

The SMSF State of Play  
October 2023



Presented by Shelley Banton, Head of Education, October 23, 2023

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**Agenda**

- ATO releases and focus areas
- Where are we on NALI?
- Death benefits v member benefits
- Valuations of complex assets
- Key audit risks and responses

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### ATO Updates

- Addendum to TR 2013/5 re TBC
- Draft PSLA's on hold 2023
- Security Over Assets
- LRBA new Benchmark Rate



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### ATO Release: PSLA 2023/1




ATO applies rectification direction (RD) to SMSF trustee for SIS breach




SIS9 SIS requires a person to take action to and evidence the RD is complied with



Trustee must comply with the RD within the specified timeframe (6mths typically)



No penalty for not complying, but 10 penalty units for missing the deadline

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### ATO Release: TA 2023/2




SMSF owns special purpose vehicle for property development



Non-arm's length arrangements shift profits to SMSF concessionally taxed



Dividends and other income may be NAL as well as any capital gain on disposal



ATO is scrutinising these arrangements. Refer also SMSFRB 2020/1

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### ATO Focus Areas



- Illegal early access warnings & trustee disqualifications
- Notice to ATO before reinjecting COVID 19 funds (QC 66700 & QC 66719)
- Voluntary disclosure: use new form (QC 49178)
- Charges over Fund Assets – property title searches

**asf audits**

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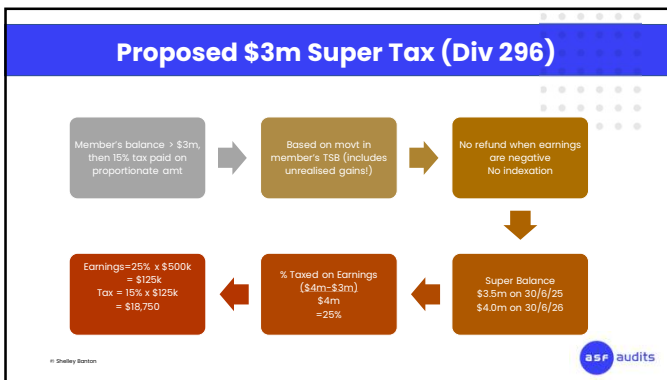
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### Proposed \$3m Super Tax (Div 296)



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    graph TD
      A["Member's balance > $3m, then 15% tax paid on proportionate amt"] --> B["Based on movt in member's TSB (includes unrealised gains)"]
      B --> C["No refund when earnings are negative  
No indexation"]
      C --> D["Super Balance  
$3.5m on 30/6/25  
$4.0m on 30/6/26"]
      D --> E["% Taxed on Earnings ($4m-$3m)  
$4m  
=25%"]
      E --> F["Earnings=25% x $500k = $125k  
Tax = 15% x $125k = $18,750"]
  
```

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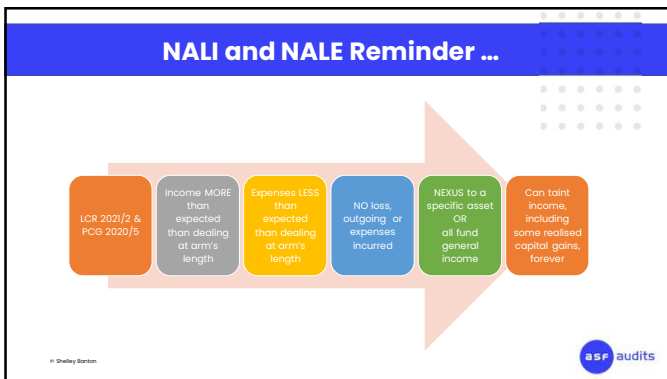
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### NALI and NALE Reminder ...



- LCR 2021/2 & PCG 2020/5
- Income MORE than expected than dealing at arm's length
- Expenses LESS than expected than dealing at arm's length
- NO loss, outgoing, or expenses incurred
- NEXUS to a specific asset OR all fund general income
- Can taint income, including some realised capital gains, forever

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### Treasury Laws Amendment Bill (Measures For Consultation) 2023

Limited to SMSFs and small APRA funds

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NALI is twice the level of a general expense

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Exempts: Contributions Expenditure (prior to 2018-19 FY)

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If 2x breach is greater than all fund income, then NALI is fund income x 45%



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10

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### Case Study: Accounting Services



Fund Income \$100,000	No NALI	NALI at 45%	NALI at 45% x 45% x (2 x Exp)	NALI at 45% x 45% x (2 x Exp)
Value of Service	\$0	\$0	\$5,000	\$1,000
Tax	\$15,000	\$0	\$13,500 <small>(15% x \$90K)</small>	\$14,700 <small>(15% x \$98K)</small>
NALI	\$0	\$45,000	\$4,500	\$900
After-Tax Income	\$85,000	\$55,000	\$82,000	\$84,400

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11

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### ATO: Death Benefit v Member Benefit

Industry: Benefit paid after death is a death benefit

Facts & circumstances: Trustee would know member died

ATO update QC 42473 (no ruling passed)

PBRs said benefits were member benefits

Member requests benefit then dies

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12

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### Problems Concerning Market Valuations


- R8.02B SISR requires assets valued at mkt value annually
- ATO: independent valuation not required each year!

Onus on trustees
- Consider if asset complex or material

Valuation becomes materially inaccurate

New valuation or other forms of evidence





13

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### Property Market Valuations

• Valuations are not required annually, but additional evidence required

• Be wary of online valuations

• Council rates r/a for residential property, only vacant

**Commercial**

• Online valuations not readily available - coming soon?

• Market valuations or appraisals from a real estate agent, capitalisation of net income, comparable sales

**Property Development**

• Valuations include assumptions about the condition when complete


• Risks have a material impact on value such as increased costs, market downturn, disputes

**In-specie Contributions**

• If less than MV then NAI on income and capital gains

• Mix of \$ and contribution contract must stipulate what is being paid for by cash v contribution

• Refer: LCR 2021/2 Example 5



14

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### Market Value of Rent

ALSO a requirement under r8.02B SISR

What happens if property leased to a related party is revalued during a lease and the rent is higher?

Can rent from related parties be adjusted for property improvements?

Does Air BNB rent reflect market value?



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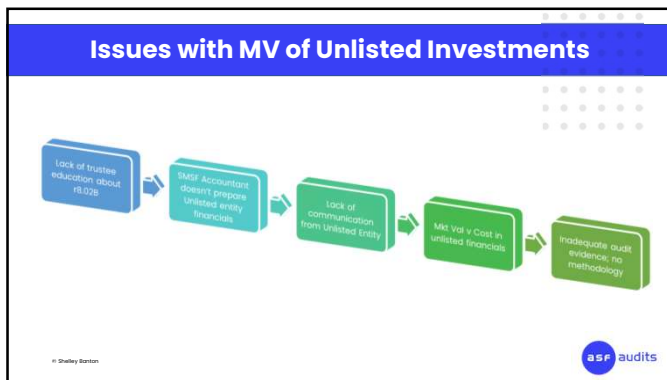
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### 2) r4.09A Common ACR

- R4.09A - Assets not in name of trustee ATF SMSF
- SMSF Auditor Independence
- Title to assets compromised
- Declaration of Trust????
- Acknowledgment of Trust
- Will it be OK at audit time?

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### 3) Related Party Bare Trust No LRBA

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### 4) The Continuation of IHAs

- Be aware of the IHA limits in lead up to June 30
- SMSF trustees "playing around the 5% IHA edges"
- Proactively identify related parties. Each year.
- Don't Bust the Trust!

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21

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### 5) Current Lease Agreement

- Related party leases
- Must be at arm's length
- Under r13.22C must be in place at all times
- Cannot lapse. Ever.
- "Busting the Trust" cannot be reversed

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### 6) Derivatives

R13.14 SISR – Requires a Derivative Risk Statement

Approved Exchange listed on Schedule 4 SISR

DRS not required for Rights Issues

"JUST SAY NO" when Crypto is involved

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### 7) Work Test Gone .... But ....

**1 July 2022**


- No longer required to satisfy the work test to make NCC
- Required for personal deductible contributions
- Work test now under the Tax Act, not SIS!

**Personal Deductible Contribution 2023 FY**

- Member to lodge notice of intent (NAT 7121), form or letter with the trustee earlier of:
  - 1) day before FIR lodged OR
  - 2) before end of the income year after contribution made

**Notices of Intent Must be Acknowledged (QC 24422)**

- Required to acknowledge notice without delay
- Date, member, total amt of personal contributions, amt of personal deductions

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**Any Questions?**

**The SMSF State of Play Oct 2023**

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