuation balance of $650,000. He carries forward the earnings losses attributable to his excess balance at 30 June 2026 of $300,000 and is only liable to pay the tax on $350,000 of earnings
- This means his tax liability is:

**15% x $350,000 = $52,000**

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# So What do you do?

- As super is capped at 30% it is still the best place to accumulate up to about age 70 (no top up tax)
- But paying 30% tax, plus 15% contributions tax and then 15% death benefits tax means effective tax rate of 40.5%
- Consider a company with shares in the individual names that can be left to a testamentary trust

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# What made it through?

# Minimum Pension Drawdowns

| | |
|---|---|
| **Under 65** | 4% |
| **65 - 74** | 5% |
| **75 - 79** | 6% |
| **80 - 84** | 7% |
| **85 - 89** | 8% |
| **90 - 94** | 11% |
| **95 or more** | 14% |

| Year | Reduction |
|---|---|
| 2008/09 | 50% |
| 2009/10 | 50% |
| 2010/11 | 50% |
| 2011/12 | 25% |
| 2012/13 | 25% |
| 2019/20 | 50% |
| 2020/21 | 50% |
| 2021/22 | 50% |
| 2022/23 | 50% |

# Downsizer Contributions – Current Law

- Previously introduced legislation
- Reducing the minimum age to 55
- For properties in Australia
- Not a caravan, houseboat or motor home
- Exempt or partially exempt from CGT under the main residence exemption
- Complete and submit the relevant form
- Contribution within 90 days of receiving the proceeds

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# What didn’t make it

# What Was Left Out of the Budget?

- Legacy Retirement Income Product relief
- Relaxing Residency Requirements for SMSFs (announced to still be done)

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# Announcements

# From 1 July 2023

- Superannuation Guarantee rate is 11%
- General Transfer Balance Cap is $1.9 million
- Contribution Caps are $27,500/$110,000
- Low Rate Cap Amount $235,000
- LRBA Safe Harbour Rate 2022/23 5.35%
- CGT Cap Amount $1,705,000
- ECC Charge Rate 6.46% (up to June 2023)
- Preservation Age 59 until 30 June 2024

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# Transfer Balance Cap

- The Transfer Balance Cap will increase to $1,900,000 on 1 July 2023
- No change to the Contribution Caps
- Proportionate Transfer Balance Cap is still based on your highest percentage

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# Proportionate Example

- Peter contributed $800,000 to a pension when the TBC was $1.6 million.  At the time his transfer balance cap was $1.6 million
- When the caps went up to $1.7 million he received 50% of the increase so his new cap was $1,650,000
- He is now at 48.48% of his cap
- But his increase will still only be 50%
- So he receives $100,000 increase to his cap
- From 1 July 2023 his personal TBC will be $1,750,000

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# Death Benefits Update

- However the ATO have updated their information sheet on death benefits
- They state that the trustees should not be aware that the member has deceased
- This is in contrast to many PBR's issued over the past few years

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# ATO Outlines New TBAR Framework for SMSFs

- From 1 July 2023
- All SMSFs will have to report quarterly
- 28 days after the end of the quarter
- Or earlier if in response to an excess transfer balance determination or commutation authority

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# Leverage & Risk in the Superannuation System

- Council of Financial Regulators (APRA, ASIC, Reserve Bank, Treasury)
- Follows an initial report in Feb 2019 where continued monitoring was recommended and a subsequent report issued
- Increase of SMSFs with LRBA’s from 2.9% to 11.8% from 2013 to 2020

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# Legislation Introduced

# Making Super Contributions Compulsory

- Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023
- First Bill introduced 29 March 2023 (second reading 10th May)
- Currently it is not legislated anywhere that you have to pay super for your employees
- It is just that if you don’t you pay SGC
- This is also now another avenue for employees to sue employers

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# Rulings

# PBR 1051928510540

- Can you claim a tax deduction for your personal superannuation contributions made under section 290-150 of the Income Tax Assessment Act 1997 (ITAA 1997)? – NO!
  - On DD MM YYYY you contributed $xxxxx superannuation contributions into your self-managed superannuation fund
  - On DD MM YYYY you lodged your tax return for the 20xx-xx income year
  - On DD MM YYYY the Notice of Intent to claim a deduction was filed with your self-managed superannuation fund
  - On DD MM YYYY the respective acknowledgement letter was returned to you

# PBR 1052076327630

- You moved to Country X to work for a Country X employer
- You commenced paying into a fund with your Country X employer in XX/20XX, ending with a final contribution in XX/20XX prior to your return to Australia
- Both you and your Country X employer made contributions to the fund
- You arrived back in Australia on XX/XX/20XX on which date you became a resident of Australia for tax purposes again
- Subsequently, you withdrew the entire amount from the fund as a lump sum on XX/XX/20XX
- Prior to receiving payment, Country X tax was withheld at the rate of XX% on the whole amount of the withdrawal

# PBR 1052076327630

- Is this a Foreign Trust Income or Super?
  - *Answer* - Foreign Trust Income

# PBR 1052076327630

- The Commissioner's view is that for a fund to be classified as a superannuation fund, it must exclusively provide a narrow range of benefits that are characterised by some specific future purpose. That is, the payment of superannuation benefits upon retirement, invalidity or death of the individual or as specified under the SISA
- Some foreign pension plans allow members to withdraw benefits for termination of employment, medical schemes, housing plans, leaving the country permanently, loans and rental assistance. In general, these provisions do not provide benefits for the specific future purposes of the individual's retirement
- The type of fund in question from Country X allow for withdrawals for housing, college tuition and other hardship scenarios. Therefore, they do not meet the definition of a foreign superannuation fund and the applicable fund earnings calculation does not apply to a payment or transfer from these funds

# PBR 1052097327812

- Question:
  - Is the superannuation lump sum payment of $XXX received by the Estate of XXXX a superannuation death benefit, with regard to any pay as you go (PAYG) withholding obligations in accordance with section 12-85 of Schedule 1 to the Taxation Administration Act 1953 (TAA)?
- Answer:
  - Yes

# PBR 1052097327812

- The Deceased was a member of the Fund
- The Deceased was aged over 65
- The Deceased passed away on the same day (but after) a request was lodged by the Deceased's financial advisor to withdraw the Deceased's benefits from the Fund
- The following day, the financial advisor was informed that the Deceased had passed away
- Following the Deceased's death, the Fund advised the Financial Advisor of the following:
- As the signature on the withdrawal form was an electronic signature and not a "wet" signature, the Fund could not process the withdrawal request as a member lump sum payment; and

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# PBR 1052097327812

- The Fund would now require documentation to be provided by the executor of the Deceased's Estate to enable funds to be paid out and they would record this as a death benefit payment
- The Fund paid the balance of the Deceased member's superannuation pension account as a death benefit payment to the Deceased Estate

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# PBR 1052090528673

- Are the three benefits from a partial commutation of X's pension phase account requested before their death on X XXX 20XX, but received after X's death, being amounts of $A each on X XXX 20XX, X XXX 20XX and X XXX 20XX superannuation income stream benefits or superannuation lump sum benefits?
  - *Answer* – Lump Sum
- Is the amount of $B paid from X's accumulation phase account requested before their death, but received after their death, on X XXX 20XX, a superannuation income stream benefit or a superannuation lump sum benefit?
  - *Answer* – Lump Sum
- Is the pension payment of $C received on X XXX 20XX from X's pension phase account, a superannuation income stream benefit or a superannuation lump sum benefit?
  - *Answer* – Lump Sum

# PBR 1052090528673

- Are the amounts of $D received on X XXX 20XX, $E received on X XXX 20XX and $F received on X XXX 20XX, from the X's accumulation account, superannuation income stream benefits or superannuation lump sum benefits?
    - *Answer* – Lump Sum
- Are the three benefits from a partial commutation of X's pension phase account requested before their death on X XXX 20XX, but received after X's death, being amounts of $A each on X XXX 20XX, X XXX 20XX and X XXX 20XX superannuation member benefits or superannuation death benefits?
    - *Answer* - Member Benefits (no death benefits tax)

# PBR 1052090528673

- Is the amount of $B paid from X's accumulation phase account requested before their death, but received after their death, on X XXX 20XX a superannuation member benefit or superannuation death benefit?
  - *Answer* - Member Benefit (no death benefits tax)
- Is the pension payment of $C received on X XXX 20XX from X's pension phase account, a superannuation member benefit or a superannuation death benefit?
  - *Answer* – Member Benefit
- Are the amounts of $D received on X XXX 20XX, $E received on X XXX 20XX and $F received on X XXX 20XX from X's accumulation account, superannuation member benefits or superannuation death benefits?
  - *Answer* - Death Benefits (taxable)

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# Questions?

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