

Super Update

Edition 5 | September 2024

Below is a round-up of some superannuation changes and key developments that may be relevant to you, as trustee of your SMSF. It is important that you know what changes are coming, so you can effectively understand how they may affect you and the members of your SMSF.

We intend to regularly provide you with these updates as a way of helping you plan for your retirement and identify any opportunities that can assist you to grow your superannuation savings.

17 SEPTEMBER

Legacy pension conversions and reserves: Draft regulations released for consultation

The Treasury Laws Amendment (Self-managed superannuation funds – legacy retirement product conversions and reserves) Regulations 2024 ([draft regulations](#)) aim to relax the commutation restrictions for legacy retirement products **and** create a more flexible avenue for allocations from reserves.

These pensions are typically non-commutable. However, the relaxation of these commutation restrictions will enable members to exit legacy products with the resulting capital used to commence an account-based income stream, left in an accumulation interest account, or withdrawn from superannuation entirely.



19 SEPTEMBER

Superannuation on Paid Parental Leave

The Paid Parental Leave Amendment (Adding superannuation for a more secure retirement) Bill 2024, was passed by both houses of parliament.

As a result, eligible parents with babies born or adopted on or after 1 July 2025 will receive an additional payment, based on the Superannuation Guarantee (12 per cent of their Paid Parental Leave payment), as a contribution to their nominated superannuation fund.



3 SEPTEMBER

Disqualified SMSF Trustees Register updated



The ATO released its [latest figures](#) on the number of disqualified SMSF trustees, revealing that 692 trustees were disqualified in 2023/24.

This marks a slight decrease from the 751 disqualifications in 2022/23.

Note: This includes all disqualifications processed to 30 June 2024 (15 revocations).

29 AUGUST

Australian Prudential Regulation Authority: Quarterly Superannuation Statistics (June 2024 quarter).

Australian Prudential Regulation Authority (APRA) has released its Quarterly Superannuation Performance publication and the Quarterly MySuper Statistics report for the June 2024 quarter.

According to these latest statistics, total superannuation assets increased by 0.4 per cent over the quarter to reach \$3.9 trillion as at June 2024.

These statistics also revealed that the SMSF sector now accounts for over \$990 billion of these total superannuation assets.

In the 12 months since the June 2023 quarter statistics were published, assets in the SMSF sector grew 7.5% per cent – up from \$921.2 billion.



22 AUGUST

ATO Update: Voluntary disclosure service

The ATO provided a reminder of the benefit of using the ATO's voluntary disclosure service – which enables fund trustees to inform the ATO early if a contravention has occurred.

Further, the ATO will take any voluntary disclosure into account when determining what actions will be taken regarding any contraventions reported by the fund's approved auditor.

22 JULY

ATO: New SMSF courses launched

The ATO released 2 new education courses for SMSF trustees to build their knowledge on “setting up” and “winding up” an SMSF.

These courses form part of a suite of education products aimed at supporting SMSF trustees with their regulatory and reporting obligations.

The ATO has also indicated that it will be launching the final course in the suite later in the year on “Running a self-managed super fund”.

17 JULY

NALI and CGT: Tax Determination

The ATO published the final version of Tax Determination TD 2024/5, *Income tax: how the non-arm's length income and capital gains tax provisions interact to determine the amount of statutory income that is non-arm's length income*.

This final determination includes the ATO's view that in accordance with the law, arm's length capital gains will be tainted if there is also a non-arm's length capital gain realised in the same financial year.

26 JUNE

ATO income stream ruling: Updated

The ATO issued an addendum to its Tax Ruling TR 2013/5, *Income tax: when a superannuation income stream commences and ceases*.

This update was intended to ensure alignment between the contents of the ruling and legislative changes that have occurred since this ruling was originally published – such as the introduction of the transfer balance cap regime and the definition of a retirement phase income stream.

However, one notable update to this ruling is that the ATO has explicitly differentiated between an income stream ceasing for tax purposes versus superannuation purposes, where a pension ceases due to failing to meet the relevant pension standard.

For example, in the event of a minimum pension underpayment, the Commissioner now requires a commutation of the superannuation income stream before a new income stream can commence and meet the requirements of a retirement phase income stream. The new Ruling may also have implications for SMSF trustees and the management of retirement phase income streams, particularly the maintenance of an income stream as a 'separate superannuation interest'.

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25 JUNE

NALE Bill: Now law

The Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023 was finally passed by both Houses – and subsequently received Royal Assent on 28 June 2024.

The passage of this Bill introduces amendments to the non-arm's length expense (NALE) rules applicable to "general expenses" into law – with effect from 1 July 2018.

Primarily, this means that where NALE arises with respect to a "general expense" the amount of NALE will be calculated as twice the difference between an arm's length and non-arm's length expense, including where the entity did not incur any expense.



7 JUNE

LRBA: PCG 2016/5 – 'Safe harbour' interest rates increased



The interest rate applicable to a related party loan (for SMSF trustees relying on the PCG 2016/5 Safe Harbour provisions to establish that a related party loan is consistent with arm's-length dealings), will increase from 1 July 2024.

The applicable interest rates, based on the nature of the acquired asset, are as follows:

- Real Property: 9.35%
- Listed shares or units: 11.35%

Importantly, the interest rate charged is only one of several requirements that must be met for the Safe Harbour to apply.

29 MAY

ATO Update: Personal superannuation contributions

The ATO reminded SMSF members seeking to claim a tax deduction for personal super contributions that they must receive a written acknowledgment, confirming that the fund trustee(s) has received their notice of intent form **prior** to claiming a tax deduction for contributions in their tax return.



21 MAY

ATO Statistics – SMSF quarterly statistical report (March 2024)

The ATO published its SMSF quarterly statistical report for the March 2024 quarter.

Some of the key highlights from this latest statistical report include that:

- At the end of the March 2024 quarter, it was estimated there were 616,400 SMSFs, with 1,148,481 members.
- The total estimated SMSF assets were \$932.9 billion.
- The top asset types held by SMSFs (by value) were:
 - Listed shares (29% of total estimated SMSF assets)
 - Cash and term deposits (16%)
- 53% of SMSF members are male and 47% are female – consistent with March 2023.
- 87% of SMSF members are 45 years or older – consistent with March 2023.

16 MAY

AAT Case:

Merchant and Commissioner of Taxation [2024] AATA 1102

The Administrative Appeals Tribunal (AAT) overturned the ATO Commissioner's earlier decision to disqualify Gordon Merchant, from acting as an SMSF trustee.

Despite serious breaches of the Superannuation (Industry) Supervision Act (SISA), broadly relating to the SMSFs acquisition of shares from a controlled discretionary trust to realise a capital loss, the AAT found the risk of future non-compliance was low.

It was noted that the breaches resulted from a single course of conduct and, as the transaction was suggested by the SMSF's auditors, and that at no time was it suggested that the transaction risked breaching the provisions of the SISA, it was fair for the member to have thought that the transaction was lawful from a superannuation compliance perspective – further emphasising that disqualification served no useful purpose in this case.

This case should not signal a shift in the ATO's focus on disqualification of SMSF trustees but rather highlights that while the ATO's enforcement actions are stringent, there remains room for individual assessment and appeal.

10 MAY

Better targeted superannuation concessions (Division 296 Tax) – Senate Inquiry report handed down

Treasury Laws Amendment (Better targeted Superannuation Concessions and Other Measures) Bill 2023, if legislated, will introduce the new Division 296 Tax– impacting those members with a Total Superannuation Balance greater than \$3 Million.



Following the completion of its senate inquiry, the senate committee handed down its report on 10 May 2024.

Despite numerous submissions received from various industry bodies, associations, and individuals highlighting the unintended consequences of certain key measures in the bill, the 106-page report stated that:

“The committee strongly supports the reforms to superannuation tax concessions that will ensure they are fairer, more sustainable, and better targeted”.

At the time of writing this measure was not yet law.

WHAT'S NEXT?

Navigating your way through the evolving superannuation rules can be very complex, especially in the lead up to a member's retirement. If you have any questions, require assistance, or would like to discuss any of the above changes, please feel free to give me a call to arrange a time to discuss.

The contents of this Technical Newsletter are taken to be correct at the time of publication on 26 September 2024.

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