



TriSuper Auditors

# SMSF Updates

## April 2023

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# Better Targeted (ie new tax) Super Concessions

## What do we know?

- Proposed tax on high balance super fund members.
- Commencing after the next election
- First year impacted 2026 FY
- Relax, plenty of time to plan...

# Current details:

- Will affect members > \$3M Total Super Balance (TSB)
- First testing date is 30 June 2026
- An additional 15% tax will apply to “earnings” for a financial year
- Applies to earnings on both accumulation and pension accounts
- Not just taxable income, all earnings realised or unrealised
- Payment options similar to Div 293 tax
- \$3M cap is not subject to indexation

# Calculation of earnings?

2026 earnings calculated as:

**Earnings = TSB<sub>30 June 2026</sub> *minus* TSB<sub>30 June 2025</sub>\* *plus* Withdrawals *minus* Net Contributions**

\*Adjusted to \$3M if less than \$3M

The government will need to provide guidance of what is included as a withdrawal and net contribution:

- Pension payments
- Spouse splitting
- Family Law splits
- CC, NCC, CGT contributions
- Reversionary pension commencements.

# EXAMPLE

Tom has a TSB at 30 June 2025 of \$3M.

During 2026FY, he makes concessional contributions of \$20K and also takes a \$10K lump sum.

His TSB at 30 June 2026 is \$3.5M

**Earnings = \$3.5M - \$3M + \$10K - (\$20K x .85) = \$493K.**

## What if there is a loss?

Can be carried forward to future years.



# So how much of the earnings is taxed?

Answer:

Proportionate to the % of your TSB over \$3M.

In our example:

$$\text{Proportion} = (\$3.5\text{M} - \$3\text{M}) / \$3.5\text{M} = 14.3\%$$



## Tax payable?

$$\text{Tax liability} = 15\% \times \$493\text{K} \times 14.3\% = \$10,574.85$$

✓ Simple....

# ISSUES?

- Asset Valuations
- Tax on unrealised gains on non-liquid assets
- Applies to assets supporting account-based pensions
- Should I move my excess above \$3M out of super environment?
- If yes, where to?
- This may assist to reduce tax on death benefit payments to non-dependents
- It may never happen...
- Government has asked for industry submissions

# Increase in TBC and TSB

The Transfer balance cap and total super balance cap will increase to \$1.9M from 1 July 2023.

However, the CC and NCC Caps will remain at \$27.5K and \$110K.

## 2023/24 NCC Caps

TSB 30 June 2023	Bring forward amount if triggered in 2023/24
< \$1.68M	\$330,000
\$1.68M to < \$1.79M	\$220,000
\$1.79M to < \$1.9M	\$110,000
>= \$1.9M	Nil



# Should you delay starting an account-based pension until 2023/24?



- ▶ Will have access to the greater \$1.9M TBC.
- ▶ Remember you don't get the full \$200K increase if you already have a TBC balance.
- ▶ You only get a proportionate increase based on your highest ever TBC.
- ▶ Start planning now.

# PROPERTY



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# How can I use my SMSF to buy a property with a relative or business partner?

**Assumptions:** the other party and myself are committing/borrowing an equal 50%

Some upfront questions:

- Is the other party related?
- Will borrowing be required?
- Do you want the other party to be a member in your SMSF?
- Will the property be “business real property”?
- Do you wish to lease the property to a related party?

# Who is a related party?

Generally:

- Relatives: a parent, grandparent, sibling, uncle, aunt, nephew, niece, lineal descendant or adopted child of the member or of his or her spouse; a spouse of the forementioned.
- Another member of the Fund
- An entity that is controlled by one (or a combined group of the above)
- Control of a Trust/Company – more than 50%.

A non-relative business partner is generally not deemed to be related (unless in a tax partnership).

# How does borrowing restrict options?

Where both parties are related

- Borrowing restrictions may be limited to a joint SMSF / LRBA arrangement.
- SMSF can not invest in related trust or company which has borrowings.
- 50% control threshold - trusts/companies



# Happy Smiley SMSF Families



- Joint SIS compliance obligations
- Duty of care Trustee obligations  
(investment/insurance strategies)
- What if we break up or die?

# What is “business real property”?

Section 66 SIS definition

**“ ...any freehold or leasehold interest of the entity in real property...  
where the real property is used wholly and exclusively in one or more businesses  
(whether carried on by the entity or not)....”**

**Also impacts ability for a SMSF to purchase property from a related party**

# Primary Production – expanded definition:

Section 66.

“real property used in one or more primary production businesses does not cease to be used wholly and exclusively in that business or those businesses only because:

- (a) an area of the real property, not exceeding 2 hectares, contains a dwelling used primarily for domestic or private purposes; and
- (b) the area is also used primarily for domestic or private purposes;

provided that the use for domestic or private purposes referred to in paragraphs (a) and (b) is not the predominant use of the real property.”





# Leasing the property to a related or associated party

- Only *business real property* can be leased to related entities.
- Commercial lease agreement on arm's length terms required.



# Related Parties / No Borrowings

- Reg 13.22c (non-g geared) Trust/Company
- Tenants in common (two SMSFs, or one SMSF and an individual etc)
- SMSF (joint members of same SMSF)
- If non-business property, can only lease to non-related parties



# Related Parties / Borrowings

- SMSF (joint members) with LRBA
- If non-business property, can only lease to non-related parties



# Unrelated Party / No Borrowings

- Trust / Company
- Tenants in common
- SMSF (Joint members)
- If business real property, can be leased to related party on arm's length terms.



# Unrelated Party / Borrowings

- Trust / Company (no greater than 50% ownership)
- SMSF (Joint members) with LRBA
- If business real property, can be leased to related party on arm's length terms.



# But hang on – I heard this guy say I could.....

- SMSF LRBA borrowing as tenants in common
- Related Party LRBA to buy units in a Reg13.22c trust
- Unrelated Trust leasing residential property to a family member....

HMM.....



# Farming with SMSFs

**Members / Related Parties can live on the farm.**

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# Predominant use?

- TR 97/11 outlines ATO view on when a primary production business is carried on
- SMSFR 2009/1 – ATO scenario examples of predominant use

Only relevant where leased to related parties.

# Other things to consider – Related Lessee

- Formal lease agreement on market rates (including any residential component).
- Reminder, only real property can be leased.
  - Review SMSFR 2009/1 – What is business real property?



# SMSFR 2009/1 – Fun facts!

## What *cannot* be leased to related parties:

- Demountable buildings (unless permanently fixed to land)
- Plant and Machinery
- Water Licenses – arrangements in place prior to change in state laws can continue
- Livestock
- Crops?



# How's your Latin?



Still from Monty Python's "Life of Brian"

# Fructus naturales or Fructus industriales?

**Fructus of Nature** (Perennials) are seen to form part of the land and can be leased to related parties:

- Grass
- Fruit Trees

As opposed to **Fructus of Industry** (annuals):

- produced by industry through sowing and cultivation, including most vegetables, corn, wheat, rye, oats and other grain crops.



# Can the SMSF run the business itself?

**Is there anything to stop the Fund (who currently owns the land) from conducting the business itself rather than leasing the property to the related entity?**

There is no specific prohibition on a SMSF running a business.

However, there is a lot to tick off before you begin:

# Can the SMSF run the business itself?

## Considerations of the proposed business:

- is it permitted by the fund's trust deed;
- satisfies the sole purpose test;
- in accordance with the fund's investment strategy;
- does not constitute a loan or financial assistance to a member or member's relative;
- does not involve a borrowing by the SMSF (with limited exceptions);
- does not involve allowing a charge over fund assets or member benefits;
- is not an acquisition from a related party (with limited exceptions);
- is made and maintained on an arm's length basis.



# Can the SMSF run the business itself?

Considerations of the proposed business:

- Can the Trustees be remunerated for working in the business
  - is appropriately qualified, and holds all necessary licences,
  
  - the remuneration is no more favourable to the trustee than would apply if the trustee were dealing with the relevant other party at arm's length
  
- NALI issues



# What are we seeing?

- ✓ Farm Stays
- ✓ Purchasing livestock
- ✓ Planting of Perennials
- ✓ Biodiversity / Carbon Credit Schemes

Should the SMSF lease or operate?



and breathe

# Q&A

“I’ll take that as a comment...”

Joel Curry, Director



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