INSTITUTE OF FINANCIAL PROFESSIONALS AUSTRALIA

SUPER QUARTERLY UPDATE – Session 2: Mar to May 24

Presented by

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Questions?

Please ask questions through the Q & A pod not on the chat pod.

Not Answered Questions will be emailed to you along with the **webinar recording**

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Agenda

Legislative update

Regulator update

Other developments / announcements

Legislative update

Family law super payments & Div 293

- *Taxation Administration (Meaning of End Benefit) Instrument 2024*
- *Status: registered as F2024L00131 on 2/2/24*
- *Start date: 3/2/24*
- *Key measures:*
  - *Ensure family law super payments are not ‘end benefits’ under s133-130 in Schedule 1 to the Taxation Administration Act 1953 and therefore do not trigger an individual’s liability to pay Div 293 tax that has been deferred to a debt account*
  - *Applies to defined benefit funds only*

Div 296 tax

- *Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023 and the Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2023*
- *Status: before House of Representatives*
- *Start date: 1/7/25*
- *Key measures:*
  - *Impose extra 15% tax (aka Div 296 tax) on a proportion of earnings for individuals whose TSB exceeds $3m*
- *Senate economic legislation committee (SELC) recommended the Bills be passed without amendments on 10/5/24 → note the Coalition and Greens' dissenting report*

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Div 296 tax

Coalition and Greens dissenting report

LIBERAL

- *The Bills should not be passed*
- *Coalition referred to IFPA and other professional bodies Div 296 submissions and comments made at the recent public inquiry hearing on the Div 296 Bills*
- *Senators Andrew Bragg and Dean Smith*

THE GREENS

- *Lower threshold to $2m as this will "still only hit the wealthiest 1 % of accounts" and index $2m threshold to inflation*
- *Abolish LRBAs as "allowing SMSFs to continue borrowing to purchase investment properties under this proposed tax structure would be a recipe for disaster"*
- *Senator Nick McKim*

Objective of super

- *Superannuation (Objective) Bill 2023*
- *Status: before Senate*
- *Start date: 28 days after Royal Assent*
- *Key measures:*
  - *Define the objective of superannuation: ‘to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way”*
  - *Require policy makers to assess future changes to super legislation for compatibility with the objective*
- *SELC recommended the Bill be passed*

NALE

- *Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023*
- *Status: before House of Representatives*
- *Start date: the changes apply in relation to income derived in the 2018-19 income year or a later FY, and to expenses incurred or expected to have been incurred in the 2018-19 or later FYs*
- *Key measures – amend the rules for non-arm's length expenses (NALE) for super funds as follows:*
  - *Exempt APRA funds from NALI provisions (SMSFs and SAFs still subject to NALI)*
  - *Limit all general expenses to 2 x shortfall amount*
  - *A fund's total non-arm's length component cannot exceed the fund's taxable income minus deductions*
- *Note – ATO's compliance approach in PCG 2020/5 expired 30/6/23 → potential extension to the 2023/24 financial year?*
- *Bill held up due to the disagreement over the proposed instant asset write off amendments in Bill*

Increase to penalty unit regime

- *Crimes and Other Legislation Amendment (Omnibus No. 1) Bill 2024*
- *Status: before House of Representatives*
- *Key measures: increase penalty unit for Commonwealth criminal offences from $313 to $330 from 1 July 2024*
- *Value of penalty unit indexed every three years to CPI – next indexation to occur on 1 July 2026*
- *Historical penalty unit rates:*

Date when infringement occurred	Penalty unit amount
Up to 27 Dec 2012	*$110*
28 Dec 2012 to 30 July 2015	*$170*
31 July 2015 to 30 June 2017	*$180*
1 July 2017 to 30 June 2020	*$210*
1 July 2020 to 31 Dec 2022	*$222*
1 Jan 2023 to 30 June 2023	*$275*
1 July 2023 to 30 June 2024	*$313*

Increase to penalty unit regime

Common SMSF administrative penalties

Provision in SISA	Description	Administrative penalty
Subsection 34(1)	Operating standards	20 penalty units
Subsection 35B(1)	Accounts and statements	10 penalty units
Subsection 65(1)	Lending to members and relatives	60 penalty units
Subsection 67(1)	Borrowings	60 penalty units
Subsection 84(1)	In-house assets	60 penalty units
Subsection 103(1)	Duty to keep minutes	10 penalty units
Subsection 103(2)	Duty to keep minutes of meetings	10 penalty units
Subsection 103(2A)	Retention of copy of section 71E election	10 penalty units
Subsection 104(1)	Duty to keep records of changes of trustees	10 penalty units

Provision in SISA	Description	Administrative penalty
Subsection 104A(2)	Declaration of recognition of obligations and responsibilities	10 penalty units
Subsection 105(1)	Duty to keep and retain member or beneficiary reports	10 penalty units
Subsection 106(1)	Duty to notify of significant adverse events	60 penalty units
Subsection 106A(1)	Duty to notify of change in status of entity	20 penalty units
Subsection 124(1)	Written appointment of investment managers	5 penalty units
Subsection 160(4)	Education direction	5 penalty units
Subsection 254(1)	Information to be given to the regulator	5 penalty units
Subsection 347A(5)	Participation in the regulator's statistical program	5 penalty units

Source: ATO website QC 42478

QAR first tranche

- *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024*
- *Status: before House of Representatives. Referred to Senate Committee on 27/3/24 with report due on 20/6/24*
- *Start date: generally, after date of Royal Assent*
- *Key measures:*
  - *Implement tranche 1 of the QAR recommendations by providing legal certainty for the payment of financial adviser fees from a member's super account and remove red tape that currently adds to the cost of financial advice*

Regulator update

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Financial dependency criteria clarified

ATO PBR 1052187560814 – ATO ruled beneficiary was not financially dependent on deceased, therefore not a death benefits dependant

Facts:

- *Beneficiary was >18yo at time of father’s death and was one of the deceased’s 3 children*
- *Deceased was sole member of his SMSF*
- *Will stated net assets of his estate were to be distributed equally among the three children, including the beneficiary*
- *Beneficiary did not live with deceased but deceased paid the beneficiary:*
    - *A monthly allowance, extracurricular school activities, uni fees, private health insurance and medical expenses*

Meaning of death benefits dependant

A death benefits dependant of a person who has died is (s302-195(1) ITAA97):

a) *The deceased person's spouse or former spouse, or*

b) *The deceased person's child, aged less than 18, or*

c) *Any other person with whom the deceased person had an interdependency relationship under section 302-200 just before he or she died, or*

d) *Any other person who was a dependant of the deceased person just before he or she died*

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Financial dependency criteria clarified

ATO decision

- *Beneficiary was not substantially reliant on regular and continuous financial support from the deceased for their ordinary living expenses → therefore not a death benefits dependant*
- *No evidence that beneficiary had any financial obligations towards major household expenses*
- *Parent 2 had ability to provide substantial financial support to the beneficiary*
- *Beneficiary had been working part-time and could contribute towards their ongoing personal expenses*
- *ATO conclusion – while there was some evidence supporting the beneficiary receiving financial support from the deceased, financial dependency was not proven*
- *Key takeaway – mere monetary gifts are insufficient to establish financial dependency → there must be a relationship where one party relies on the other for their ordinary living expenses*

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Interdependency criteria clarified

ATO PBR 7910161077376 – ATO ruled an interdependency relationship existed between the deceased and the beneficiary

Facts:

- *Beneficiary was the parent of the deceased*
- *The deceased's estate received a death benefit payment from the deceased's super fund*
- *Beneficiary acted as the LPR and was the only nominated beneficiary of the estate*
- *Beneficiary applied to the ATO for a private ruling to confirm interdependency status*
- *Beneficiary provided assistance with domestic duties and personal care during the deceased's periods of illness*
- *Deceased was partially financially dependent on the beneficiary*

Interdependency criteria clarified

Meaning of interdependency relationship

An interdependency relationship is defined under s302-200(1) ITAA97

Two persons (whether or not related by family) have an interdependency relationship if:

a) *They have a close personal relationship, and*

b) *They 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 domestic support and personal care*

Interdependency criteria clarified

Other matters to take into account

Other matters regarding circumstances of relationship include (s302-200.01(2) ITAR21):

a) *The duration of the relationship*

b) *The ownership, use and acquisition of property*

c) *The degree of mutual commitment to a shared life*

d) *The care and support of children*

e) *The reputation and public aspects of the relationship*

f) *The degree of emotional support*

g) *The extent to which the relationship is one of mere convenience*

h) *Any evidence that the parties intend the relationship to be permanent, and*

i) *The existence of a statutory declaration signed by one of the persons to the effect that the person is, or (in the case of a statutory declaration made after the end of the relationship) was in an interdependency relationship with the other person*

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Interdependency criteria clarified

ATO decision

- *An interdependency relationship existed between the deceased and the beneficiary*
- *All the requirements set out in the legislation had been satisfied → therefore a death benefits dependant*
- *As the beneficiary was the parent of the deceased, 302-195(1)(a) and (b) of the ITAA97 were not applicable*
- *Instead, to meet the definition of a death benefits dependant, the beneficiary needed to demonstrate an interdependency relationship with the deceased (as stated in paragraph 302-195(1)(c) of the ITAA97)*

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ATO PBR on residency of SMSF

ATO PBR 1052213316457 – ATO ruled an SMSF was considered an Australian fund for the purposes of s295-95(2) ITAA97

Facts:

- *An SMSF was established in Australia and had 3 members who acted as individual trustees*
- *The fund's assets included cash, term deposits, shares in listed Australian companies and listed trusts and other assets*
- *One of the members left Australia with the intention of returning within the next 5-6 years. The other two members remained in Australia*
- *One of the remaining members held 100% of the SMSF's assets and was the only active member, with the last contribution being an NCC*
- *The member residing overseas regularly visited Australia and intended to return within the foreseeable future*

ATO PBR on residency of SMSF

ATO decision

- *SMSF was considered an Australian super fund as it satisfied all the necessary tests:*

    1. *The SMSF was established in Australia*

    2. *The high-level and strategic decision-making processes for the SMSF were undertaken by the member residing in Australia, with consultation from the other two members*

    3. *As there were no further contributions made to the SMSF after the member residing overseas became a foreign resident, and the remaining active member had commenced an income stream, the SMSF satisfied the active member test*

- *Note – still waiting on govt to relax the SMSF and small APRA fund residency rules*

ATO PBR on cashing out personal deductible contributions

ATO PBR 7910161077376 – ATO clarified that super fund members can make personal contributions, claim a tax deduction on those contributions, and then cash out the contributed amount without triggering tax-avoidance provisions (Part IVA rules)

Facts:

- *Fund member had been making personal super contributions over several years, claiming a tax deduction for those contributions*
- *The member raised concerns about whether they could continue this practice and cash out part of their retirement savings balance tax-free in the year of their retirement*

ATO PBR on cashing out personal deductible contributions

ATO decision

- *Member could claim a tax deduction for the personal super contributions*
- *The general anti-avoidance rule (Part IVA) did not apply in this case as member had an established practice of making deductible super contributions, and the contribution made in the financial year of retirement was consistent with that practice*
- *Key takeaway – consistency was a key factor in establishing that the sole or dominant purpose, which is crucial for the application of Part IVA, was not solely for obtaining a tax benefit*

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Crypto scam losses for SMSFs

- *SMSF trustees are reporting losses associated with crypto investments*
- *Losses attributed to various factors, including scams, theft, collapsed crypto trading platforms, lost passwords, and scammers impersonating the ATO*
- *ATO is advising trustees to seek financial advice before venturing into this asset class*
- *Separately, the ATO will acquire data from crypto designated service providers for the 2023-24 financial year through to the 2025-26 financial year and match it to ATO systems to identify and treat clients who failed to report a disposal of crypto assets in their income tax return*

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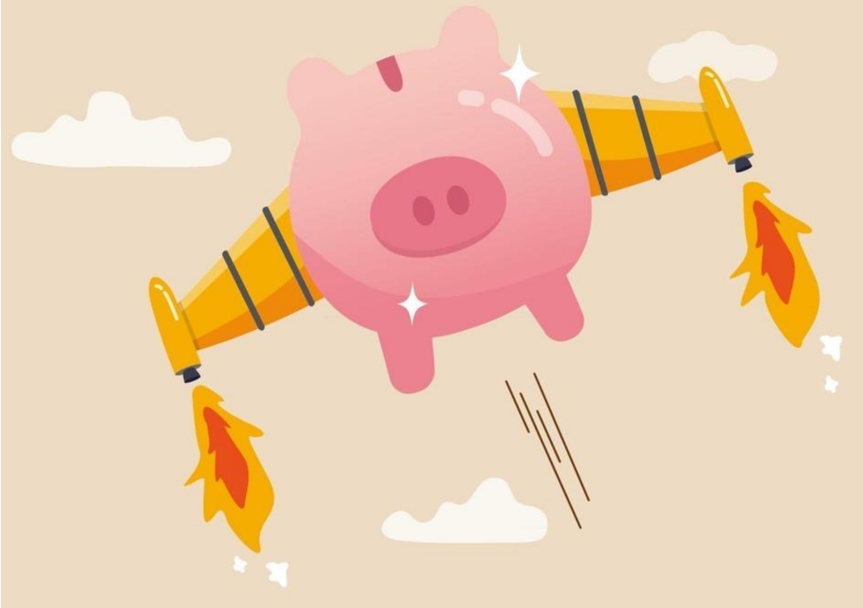
SMSF statistical report – March 2024

SMSF sector continues to grow. Highlights include:

- *Total number of SMSFs now exceeds 616,400*
- *Majority are two member funds with 1,148,481 total members*
- *The total estimated assets of SMSFs are $932.9 billion*
- *The top asset types held by SMSFs (by value) are:*
  - *listed shares (29% of total estimated SMSF assets)*
  - *cash and term deposits (16%)*
- *53% of SMSF members are male and 47% are female*
- *87% of SMSF members are 45 years or older*



ASIC to review death benefit claims

- *ASIC is undertaking a review of industry practices and compliance with laws relating to member services, focussing initially on how trustees handle death benefits claims*
- *ASIC has revealed areas for improvement in trustees' public communications*
- *Quality of info around BDBNs provided to members was lacking in several areas*
- *Trustees must consider whether their arrangements for dealing with death benefit claims are fit for purpose*

Other developments / announcements

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2024/25 super thresholds

	2023/24	2024/25
General TBC	$1,900,000	Unchanged
Defined benefit income cap	$118,750	Unchanged
TSB eligibility thresholds	No NCCs if TSB > $1.9m	No NCCs if TSB > $1.9m
CC cap	$27,500	$30,000
NCCcap	$110,000	$120,000
Small business CGT lifetime cap	$1,705,000	$1,780,000
Low rate cap amount	$235,000	N/A
Untaxed plan cap amount	$1,705,000	$1,780,000
Govt co-contribution	$43,445 / $58,445	$45,400 / $60,400
SG rate	11% SG	11.5% SG
Maximum SG contributions base	$62,270 per quarter	$65,070 per quarter

TSB at 30 June 2024 (for 2024/25)	Max NCC cap
< $1.66m	$360,000 – 3 years
$1.66 to < $1.78m	$240,000 – 2 years
$1.78m to < $1.9m	$120,000 – 1 year
$1.9m +	$0

2024 Federal Budget super measures

What was announced

- SG on paid parental leave
- Recovery of unpaid super
- Funding for payday super and SuperStream

What was left out

- No further details on Div 296 tax
- No legislative fix to the NALI / NALE rules
- Allow for people to exit certain legacy income streams
- Relax the SMSF and SAF residency rules

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