SMSF PROFESSIONALS DAY WORKBOOK

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- Technical help desk covering the areas where advisers work (superannuation, tax, accounting, specialist advice, and more)
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SMSF Professionals Day - Agenda

Changes affecting SMSFs: time to take stock
Mark Ellem & Matthew Richardson

Start the day with an overview of legislative changes and the latest trends impacting the SMSF sector, including the latest on the Government's "Better targeted superannuation concessions" measure (the additional 15% tax for those with more than $3m in super). We'll also explore any relevant SMSF related announcements from the May Federal Budget and what they mean for SMSF members and the wider industry.

<u>Learning outcomes</u>
• Evaluate recent legislative and proposed changes and assess their impact on SMSFs and their members.
• Differentiate between legislative changes and proposals and the timing of their application.
• Explain the changes made and proposed that affect SMSFs and their members.

The $3 million question: If not inside super then where?
Lee-Ann Hayes & Mark Ellem

With just over two years until the first 'test date' for the reduction in superannuation tax concessions for individuals with a total super balance over $3 million, planning needs to be begin now. Armed with an understanding of how the measures will be applied, in this session we'll compare holding wealth inside and outside of super and what it may mean from a taxation perspective.

<u>Learning outcomes</u>
• Describe the measure to impose additional tax on superannuation balances for certain individuals.
• Explain the process for calculating the additional tax.
• Compare and contrast holding retirement savings inside and outside of superannuation.
• Evaluate the structuring options for building retirement savings outside of superannuation.

Death and taxes: strategies for reducing death benefits tax
Anthony Cullen

There are only two certainties in life, and while you may not be able to avoid them, you can plan for them. With changes to the contribution rules and the interaction with being able to access benefits, pre-death opportunities to minimise the tax that may be paid on superannuation death benefits have never been more readily available. We'll also look at some post death strategies, such as testamentary trusts, that may also impact on the tax position.

<u>Learning outcomes</u>
• Understand when superannuation death benefits will be subject to tax.
• Evaluate the difference between member benefits and superannuation benefits.
• Explore strategies that may reduce tax on death benefits.

Retirement investment strategies: it's not just about accumulation
Melanie Dunn

As members enter retirement it is important to ensure the SMSF investment strategy considers the impact of paying out benefits to members and the risks involved in fund investments. This session will examine how to assist SMSF trustees create and regularly assess an investment strategy which will balance cashflow objectives with managing risks such as sequencing and liquidity risk per the requirements of SMSF investment strategies under the SIS Regulations, and how to communicate the compliance of the SMSF investment strategy in retirement for the fund auditor.

<u>Learning outcomes</u>
• Explain the requirements of an SMSF investment strategy and how this compares to the retirement income covenant for APRA funds.
• Assess the impact on ECPI of commencing pensions and selling assets at retirement.
• Assess the impact on achieving a member's retirement objectives of a fund's cashflow strategy and investment risk profile.
• Demonstrate the compliance of the SMSF's retirement investment strategy for the fund auditor.

A view from the trenches: the top questions asked
Mark Ellem, Anthony Cullen and Matthew Richardson

Accurium has received hundreds of SMSF technical and compliance questions over the last 12 months. Finish off the day with our experts exploring a selection of these questions as we address the issues and what solutions are available.

<u>Learning outcomes</u>
• Identify the compliance areas, issues and topics that generate the most questions from those dealing with SMSFs.
• Examine how to approach an issue with the goal to resolve and/or avoid adverse outcomes.
• Appraise the outcomes of the scenarios discussed and compare them to your own approach.

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Session 1
Changes affecting SMSFs: time to take stock

Mark Ellem
Head of Education (SMSF)
Accurium

Matthew Richardson
SMSF Manager
Accurium

Changes affecting SMSFs: time to take stock

Topics

Federal Budget	Preservation Age increase	Contribution cap changes
Catch-up concessional	$3m better targeted super concessions	NALI

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Federal Budget: Super measures

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Federal Budget

Superannuation measures: SMSFs

Federal Budget

Superannuation measures: SMSFs

Exit measure for recipients of legacy pensions

Changes to super residency rules

We didn't see

Freezing indexation on caps

Changes to Div 296 or NALE rules

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Federal Budget
Other superannuation related measures

Paying superannuation on Government Paid Parental Leave:

- Government has announced that it will pay superannuation on Commonwealth government-funded Paid Parental Leave (PPL) for births and adoptions on or after 1 July 2025.
- Eligible parents will receive a contribution to their superannuation fund based on the superannuation guarantee rate (12% from 1 July 2025).

Previously announced
7 March 2024

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Federal Budget
Other superannuation related measures

Additional funding over 4 years from 2024–25 to support delivery of Government priorities in Finance portfolio, including:

- $9.2 million to Commonwealth Superannuation Corporation and Department of Finance to implement 2023–24 Budget measure Better Targeted Superannuation Concessions for members of Commonwealth defined benefit superannuation schemes
- $2.7 million (and $0.7 million per year ongoing) to support SuperStream Gateway Network Governance Body

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Federal Budget

Other superannuation related measures

Additional funding over 4 years from 2024–25 to support progression of Government's workplace relations agenda

Pursuing unpaid superannuation entitlements owed by employers in liquidation or bankruptcy from 1 July 2024

Fair Entitlements Guarantee
Legislative safety net scheme of last resort with assistance available for eligible employees

Supporting workplaces to implement policy changes such as introduction of payday superannuation ($60 million)

Payday superannuation
Proposal that from 1 July 2026 employer required to pay SG at same time as Salary and wages

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Federal Budget

Other superannuation related measures

$187.0 million over 4 years from 1 July 2024 to
ATO to strengthen ability to detect, prevent and mitigate fraud against tax and superannuation systems

- $78.7 million for upgrades to information and communications technologies
- $83.5 million for a new compliance taskforce
- $24.8 million to improve ATO's management and governance of its counter-fraud activities

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Increase to preservation age from 1 July 2024

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Increase to the preservation age

Rule change

- Applicable for: 'retirement' CoR[1] | 'attaining preservation age' CoR[1] | 'severe financial hardship' CoR[1]

Date of birth	Preservation age	Financial year will reach preservation age
Before 1 July 1960	55	Already attained
1 July 1960 to 30 June 1961	56	Already attained
1 July 1961 to 30 June 1962	57	Already attained
1 July 1962 to 30 June 1963	58	Already attained
1 July 1963 to 30 June 1964	59	Already attained
After 30 June 1964	60	1 July 2024 onwards, when turn 60

1. Condition of release

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Attaining preservation age condition of release (CoR)

Requirements

- Once a person attains their preservation age, they can access their preserved and restricted non-preserved benefits in the form of a transition to retirement income stream (TRIS).

1. An account-based pension.
2. Total payments[1] in a financial year cannot be more than 10% of the pension account balance either on 1 July or where the pension commences → the commencement amount.
3. Where the pension is commuted, the resulting lump sum cannot be **cashed** unless the member has satisfied a CoR with no cashing restriction; payment per a Release Authority; payment to ATO for unclaimed super

TRIS can be commuted provided commuted amount is retain in member's accumulation account (interest). This is not 'cashing' the resulting lump sum from the commutation.

1. Excluding payments by way of commutation but including payments under a payment split.

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Severe financial hardship

Condition of release

Less than preservation age

- Fund trustee satisfied person unable to meet reasonable and immediate family living expenses.
- Must have written evidence[1] of receiving Commonwealth income support payments for a continuous period of 26 weeks + in receipt at time of written evidence.
- Benefit restriction ➲ in each 12-month period[2] a single lump sum not < $1,000[3] and not > $10,000.

Preservation age + 39 weeks

- Written evidence[1] of receiving Commonwealth income support payments for a cumulative period of 39 weeks after reaching preservation age, AND
- Not gainfully employed[4] on date of application.
- No cashing restriction.

1. Provided by at least one Commonwealth department or agency responsible for administering a class of Commonwealth income support payments.
2. Beginning on the date of the first payment.
3. Except if the amount of the person's preserved benefits and restricted non-preserved benefits is less than $1,000.
4. On either a full-time or part-time basis.

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Retirement CoR as it applies now

What is 'retirement' for super access purposes

Retirement CoR (item 101 SIS Sch. 1)
Defined in SIS Subreg 6.01(7)

1st limb: reached preservation age but < 60

- Gainful employment arrangement ends; AND
- Trustee is reasonably satisfied member never intends to be gainfully employed on either a full-time or a part-time basis[1].

2nd limb: reached age 60

- Gainful employment arrangement ends; AND EITHER:
  - The member attained age 60 on or before the ending of employment; OR
  - Trustee is reasonably satisfied member never intends to be gainfully employed on either a full-time or a part-time basis[1].

1. Full time = 30 hours or more per week; Part-time = 10 hours or more per week.

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Retirement CoR as it will apply from 1 July 2024

What is 'retirement' for super access purposes

Retirement CoR (item 101 SIS Sch. 1)

2nd limb: reached age 60

- Gainful employment arrangement ends; AND EITHER:
  - The member attained age 60 on or before the ending of employment; OR
  - Trustee is reasonably satisfied member never intends to be gainfully employed on either a full-time or a part-time basis[1].

Satisfying the 'retirement' CoR depends on when gainful employment arrangement ceased.

On or after member turns 60:
'retirement' CoR is satisfied from when a gainful employment arrangement (← just one arrangement) is ceased ← no requirement for the trustee to be satisfied that the member never intends to be gainfully employed on either a full-time or part-time basis[1].

Prior to member turning 60:
Trustee must be satisfied that the member never intends to be gainfully employed on either a full-time or part-time basis[1].

1. Full time = 30 hours or more per week; Part-time = 10 hours or more per week.

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Increase preservation age to 60
Other consequences

- Low rate cap amount for taxable component of superannuation lump sum benefits no longer applies
  - Applied to member benefits received by those who have reached their preservation age but are below 60.
- Where member has access to super and receives lump sum benefit prior to age 60
  - Taxable component taxed at 20% + 2% Medicare levy, e.g., disability super benefit payment.
- Payments from complying TRIS will be 100% tax-free.
- SMSFs only required to be registered for PAYG Withholding where:
  - Paying capped defined benefit income stream.
  - Paying superannuation death benefit.
  - Paying disability super benefit.
  - Paying benefit under financial hardship or compassionate grounds CoR.
- Downsizer contribution
  - Increases period before downsizer contribution can be accessed
  - Initially downsizer eligibility age of 65 = Age 65 CoR
  - Since 1 January 2023 downsizer eligibility age is 55 – preservation age increasing to 60.

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What is gainful employment?
For the purpose of the 'retirement' CoR

"gainfully employed" means:

employed or self - employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

"gainfully employed" has two components:

1. An employee or self – employed; and
2. Gain or reward in return for their employment of self-employment.

No minimum period that a person must be 'gainfully employed' before they can cease the arrangement.

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Ceasing a gainful employment arrangement

Example: after attaining age 60

- Beverly turns 60 on 15 July 2024
- Has been employed as an Accounts Manager for the last 8 years
  - 3 days a week ← 22.5 hours.
- Also has another part-time job:
  - One day a week (bookkeeper) ← 15 hours

How could Beverly satisfy the retirement CoR and access her preserved benefits?

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Retirement CoR

What is the amount that can be accessed?

15 July 2024
Bev's 60th birthday

31 July 2024
Beverly ceased her 3-day a week job as an Accounts Manager
Super balance = $845,698

1 Aug. To 1 Oct. 2024
Makes a $180k non-concessional contribution
Employer (net) contributions + net earnings of $18,685

1 Oct. 2024
Requests to commence an ABP on all of her available benefits
Balance = $1,044,383

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Accessing remaining preserved benefits

After original condition of release

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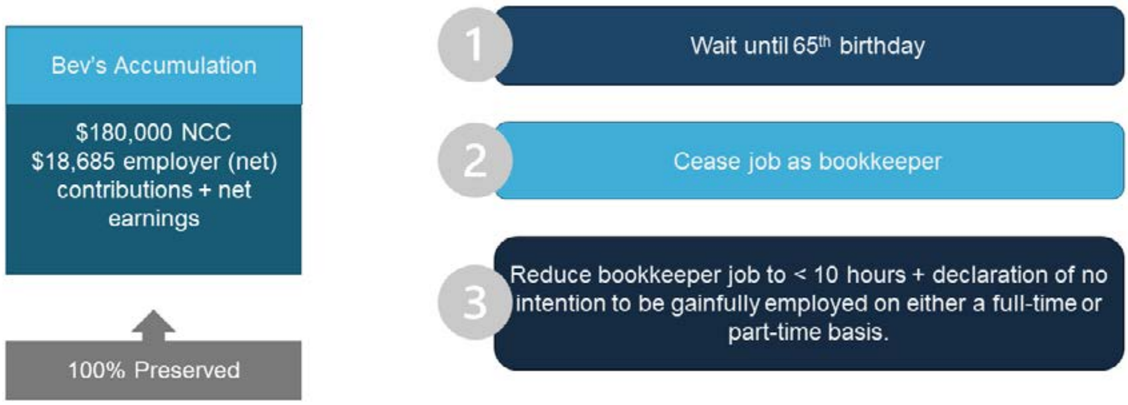
Accessing remaining preserved benefits

After original condition of release



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Increase to contribution caps from 1 July 2024

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Increase to contribution caps from 1 July 2024

Concessional and non-concessional contribution caps

Concessional cap increases from $27,500 to $30,000 on 1 July 2024 (applies to 2024-25 financial year).

Non-concessional cap = 4 x concessional cap. Increase from $110,000 to $120,000 on 1 July 2024 (applies to 2024-25 financial year).

Bring forward amount for non-concessional contributions increases to $240k (2 years) and $360k (3 years) when first triggered in 2024-25.

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Increase to contribution cap

Effect on bring forward arrangement for non-concessional contributions

Where bring forward triggered in 2023-24:

Total super balance on 30 June of previous year	Non-concessional contributions cap for the first year	Bring-forward period
Less than $1.68m	$330,000	3 years
$1.68m to less than $1.79m	$220,000	2 years
$1.79m to less than $1.9m	$110,000	No bring-forward period, general non-concessional contributions cap applies
$1.9m or more	Nil	Not applicable

Where bring forward triggered in 2024-25:

Total super balance on 30 June of previous year	Non-concessional contributions cap for the first year	Bring-forward period
Less than $1.66m	$360,000	3 years
$1.66m to less than $1.78m	$240,000	2 years
$1.78m to less than $1.9m	$120,000	No bring-forward period, general non-concessional contributions cap applies
$1.9m or more	Nil	Not applicable

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Non-concessional contributions

Bring forward rule: timing of triggering

N-C contribution	$110k+ → $330k	$330k less prior 1	$330k less prior 2	$120k+ → $360k	$360k less prior 1
TSB must be below	$1.48m	$1.9m	$1.9m	$1.66m	$1.9m
N-C contribution		$110k+ → $330k	$330k – prior 1	$330k less prior 2	$120k+ → $360k
TSB must be below		$1.68m	$1.9m	$1.9m	$1.66m
N-C contribution			$120k+ → $360k	$360k less prior 1	$360k less prior 2
TSB must be below			$1.66m	$1.9m	$1.9m
	2022-23	2023-24	2024-25	2025-26	2026-27

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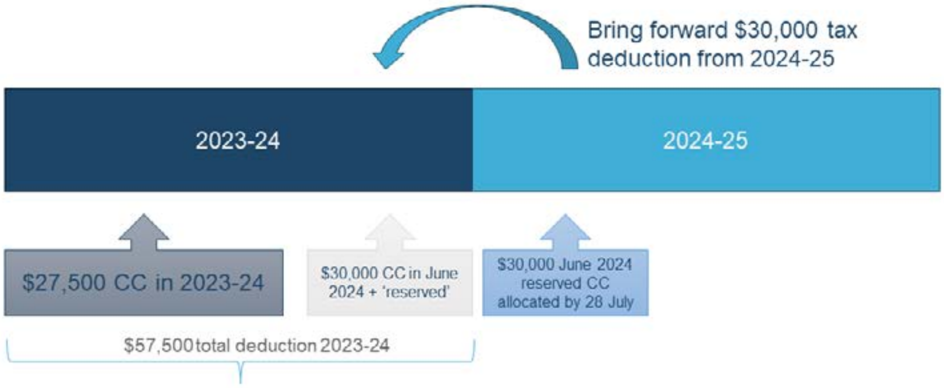
Increase to 2024-25 concessional cap

Contribution reserving strategy 2023-24

- Increase deduction ➔ bring forward 2024-25 deduction
- Increased tax benefit ➔ Stage 3 tax cuts apply from 2024-25



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Expiration of first year of catch-up concessional

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Catch-up concessional contributions

2023-24 last financial year to use 2018-19 unused

Individual is eligible to use unused concessional contribution cap from a previous financial year where:

They have a total superannuation balance of less than $500,000 at 30 June of the previous financial year

+

They have unused concessional contributions cap amounts from up to 5 previous years (but not before 2018-19)

Rules:

1. The oldest available unused cap amounts are carried forward first.
2. Unused cap amounts are available for 5 years and expire after this.
3. Unused concessional cap amounts are applied automatically once you exceed the cap in any year.

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Catch-up concessional contributions

2023-24 last financial year to use 2018-19 unused

	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Standard cap	$25,000	$25,000	$25,000	$27,500	$27,500	$27,500
Total unused available cap accrued	$0	$22,000	$44,000	$64,000	$81,500	$109,000
Maximum cap available	$25,000	$47,000	$69,000	$91,500	$27,500	$136,500
TSB[1] @ 30 June of prior year	$380,000	$390,000	$405,000	$419,000	$505,000	$495,000
Concessional contributions	$3,000	$3,000	$5,000	$10,000	Nil	$49,500
Unused concessional cap accrued for the year	$22,000	$22,000	$20,000	$17,500	$27,500	Nil

1. Total superannuation balance.

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Catch-up concessional contributions

Other scenarios to apply……..

- Child turning 18 in a financial year
  - Prior 5 financial year concession caps + current financial year concessional cap + contribution reserving
  - In 2023-24[1] potential maximum deduction for a personal super deduction of:
    - $25,000 + $25,000 + $25,000 + $27,500 + $27,500 + $27,500 + $30,000 = $187,500
- Individual with no employer support + no deductible contributions
  - Large CG from disposal of CGT asset, e.g., rental property
- Individual becomes resident for Australian tax purposes
  - Not being an Australian resident for income tax purposes does not preclude an individual from using the catch-up concessional contribution rule.
- Allocation of reserves/unallocated amounts inside an SMSF
  - No age limit as allocation not subject to contribution acceptance rules in SIS reg 7.04.
    - 85 year old with prior 30 June TSB < $500k can have unused carry forward amount for 2023-24 of $130,000
      - Increase by 2023-24 standard concessional cap of $27,500 → $157,500

1. Assuming no employer SG support in prior years.

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Proposed Div 296 tax

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Proposed Division 296 tax

Update on progress of legislation

Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2023

15 March 2024: Release of draft regulations for defined benefit interests

30 November 2023
- Introduced to lower house

7 December 2023
- Referred to Senate Economics Legislation Committee (SELC)

19 April 2024
- Report due back from SELC

Report issued 10 May 2024: recommends no changes to draft bill ➔ proceed to the lower house.

28 February: Senate granted an extension to 10 May 2024

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Proposed Division 296 tax

Passage through the Senate

Total Votes = 76
Votes needed to pass = 39
Government votes = 26
Remaining required = 12

as at 03/04/2024

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Proposed Division 296 tax
Passage through the Senate – via Greens

Recommendation 1 (para 1.9)

- The threshold should be lowered from $3 million so that super balances over $2 million are liable for the 30 per cent tax rate, indexed in line with inflation.

Recommendation 2 (para 1.19)

- The Government prepare comprehensive legislation to restore superannuation's purpose to support working people's dignified retirement by removing and reducing all the tax settings that disproportionately benefit the highest income earners and asset owners.

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Proposed Division 296 tax
Passage through the Senate – via Greens

Recommendation 3 (para 1.24)

- To ensure the regulations for taxing defined benefit schemes are not disallowed in the Senate, the government must ensure the actuarial formula does not result in women being taxed higher than men as a result of their longer life expectancy.

Recommendation 4 (para 1.46)

- To ensure financial risks in the superannuation system aren't amplified by combining taxes on unrealised capital gains with borrowing by super funds, this bill should only pass the Senate if the government addresses the concerns regarding the exemption on the prohibition for super funds to borrow to finance investments in section 67A of the Superannuation Industry (Supervision) Act 1992 on a prospective basis, as recommended in the Murray Review and subsequent reviews by the Council of Financial Regulators.

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Proposed Div 296 tax

Better targeted superannuation concessions

1.1 The Bill and the Imposition Bill reduce the tax concessions available to individuals with TSBs exceeding $3 million. From the 2025-26 income year onwards, the headline concessional tax rates applying to superannuation earnings are:

- up to 15 per cent on earnings on superannuation balances below $3 million; and
- up to an overall 30 per cent on a percentage of earnings equal to the percentage of superannuation balances above $3 million.

1.9 From the 2025-26 income year onwards, the overall tax rate applied to a percentage of future earnings equal to the percentage of an individual's TSB above $3 million will be up to 30 per cent

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Proposed Div 296 tax

The maths don't work

What the EM to the Bill, Treasury and Government want you to believe:

15% x fund taxable income applicable to an individual superannuation benefits

+

15% of 'net earnings' applicable to an individual's TSB in excess of $3m

=

30% tax ← but on what? ← not the same denominator

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Proposed Div 296 tax

Example[1]

- Jess has a TSB of $4m on 30 June 2025, and $4.5m at 30 June 2026.
- Jess receives concessional contributions to superannuation of $27,500 in the 2025-26 income year.

1. Is 30 June 2026 TSB > $3m?
   - Yes
2. Calculate superannuation earnings for the income year.
   - ($4.5m – ($27,500 x 85%)) – $4m) = $476,625
3. Determine the percentage of TSB (at end of income year) that is above $3m.
   - ($4.5m – $3m) ÷ $4.5m = 33.33%
4. Calculate total amount of "taxable superannuation earnings"
   - $476,625 x 33.33% = $158,859
5. 15% of "taxable superannuation earnings" = tax levied to individual.
   - 15% x $158,859 = $23,829

1. From Exposure draft explanatory materials to Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023 and Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2023

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Proposed Div 296 tax

Example[1]

- Jess has a TSB of $4m on 30 June 2025, and $4.5m at 30 June 2026.
- Jess receives concessional contributions to superannuation of $27,500 in the 2025-26 income year.

1. Net increase to Jess' super over 2025-26 was $500,000
   - $23,375 due to net employer contribution
2. Earnings for 2025-26 was $476,625: split that:
   - $200,000 net taxable income ← a yield of 5% on o/balance
   - $276,625 net increase in value of investments ← unrealised gain ← 6.9%
3. 33.33% of her TSB is above $3m.
   - 33.33% of taxable income relates to super above $3m → $66,660
4. Total tax applicable to the taxable earnings
   - (15% x $66,660) + (15% x ($476,625 x 33.33%)) = $33,829
5. Total tax paid of $33,829 in respect of taxable income attributable to TSB > $3m of $66,660.
   - Equates to tax rate (using same denominator/base) of 50.75%

1. From Exposure draft explanatory materials to Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023 and Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2023

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Div 296 approach to determining 'net earnings'

Example: Carlos from the EM with some changes

1 July 2025 opening balance	$9,000,000
Add: share of fund's taxable income (net of tax)	$600,000
Less: share of decrease in market value of fund assets (after provision for deferred tax)	$600,000
Less: withdrawals	$150,000
30 June 2026 closing balance	$8,850,000

Div 296 earnings: ($8,850,000 + $150,000) - $9,000,000 = Nil ← no Div 296 earnings

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Div 296 tax

Approach

- Passage of legislation: don't act too early
- Identify clients affected: >$3m and those approaching $3m
- Analyse client's own facts: evaluate the likely future tax rate applicable
- Consider alternative tax structures: Tax and flexibility
- Where there's an amount to be withdrawn from super (and the member can) do so, by 30 June 2026.

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Update on NALE

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Changes to non-arm's length expenditure

Update on progress of legislation

Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023

13 September 2023
- Introduced to lower house

19 October 2023
- Referred to Senate Economics Legislation Committee (SELC)
- Reported back 24 Nov
- Introduced to Senate 27 Nov

27 March 2024
- Pass by Senate
- Parts of Bill amended ← not NALE part
- Back to Lower House

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The evolution of NALI

The long journey……

1. Tabled in lower house 13 September 2023

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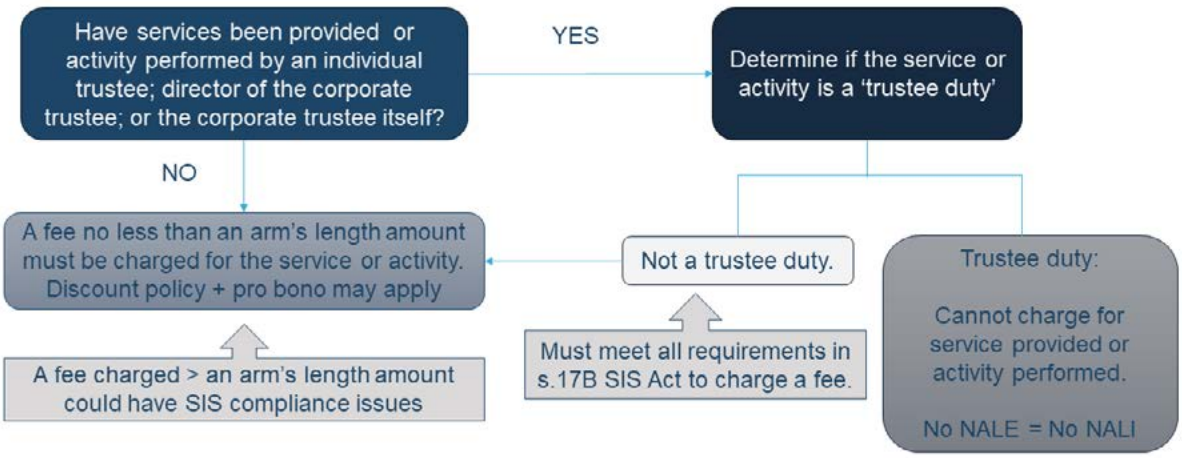
NALE for SMSFs

2023-24 and onwards[1]…..



1. Subject to passage of Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023.

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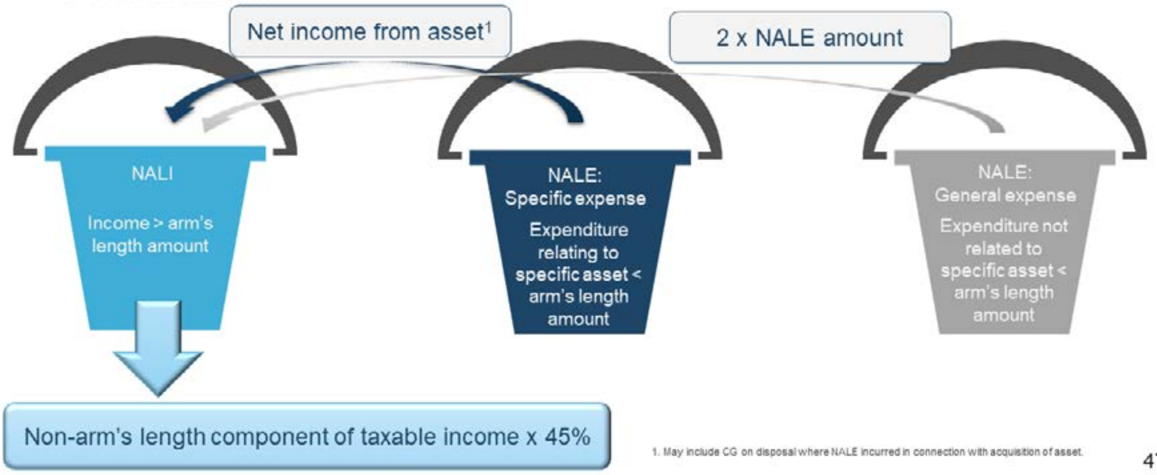
NALI and NALE

Approach for 2023-24 onwards….

The total amount of a small complying superannuation fund's non-arm's length component will be capped at an entity's taxable income for the year not including any assessable contributions or any deductions against assessable contributions.

- 3 NALI buckets…..



1. May include CG on disposal where NALE incurred in connection with acquisition of asset.

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NALE

Substantiating arm's length amount of expenditure

- ATO expects SMSF trustee + service provider to have sound basis for arriving at amount to be charged:

> *"….from 1 July 2023, where the ATO applies any compliance resources for such general fund expenses, they will only be directed:*
>
> *for an SMSF - toward ascertaining whether the parties have made a reasonable attempt to determine an arm's length expenditure amount for services provided to the fund, other than services provided by an individual either acting in the capacity as trustee of the SMSF or as a director of a body corporate that is a trustee of the fund,"*[1]

E.g., application of commercial pricing policies

- Allows for:
  - staff discounts → consistent with normal commercial practices.
  - pro bono → where SMSF trustee not able to influence the service provider.

1. Appendix – Compliance approach, para 92 LCR 2021/2.

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All is not lost if an SMSF has general NALE…..

Malia is one of four members of a small superannuation fund. Malia is an accountant and provides general accounting services to the small superannuation fund worth $10,000 which the small superannuation fund acquires for $5,000.

The total income of the small superannuation fund in 2023-24 is $23,000 in rent from a rental property which is rented to Malia's accounting business. Had the property been rented at arm's length, it might have been expected to receive $15,000 in rent based on known rents for comparable tenanted commercial properties.

Maintenance was carried out on the commercial property at arm's length constituting $10,000 in eligible deductions.

Assessable contributions totaling $20,000 were received in that income year.

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SMSF with general NALE

Case study workings

General NALE	NALI	Taxable income
–Accounting fees ← $5k charge, arm's length price is $10k. –2 x factor approach for determining amount of NALI –2 x ($10k – $5k) = $10,000	–Rental income from non-arm's length arrangement → $23,000 –Deductions in relation to NALI → $10,000	–Assessable conts: $20,000 –Rental property income: $23,000 –Rental property dedns: $10,000 –Accounting fees: $5,000 –Taxable income: $28,000 –NALI: $23k – $10k + $10k = $23k –NALC cap = $28k - $20k = $8,000 –NALC: $8,000 ←45% –LTC: $20,000 ← 15%

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SMSF paying arm's length amount v NALE
Case study workings

With NALE ($5k)	No NALE (pay xtra $5k)
• Taxable income = $28,000 • NALC: $8,000 x 45% = $3,600 • LTC: $20,000 x 15% = $3,000 • Total tax = $6,600	• Taxable income = $23,000 • NALC: $3,000 x 45% = $1,350 • LTC: $20,000 x 15% = $3,000 • Total tax = $4,350

$2,250 less tax, but additional $5,000 cost = net loss of $2,750

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NALE and NALI
Further developments…….

- Passage of Bill
- Finalisation of TD 2023/D1
- Finalisation of TR 2010/1DC
- Revised LCR 2021/2

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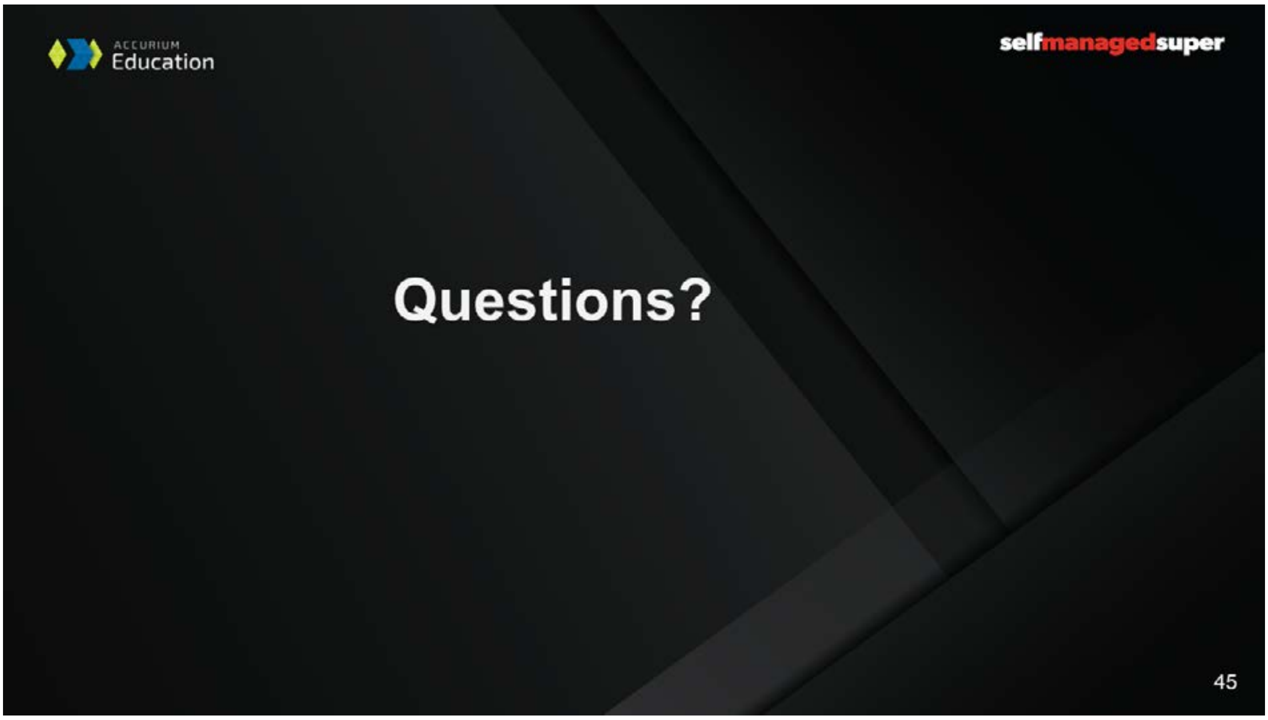
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Questions?
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Session 2

The $3 million question: If not inside super then where?

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Head of Education (Tax)
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Mark Ellem
Head of Education (SMSF)
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The $3 million question: If not inside super then where?

- Div 296: Proposed Law
- Other investment structures | The tax implications
- Small business CGT concessions
- Case studies
- Other considerations

Learning objectives

Learning outcomes

- Describe measure to impose additional tax on superannuation balances for certain individuals
- Explain process for calculating additional tax
- Compare and contrast holding retirement savings inside and outside of superannuation
- Evaluate structuring options for building retirement savings outside of superannuation

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Div 296: Proposed Law

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The $3 million question

Proposed law

- TLA (Better Targeted Superannuation Concessions and Other Measures) Bill 2023 introduced 30 November 2023

Applies from 2025-26 income year — First test time is 30 June 2026

Measure

- Introduction of new Division 296
- Additional 15% tax on 'earnings' where TSB at end of year is > $3m ➜ 'large superannuation balance threshold'
- Div 296 tax is assessed by ATO NOT the super fund ➜ issued to individual
- No change to how a super fund's taxable income is determined
- Div 296 tax can be paid from individual's super fund ➜ via Release Authority (within 60 days)
- Otherwise due and payable within 84 days of notice of assessment ➜ if paid outside of super

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The $3 million question

Proposed law

Calculation

1. 30 June TSB > $3m
2. Calculate superannuation earnings for income year (next slide)
3. Determine the percentage of TSB (at end of income year) above $3m:

$$\frac{\text{TSB as at end of the year} - \text{Large superannuation balance threshold}}{\text{TSB as at end of year}} \times 100$$

Percentage is rounded to 2 decimal places

4. Calculate total amount of 'taxable superannuation earnings':
   - Percentage from Step 3 X superannuation earnings for income year
5. 15% of 'taxable superannuation earnings' = tax levied to individual

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The $3 million question

Proposed law

Basic Superannuation earnings*

Current adjusted total superannuation balance — Previous total superannuation balance

30 June of current income year

30 June of previous income year

If current or previous balance < $3m → replace with $3m

Where 'transferable negative superannuation earnings':

Basic super earnings for year — Unapplied transferable negative superannuation earnings

Carry forward negative superannuation earnings apply where prior 30 June TSB >$3m

Adjusted TSB = TSB at end of year + Withdrawals (as defined) for year - Contributions (as defined) for year

* No available 'transferrable negative superannuation earnings' also outstanding loans under LRBA are excluded for this purpose

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The $3 million question

If not superannuation: where?

Is superannuation the best investment vehicle?	
What is the impact of the proposed new law?	**What if balance below $3 million?**
Superannuation may still be preferred	Superannuation may not the best option

Considerations

- Is member single or part of a couple
- What other assets or wealth is held outside superannuation
- Estate planning – are there tax dependents

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Other investment structures The tax implications

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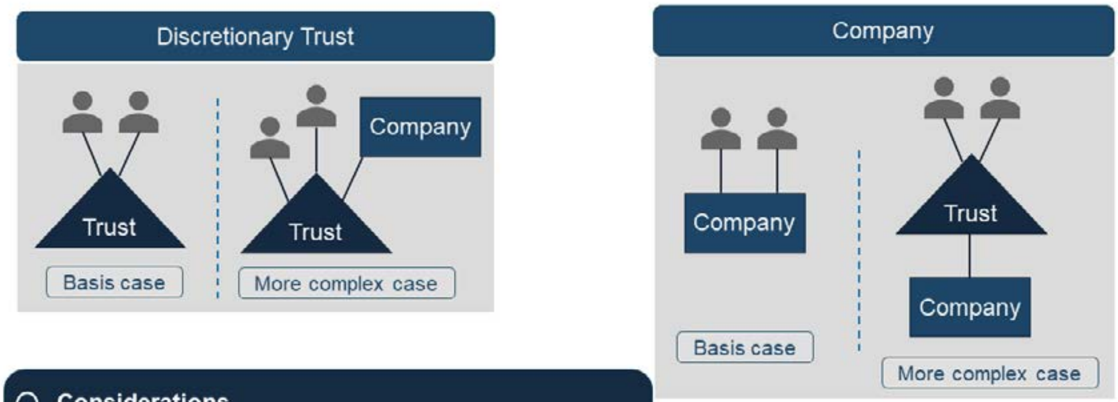
Other investment structures | The tax implications
Overview



Considerations
Focus on investment structures | Asset protection |
Wealth accumulation v income generation | Complexity

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Other investment structures | The tax implications
Overview

Discretionary Trust		Company
Up to 47%	Tax rate	30%
Tax rate → present entitlement No beneficiary entitled: 47% Proportionate approach Trust deed considerations	Operation	Profit can be accumulated Distributions in form of dividend Governed by Corporations Act
Flexible distributions Asset protection Income retains it character (stream capital gains and franked dividends for tax)	Advantages	Asset protection (watch shares) Franking credits (credit for tax paid by company) Accumulate profit
Cannot tax effectively accumulate profit Integrity rules Increased ATO scrutiny	Disadvantages	Distributions are dividends to shareholders Income loses it character No CGT discount

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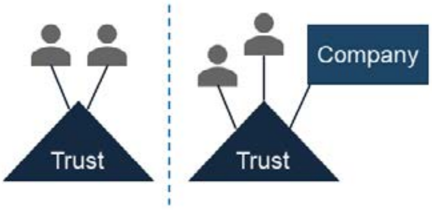
Other investment structures | The tax implications

Trust considerations

Considerations
What assets are we holding?

- Income producing
- Capital appreciating
- Both



Discussion Points

- Flow-through taxation: income distributed to a presently entitled resident beneficiary – beneficiary taxed
- Income retained in structure: highest marginal tax rate plus Medicare levy
- Optimal for capital appreciating assets with little or no income – i.e. BRP used rent-free in connected entity
- Problematic if saving for retirement
  - consider parking profits in another entity i.e. a corporate beneficiary
  - WARNING | s. 100A and Div 7A

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Other investment structures | The tax implications

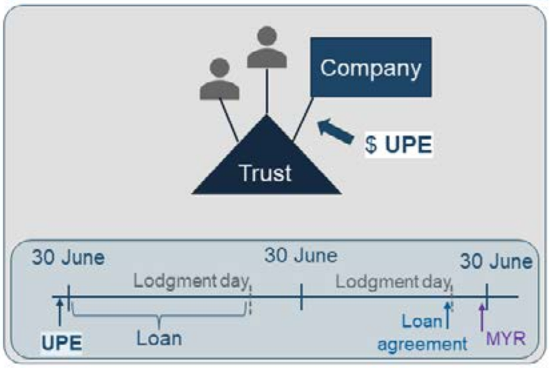
Integrity rules

Section 100A

- Connection requirement
- Benefit to another requirement
- Tax reduction purpose requirement
- Ordinary dealing exception is not satisfied

Important
Must pay entitlement to beneficiary or show being held for their benefit
EXCEPTION: Ordinary family or commercial dealing

Division 7A



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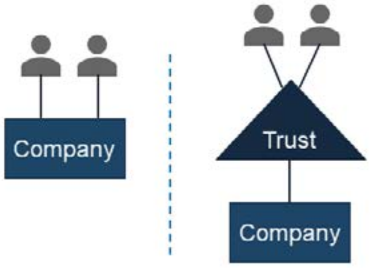
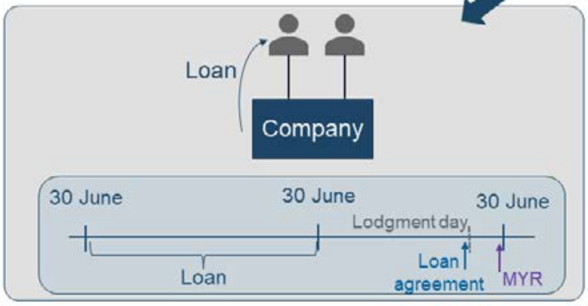
Other investment structures | The tax implications

Company considerations

Considerations
What assets are we holding?
- Income producing
- Capital appreciating
- Both



Discussion Points
- Company profits belong to company
- Retained income 30% and has franking credits
- Shareholders cannot use unless manage – Div 7A



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Small business CGT concessions

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Small business CGT concessions
Overview

Division 152: CGT concessions for:
- Capital gains realised on disposal of CGT asset used in carrying on a business
- Basic and additional eligibility conditions

→ Asset must be an active asset
Must pass MNAVT or be CGT SBE

The concessions:
- Small business 15-year exemption
- Small business 50% reduction
- Small business retirement
- Small business roll-over

→ Concessions do not apply to reduce or deny a capital loss

CGT concessions are available to taxpayer who has realised gain

→ Company or trust holding asset

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Small business CGT concessions
Basic rules

1. A **CGT event** happens to a CGT asset 'owned' by taxpayer
2. CGT event would otherwise result in a **capital gain**
3. At least one of following applies:
   - taxpayer is a **CGT SBE**
   - taxpayer satisfies the **MNAV test**
   - **taxpayer** passively **owns CGT asse**t, and asset is **used** in a business carried on by an affiliate or connected entity that is a **CGT SBE** or
   - taxpayer is a partner in a partnership that is a CGT SBE, and:
     - CGT asset is an asset of the partnership or
     - CGT asset is owned passively by the partner, and is used in business of the partnership
4. The CGT asset satisfies **active asset test**

Note: All basic conditions must be satisfied to access any of concessions

Additional basic conditions apply if:
- relevant CGT asset is share in a company or interest in a trust
- CGT asset held by interposed entity

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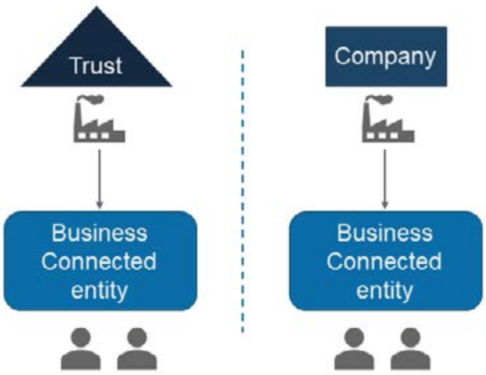
Small business CGT concessions

Key eligibility notes

Taxpayer must qualify	• Pass MNAVT or be CGT SBE or • Passively own CGT asset, and use in business carried on by affiliate or connected entity that is CGT SBE

Active asset	• Used in course of carrying on a business or
	• Used in course of carrying on a business by:
	  • taxpayer's affiliate or
	  • an entity connected with taxpayer

Who is connected	• Control of company • Control of trust
Who is an affiliate	• Individual or company that acts in accordance with taxpayer's directions or wishes in relation to business of individual or company



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Small business CGT concessions

The concessions

Small business 15-year

- Capital gain is disregarded if a CGT asset has been continuously owned for a 15 year period, and individual (or a 'significant individual' in case of an entity) is aged ≥55 years at time of CGT event and event happens in connection with retirement

Small business 50% reduction

- Optional 50% reduction of capital gain – in addition to any reduction for discount and may be used in combination with retirement exemption or small business roll-over

Small business retirement exemption

- Capital gain is disregarded if capital proceeds from CGT event are used in connection with retirement – a lifetime limit of $500,000 applies

Small business roll-over

- Capital gain is deferred to extent taxpayer incurs expenditure on a replacement asset, or improves an existing asset, within a certain time period

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Case Studies

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Case study 1 | Impact of Div 296 tax

Facts

Assumptions
Income of SMSF includes:
- Rent (8% of MV of BRP)
- Dividends $70K + $30K franking credit

TSB → Div 296 applies

Assumptions
Income of SMSF includes:
- Dividends $70K + $30K franking credit
- Concessional contributions - $30k

Rent saved taxed in Business entity @ 30%
TSB → Div 296 does NOT apply

Capital Gain on sale of BRP
BRP sold 4 years later
Assumed growth in property 3.5% pa
(reflected in both CP and CB)

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Case study 1 | Impact of Div 296 tax

Capital gain calculation notes

1. Reduce capital gains made during income year by capital losses — If using 15-year capital gain is entirely disregarded ∴ no step 1 amount
2. Apply any previously unapplied net capital losses from earlier income years
3. Reduce by discount percentage each amount of a discount capital gain remaining after step 2 — $33\,^1/_3\%$ v 50%
4. If any capital gains qualify for the small business concessions apply those concessions — Not available to SMSF
5. The amount of capital gains remaining after step 4 is the net capital gain for the income year — This is what is included in assessable income

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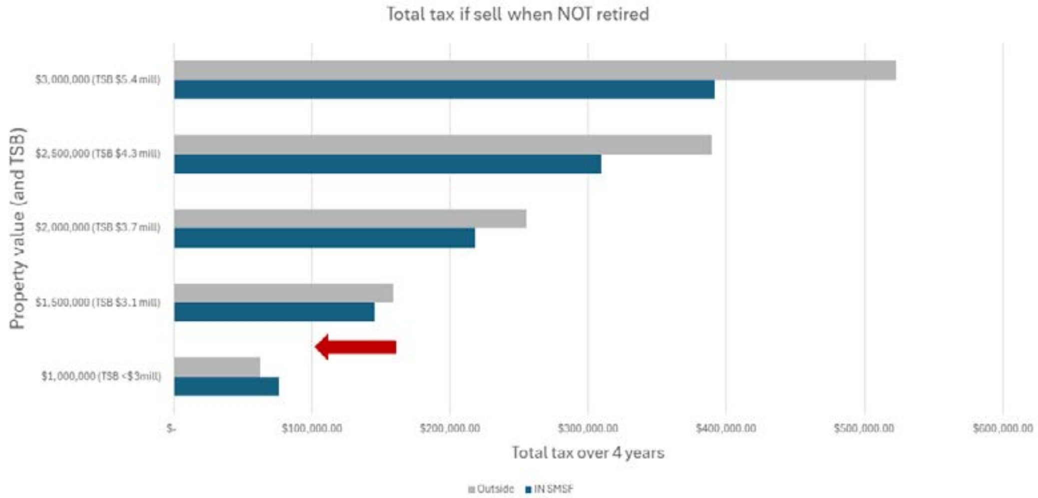
Case study 1 | Impact of Div 296 tax

Comparison Summary



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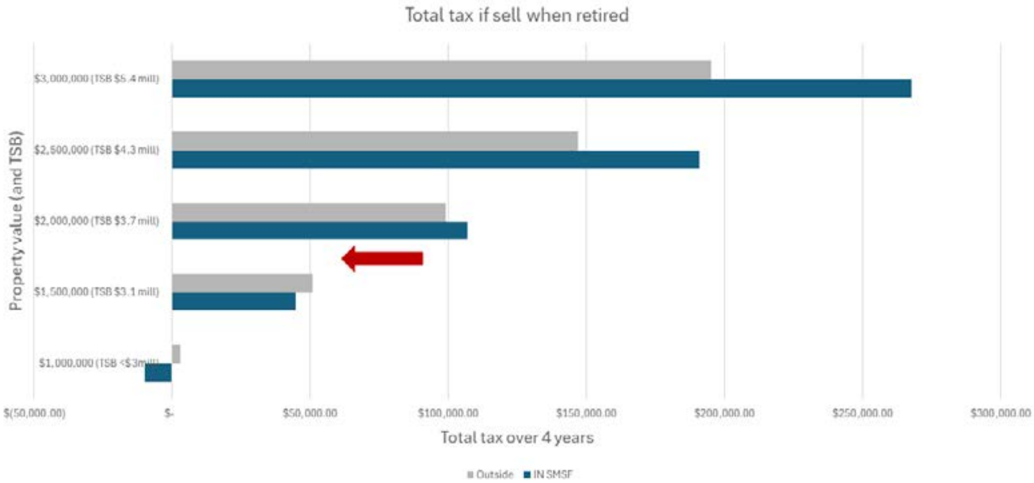
Case study 1 | Impact of Div 296 tax

Comparison Summary



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Case Study 2 | Investment choices <$3mill

Income: In SMSF v Via trust distribution to Mum and Dad

Assumptions
Return on capital of 8%
Fund not in retirement phase
No contributions
Ignore SMSF expenses

Assumptions
Return on capital of 8%
Mum and Dad do not have any other assessable income
Trust distributes income 50:50
Low income offset available
No SAPTO

? At what income level is one structure preferred over another?

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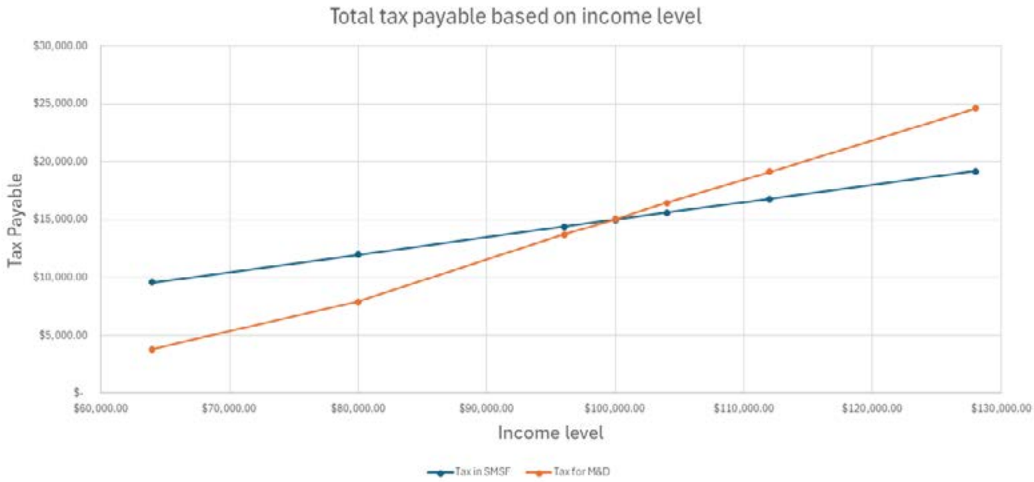
Case Study 2 | Investment choices <$3mill

Income: In SMSF v Via trust distribution to Mum and Dad



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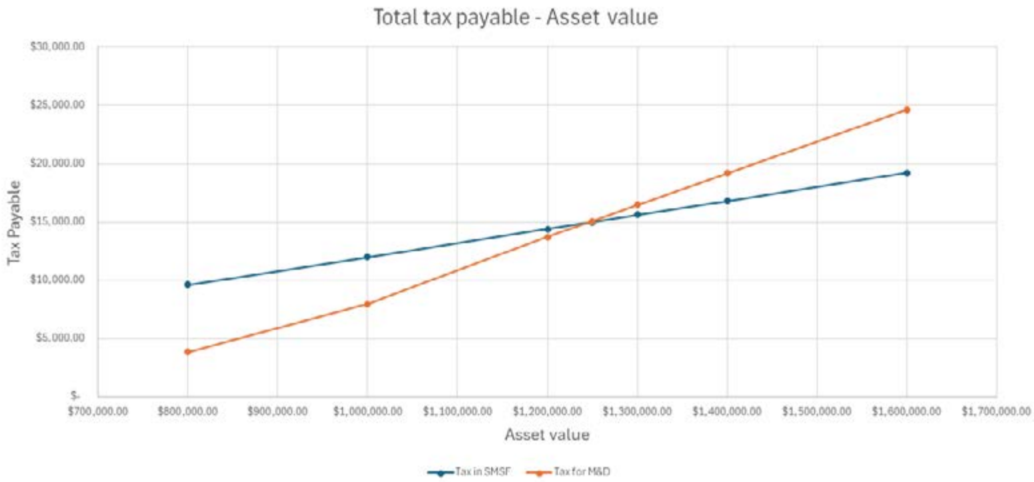
Case Study 2 | Investment choices <$3mill

Income: In SMSF v Via trust distribution to Mum and Dad



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Other considerations

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Investment bonds

Overview

What are Investment bonds?

- Long term investments that allow for regular contributions – held in form of units or an account balance
- Income is re-invested to achieve a
- compounding effect
- Marketed as an alternative to managed investments and superannuation
- Premiums analogous to a savings bank account

Benefits

- No need to meet condition of release
- Superannuation contribution caps do not apply

Operation

- Nominal term of 10 years (although can be longer)
- Purchase price – usually a single premium (although sometimes regular periodic payments – special 125% rule)
- Investment earnings accumulated as reversionary bonuses
- Issuer of bond subject to 30% tax on investment earnings – investor has no assessable amounts
- Mechanism to cap tax at 30% – however if held >10 years, no further tax on maturity
- Reversionary bonus received:
  - after 10 years – tax free
  - in 9th year – 2/3 assessable
  - in 8th year – 1/3 assessable
  - during first 8 years assessable

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Private ancillary funds

Overview

What is a Private ancillary fund (PAF)?

- A trust set up and maintained solely for purpose of providing money, property or benefits to deductible gift recipients (DGRs)
- Although an ancillary fund is also a deductible gift recipient, it does not undertake charitable work – rather it acts as an intermediary between donors and DGRs

How to establish?

- Create a trust that is a private ancillary fund
- Obtain an ABN
- Get endorsement as a DGR

Operation

- PAF must distribute at least 5% of market value of fund's net assets as at end of previous financial year
- However PAF guidelines require PAF to distribute at least $11,000, or remainder of fund if that is < $11,000, during that financial year if both of the following applies:
  - 5% is less than $11,000
  - any expenses of fund in relation to that financial year are paid directly or indirectly from fund's assets or income

Benefits

- Money donated into PAF receives immediate tax deduction
- Strategically manage philanthropy

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Session 3

Death and taxes: strategies for reducing death benefits tax

Anthony Cullen
Senior SMSF Educator
Accurium


Agenda
Strategies to reduce death benefits tax
1
2
3
4
Don't die (but if you do, make sure you have control)
Don't have money in super when you do die
Have a SIS/tax dependant
Don't have a taxable component
3


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Strategy 1:
Don't die
4

Have an estate plan

What is the plan?

- It's not; do I have a will, EPoA, BDBN etc

An estate plan will generally be interested in the following:

- What happens when I die?
- What assets do I hold, and how are they held?
- Whom do I want my assets to go to?
  - How will I make sure they get them?

5

Control

Trust deed

- Automatic removal of trustees/members?
- Ability to appoint new trustees
  - May, will, must
- Need to consult executor

Company constitution

- Automatic removal of directors
- Alternate/Successor directors
- Ability to appoint new directors
  - Often lies with the shareholders
    - Who are the shareholders after you die?

6

Control

Other considerations

- Death benefit nominations
  reversionary pensions
- Will
- Enduring Power of Attorney
- Blended families
- Definition of SMSF

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In practice

- Off the shelf vs bespoke documents
- Client choice
  - off the shelf doesn't consider client circumstances
- Are you dealing with the current deed?
- Ensure clients have an exit strategy
- Potential for litigation?

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Strategy 2: Don't have money is super when you die

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Accessing benefits

- Who is making the decision to access benefits?
- Has the member met a condition of release?
  - Are there withdrawal restrictions i.e. non-commutable pension
- Impact of withdrawing all benefits
  - Tax implications between holding investments in super vs outside of super
  - Life insurance policies
- Who benefits from such a strategy?
  - Member or beneficiary?
- Super should not be looked at in isolation, should be considered as party of wider estate plan.

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Timing withdrawals and death

Liquidity of assets
- Investment strategy

→

Delays in liquidating assets and paying benefits
- In-specie transfers

→

Member benefit vs death benefit
- Can a trustee pay a member benefit, knowing the member has died?

→

Impact of actions taken/not taken by practitioners
- Potential for insurance claims?
- How are you protecting yourself?

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Strategy 3: Have a SIS/tax dependant

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BDBN vs reversionary pension

- Why not both?
- Dealing with separate interests with different approaches
  - i.e. separate BDBN for different interest
- Reversionary beneficiaries overlook accumulation accounts
- Is reversionary beneficiary entitled to receive benefits?
- No paperwork, no reversionary pension
- Who determines if they are valid?
- Is there merit in not having either?
  - May provides greater flexibility for trustees.

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BDBN vs reversionary pension
Paperwork

- Using templated documents
  - In accordance with the fund's deed?
  - Legal work
- Changing reversionary status mid-stream
  - ATO's view
  - What does the deed say?
  - What do the pension documents say?
  - Alternate – stop and restart
    - implications
- Adding beneficiary details to member statements
- Adult children may not be tax dependants, but they are SIS dependants.

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Strategy 4: Don't have a taxable component

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Withdrawal and recontribution strategy

- A strategy that is more for the beneficiary than it is for the member
- Accessing benefits that may be grandfathered for Centrelink purposes that will become deemed
- Take advantage of change in work test rules and meeting a condition of release i.e. attaining age 65
- Consider member's total super balance (TSB) and timing
- Tax and other implications for fund
  - CGT on disposal of assets to fund withdrawal?
  - Exempt current pension income (ECPI)
  - Costs associated with acquiring new investments.

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Withdrawal and recontribution

Case study

- Patrick will turn 60 on 1 July 2024 and will not have met a full condition of release
- He is expected to have $1m in his SMSF at the time
  - 100% taxable component
- He also has an industry fund where his employer contributions are received
- He is considering starting a TRIS to start a withdrawal and recontribution strategy
- Assume he will receive an 8% return, on his opening balance, each year.

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Withdrawal and recontribution – start at 60

Commence new pension with recontributed amounts

Year	Age	Open balance	Earnings	Pension	Close Balance	Open balance - a/c 2	Earnings	Pension	Recontribute	Close Balance - a/c 2
2024/25	60	$1,000,000	$80,000	$100,000	$980,000	$0			$100,000	$100,000
2025/26	61	$980,000	$78,400	$98,000	$960,400	$100,000	$8,000	$4,000	$98,000	$202,000
2026/27	62	$960,400	$76,832	$96,040	$941,192	$202,000	$16,160	$8,080	$96,040	$306,120
2027/28	63	$941,192	$75,295	$94,119	$922,368	$306,120	$24,490	$12,240	$94,119	$412,489
2028/29	64	$922,368	$73,789	$92,237	$903,921	$412,489	$32,999	$16,500	$92,237	$521,225
2029/30	65	$903,921	$72,314	$360,000	$616,234	$521,225	$41,698	$26,060	$360,000	$896,863
2030/31	66	$616,234	$49,299	$0	$665,533	$896,863	$71,749	$44,840	$0	$923,772
2031/32	67	$665,533	$53,243	$0	$718,776	$923,772	$73,902	$46,190	$0	$951,483
2032/33	68	$718,776	$57,502	$360,000	$416,278	$951,483	$76,119	$47,570	$360,000	$1,340,032
2033/34	69	$416,278	$33,302	$0	$449,580	$1,340,032	$107,203	$67,000	$0	$1,380,235
2034/35	70	$449,580	$35,966	$0	$485,547	$1,380,235	$110,419	$69,010	$0	$1,421,643
2035/36	71	$485,547	$38,844	$360,000	$164,390	$1,421,643	$113,731	$71,080	$360,000	$1,824,295
2036/37	72	$164,390	$13,151	$0	$177,542	$1,824,295	$145,944	$91,210	$0	$1,879,029
2037/38	73	$177,542	$14,203	$0	$191,745	$1,879,029	$150,322	$93,950	$0	$1,935,401
2038/39	74	$191,745	$15,340	$207,084	$0	$1,935,401	$154,832	$96,770	$207,084	$2,200,547

Withdrawal and recontribution – start at 60

Do not commence new pension with recontributed amounts

Year	Age	Open balance	Earnings	Pension	Close Balance	Open balance - a/c 2	Earnings	Pension	Recontribute	Close Balance - a/c 2
2024/25	60	$1,000,000	$80,000	$100,000	$980,000	$0			$100,000	$100,000
2025/26	61	$980,000	$78,400	$98,000	$960,400	$100,000	$8,000	$0	$98,000	$206,000
2026/27	62	$960,400	$76,832	$96,040	$941,192	$206,000	$16,480	$0	$96,040	$318,520
2027/28	63	$941,192	$75,295	$94,119	$922,368	$318,520	$25,482	$0	$94,119	$438,121
2028/29	64	$922,368	$73,789	$92,237	$903,921	$438,121	$35,050	$0	$92,237	$565,407
2029/30	65	$903,921	$72,314	$360,000	$616,234	$565,407	$45,233	$0	$360,000	$970,640
2030/31	66	$616,234	$49,299	$0	$665,533	$970,640	$77,651	$0	$0	$1,048,291
2031/32	67	$665,533	$53,243	$0	$718,776	$1,048,291	$83,863	$0	$0	$1,132,154
2032/33	68	$718,776	$57,502	$360,000	$416,278	$1,132,154	$90,572	$0	$360,000	$1,582,727
2033/34	69	$416,278	$33,302	$0	$449,580	$1,582,727	$126,618	$0	$0	$1,709,345
2034/35	70	$449,580	$35,966	$0	$485,547	$1,709,345	$136,748	$0	$0	$1,846,092
2035/36	71	$485,547	$38,844	$360,000	$164,390	$1,846,092	$147,687	$0	$360,000	$2,353,780
2036/37	72	$164,390	$13,151	$0	$177,542	$2,353,780	$188,302	$0	$0	$2,542,082
2037/38	73	$177,542	$14,203	$0	$191,745	$2,542,082	$203,367	$0	$0	$2,745,449
2038/39	74	$191,745	$15,340	$207,084	$0	$2,745,449	$219,636	$0	$207,084	$3,172,169

Withdrawal and recontribution – start at 65

Do nothing until meet full condition of release

Year	Age	Open balance	Earnings	Pension	Close Balance	Open balance - a/c 2	Earnings	Pension	Recontribute	Close Balance - a/c 2
2024/25	60	$1,000,000	$80,000	$0	$1,080,000	$0			$0	$0
2025/26	61	$1,080,000	$86,400	$0	$1,166,400	$0	$0	$0	$0	$0
2026/27	62	$1,166,400	$93,312	$0	$1,259,712	$0	$0	$0	$0	$0
2027/28	63	$1,259,712	$100,777	$0	$1,360,489	$0	$0	$0	$0	$0
2028/29	64	$1,360,489	$108,839	$0	$1,469,328	$0	$0	$0	$0	$0
2029/30	65	$1,469,328	$117,546	$360,000	$1,226,874	$0	$0	$0	$360,000	$360,000
2030/31	66	$1,226,874	$98,150	$0	$1,325,024	$360,000	$28,800	$18,000	$0	$370,800
2031/32	67	$1,325,024	$106,002	$0	$1,431,026	$370,800	$29,664	$18,540	$0	$381,924
2032/33	68	$1,431,026	$114,482	$360,000	$1,185,508	$381,924	$30,554	$19,100	$360,000	$753,378
2033/34	69	$1,185,508	$94,841	$0	$1,280,349	$753,378	$60,270	$37,670	$0	$775,978
2034/35	70	$1,280,349	$102,428	$0	$1,382,777	$775,978	$62,078	$38,800	$0	$799,256
2035/36	71	$1,382,777	$110,622	$360,000	$1,133,399	$799,256	$63,941	$39,960	$360,000	$1,183,237
2036/37	72	$1,133,399	$90,672	$0	$1,224,071	$1,183,237	$94,659	$59,160	$0	$1,218,736
2037/38	73	$1,224,071	$97,926	$0	$1,321,997	$1,218,736	$97,499	$60,940	$0	$1,255,295
2038/39	74	$1,321,997	$105,760	$360,000	$1,067,756	$1,255,295	$100,424	$62,760	$360,000	$1,652,958

Withdrawal and recontribution

Comparison

1
- Total interest: $2,200,547
- Tax-free: $2,200,547
- Taxable: $0
- Death benefit tax: $0

2
- Total interest: $3,172,169
- Tax-free: $1,767,480
- Taxable: $1,404,689
- Death benefit tax: $210,703

3
- Total interest: $2,720,715
- Tax-free: $1,652,958
- Taxable: $1,067,756
- Death benefit tax: $160,163

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Insurance

- Is super the appropriate place to hold insurance
  - Potential to create an untaxed element if benefits paid to non-tax dependant
- What interest are insurance premiums being paid from?
  - Influences where proceeds are paid
  - Who is making this decision?

Taxation of super death benefit

Calculation of untaxed element

Step 1: calculate taxed element:

$$\text{Death benefit (LS}^{1}\text{)} \times \left[\frac{\text{Service days}}{\text{Service days + Days to retirement}} \right] - \text{Tax free amount}$$

Step 2: calculate untaxed element:

Taxable component – taxed element

- No untaxed element where member was aged 65 or more at time of death.
- Consider moving insurance to outside of super where <65 and no 'death benefit dependants'.

- Member with large service period will have relatively less untaxed element than another member of the same age with a shorter service period.
  - Increasing service period could reduce untaxed element.
  - Does the member have benefits in another fund with an earlier service date?

1. Lump sum amount, including insurance proceeds

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Superannuation death benefit lump sum

Calculation of components

- Sam, a member of the Midfielder Super Fund, dies at the age of 42.
- Using the following details, let's calculate the components of his superannuation death benefit:
- Service Period: 20 years (7,300 days)
- Future Service Period[1]: 23 years (8,395 days)
- Total superannuation death benefit payment = $1.3m:
  - $600,000 insurance (taxable component)
  - $600,000 tax free amount
  - $100,000 taxable component

Step 1: calculate taxed element:

$1.3m x 7,300 / (7,300 + 8,395) – 600,000 = $4,651

Tax @ 15% = $698[2]

Step 2: Calculate untaxed element:

($100,000 + $600,000) - $4,651 = $695,349

Tax @ 30% = $208,605[2]

Total tax = $209,303[2]

1. To age 65
2. 2% Medicare levy may also apply.

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Death of SMSF member

Alternate option for claiming cost of insurance

SMSF member dies prior to age 65 + insurance cover

Future Service Liability Deduction election – alternate to claiming insurance premium(s)

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Death of SMSF member

Future service liability deduction

- Based on actual cost of providing benefits in a year.
  - Formulae provided in sectn 295.470 ITAA 1997

Deduction =

benefit amount[1] x future service days[2] / total service days[3]

1. Benefit amount = amount of death benefit lump sum, account balance of death benefit income stream or value of temporary disability income payments made during year.
2. Future service = days from termination to last retirement date (generally age 65).
3. Total service = existing service period plus future service.

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Future service liability deduction

Eligibility

- Fund entitled to deduction for insurance premium →
- Trustee makes choice to deduct under alternate section →
- Pays death, terminal illness or disability benefit in consequence of termination of employment[1] or pays temporary disability benefit →
- Can't claim cost of any premiums in future years →
- No deduction where member age 65+.

1. TR 2003/13 – meaning of phrase 'in consequence of'

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Future service liability deduction

Considerations

1. Effect of ECPI on brought forward tax loss
2. Transfer pension members to another SMSF/fund
3. Introduce new member with assessable contributions
4. Hold insurance in alternate fund to claim insurance premiums as tax deduction

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Future service liability deduction

Other issues

1. Must be insurance premium in year of death[1]
2. Annual v monthly premiums (1st of the month)
3. Death benefit can be paid in next year[2]
4. Election can be made after member's death[3]
5. Payment in consequence of terminating employment[4,5]

1. PBR 1012695230090
2. PBR 1051635575419
3. ATO ID 2015/7
4. Not a consideration where cost of insurance relates to temporary disability benefit
5. Refer TR 2003/13

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Future service liability deduction

Case study

Jessica, a member of the Blues Super Fund, died, age 44, in February 2024:

- Employed up to date of death
- Current service period is 25 years (9,125 days)
- Future service period is 21 years (7,665 days)
- Total benefit paid to spouse is $1.5m
  - Paid in August 2024
  - Includes $800,000 of insurance
- Insurance premiums paid in 2020-21: $2,816 (8 x $352)
- Death benefit can be either lump sum or death benefit pension.

Alternate deduction

- $1.5m x 7,665 / (9,125 + 7,665) = $684,783
- Tax benefit to SMSF of $102,717
- Versus tax benefit of $422 for $2,816 insurance premium claim.

Note: SMSF can never again claim insurance premiums as tax deduction

In 2023-24:

- Document choice to claim under 295-470 ITAA 97;
- Do not claim $2,816 insurance premiums.

In 2024-25:

- Claim $684,783 cost of insurance.

Death benefit payment options

SIS dependant	Death benefits dependant	Lump sum	Retirement phase income stream
Spouse (including same-sex and de facto)	Yes	Yes	Yes
Child under 18 (including an ex-nuptial, adopted or step-child of the person and a child of the person's spouse)	Yes	Yes	Yes
Child over age 18 and financially independent	**No**	Yes	**No**
Child over age 18 and under 25, financially dependent	Yes	Yes	Yes
Disabled[1] child (no age restriction)	Yes	Yes	Yes
Person with whom an interdependent relationship[2] existed	Yes	Yes	Yes
Financially dependent person at the time of death	Yes	Yes	Yes

1 - Disability Services Act 1986 (Cth) s8(1) (Austl)
2 - An interdependent relationship, according to the SIS Act, is defined as two people whom: a) have a close personal relationship, and b) live together, and c) one or each of them provides the other with financial support, and d) one or each of them provides the other with Income Tax Assessment Act 1997, ITAA 302-195.

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Taxation of SMSF death benefit payments

Death benefit beneficiary	Lump sum	Income stream[1]
Death benefits dependant	Payment tax free	Tax free if deceased or beneficiary aged 60 or over. If beneficiary and deceased both under age 60 at death pay no tax on tax-free amounts, marginal rates[3] with rebate of 15% on taxed amounts.
Other beneficiaries[2]	No tax payable on tax-free component. Up to 15% on taxable element and 30% on any untaxed element, plus Medicare levy. If paid to the Estate Medicare levy not payable.	Not applicable

1 - where children under age 25 start receiving a death benefit income stream after 1 July 2007, they must stop the income stream and take the remaining benefit as a lump sum on or before the date they turn 25 with the lump sum tax free
2 - in the situation where a member of the Australian Defence Force or police force dies in the line of duty, the lump sum super death benefit is also tax free for someone who is not a death benefits dependant
3 – marginal tax rates including Medicare levy

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Wrap up

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Death of an SMSF member

Strategies to minimise tax on superannuation death benefit

Don't die!
- But if you do, make sure you leave the right person(s) in control to carry out your (estate) plan.

Don't have money in super when you die
- refer to member benefit v super death benefit discussion.

Ensure you always have a 'death benefits dependant'[1].
- Understand difference from SIS dependant

Consider transferring insurance out of super
- under age 65 + no 'death benefits dependant'[1].

Use TRIS to 'lock in components'
- earnings allocated to accumulation interest → taxable component.
- earnings allocated to TRIS → split between components (if 100% tax-free earnings all allocated → tax-free).

Withdrawal + re-contribution strategy
- removal of 'work test' from contribution acceptance rule for those aged 67 to 74 from 1 July 2022.
- still consider contribution caps, including prior 30 June total superannuation balance.

1. As defined per sectn 302-195 ITAA 1997

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Wrap up

Estate planning is not the domain for the elderly • Differentiate between the 'plan' and the documents to implement it	Average age of new fund members is getting lower • Young people die	Continually review/address • Non lapsing nominations should not be a set and forget	Many clients, both young and old still believe their super is covered by their will
Loss of capacity is just as relevant	Encourage clients to have conversations about their wishes with their children/beneficiaries	Try to arrange meetings and build rapport with all interested parties	Protect yourself (and your business).

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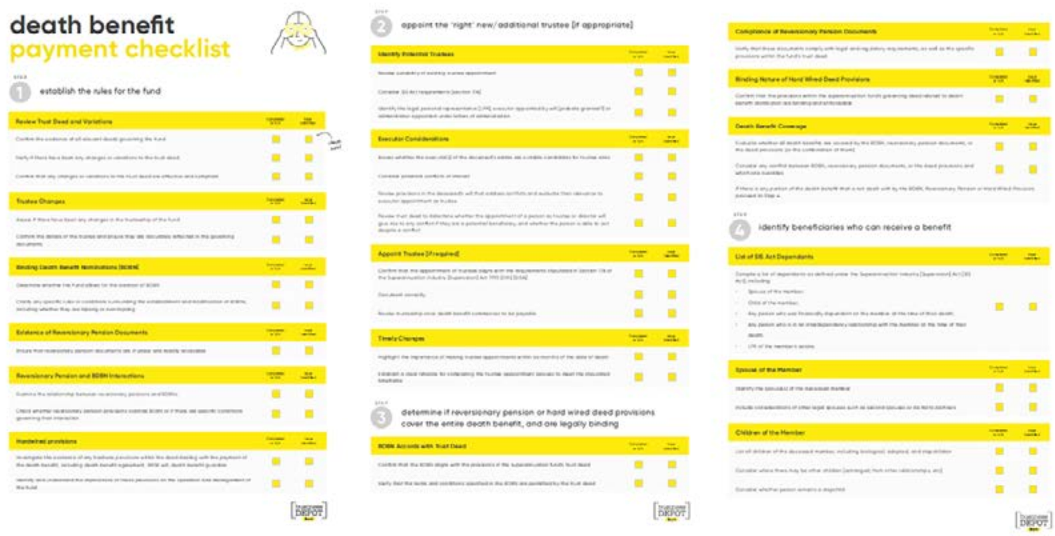
Death benefit payment process



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Questions?

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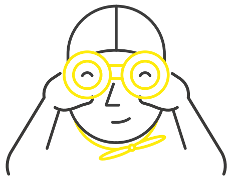
death benefit
payment checklist



STEP **1** establish the rules for the fund

Review Trust Deed and Variations	Completed or N/A	Issue Identified
Confirm the existence of all relevant deeds governing the Fund		
Verify if there have been any changes or variations to the trust deed		
Confirm that any changes or variations to the trust deed are effective and compliant		

check here!

Trustee Changes	Completed or N/A	Issue Identified
Assess if there have been any changes in the trusteeship of the Fund		
Confirm the details of the trustee and ensure they are accurately reflected in the governing documents		

Binding Death Benefit Nominations [BDBN]	Completed or N/A	Issue Identified
Determine whether the Fund allows for the creation of BDBN		
Clarify any specific rules or conditions surrounding the establishment and modification of BDBNs, including whether they are lapsing or non-lapsing		

Existence of Reversionary Pension Documents	Completed or N/A	Issue Identified
Ensure that reversionary pension documents are in place and readily accessible		

Reversionary Pension and BDBN Interactions	Completed or N/A	Issue Identified
Examine the relationship between reversionary pensions and BDBNs		
Check whether reversionary pension provisions override BDBN or if there are specific conditions governing their interaction		

Hardwired provisions	Completed or N/A	Issue Identified
Investigate the existence of any hardwire provisions within the deed dealing with the payment of the death benefit, including death benefit agreement, SMSF will, death benefit guardian		
Identify and understand the implications of these provisions on the operation and management of the Fund		

STEP 2

appoint the 'right' new/additional trustee [if appropriate]

Identify Potential Trustees	Completed or N/A	Issue Identified
Review suitability of existing trustee appointment		
Consider SIS Act requirements [section 17A]		
Identify the legal personal representative [LPR], executor appointed by will [probate granted?] or administrator appointed under letters of administration		

Executor Considerations	Completed or N/A	Issue Identified
Assess whether the executor[s] of the deceased's estate are suitable candidates for trustee roles		
Consider potential conflicts of interest		
Review provisions in the deceased's will that address conflicts and evaluate their relevance to executor appointment as trustee		
Review trust deed to determine whether the appointment of a person as trustee or director will give rise to any conflict if they are a potential beneficiary, and whether the person is able to act despite a conflict		

Appoint Trustee [if required]	Completed or N/A	Issue Identified
Confirm that the appointment of trustees aligns with the requirements stipulated in Section 17A of the Superannuation Industry [Supervision] Act 1993 [Cth] [SISA]		
Document correctly		
Review trusteeship once death benefit commences to be payable		

Timely Changes	Completed or N/A	Issue Identified
Highlight the importance of making trustee appointments within six months of the date of death		
Establish a clear timeline for completing the trustee appointment process to meet the stipulated timeframe		

STEP 3

determine if reversionary pension or hard wired deed provisions cover the entire death benefit, and are legally binding

BDBN Accords with Trust Deed	Completed or N/A	Issue Identified
Confirm that the BDBN aligns with the provisions in the superannuation fund's trust deed		
Verify that the terms and conditions specified in the BDBN are permitted by the trust deed		

Compliance of Reversionary Pension Documents	Completed or N/A	Issue Identified
Verify that these documents comply with legal and regulatory requirements, as well as the specific provisions within the fund's trust deed		

Binding Nature of Hard Wired Deed Provisions	Completed or N/A	Issue Identified
Confirm that the provisions within the superannuation fund's governing deed related to death benefit distribution are binding and enforceable		

Death Benefit Coverage	Completed or N/A	Issue Identified
Evaluate whether all death benefits are covered by the BDBN, reversionary pension documents, or the deed provisions [or the combination of them]		
Consider any conflict between BDBN, reversionary pension documents, or the deed provisions and which one overrides		
If there is any portion of the death benefit that is not dealt with by the BDBN, Reversionary Pension or Hard Wired Provision, proceed to Step 4.		

STEP

4 identify beneficiaries who can receive a benefit

List of SIS Act Dependants	Completed or N/A	Issue Identified
Compile a list of dependants as defined under the Superannuation Industry [Supervision] Act [SIS Act], including • Spouse of the member; • Child of the member; • Any person who was financially dependent on the member at the time of their death; • Any person who is in an interdependency relationship with the member at the time of their death; • LPR of the member's estate.		

Spouse of the Member	Completed or N/A	Issue Identified
Identify the spouse[s] of the deceased member		
Include considerations of other legal spouses such as second spouses or de facto partners		

Children of the Member	Completed or N/A	Issue Identified
List all children of the deceased member, including biological, adopted, and stepchildren		
Consider where there may be other children [estranged; from other relationships, etc]		
Consider whether person remains a stepchild		

Financially Dependency and Interdependency Relationships	Completed or N/A	Issue Identified
Identify individuals who were in an interdependency relationship with or otherwise dependent upon the deceased member		
This may include individuals who shared a close personal relationship and were financially dependent or mutually supportive		

Documentation	Completed or N/A	Issue Identified
Maintain accurate and updated documentation for each identified beneficiary, including relevant proof of relationships, financial dependencies, proof of requirements for interdependency relationship		

STEP

5 conduct inquiries regarding beneficiary circumstances

Contact Dependants	Completed or N/A	Issue Identified
Write to each identified dependant to inquire about their intentions regarding the deceased member's death benefit		
Request information about their relationship with the deceased and details regarding their personal financial situation		

Engage with LPR	Completed or N/A	Issue Identified
Reach out to the LPR to understand how the death benefit would be distributed if directed to the estate		
Gather information about the circumstances of the beneficiaries who would receive the death benefit in the case of estate distribution		

Consider Non-Binding Death Benefit Nominations	Completed or N/A	Issue Identified
Review any existing non-binding death benefit nominations made by the deceased member		
Take into account the preferences expressed in these nominations when assessing potential beneficiaries		

Examine the Deceased Member's Will	Completed or N/A	Issue Identified
Scrutinise the contents of the deceased member's will for indications of the deceased's wishes regarding the distribution of the death benefit		

Document Findings	Completed or N/A	Issue Identified
Keep detailed records of the enquiries made, responses received, and any additional information gathered during the process		

STEP 6

exercise trustee discretion

Completion of Reasonable Enquiries	Completed or N/A	Issue Identified
Confirm that the trustee has conducted reasonable enquiries regarding the circumstances of each potential beneficiary, including dependants and the LPR		

Timely Distribution	Completed or N/A	Issue Identified
Ensure that the trustee is fulfilling its responsibility to distribute the deceased member's death benefit as soon as practicable following the member's death		

Adherence to Fund Rules	Completed or N/A	Issue Identified
Consider the process for trustees exercising discretion in the Fund rules		
If the payment is subject to any further limitation [e.g. the consent of a Death Benefit Guardian], then ensure that limitation is addressed		

Ensure that in exercising the discretion, the trustee has	Completed or N/A	Issue Identified
Acted in good faith;		
Given real and genuine consideration;		
Exercised the discretion personally [and not delegate it to a third party – e.g. an adviser]; and		
Exercised the discretion for a proper purpose, and for no other purpose		

Record Decision in Resolution	Completed or N/A	Issue Identified
Confirm that the trustee records its decision through a resolution, detailing the following • The person[s] eligible to receive the deceased member's death benefit; • Enquiries made of the deceased member's dependants and estate, including the nature of these enquiries; • The trustee's decision on how the death benefit will be distributed, specifying the percentage each beneficiary will receive and the form of distribution [e.g., lump sum, pension]		

Absence of Requirement for Detailed Reasons	Completed or N/A	Issue Identified
Note that the trustee is not obligated to provide detailed reasons for its decision, as long as the resolution includes the essential information outlined above		

Communication of Decision	Completed or N/A	Issue Identified
Communicate the trustee's decision regarding the distribution of the death benefit to relevant parties in a clear and timely manner		
Only communicate the decision to the extent it affects that person – i.e. "the trustee has made a determination with respect to the deceased member's benefit, and has determined to pay $X to you"		

Documentation Retention	Completed or N/A	Issue Identified
Encourage the trustee to retain a copy of the resolution and associated documentation for record-keeping purposes		

To help you navigate this process effectively, use a lawyer who can provide valuable support by:

- Reviewing the trust deed for fund, including any deeds of variation and changes of trustee.
- Ensuring trustee appointments align with legal requirements and identifying potential conflicts.
- Verifying the accuracy, completeness, and legal soundness of all documentation related to trustee appointments.
- Conducting a comprehensive review and validation of BDBN, reversionary pension documents, and hard wired deed provisions.
- Ensuring all requirements are met regarding the distribution of benefits.
- Ensuring the identification of beneficiaries aligns with SIS Act definitions and requirements.
- Managing the inquiries process with the beneficiaries.
- Verifying that the resolution and decision-making process complies with the above Checklist.

our legal crew are here to help

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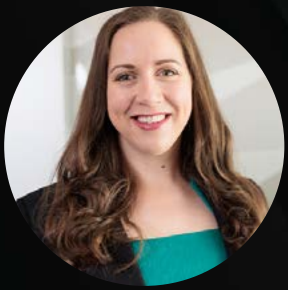
Session 4
Retirement investment strategies



Melanie Dunn
Principal
Accurium

Deciding to retire is a big life decision… we help it be an exciting one

- Retirement is a trigger to seek advice about finances
- Need to think about own investment strategy for retirement, and how that impacts the SMSF's strategy
- SMSF has new responsibilities and considerations when a member retires
  - Transfer balance account reporting (TBAR)
  - Paying member benefits from a pension or/and accumulation
  - Exempt current pension income and expense deductibility
  - Estate planning/exit plan
- Important to review that investment strategy and trust deed allows for desired retirement strategy

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Retirement strategies

SMSFs vs APRA funds

4

SIS Act Investment covenants Section 52B

SMSF investment strategy requirements

Trustee must formulate, review regularly and give effect to an investment strategy having regard to:

- the risk involved in fund investments, having regard to the objectives and expected cash flow requirements
- the diversification of fund investments
- the liquidity of the investments, having regard to expected cash flow requirements
- the ability to discharge existing and prospective liabilities

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APRA funds vs SMSFs

Retirement income strategy requirements SIS Act Sect 52AA

Must address how the trustee will assist members who are retired or approaching retirement to achieve and balance the following objectives:

a) to maximise expected retirement income (net of tax) over retirement

b) to manage expected risks to the sustainability and stability of retirement income over retirement:
   i. longevity risks
   ii. investment risks
   iii. inflation risks
   iv. any other risks

c) to have flexible access to funds over retirement

Different words… similar themes to the SMSF investment strategy

discharge liabilities

the risk involved in fund investments, having regard to the objectives and expected cash flow requirements

diversification and liquidity

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Creating a retirement investment strategy
Everyone's retirement is different

SMSFs are better placed than APRA funds to tailor a retirement investment strategy for members

- Members are designing a strategy to suit only them and not a large cohort of members
- Very few unknowns… members know about their financial situation and retirement objectives

APRA funds were required to have a published strategy by 1 July 2022 - you can find examples on fund websites:

Australian Super

Aware Super

UniSuper

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Creating a retirement investment strategy
Fit for purpose and compliant – the SMSF Audit SIS Reg 4.09

- Auditor reviews investment strategy for evidence that:
  - has regard to the whole of the fund's circumstances
  - considers investment risk and returns, diversity, liquidity and the ability to discharge liabilities as they fall due
  - considers the insurance needs of members
  - is regularly reviewed
- Auditor checks the investments of the fund to understand if invested in accordance with its requirements
- Material contravention = qualified auditor's report + lodgment of an ACR
  - can notify trustees in the management letter of any further concerns about the investment strategy and its investments

Evidence for auditor:
- A written investment strategy
- A new strategy or notations on current strategy
- Information in minutes of trustee meetings

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Creating a retirement investment strategy

Focusing on the strategic decisions for an SMSF in retirement

ECPI & capital gain strategies

Assessing a retirement strategy

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ECPI and capital gain strategies

commencing pensions and selling assets

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Commencing to pay a pension in the SMSF

Eligible to commence a pension?
- Condition of release met
- Trust deed allows
- Space in TBC

Cashflow requirements?
- Minimum pension standards
- Desired spending from SMSF
- Tax consideration of pension payment vs lump sum
- Liquidity of fund assets to pay the pension

Restructuring investments?
- Pension payments must be 'cashed'
- Sale of assets / liquidity
- Claiming ECPI and deductibility of expenses
- Investments re-structured towards achieving retirement objectives

Pension documents?
- Tax components
- Reversionary?
- TBAR

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Restructuring investments to avoid the $3m cap

ECPI considerations of $3m cap

- $3m cap applies from 2025-26 income year
  - first test 30 June 2026
  - a 'personal' tax which an individual could choose to pay from SMSF, no change to tax calcs for the SMSF
- If have met a nil cashing restriction condition of release could choose to withdraw savings
  - CGT event when assets are sold or withdrawn in-specie + amounts will be withdrawn from the SMSF
- If member with large balance is in retirement, SMSF is likely to have disregarded small fund assets
  - member in retirement phase with > $1.6m total superannuation balance

SMSF has DSFA
- Proportionate method for ECPI
- Timing of CGT events no impact
- Timing of withdrawals does impact

SMSF does not have DSFA
- Eligible to use segregated method
- Timing of CGT events and withdrawals can impact ECPI if have deemed segregated periods

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Mega Super Fund Case Study

$4.8m in super = TSB over the $3m cap

Matt: working aged 68
Accumulation= $2,100,000
ABP = $2,700,000

Mary: working aged 63
Accumulation = $1,800,000

SMSF Investments - 1 July
$6,600,000

Asset	Market value	Capital gain/ loss if sold
Property A	$3,000,000	+$950,000
Property B	$2,000,000	-$200,000
Share portfolio	$1,100,000	+$220,000
Term deposits	$300,000	n/a
Cash	$200,000	n/a

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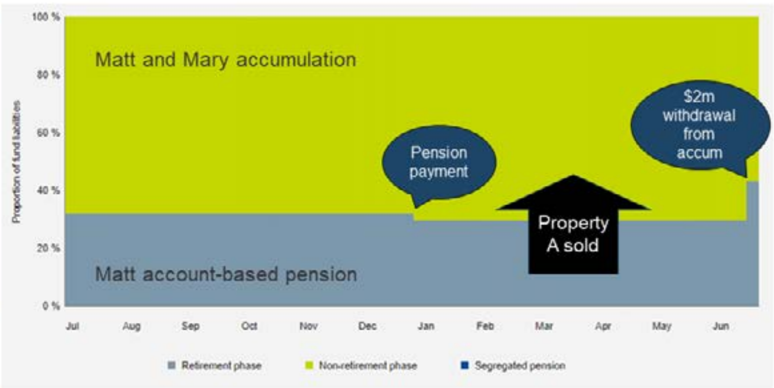
Impact on ECPI of restructuring balance under $3m

Mega Super Fund case study

- Fund has DSFA
  - Maximising ECPI = maximising actuarial %
- Decide want to withdraw $2m at end of year
- Proportionate method for ECPI 30.778%
- Applies to all income and gains in the year

$950,000 net capital gain 30.778% exempt



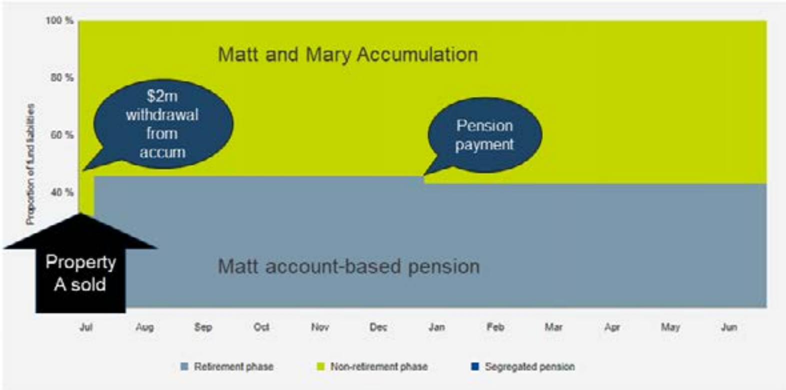
14

Impact on ECPI of restructuring balance under $3m

Mega Super Fund case study

- Fund has DSFA
- Decide want to withdraw $2m at START of year
- Proportionate method for ECPI ~~30.778%~~ 43.973%
  - For every $100k income an extra $13k tax free ECPI
- Applies to all income and gains in the year

$950,000 net capital gain 43.973% exempt



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Timing is everything

...when using proportionate method for ECPI

$$\text{Exempt income proportion} = \frac{\text{average value of retirement phase liabilities}}{\text{average value of superannuation liabilities}}$$

This uses a daily weighted average so *when* a transaction occurs is important to maximise ECPI

- More in retirement phase on average and less in non-retirement phase on average

Timing Important

- Retirement phase pensions
  - commence as early as possible
  - commute as late as possible if will remain in accumulation phase
- Contributions and rollovers
  - if will remain in accumulation phase, as late as possible
  - if to be used to start a retirement phase income stream, as early in year as possible
- Withdrawals
  - if from accumulation, as early as possible
  - if from pension, as late as possible

Capital gains or losses

- Net capital gain = exempt income proportion applies
- Net capital loss = can be carried forward

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Impact on ECPI of restructuring balance under $3m

Restructuring investments ⟶ capital gains tax event

A capital gain or loss is likely to be realised prior to or at time of withdrawal if selling assets to provide liquidity or paying out in-specie.

…is there any way to use the segregated method?

- Why? Might be able to improve ECPI outcome if realising material capital gains
  - Capital gains on segregated pension assets = tax free
  - Need a scenario where SMSF won't have DSFA = does not have a member at prior 30 June with TSB greater than $1.6m and a superannuation interest in retirement phase OR fund solely in retirement phase

- I can think of multiple theoretical ways to create the situation where the SMSF did not have DSFA HOWEVER most would likely constitute a scheme to avoid tax

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Impact on ECPI of restructuring balance under $3m

Types of 'strategies' which will likely catch the eye of the ATO:

- Move accumulation balances to a new SMSF, keeping assets would like to realise gains on in pension SMSF, in year fund A solely in retirement phase sell assets tax free, move assets over to other SMSF, fund unsegregated, withdraw amounts from accumulation
- For fund moving into pension phase for first time (no DSFA), move entire fund into pension, creates deemed segregated period, sell assets tax free, resolve excess by commuting back to accumulation, withdraw amounts from accumulation, pay excess TBA tax and do TBAR
- Roll back pensions to accumulation 29 June, 30 June no retirement phase balance, no DSFA for next year, restart pensions and segregate assets wish to sell to the pensions (note cannot segregate part of an asset), sell assets tax free, unsegregated cash, make withdrawal from accumulation

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Sensational Super Fund Case Study

SMSF does NOT have DSFA

$4.8m in super = TSB over the $3m cap

Chris: working aged 65
Accumulation= $4,800,000

Cathy: working aged 63
Accumulation = $1,800,000

Cathy is considering ceasing an employment arrangement to meet the 'retirement' condition of release

SMSF Investments - 1 July
$6,600,000

Asset	Market value	Capital gain/ loss if sold
Property A	$3,000,000	+$950,000
Property B	$2,000,000	-$200,000
Share portfolio	$1,100,000	+$220,000
Term deposits	$300,000	n/a
Cash	$200,000	n/a

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Example: Impact on ECPI of restructuring balance under $3m

- Setup a segregated investment strategy
- Maintain the segregated strategy beyond first year for investment purposes

No DSFA
Segregated method for ECPI

DSFA
Proportionate method for ECPI

Asset	Market value	Segregated to ABPs?	Capital gain/loss if sold
Property A	$3,000,000	$3,000,000	+$950,000
Property B	$2,000,000	No	-$200,000
Share portfolio	$1,100,000	$550,000 of shares	+$220,000
Term deposits	$300,000	No	n/a
Cash	$200,000	$150,000	n/a

Commence pensions 1 July

SMSF sets up segregated investment strategy for $3.7m in account-based pensions

Investment strategy review

Due to sale of property now have large amount sitting in cash segregated to ABPs.

Chris wants to withdraw $2m from accumulation. Need liquidity in accumulation to facilitate this and would prefer growth assets segregated to ABPs over cash.

Decide to adjust fund assets so Property B is segregated and $2,050,000 in cash unsegregated to support accumulation.

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Assessing a retirement strategy

balancing cashflow objectives and risks

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Creating a retirement investment strategy

Accumulation	Retirement
Regular contributions, compound returns	Regular benefit payments + possible lump sums
Investing for growth, long term	Investing for growth… but
Don't need liquidity	Liquidity required to make payments
No sequencing risk (no withdrawals)	Manage sequencing risk

Holistic retirement strategy for an individual/couple

- Cashflow planning, what do you spend
- Investments to manage growth vs sequencing risk vs liquidity needs
- Age Pension, superannuation savings, non-superannuation savings

SMSF retirement investment strategy

- Commonly a single investment strategy for all fund members
- What cashflows are required from the SMSF
- Issue with multigenerational funds where members have different objectives

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Understanding cashflow requirements

Many people don't know what they spend their money on!

- Understand what benefits your retiree may be eligible for which could help reduce costs:
  - Age Pension / Pensioner Concession Card
  - Commonwealth Seniors Healthcare Card (nearly all retirees should be eligible!)
  - Seniors Card
- Do a budget for their retirement spending:
  - Non-negotiables: power and water bills, rent/mortgage, medicines, groceries
  - Lifestyle expenses: dining out, private insurance, holidays, memberships
- Don't forget inflation risk
  - Generally, might desire spending to increase over time to maintain purchasing power

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Understanding risks to the retirement strategy

Risk = uncertainty

- SMSF investment strategy focuses on market risk having regard to the cashflow objectives:
  - Risk involved in making, holding, and realising, and the likely return from the investments
  - Composition of the investments, including the extent to which the investments are diverse
- To assess whether investments will achieve objectives must also consider longevity risk
  - Accurium research[1] showed SMSF retirees expected to live longer than population averages
- Future outcomes are not 'risky' if we know about them and can plan with certainty, even if are bad
  - What will future returns be? How long will you live? How much will cost of living rise?

1 - Accurium SMSF Retirement Insights 'SMSF Trustees – healthier, wealthier, and living longer, Vol 2 April 2015, Volume-2-SMSF-Trustees-healthier-wealthier-and-living-longer-April-2015.pdf (accurium.com.au)

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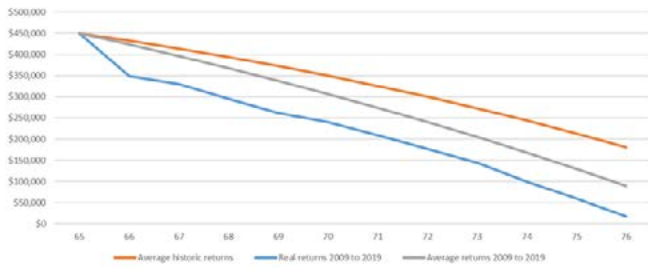
Market and inflation risk in retirement

Sequence of returns experienced have a big impact on the outcome

- Consider a person retiring aged 65 in 2009 with $450,000 invested in a balanced asset mix[1] and they desired a retirement income of $45,000 p.a. that will increase annually with price inflation

Year	Real return
Average historic 20yrs (1989-2008)	6.4%
2009	-13.3%
2010	8.1%
2011	3.5%
2012	4.0%
2013	10.1%
2014	6.2%
2015	6.9%
2016	7.9%
2017	0.3%
2018	5.7%
2019	8.7%
Average (2009-2019)	4.4%



- Illustrate retirement using actual returns and inflation[2]
- Poor returns at start of retirement bigger impact than later on
- Cost of sequencing risk hidden using fixed assumptions

1 – Balanced asset mix 25% Aus shares, 25% Aus bonds, 25% Aus property and 25% Cash
2 - Vanguard Index Chart 2019 returns and RBA historic annual inflation rates, years ended 30 June

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Assessing retirement strategies

Evidence of achieving SMSF investment strategy requirements

Given the fund investments and risks involved, what is the chance the SMSF investment strategy will help achieve the cashflow objectives?

- Utilise actuarial techniques – stochastic modelling
  - Real world is not static; future outcomes are unknown
  - Considers correlations and interactions over time, allows for realistic variation in returns
  - Can be tailored to an individual's retirement investments and objectives
  - Can use thousands of simulations to stress test likelihood of achieving objectives

Asset Class A	Yr1	Yr2	Yr3	Yr4	Yr5	..
Sim1	19.94%	10.84%	16.35%	-12.43%	-1.99%	0.93%
Sim2	-24.12%	11.80%	8.23%	-14.84%	9.90%	8.53%
Sim3	4.76%	17.70%	5.57%	-0.86%	-15.06%	6.15%
Sim4	4.63%	-8.86%	3.63%	4.30%	13.73%	13.38%
Sim5	13.88%	9.17%	3.52%	17.56%	-0.96%	-9.46%
Sim6	16.67%	4.32%	-4.38%	17.86%	1.05%	-16.96%
						10.84%

Asset Class B	Yr1	Yr2	Yr3	Yr4	Yr5	...
Sim1	2.04%	3.39%	0.67%	2.61%	3.56%	1.26%
Sim2	2.37%	6.97%	1.92%	3.67%	5.74%	8.84%
Sim3	3.05%	-0.59%	2.12%	6.39%	2.58%	3.58%
Sim4	4.71%	0.77%	1.13%	1.03%	0.47%	3.62%
Sim5	4.79%	3.25%	5.81%	1.00%	0.86%	1.55%
Sim6	2.89%	0.29%	3.57%	0.19%	2.61%	1.08%
....	4.18%	7.17%	1.83%	3.80%	0.59%	0.20%

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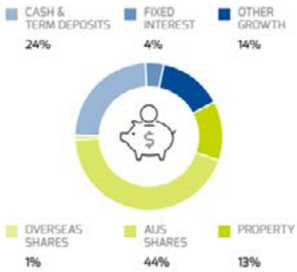
Case study: P&K SMSF 1 July 2024

SMSF accounts

Peter (69) $1,563,000

Kim (67) $399,000



Non-super assets

Cash $20,000

Investment portfolio $55,000 (60% growth)

- Currently spending around $90k p.a. increasing each year with inflation
- Allow for spending to reduce 25% when first person passes away
- Is there high confidence spending will last for life?
- Can we afford to go on a big $50k holiday next year?
- Is there high confidence of having $500k when Kim aged 80 for aged care planning?

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Case Study: P&K SMSF

Given the fund investments and risks involved, what is the chance the SMSF investment strategy will help achieve the cashflow objectives?

- Methodology:
  - Test retirement strategy by analysing across 2,000 simulations of retirement using returns and inflation from the stochastic asset model[1]
- Success measure:
  - At least 3 in 4 chance can afford target $90,000 annual spending for life if take extra $50k spend next year
  - A 9 in 10 chance have at least $500,000 at age 80 (Kim)

1. Assumptions: Life expectancy based on ALT 2015-17 with 25yr improvement factors, rounded up to nearest whole age. Return assumptions utilising 2,000 simulations over 40 years of 10E24 asset class data, also assume $100,000 personal assets. Investment mix, spending, and assets as stated on slide 35. Other fees, assumptions, and methodology per Accurium's default assumptions in methodology guide for the RetirementHealthCheck on the Accurium website dated Feb 2024.

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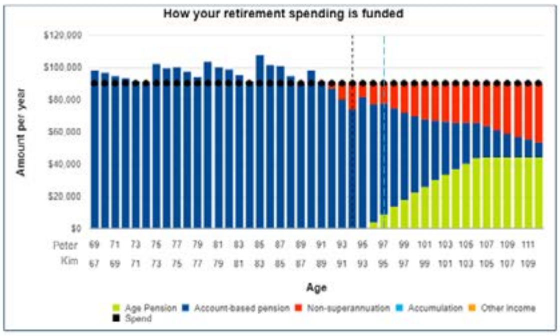
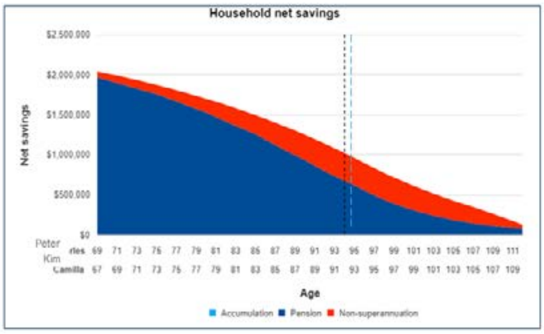
Case study: P&K SMSF – spending $90k p.a.

Retirement spending





There is a 50% chance that one of Peter and Kim will still be alive in 25 years time. The black dotted line.

There is a 25% chance that one of Peter and Kim will still be alive in 28 years time. The blue dotted line.

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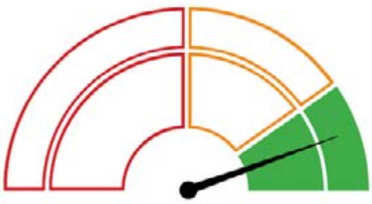
Case study: P&K SMSF – spending $90k p.a.

Is the spending sustainable?

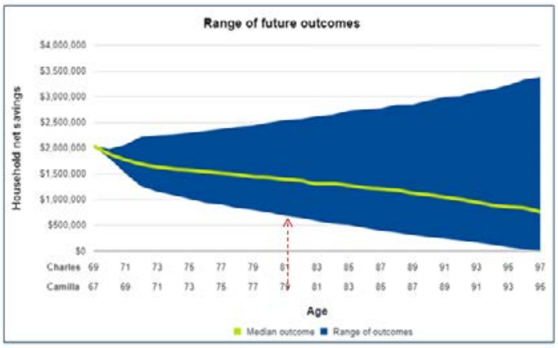
The range of outcomes from the 2,000 'real world' simulations that were stress tested are shown below. In 80% of scenarios considered, future household savings falls in the blue shaded area.



HIGH

In 91% of the 2,000 scenarios tested the cashflow objective was sustainable for the life of Peter and Kim.

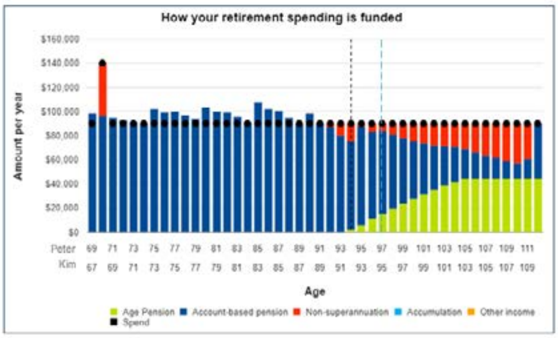
At age 80 median outcome is $1,293,000
In worst 10% of outcomes will have > $500,000

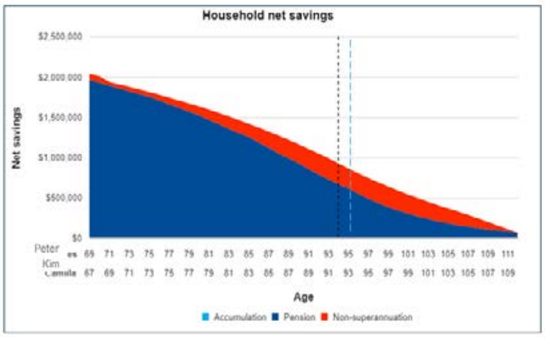


30

Case study: P&K SMSF – spending $90k p.a.

Retirement spending incl one off $50k





There is a 50% chance that one of Peter and Kim will still be alive in 25 years time. The black dotted line.

There is a 25% chance that one of Peter and Kim will still be alive in 28 years time. The blue dotted line.

31

Case study: P&K SMSF – spending $90k p.a.

Can they afford the big holiday?

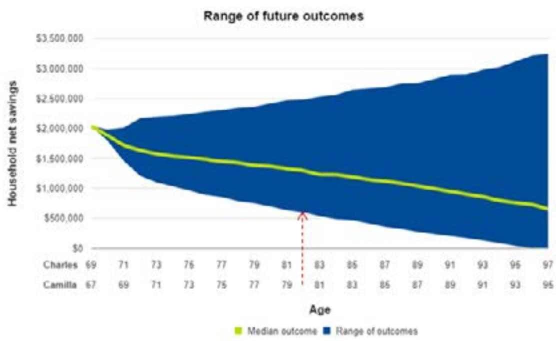
The range of outcomes from the 2,000 'real world' simulations that were stress tested are shown below. In 80% of scenarios considered, future household savings falls in the blue shaded area.

HIGH

In 89% of the 2,000 scenarios tested the cashflow objective sustainable for the life of Peter and Kim.

At age 80 median outcome is $1,293,000

In worst 10% of outcomes will have > $500,000



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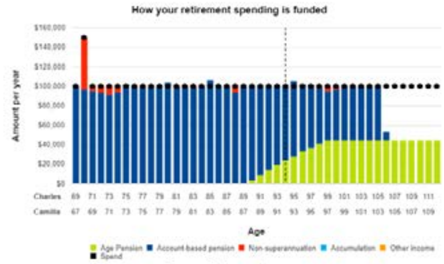
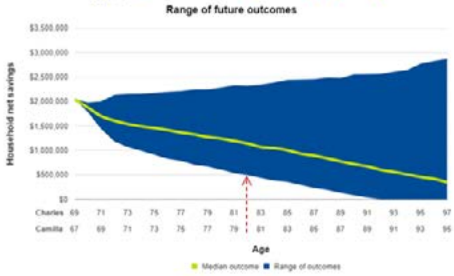
Case study: P&K SMSF

What could they afford to spend and still have 'high' confidence?





HIGH

In 80% chance the cashflow objective sustainable for the life of Peter and Kim if spending **$99,500 per annum**.

At age 80 median outcome is $1,137,000.
In worst 10% of outcomes will have around $500,000.

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Case study: P&K SMSF

- Showed can have very high (89%) confidence of spend lasting for life if take a big holiday in a year's time, and in worst 10% of scenarios will still have more than $500k when Kim is aged 80.
- Spending $99,500 p.a. increasing annually with inflation + $50k spend after 1 year is expected to last for life with 80% confidence
  - An extra $9,500 p.a. vs current $90,000 spend
  - Around $500k in assets in all but worst 10% of future scenarios tested when Kim is 80.

Having stress tested the SMSF investment strategy this provides evidence that the strategy supports the client's in achieving their cashflow objectives.

- Could this type of risk-based analysis provide your clients with confidence they can afford that big holiday?
- Or the confidence that they are indeed in a good position and don't worry about spending a little more each year if that helps to enjoy retirement?

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Summary

- Experts can help retirees achieve their retirement objective
  - Think about ECPI implications of selling assets and commencing pensions as prepare for retirement
  - Evidence that the SMSF investment strategy will achieve the cashflow objectives having regard to the risk of investments can be obtained from a retirement model
- Demonstrate the compliance of the SMSF's retirement investment strategy for the fund auditor
  - A written investment strategy, notations on current strategy
  - Documentation of decisions in minutes of trustee meetings

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Session 5

A view from the trenches: the top questions ask

Mark Ellem
Head of Education (SMSF)
Accurium

Matthew Richardson
SMSF Manager
Accurium

Anthony Cullen
Senior SMSF Educator
Accurium

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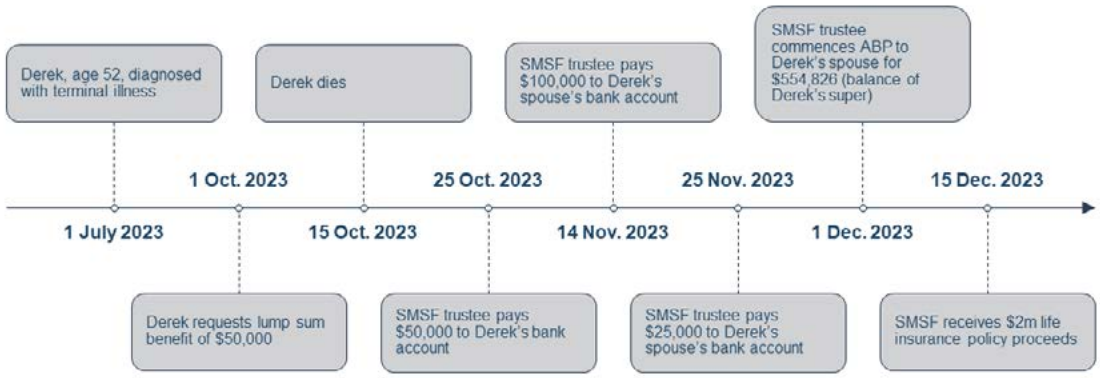
Member benefit v super death benefit

3

Member requests benefit then dies

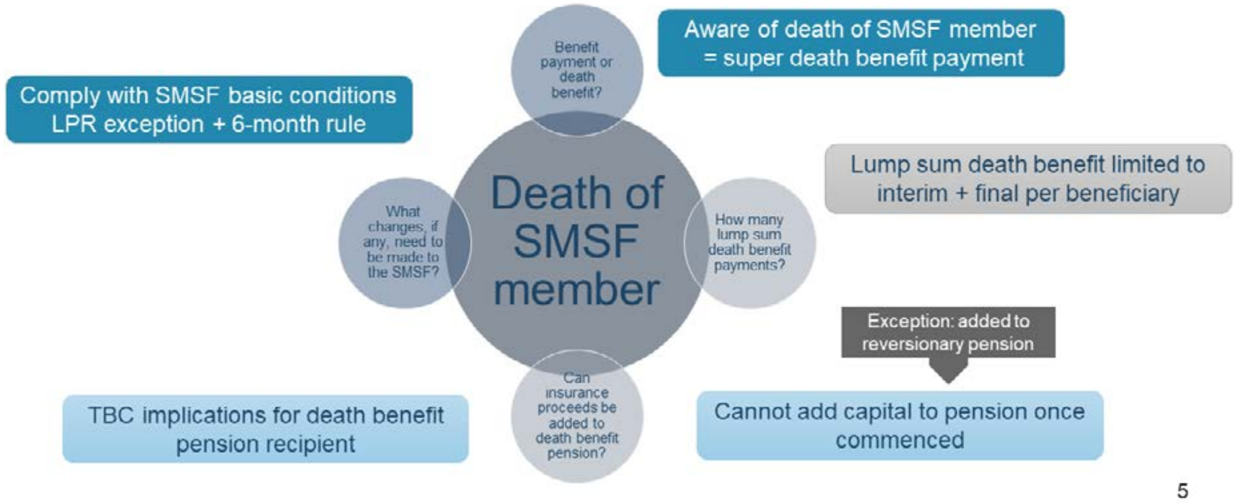
Benefit type; death benefit payment rules; SMSF trusteeship; insurance…..



4

Member requests benefit then dies

Questions asked……



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SMSF rules on death

Who can be trustee/director on death of an SMSF member?

SIS s.17A(3)(a) **allows** LPR of deceased member to be appointed in place of deceased member

LPR = executor of member's Will or administrator of estate

During period from when member died up to when death benefits **commence to be payable**

First lump sum	Commence death benefit pension

Individual trustees

- Appoint trustee
- Refer SMSF trust deed

Corporate trustee

- Appoint director
- Refer company constitution

6

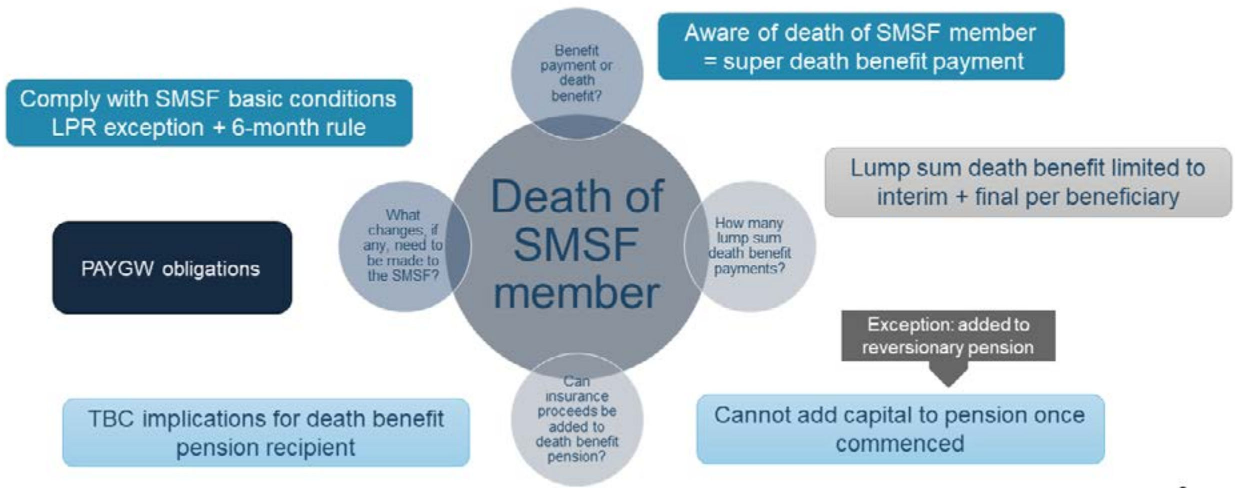
SMSF trusteeship

Timeline for SIS compliance with basic conditions

7

Member requests benefit then dies

Questions asked……



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PAYG Withholder obligations summary

Death of an SMSF member

Death benefit recipient	Lump sum death benefit payment			Death benefit pension		
	Reg	W'hold	Report	Reg	W'hold	Report
LPR (estate)	Yes	No	Yes	N/A	N/A	N/A
Tax dependant (+ dec'd < 60)	No	No	No	Yes	Yes	Yes
Tax dependant (or dec'd ≥ 60)	No	No	No	No	No	No
Non-tax dependant	Yes	Yes	Yes	N/A	N/A	N/A

SMSF just needs one 'Yes'. For example, deceased member's benefit cashed as:

- Reversionary (death benefit) pension to spouse (both deceased and spouse ≥ 60)
- Accumulation account of deceased paid to LPR.

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Superannuation lump sum death benefit

Taxation treatment: paid by fund direct v via estate (non-tax dependant)

SMSF

Death benefit lump sum: $980,852
Tax-free amount: $245,500
Taxable amount: $735,352

SMSF paid to non-tax dependant

1. SMSF registers for PAYGW
2. SMSF withholds 17% from taxable component = $125,010 → ATO
3. Net amount of $855,842 paid to non-tax dependant + S'ment
4. Non-tax dependant includes gross amount in personal ITR – PAYGW covers tax assessed on death benefit

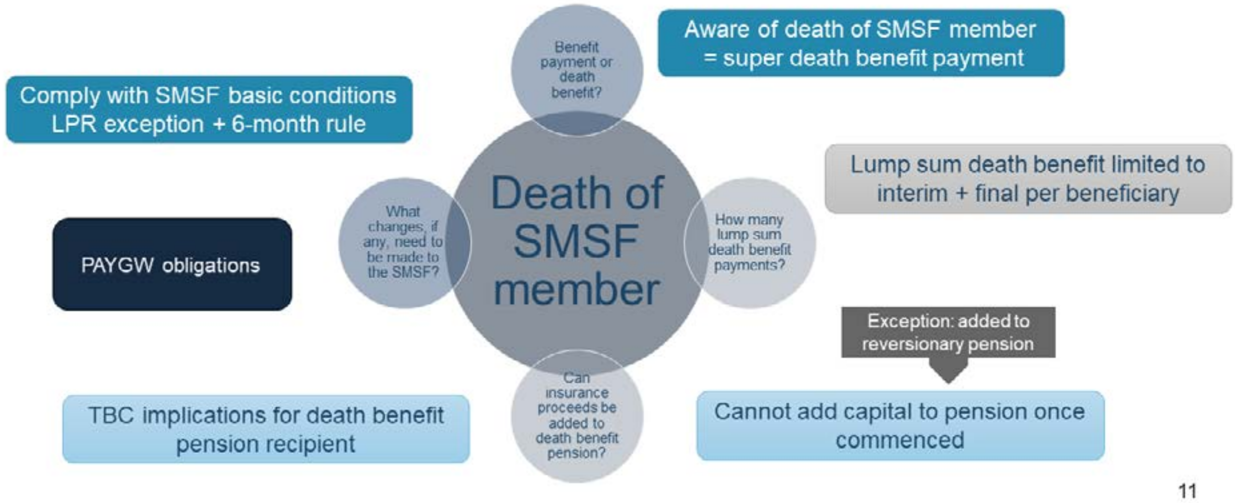
SMSF paid to estate

1. SMSF registers for PAYGW
2. SMSF pays $980,852 to estate
3. $735,352 incl in estate's tax return
4. Estate trustee assessed tax of $110,303 15% ← held back
5. Net amount $870,549 paid to non-tax pendant ← not include in their personal tax return.

10

Member requests benefit then dies

Questions asked……



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Contributions and personal tax deduction

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Claiming personal contribution

Timing + having sufficient taxable income

Is it ok to go back and amend the pension establishment details with the new value and components, even though the amended Notice of intent will be signed after the pension commenced?

12 Feb. 2023

- Oliver makes $27,500 personal contribution to his SMSF.
- Provides notice of intent to claim full $27,500.
- SMSF trustee provided Oliver with acknowledgement of notice and that it was valid.

1 Mar. 2023

- Oliver requests commencement of ABP ← satisfies 'retirement' CoR.
- SMSF trustee resolves to commence ABP on Oliver's accum balance ← includes $27,500 contribution.

15 Apr. 2023

- SMSF trustee reports commencement of ABP for Oliver via TBAR.

19 Oct. 2023

- SMSF's 2023 annual return lodged ← included $27,500 concessional contribution for Oliver + ECPI claim.

18 Feb. 2024

- Prepare Oliver's 2023 personal tax return.
- Discovers not enough assessable income to claim full $27,500 as super deduction[1].

1. Refer sectn 26.55 ITAA 1997

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Claiming personal contribution

Varying a previous valid notice

Once a valid notice of intent has been provided to the fund's trustees it cannot be withdrawn or revoked ← s.290.180(1) ITAA 1997

However, the amount that the person intends to claim as a tax deduction can be varied but only down, including to nil ← s.290.180(2) ITAA 1997

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Varying a previous notice

Timing: when can it be varied?

The variation is NOT effective if, when the member makes it, either one of the following applies[1]:

1. *you were not a member of the fund*
2. *the fund trustee no longer holds the contribution*
3. *the trustee has begun to pay a superannuation income stream based in whole or part on the contribution*

1. Refer sectn 290.180(3A) ITAA 1997

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Varying a notice of intent

The declaration

I declare that at the time of lodging this notice:

- *I intend to claim the personal contributions stated as a tax deduction*
- *I am a current member of the identified super fund*
- *the identified super fund currently holds these contributions and has not begun to pay a superannuation income stream based in whole or part on these contributions*
- *I have not included any of the contributions in an earlier valid notice.*

I declare that I am lodging this notice at the earlier of either:

- *before the end of the day that I lodged my income tax return for the income year in which the personal contributions were made, or*
- *before the end of the income year following the year in which the contribution was made.*

I declare that the information given on this notice is correct and complete.

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Consequences

Tax, caps and pension components.....

Remains assessable income of the SMSF – no amendment to SMSF return

Counts towards concessional cap (will it though?)

Unable to vary notice of intent

No amendment to SMSF financial statements

No change to tax components of pension

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Cashing a deceased member's benefit

18

Cashing a deceased member's benefit

Can a deceased member's accumulation account be cashed as a pension?

SMSF

Frank (member) died

Accum: $1m
Reversionary ABP: $500k

BDBN in favour of spouse

Helen (member) Spouse

Reversionary ABP: $1.5m
TBC space = 0

Goal: retain as much of the deceased member's super in super as permitted.

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Cashing a deceased member's benefit

Can a deceased member's accumulation account be cashed as a pension?

- SIS Regulation 6.21:

> The form in which benefits may be cashed under this regulation is any one or more of the following forms:
>
> a) in respect of each person to whom benefits are cashed:
>   i. a single lump sum; or
>   ii. an interim lump sum and a final lump sum.
>
> b) subject to subregulations (2A) and (2B):
>   i. 1 or more pensions, each of which is a superannuation income stream that is in the retirement phase.

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Cashing a deceased member's benefit

Transfer balance account implications

20 May 2024
- Frank died
- Accum: $1m
- Reversionary ABP: $500k ← reverts to Helen

1 July 2024
- Frank's accum ($1,006,721) is cashed as ABP to Helen
- Latest date for Helen to commute $1,006,721 of her own ABP back to accumulation ← create TBC space

28 July 2024
- TBAR for reversionary pension due ← Helen commencing retirement phase pension

28 October 2024
- TBAR for commencement of death benefit pension to Helen from Frank's accum due
- TBAR for partial commutation of Helen's own ABP due

20 May 2025
- TBA credit of $500k in Helen's TBA
- Latest date for Helen to partially commute her ABP by at least $500k ← lodge TBAR at same time to avoid excess TBA assessment
- If need to commute an amount from either death benefit pension → must cash out of super fund ← additional TBA reporting event

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Death of a member: reversionary pension + accum

SMSF trustee compliance issues

What's required for the SMSF to comply with the SMSF definition?

SIS s.17A(3)(a) allows LPR of deceased member
- Executor of member's Will or administrator of estate

Individual trustees
- Appointed trustee

Corporate trustee
- Appointed director

During period from when member died up to when death benefits commence to be payable

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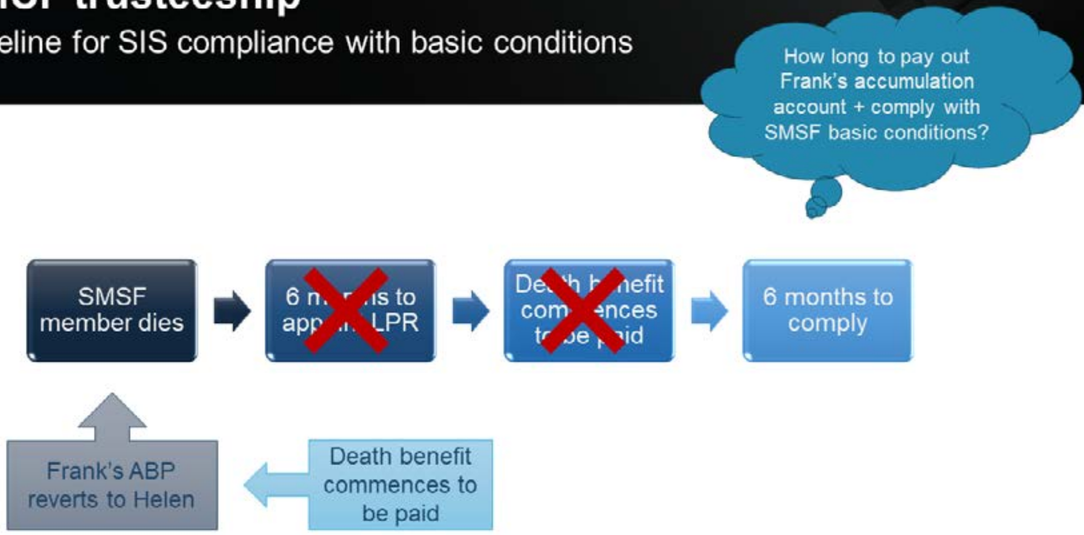
SMSF trusteeship

Timeline for SIS compliance with basic conditions



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Reversionary status of pensions

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Reversionary status of pension

Can the status of the pension change?

1. Can a non-reversionary pension be converted to a reversionary pension?
2. Can you change the reversionary status after pension commencement with a BDBN?
3. What happens when a nominated reversionary beneficiary is no longer a spouse?
4. What happens when a nominated reversionary beneficiary dies before the pensioner?

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Reversionary status of pension

Can the status of the pension change?

5. Can a pension member nominate multiple reversionary beneficiaries?
6. Does a reversionary TRIS convert to an ABP when it reverts to the beneficiary?
7. Does a reversionary pension need to be paid as lump sum if commuted?

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Questions?

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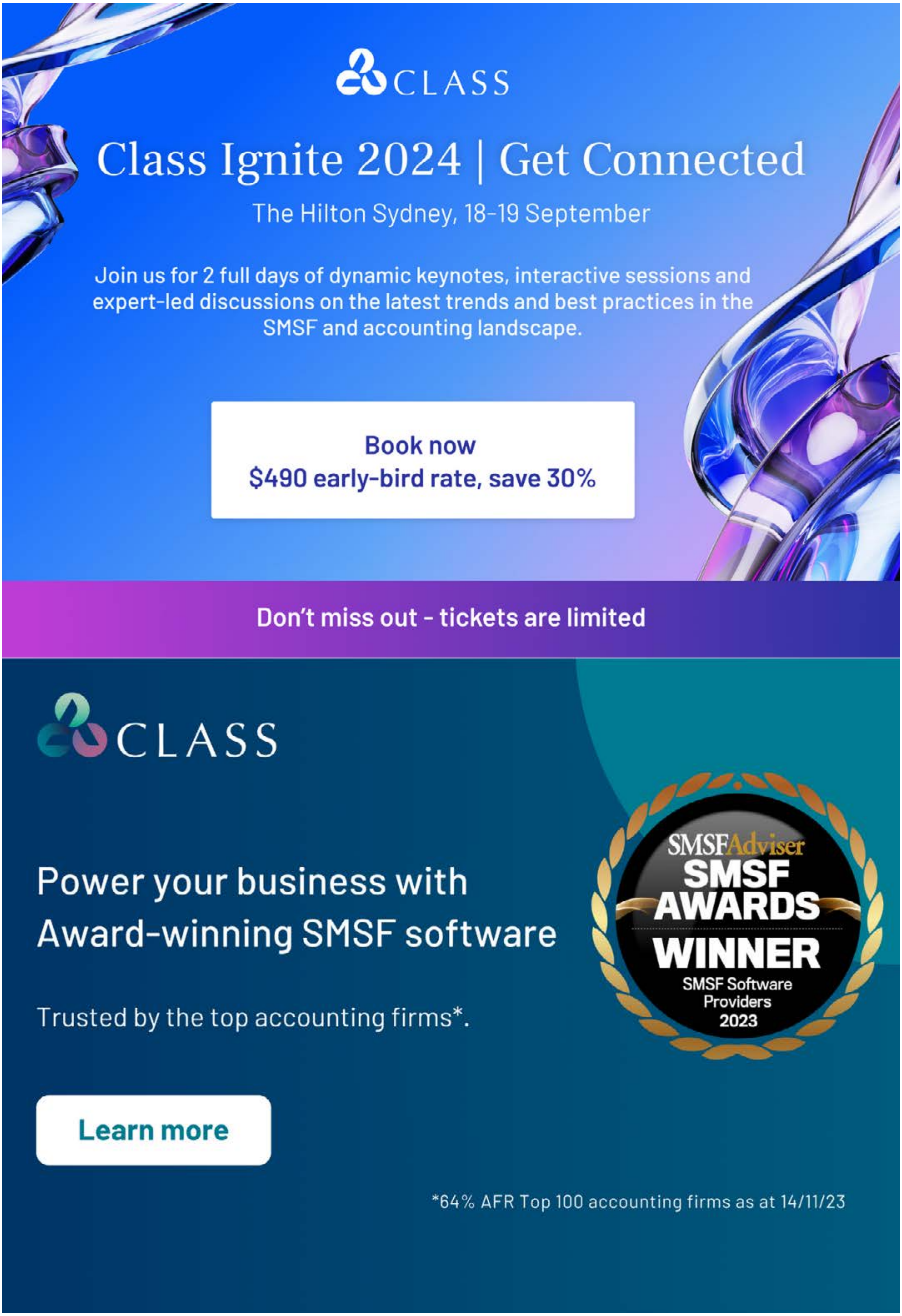
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