30 January 2026

Pre-Budget Submissions
The Treasury
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PARKES ACT 2600
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2026-27 Pre-Budget Submission

The Institute of Financial Professionals Australia (**IFPA**) welcomes the opportunity to provide this 2026-27 Pre-Budget Submission. Our submission includes both tax, superannuation and financial services matters for your consideration.

About the Institute of Financial Professionals Australia

The Institute of Financial Professionals Australia (originally known as Taxpayers Australia, and more recently Tax & Super Australia) has been serving members for over 100 years and is a leading financial professionals association dedicated to fostering excellence and professional development in the tax, accounting, superannuation, financial planning, and advisor fields. With a membership and supporter base of over 35,000 practitioners and a strong commitment to advancing knowledge, promoting ethical practices, and providing valuable resources, IFPA empowers professionals to excel in their careers and make a significant impact in the industry.

This submission is made by us on behalf of our members' interests.

If you have any questions in relation to this submission, please contact Natasha Panagis on (03) 8851 4535 or n.panagis@ifpa.com.au

Yours faithfully,

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1.0 Executive summary

1.1 Summary of tax recommendations

We believe a number of tax related changes should be legislated, and some changes are also suggested on the policy front. These are outlined in our submission below:

- **Recommendation 2.1** – The need for broad based tax reform
- **Recommendation 2.2** – Address bracket creep on personal tax
- **Recommendation 2.3** – Division 7A – disguised distributions by private companies
- **Recommendation 2.4** – Disclaimer of trust distributions
- **Recommendation 2.5** – Repeal or amend s100A ITAA 1936
- **Recommendation 2.6 –** Make the boost in the IAWO permanent and increase the thresholds
- **Recommendation 2.7** – Repeal the luxury car tax
- **Recommendation 2.8** – Increase the car depreciation limit
- **Recommendation 2.9** – Increase the GST registration threshold for not-for-profits

1.2 Summary of superannuation and financial services recommendations

We believe the following superannuation and financial services changes should be made to the law, which we have outlined in our submission below, including:

- **Recommendation 3.1** – Consolidating thresholds
- **Recommendation 3.2** – Consistency of indexation of thresholds
- **Recommendation 3.3** – Abolition of the work test for personal deductible contributions
- **Recommendation 3.4** – Streamline the personal deduction process
- **Recommendation 3.5** – Simplify spouse contribution splitting
- **Recommendation 3.6** – Protecting an individual's unused concessional contributions cap
- **Recommendation 3.7** – Fixes to the death benefit system
- **Recommendation 3.8** – Amendments required to non-arm's length expense and income rules
- **Recommendation 3.9** – Failure to make minimum pension payments
- **Recommendation 3.10** – Breaches of regulation 13.22D of the SIS Regs should be rectifiable
- **Recommendation 3.11** – Remove the auto non-compliance for breaching section 17A and failing to be an Australian super fund
- **Recommendation 3.12** – Relaxing residency rules
- **Recommendation 3.13** – Onshoring and offshoring issues

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- **Recommendation 3.14** – TBAR reporting should be annual for SMSFs
- **Recommendation 3.15** – Fix Division 296 measure
- **Recommendation 3.16** – Affordability and accessibility of financial advice
- **Recommendation 3.17** – Enable financial adviser access to the ATO portal

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2.0 Tax matters

2.1 The need for broad based tax reform

Australia's tax system across the Federation is no longer fit for purpose. While favourable commodity prices have helped deliver modest surpluses over recent years, inexorable pressures from the outlays side, including defence, the NDIS, aged care and debt servicing costs suggest a long-term run of deficits and an ever-growing mountain of debt. This creates intergenerational unfairness that will only grow over time.

Productivity is one of the main drivers of economic prosperity. Australia's performance in this area has been very weak of late, which has no doubt contributed to the country dipping in and out of being in a per capita recession in recent times. While there are other economic levers that need to be engaged to bring about much needed improvement, tax reform is an essential element which requires attention. That said, the September 2025 Roundtable process was a highly controlled process that fell short of endorsing specific reform proposals.

While earlier reviews such as the Henry Review should be referenced, our association would strongly support a comprehensive review of our tax and transfer system, including the tax mix, and with no options ruled in or out from the outset.

2.2 Address bracket creep on personal tax

At the very least, the government should either index the thresholds or cut the personal tax rates so that individuals are not paying more tax without having a real wage increase through a promotion for example. His should be done explicitly on an annual basis. The revised Stage 3 tax cuts went some way to addressing creep, but we are again seeing record personal taxes collected at a federal level. The two very modest tax cuts legislated for 1 July 2026 and 1 July 2027 are nowhere near enough to compensate working individuals who are seeing more and more of their earnings being taxed at higher rates.

2.3 Division 7A – disguised distributions by private companies

Changes to Division 7A which were announced by the previous government in the 2016-17 Budget drew on a number of recommendations made by the Board of Taxation's post implementation review of Division 7A. These changes included:

- A self-correction mechanism to rectify inadvertent breaches promptly
- Safe harbour rules to provide certainty and simplify compliance
- Simplified rules regarding complying Division 7A loans, and
- A number of technical amendments.

The ongoing delay in implementing these policies has resulted in increased complexity and compliance costs for practitioners and their clients.

Meanwhile, we note last year's Full Federal Court decision in the case of Bendel, where it was held that the unpaid present entitlement of a private corporate beneficiary of a trust does not constitute a loan to the trust. The Commissioner has appealed to the High Court against the decision. It is an issue that has created a high level of concern among practitioners and one that may need sorting out through legislative change, regardless of the High Court's decision.

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2.4 Disclaimer of trust distributions

In 2022 the High Court ruled in Carter's case that a beneficiary who validly executes a disclaimer in relation to their present entitlement to trust income after year-end cannot escape a tax liability for the relevant amount as a beneficiary's liability to tax is expressed under s97(1) in the present tense. This outcome creates a potential problem for those beneficiaries who may not become aware of their entitlement until well after the close of the income year, which the High Court acknowledged in its Reasons for Decision.

The former government noted these issues and undertook to amend the law if the High Court leaves some beneficiaries in a position where they are taxed on an entitlement they may never receive. Alternatively, beneficiaries may not be able to make disclaimers when they have valid reasons for wanting to do so. It is suggested the law be amended to allow s97(1) to operate on a retrospective basis where a beneficiary makes a valid disclaimer within a reasonable time of becoming aware of their present entitlement or the due date of lodgement of the relevant return.

2.5 Repeal or amend s100A ITAA 1936

It is clear from explanatory materials and contemporary statements from government ministers that s100A was intended to apply to egregious trust stripping arrangements involving the introduction of non-tax or low-tax entities as new beneficiaries. The decisions by the Full Federal Court in *Guardian* and *BBlood* confirms that the provision can, in fact, apply much more broadly depending on the circumstances, but suggests the provision was not needed for at least one of the income years in dispute for which the Commissioner's Part IVA determination was upheld. The *Guardian* decision suggests the Part IVA counterfactual may be more readily sustained than the alternative hypothesis in s100A.

Rather than rely on a specific anti-avoidance provision that was drafted at the height of the tax avoidance era and two years before Part IVA was introduced, our association recommends repealing the provision altogether.

Failing that, the current uncertainty around what represents ordinary family or commercial dealings would be much reduced by deeming the application of funds representing the present entitlements to trust income or capital between members of a family group as defined under subdivision 272-D of the *Income Tax Assessment Act 1936* (**ITAA 1936**) to fall within the exception.

2.6 Make the boost in the IAWO permanent and increase the thresholds

Small businesses need the cash-flow benefits of a stable, long-term and scaled up regime for writing off the cost of acquiring depreciating assets. Following the end of the temporary full expensing regime in June 2023, the government has been drip feeding extensions of the $20,000 threshold on a year by year basis.

To give small businesses confidence to invest, the threshold should be increased to $50,000 for businesses with an annual turnover of less than $50 million. These improvements in the IAWO incentive should be made permanent for qualifying businesses.

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2.7 Repeal the luxury car tax

With the local manufacture of cars coming to an end many years ago, it is difficult to justify the continued application of the luxury car tax (**LCT**).

In our association's view, the LCT is a clumsy and arbitrary proxy for luxury which raises little revenue and fails to promote vertical or horizontal equity. We do not impose a luxury tax on high end jewellery, fashion items or yachts, so why levy an additional tax impost on moderately expensive cars? Australia's robust progressive income tax system, coupled with its largely means-tested welfare system, is a much more effective and comprehensive way of redistributing wealth.

Short of its abolition or phasing out, the LCT threshold should be significantly increased. The LCT today applies to far more vehicles than when it was first introduced. Increasing the threshold to, say, $100,000 would limit its application to cars that most fair-minded people would regard as luxury vehicles.

2.8 Increase the car depreciation limit

As is the case with the LCT, the car depreciation limit has not kept up with automotive industry changes and today applies to far more vehicles than it did on its introduction. While our association has no objection in principle to having some sort of cap on business depreciation for cars, we consider the threshold should be raised to somewhere around $100,000.

2.9 Increase the GST registration threshold for not-for-profits

The GST registration threshold for not-for-profits (**NFPs**) has been set at $150,000 for a number of years now. While this is double the registration threshold for other enterprises, $150,000 is a relatively low amount. Singapore, for example, has a threshold of S$1 million (AUD 1,130,000) for NFPs.

To avoid NFPs incurring compliance costs by exceeding the current low threshold, the threshold should be significantly increased – we would recommend doubling it to $300,000. This would help these organisations focus more on pursuing their core mission rather than accounting for relatively trivial net GST amounts.

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3.0 Superannuation and financial services matters

3.1 Consolidating thresholds

The superannuation system currently has a significant number of different thresholds for various measures, including:

- General transfer balance cap (**TBC**) ($2 million)[1]
- Total superannuation balance (**TSB**) (varies depending on the measure)[2]
- Disregarded small fund assets (TSB > $1.6 million)[3]
- Unused concessional contributions carry forward cap (TSB < $500,000)[4]
- Bring forward rule for non-concessional contributions (**NCC**) (up to $360,000 where TSB < $1.76 million)[5]
- Extension of work test exemption (TSB < $300,000)[6]

Some of these thresholds such as the disregarded small fund assets, the unused concessional contributions carry forward cap, and the work test exemption have not been reviewed since inception. As such, we believe that many of these thresholds, in particular, the disregarded small fund assets and the bring forward rule thresholds, should be consolidated to a single threshold of $2 million (ie, the general TBC, as indexed).

Furthermore, streamlining certain thresholds, such as removing the three tier TSB thresholds in order to utilise the bring forward rule will also reduce the complexity involved when making a bring forward NCC, particularly if an individual is close to the relevant TSB threshold. We suggest having one single threshold which is aligned with the general TBC, where individuals with a TSB below the general TBC will be allowed to utilise the three year bring forward rule. This streamlined process will help simplify our complex superannuation rules making the retirement planning process simpler for many Australians.

3.2 Consistency of indexation of thresholds

There is inconsistency in the superannuation system in how various thresholds are indexed, including:

- Proportional indexation for personal TBC[7]
- Indexation of general TBC in increments of $100,000, depending on CPI[8]
- The proposed indexation for the Division 296 tax thresholds of $3 million and $10 million, depending on CPI

[1] Section 294-35(3) *Income Tax Assessment Act 1997* (Cth) (**ITAA 1997**)
[2] Section 307-230 ITAA 1997
[3] Section 295-387 ITAA 1997
[4] Section 291-20(3) ITAA 1997
[5] Section 292-85(3) ITAA 1997
[6] Regulation 7.04(1A) *Superannuation Industry (Supervision) Regulations 1994* (Cth) (**SIS Regs**)
[7] Section 294-40 ITAA 1997
[8] Sections 960-265, 960-280(1) and 960-285(7) ITAA 1997

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- General concessional contributions cap of $30,000, indexed in increments of $2,500 in line with average weekly ordinary time earnings (**AWOTE**)[9]

We believe there needs to be a consistent approach to threshold indexation. These thresholds are subject to different methods of indexation adding to complexity. In particular, we recommend:

- That the thresholds should be indexed under the same formula tied to AWOTE (rather than CPI)
- That proportionate indexation of the TBC should be abolished and instead, ensure all member's personal TBC is aligned with the general TBC. This change would see a member who has used a portion of their TBC to benefit from indexation in increments of $100,000
- The indexation of the Division 296 thresholds should be tied to the indexation of the TBC so that each of those thresholds move in tandem (ie, 1.5 times the TBC for the $3 million threshold and 5 times the TBC for the $10 million threshold).

Expanding the application of indexation to all pension members would streamline administration for the ATO, advisers, and members alike. The financial impact of broader TBC indexation, including a marginal reduction in tax revenue, is expected to be minimal, especially when weighed against the ongoing costs of administering indexation and repeatedly redesigning complex systems each time it takes effect. Simplification, particularly relating to proportional indexation for personal TBC, will reduce the incidence of unintended cap breaches and subsequent penalties to superannuation members.

Other thresholds that require indexation

As mentioned in section 3.1, many superannuation thresholds have not been reviewed since inception as they are not subject to indexation. Such thresholds include:

- Downsizer contributions ($300,000)[10]
- The CGT small business retirement exemption ($500,000)[11]
- Unused concessional contributions carry forward cap ($500,000)[12]
- Disregarded small fund assets ($1.6 million)[13]
- Division 293 tax threshold ($250,000)[14]

We recommend that all superannuation thresholds be subject to indexation to ensure they remain current in real terms by keeping up with inflation, salary/wage increases and cost of living increases.

3.3 Abolition of the work test for personal deductible contributions

Since 1 July 2022, individuals aged between 67 to 74 years old have been able to make or receive personal contributions and salary sacrifice contributions without meeting the work test, subject to existing contribution caps.

However individuals between 67 to 74 years old are still required to meet the work test to claim a deduction for personal contributions. Our association believes that this existing work test requirement

[9] Sections 291-20(2) and 960-285(7) ITAA 1997
[10] Section 292-102 ITAA 1997
[11] Section 152.320 ITAA 1997
[12] Section 291.20(3) to (7) ITAA 1997
[13] Section 295.387 ITAA 1997
[14] Division 293 ITAA 1997, last reviewed 2017/18

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should also be abolished. This change will simplify superannuation rules, create a more equitable treatment across age groups and encourage greater work participation amongst older Australians.

3.4 Streamline the personal deduction process

The current administrative process required to claim a tax deduction for personal superannuation contributions is unnecessarily complex. In particular, the requirement to first notify the fund via an approved form of an intent to claim a deduction is administratively burdensome.

We believe this process should be streamlined to make it easier for superannuation fund members to claim a deduction for personal superannuation contributions.

For example, members could make an election as part of their individual tax return and the ATO notify the relevant superannuation fund on behalf of the member. This would avoid unnecessary paperwork and reduce the number of errors with claiming deductions for personal contributions.

3.5 Simplify spouse contribution splitting

Spouse contribution splitting is a widely used strategy that allows a superannuation member to split concessional contributions made during the financial year to their spouse's super account, either within the same fund or a different one. This strategy offers significant benefits, particularly by helping to equalise superannuation balances between spouses, which is especially valuable for spouses with little or no superannuation savings.

Despite its advantages, the process for splitting contributions between spouses remains unnecessarily complex. Simplifying this process would encourage greater uptake, enabling a more equitable allocation of retirement savings between members of a couple.

Below are some barriers to spouse contribution splitting:

- **Timeframe for splitting contributions** – currently, concessional contributions are typically split after the end of the financial year in which they were made. Instead of waiting until the following financial year to complete the *Superannuation Contributions Splitting Application* (NAT 15237), we recommend streamlining the process by allowing contributions to be split more easily, such as through the myGov service. Just as rollovers can be processed at any time during the year, contribution splitting should be allowed to occur in the same way.

- **Age limit and retirement status of the receiving spouse** – contribution splitting is not permitted if the receiving spouse is aged 65 or older, regardless of whether they are still working full-time and not close to retirement. Similarly, if the receiving spouse has reached their preservation age and retired, they are also ineligible to receive a contribution split. This creates additional complexity, as individuals frequently transition in and out of retirement.

  In our experience, issues often arise when:

  - The receiving spouse is under 65 when the contribution is made but turns 65 before the splitting application is lodged, making them ineligible.

  - The receiving spouse is still working during the year the contribution is made but retires shortly after the financial year ends (before the split occurs), preventing them from receiving the split.

  To support older spouses in growing their superannuation balances, we recommend removing both the age limit and retirement status restrictions for the receiving spouse.

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3.6 Protecting an individual's unused concessional contributions cap

Under the current law, late payment of superannuation guarantee (**SG**) payments may prevent certain individuals from accessing their unused concessional contributions. As SG amounts that relate to a prior year count towards an individual's concessional contributions cap in the year they are received, an individual's concessional contributions cap under the unused carry forward concessional contributions cap will be reduced or extinguished through no fault of their own.

Our association believes there should be a mechanism in place to allow for an adjustment to an individual's unused carry forward concessional contributions cap where the cap is reduced or extinguished due to the receipt of SG amounts that relate to an earlier year.

A possible solution is to allow individuals to apply to the Commissioner to allocate late SG payments to the relevant year of income.

3.7 Fixes to the death benefit system

Our association believes the death benefit settings of the superannuation system should be reviewed. It is noted that the death benefit system has hardly changed for decades, we believe it no longer meets the needs of modern society. For example, who death benefits can be paid to and the tax settings around death benefit payments must be reviewed.

In the meantime, we believe that the following quick fixes should be implemented:

1. **Death benefit lump sums should not be limited to two payments** – superannuation law[15] specifies that if some or all of a deceased person's superannuation is paid as a lump sum, the lump sum must comprise of:

    - A single lump sum, or
    - An interim amount (that is no more than the value of the benefit at the time of the member's death) and a final lump sum.

    This "two lump sum" limit applies to each dependent. In practice, the law recognises that there may be times where the exact amount to be paid is still being finalised and, in the meantime, a decision has been made to pay a partial death benefit to a dependent(s).

    Having a maximum of two lump sums per dependent poses a problem where the surviving trustee wants or must pay multiple transfers of death benefits, such as different parcels of shares or other fund investments to the beneficiary or to the legal personal representative (**LPR**). Where the deceased member has directed the trustee to make certain transfers to their beneficiary or LPR, the trustee is required to comply with the direction. This means each cash payment, or in-specie transfer of shares or investments to the beneficiary or LPR will be treated as a separate lump sum.

    In this situation, if the death benefit consists of more than two lump sums, the requirements of regulation 6.21 of the SIS Regs would be breached. It is submitted that the requirement to pay no more than two lump sums is unnecessary restrictive, often impracticable, and superfluous (especially given that death benefits are, in any event, required to be paid as soon as practicable).

    Our association would like to see a practical approach provided in the legislation which would allow multiple lump sums being paid as soon as practicable. This change would overcome the technical issues that now exist and inadvertently lead to breaches of the SIS Regs.

[15] Regulation 6.21(2)(a)(ii) SIS Regs

2. **Binding death benefit nomination (BDBN) process** – BDBNs should not lapse after 3 years[16] – like a will, they should apply until they are revoked or replaced.

3. **"Informal" BDBNs should be allowed** – like a will, if a BDBN does not meet the strict requirements, it should nonetheless be binding if it shows a clear intention to deal with superannuation benefits. The case law in this area shows many BDBNs failing on minor technicalities due to an emphasis on the importance of form over substance.

4. **Review superannuation death benefit beneficiary rules** – superannuation law is highly prescriptive when it comes to who may receive a member's death benefits. Under the current framework, death benefits can only be paid directly from a superannuation fund to a limited class of superannuation dependants, namely a spouse (including de facto), a child of any age, and anyone who was either in an interdependency relationship with the deceased or financially dependent on them at the time of death.

   One advantage of this regime is that a valid death benefit nomination allows superannuation benefits to be paid outside the estate, reducing delay, cost and the risk of estate disputes. However, the narrow definition of eligible beneficiaries no longer reflects the diversity of modern family and personal relationships.

   Increasingly, Australians do not fit within traditional family structures. Rates of single-person households have risen significantly, and many individuals have close, enduring relationships with people who fall outside the definition of a superannuation dependant such as siblings, parents, nieces or nephews, other relatives, or non-family members who are effectively treated as family. Despite the strength and longevity of these relationships, members are unable to directly nominate such individuals to receive their superannuation death benefits.

   This creates inequitable outcomes. For example, a member may nominate an adult child of any age or financial independence, yet a single member cannot guarantee their superannuation will pass to a sibling, parent, or other close relative with whom they share a deep personal connection. In these cases, members are forced to direct their superannuation through their estate in order to benefit their chosen beneficiaries, adding unnecessary complexity, cost and risk.

   We recommend a review of the current superannuation death benefit framework with a view to modernising and expanding who may receive a death benefit. Consideration should be given to adopting a broader concept of **eligible superannuation beneficiaries**, which may include broader range of relatives. A more flexible, eligibility-based approach would better reflect contemporary relationships, support member choice, reduce disputes (including ongoing claims involving financial dependency and interdependency), and minimise reliance on estate-based workarounds, while maintaining appropriate safeguards within the superannuation system.

5. **Remove the Medicare levy on direct super death benefit payments** – we recommend removing the Medicare levy on superannuation death benefits paid directly from a superannuation fund to beneficiaries who are not tax dependants (ie, adult children).

   Under the current rules, adult children who receive a superannuation death benefit directly from a fund are subject to the Medicare levy on the taxable component, whereas the same benefit paid via the deceased's estate does not attract the Medicare levy. This creates an arbitrary and inconsistent outcome, where the tax treatment depends solely on the payment pathway rather than the nature of the benefit or the beneficiary.

[16] Regulation 6.17A(7) SIS Regs and section 59(1A) SIS Act

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Removing the Medicare levy on direct superannuation death benefit payments to non-tax dependants would align the tax treatment regardless of how the benefit is paid, improve equity between beneficiaries, and simplify death benefit planning.

3.8 Amendments required to non-arm's length expense and income rules

Our association has long raised our concerns in relation to the application of the non-arm's length expense (**NALE**) rules and the non-arm's length income (**NALI**)[17] rules that have been present in the superannuation system for many years.

We believe the following changes must be made to the NALE and NALI income rules:

1. NALE rules for superannuation funds

In last submission on the *Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Act 2024* (the Act), we urged the government to make changes to the Act before it was legislated.

In brief, our key recommendations are as follows:

- The NALE rules be repealed so the law (295-550 ITAA 1997) is brought back to its pre-1 July 2018 terms and instead use existing regulatory tools to deal with non-arm's length dealings. This includes repealing the two times multiple concept (ie, a 90% effective tax rate) for general expenses.
- Exempt SMSFs from the NALE regime (like APRA-regulated funds).
- Consistency is needed between general and specific expenses.
- NALI and NALE should be made proportionate. That is, only the additional income (over and above an arm's length income) or the underpayment of expenses (ie, below the arm's length expense) should be subject to the NALI tax rate of 45% (plus penalties, as applicable).
- Trustees should be able to rectify breaches without the application of NALI.

Further details regarding our issues with the NALE rules and our recommended legislative changes can be found in our recent submissions which are available on our website.

2. Apply 2 x model to all NALI/NALE (not just general expense NALE)

An alternative proposal is that the two times multiple could be adopted for all NALI. That is to the extent that a superannuation fund receives more income than an arm's length dealing, that excess would be subject to the two times multiple concept. Likewise, to the extent that a specific expense is less than an arm's length dealing, that under charged amount would be subject to the two times multiple concept.

While not our preferred option, this proposal would at least avoid the disproportionate tainting issue that currently occurs with NALI and specific expense NALE which results in all of the income/gains of an asset being subject to NALI.

[17] Section 295-550 ITAA 1997

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3. The NALI and CGT interaction

In July 2024, the ATO released Taxation Determination TD 2024/5, clarifying how NALI interacts with the capital gains tax (**CGT**) provisions. While some minor changes were made to the draft, the determination retains the controversial nexus between arm's length and non-arm's length gains.

Key points to note:

- **ATO's stance:** if an SMSF incurs a capital gain arising from non-arm's length dealings, all capital gains (both arm's length and non-arm's length) in the same year will be taxed as NALI at 45%.

- **Industry concerns:** this interpretation could result in a minor non-arm's length capital gain triggering punitive taxes on unrelated arm's length gains. The current industry view is that only the net capital gain related to the non-arm's length asset should be subject to NALI.

We strongly oppose this approach and recommend that legislative amendments are made to ensure that only non-arm's length capital gains are taxed at the penalty rate. Penalising genuine arm's length gains is neither fair nor aligned with industry practices.

3.9 Failure to make minimum pension payments

In June 2024, the ATO released an update to Tax Ruling TR 2013/5, clarifying when a superannuation income stream starts and stops. This update has significant implications for SMSF trustees who fail to meet the pension standards within a financial year.

Under the revised Ruling, failing to comply with pension standards results in the pension ceasing for income tax purposes, though not necessarily for superannuation purposes. This distinction introduces unnecessary complexity for trustees without delivering any practical benefit, increasing the administrative burden on both trustees and the broader system.

While the industry acknowledges that failing to meet the minimum pension requirement has tax consequences, including impacts on the transfer balance account (**TBA**), concerns remain regarding the ATO's position that a failed pension must be commuted and restarted as a new pension to claim exempt current pension income (**ECPI**) moving forward.

On 15 October 2024, the 'Joint Bodies'[18], of which IFPA is a member, submitted concerns regarding this Ruling to the ATO. While several issues require urgent attention, two key concerns stand out:

- **Unclear legislative basis for the ATO's position** – the Commissioner's stance on when a pension ceases due to failure to meet the minimum payment remains problematic. TR 2013/5 lacks clear legislative backing and relies on SIS Regulation 1.06(9A) ('Meaning of a pension'), which does not explicitly outline the tax consequences for non-compliance with the pension standards. This reliance appears to be an overreach, adding complexity without delivering practical benefits.

- **A pension is a contractual obligation** – we view a pension as a contractual agreement between a trustee and a member. If the minimum pension payment is not met, the pension itself does not cease, rather, the trustee is in breach of its contractual obligation, with any unpaid amounts remaining a debt owed to the member. This interpretation aligns with contract law principles, and if adopted, it would resolve many of our concerns. We strongly urge the ATO to reconsider its approach on this matter.

[18] The 'Joint Bodies' includes the Chartered Accountants Australia and New Zealand, CPA Australia, the Financial Advice Association Australia, the Institute of Financial Professionals Australia, the Institute of Public Accountants, the National Tax and Accountants' Association and the SMSF Association

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Recommended changes

Given the significance of these issues, we believe urgent resolution is required and recommend the following:

1. **Maintain current industry practice** – when a pension fails to meet the minimum payment requirements, it should cease to qualify for an ECPI deduction for that income year. As a result, the fund would lose its ability to claim ECPI on that pension account for the full income year, with all earnings for that year allocated to the member's taxable component rather than retaining the proportions established when the pension commenced.

   This would avoid the fiction that the pension has ceased. As such the pension would continue to be treated as the same pension for superannuation purposes, including for eligibility under the Age Pension and Commonwealth Seniors Health Card. Additionally, if the minimum pension requirements are met in the following income year, that pension would again qualify for an ECPI deduction without requiring a commutation and recommencement of a new pension. The tax-free and taxable proportions would also not be required to be recalculated accordingly. Retaining this approach would ensure that while the ECPI deduction is lost, the pension continues and no additional TBA implications or reporting complexities arise.

2. **Introduce a legislative safe harbour** – the ATO's current 'small underpayment' exception (the one-twelfth rule) is not legally binding and can be withdrawn at any time. To provide greater certainty, we recommend that the government legislate an expanded exception (such as a two or three-twelfths threshold), allowing members a more reasonable opportunity to rectify an underpayment before their pension is deemed to cease for tax purposes.

We believe these measures will provide much-needed clarity, reduce unnecessary administrative burdens, and ensure consistency with both industry practice and legislative intent.

3.10 Breaches of regulation 13.22D of the SIS Regs should be rectifiable

Under the current law, the trustee of a unit trust or company that breaches regulation 13.22D of the SIS Regs causes the units or shares held by the superannuation fund to be in-house assets. Unlike direct breaches of the SIS Act or SIS Regs by a superannuation fund trustee, a breach of regulation 13.22D cannot be rectified.[19]

We believe that rather than 'tainting' the unit trust irreversibly, the occurrence of a regulation 13.22D 'trigger event' should either:

- Be rectifiable within 12 months of the end of the financial year that the breach occurred, and/or
- The breach be subject to a penalty and rectification regime, as is the case for direct superannuation fund trustee breaches of the SIS Act and SIS Regs.

3.11 Remove the auto non-compliance for breaching section 17A and failing to be an Australian super fund

Under the current legislative settings, if a self-managed superannuation fund (**SMSF**) breaches section 17A of the *Superannuation Industry (Supervision) Act 1993* (**SIS Act**) or otherwise fails to satisfy the definition of an Australian Superannuation Fund, the SMSF is automatically made non-compliant and is issued with a tax penalty that is equal to almost half the value of its assets. This is to be contrasted with other breaches of the SIS Act where the ATO has a discretion as to whether to make the SMSF non-compliant.

[19] Regulation 13.22D(3) SIS Regs

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Our association believes the auto non-compliance for breaching section 17A, and failing to be an Australian superannuation fund, should be replaced with the ATO discretion that applies to other SIS Act breaches.

3.12 Relaxing residency rules

We welcome the relaxing the residency requirements for SMSFs and Small APRA Funds (**SAFs**) measure that was first announced in the 2021-22 Federal Budget which aims to:

- Extend the time an SMSF trustee/director can be temporarily absent from Australia from two to five years, and
- Remove the active member test for both SMSFs and SAFs.

We urge the government to legislate this measure as soon as possible.

3.13 Onshoring and offshoring issues

The interaction of the Australian superannuation system with foreign pension systems and the tax residency of Australian citizens is overly complex and no longer meets the needs of modern society. For example, when calculating the applicable fund earnings component of a lump sum received from a foreign superannuation fund, the terminology used in the legislation is not clear in all situations, creating incorrect tax outcomes in many instances.

One simple fix would be to amend the start day rules within the current law when members receive multiple lump sums.

3.14 TBAR reporting should be annual for SMSFs

Since 1 July 2023, the TBC events-based reporting arrangements for SMSFs has been streamlined to a quarterly basis so that the same reporting timeframes applies to all SMSFs. This change has meant that SMSFs that were previously lodging their transfer balance account reports (**TBAR**) on an annual basis have no longer been permitted to do so from 1 July 2023.

Our association does not believe that there was a need to move to a compulsory quarterly reporting framework. Rather, we suggest that there should be single set of *annual* reporting deadlines for all SMSFs, which will also assist with streamlining the reporting arrangements.

This would reduce red tape and allow SMSFs to complete all their reporting at once – e.g., tax return, financial statements and TBAR.

Considering around 93% of SMSFs only have one or two members, the move to a more frequent reporting regime will increase the SMSFs reporting and administrative obligations, remove flexibility and add more red tape for the majority of one to two member funds.

SMSFs that do not have specialist SMSF software to lodge a TBAR with the ATO will find it extremely difficult to keep on top of their TBAR compliance obligations and may cause additional penalties for late lodgement of a TBAR.

This may require SMSF trustees to seek advice from their accountant/tax agent on a more regular basis to help meet their reporting obligations, which will increase the cost of running an SMSF in the long run.

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While it is acknowledged, that this could result in excess transfer balance tax assessments being delayed for some members, that could be alleviated by SMSFs voluntarily lodging TBARs early. In our view, the adverse outcome to a small cohort of members does not outweigh the additional administrative burden to many SMSFs.

3.15 Fix Division 296 measure

Our association maintains its view that Division 296 should not be legislated. However, if the measure proceeds, significant amendments are required to ensure it operates fairly, reflects actual outcomes, and can be administered in practice.

Key issues with the current design include:

- **TSB measurement** – Eligibility should be based on a modified closing TSB only. Using the higher of opening or closing balances can result in tax being imposed on notional balances that no longer reflect a member's circumstances due to losses, withdrawals, insurance proceeds or other events outside their control.
- **Death-related outcomes** – Members who die during an income year should be excluded from Division 296. Without a clear exemption, tax may be assessed after benefits have been paid and estates administered, shifting liabilities to executors or beneficiaries in an inequitable manner.
- **Cost base reset flaws** – The all-or-nothing election, lack of portability between funds, exclusion of indirect assets and failure to properly exclude pre-commencement gains undermine the policy intent and risk taxing historical gains.
- **Administrative complexity** – Variable SMSF return due dates may impact cost base election timing, along with misaligned payment and release authority timeframes, and unresolved earnings attribution issues create unnecessary compliance risk and uncertainty.

Further details regarding our recommendations can be found in our submission which is available on our website.

3.16 Affordability and accessibility of financial advice

The current financial advice system is not fit for purpose and many superannuation fund members and SMSF trustees are not able to access good affordable financial advice when they need it.

We acknowledge that the government's response to the Quality of Advice Review (**QAR**) is a step in the right direction to reduce the red tape involved in providing financial advice to Australians. However, we are disappointed that the QAR recommendations failed to address two key issues, being:

1. The role accountants could play in helping to provide financial advice to a greater number of Australians, and
2. The issues with the current limited Australian Finance Services Licencing regime.

As trusted, qualified, and experienced professionals, accountants play a vital role in assisting their clients with their financial arrangements. We would like to see qualified accountants fill the advice gap in some way, particularly if employees of banks, superannuation funds and insurance companies will be given the opportunity to provide advice to their members. Accountants have the expertise and are just as competent as other providers to give advice to their clients.

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What the industry/accountants want

To clarify, we are not requesting an exemption for accountants to offer financial product advice in relation to the underlying the assets within a superannuation fund. Providing product and investment advice remains the responsibility of a licensed relevant provider.

Rather, our members want to provide strategic and structural superannuation advice to their clients relating to their tax affairs. Examples of common superannuation related advice services include the ability to make contributions, commence a pension, establish and assist with the operation of an SMSF, winding up an SMSF, etc. If accountants are granted an exemption to provide strategic and structural advice, we believe financial advisers should also have the same exemption in those situations. In other words, if this type of advice is not classified as 'financial product advice', then both accountants and financial advisers should follow the same rules regarding the need for a statement of advice (**SOA**) or record of advice (**ROA**).

It is paradoxical that accountants cannot provide such simple superannuation advice particularly when accountants have access to the tax agent portal and can see their client's total superannuation balance, their available contribution cap space, contributions made by/for them through single touch payroll, etc. On the flipside, financial advisers who are licensed to provide this advice do not have access to their client's information on the portal unless they are registered tax agents.

We believe it is time to undertake this review to allow qualified accountants to provide structural advice on superannuation, from accumulation phase right through to pension phase and beyond.

3.17 Enable financial adviser access to the ATO portal

Financial advisers play a crucial role in developing tax-efficient strategies that help clients maximise their financial position, while remaining compliant. As Qualified Tax (Relevant) Providers (**QTRPs**), advisers meet rigorous education and CPD standards in the area of taxation. However, accessing essential client data – such as taxable income, superannuation balances, and contribution cap history – is inefficient, often requiring requests through accountants or superannuation funds. This process is time-consuming, costly, and delays advice delivery. Given the public availability of the ASIC Financial Adviser Register, we recommend that authorised financial advisers be granted secure, read-only access to the ATO portal to streamline advice and improve client outcomes.

Addressing Treasury's concerns

Treasury's *Review of Tax Regulator Secrecy Exceptions* consultation paper recognises the benefits of adviser access but raises concerns about cybersecurity, implementation costs, and financial crime risks – particularly for smaller firms. However, in reality:

- Financial advisers manage sensitive client data on a daily basis, including medical, estate planning, and financial information, while adhering to strict compliance and data security requirements. Likewise, small accounting firms also handle similar sensitive information, raising the question of why only small financial advice businesses have been singled out in this discussion.

- Most financial advice firms (large and small) have undergone cybersecurity reviews and implemented strict data protection measures.

- Providing access would ease pressure on accountants, fostering collaboration between advisers and accountants for the benefit of their clients.

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The solution: secure, client-authorised access

To streamline advice while maintaining security, we propose a new, read-only access class for licensed financial advisers within the ATO portal, where:

- Clients control access via the ASIC Financial Adviser Register, similar to tax agents.
- Advisers can only view, not modify, data, ensuring tax compliance remains with registered tax agents.

This reform would reduce inefficiencies, lower costs, and improve financial advice outcomes while maintaining strict security standards. These actions will help to modernise the system to ensure Australians receive timely, affordable, and high-quality financial advice.

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