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SMSF Update for 2023

In brief

Date	Changes and actions
1 Jan 2023	• Downsizer contribution minimum age reduced to age 55 (after previously being reduced to age 60 on 1 July 2022).
Pre 30 June 2023	• **Ensure that contributions are made and received by 30 June. If contributions are by EFT, ensure that the contribution is recognised in the fund's bank account as at 30 June.** • Where applicable, ensure minimum pension payments have been withdrawn from the fund's bank account by 30 June. • Review your fund's investment strategy including the appropriateness of any existing insurance held by the SMSF or the need for insurance coverage for fund members. • Rectify any outstanding compliance issues noted by your auditor. • Ensure paperwork is in place for any in-specie contributions made to the fund.
1 July 2023	• Indexation increases general transfer balance cap to $1.9 million. • Superannuation guarantee increases to 11% • Minimum pension amounts for super income streams return to default rates. • SMSF event reporting becomes quarterly for all funds.
1 July 2025	• Extra 15% tax on earnings for super balances above $3m commences*

Not yet law. Yet to be legislated.

What's new

Superannuation Guarantee increases to 11%

The Superannuation Guarantee (SG) rate will rise from 10.5% to 11% on 1 July 2023 and will continue to increase by 0.5% each year until it reaches 12% on 1 July 2025.

If you have employees, what this will mean depends on your employment agreements. If the employment agreement states the employee is paid on a 'total remuneration' basis (base plus SG and any other allowances), then their take home pay might be reduced by 0.5%. That is, a greater percentage of their total remuneration will be directed to their superannuation fund. For employees paid a rate plus superannuation, then their take home pay will remain the same and the 0.5% increase will be added to their SG payments.

Indexation increases general transfer balance cap to $1.9m

The transfer balance cap (TBC), as the name suggests, limits how much money you can transfer into a tax-free retirement account. Indexation of the general TBC ensures that the cap remains relevant.

The general transfer balance cap is indexed to the December consumer price index (CPI) each year, increasing by increments of $100,000. High inflation in December 2022 triggered an increase to the general TBC of $200,000 to $1.9 million from 1 July 2023. The impact of this change depends on your personal circumstances:

Your cap if you start a retirement pension for the first time on or after 1 July 2023
If you start a retirement phase income stream for the first time after 1 July 2023, you will have access to the full $1,900,000 limit. For some contemplating taking a pension, there might be a benefit in deferring the commencement of a retirement income stream until on or after 1 July 2023.

Your cap if you have started a pension or retirement income stream
Where the complexity lies with the transfer balance system is that if you have commenced a retirement phase income stream before 1 July 2023, you will have a personal TBC of between $1.6 million and the general TBC cap of $1.9 million. This is because indexation only applies to your unused cap. The ATO use the highest ever balance in your transfer balance account based on information received and processed by close of business on 30 June 2023 to calculate your TBC from 1 July 2023.

You can see your personal TBC in your MyGov account linked to the ATO.

SMSF event reporting now quarterly

From 1 July 2023, all SMSFs will need to report events quarterly to the ATO that impact a members transfer balance account. Previously, where all members of the fund had a total super balance of less than $1 million, the fund could report annually with their returns. This means that when a member starts a retirement pension, a death benefit income stream, or makes a lump sum commutation, this event will need to be reported to the ATO within 28 days after the end of the quarter.

All unreported events that occurred before 30 September 2023 must be reported to the ATO by 28 October 2023.

30% tax on super earnings for balances above $3m

From 1 July 2025, a proposed 30% tax will apply to future superannuation fund earnings where a member's total superannuation balance (TSB) is above $3m. That is, if your superannuation and pension balance is above $3m, from 1 July 2025:

- An additional 15% tax will apply on earnings above $3m (not indexed); and
- The 15% tax applies to realised (from a sale) and unrealised gains (from a change in the value of assets).

The tax captures growth in your TSB over the financial year allowing for contributions (including insurance proceeds) and withdrawals. Because the calculation captures both realised and unrealised gains, this could mean paying tax on gains in value without the cash from a sale to support the tax payment.

Interests in defined benefit schemes will be appropriately valued and will have earnings taxed under this measure in a similar way to other interests.

The ATO will perform the calculation for the tax on earnings. TSBs in excess of the $3 million cap will be tested for the first time on 30 June 2026 with the first notice of assessment expected to be issued in the 2026-27 financial year.

Individuals will have the choice of paying the tax personally or from their superannuation fund. Those with multiple accounts can nominate which fund will pay the tax.

From a fund perspective, TSB reporting already forms part of the current year end tax return process.

If your superannuation balance is close to or above the $3m cap, it is important to seek advice on the best possible options for you.

Minimum pension drawdown reverts to pre pandemic levels

The temporary 50% reduction in superannuation minimum drawdown requirements for account-based pensions and similar products will end on 30 June 2023. From 1 July 2023, the minimum drawdown requirements will revert to pre-pandemic levels:

Age	Reduced rates by 50% for the 2019-20 to 2022-23 income years (%)	Default minimum drawdown rates (%) from 1 July 2023
Under 65	2	4
65-74	2.5	5
75-79	3	6
80-84	3.5	7
85-89	4.5	9
90-94	5.5	11
95 or more	7	14

How non-arms length income is managed

The non-arm's length income (NALI) rules prevent superannuation trustees artificially increasing the balance of the fund using preferential arrangements with related parties. This can also capture expenditure where a service is provided by a related party at a nil or below market rate. For example, your brother is a qualified accountant and does all of your SMSFs accounting work for free (that he would normally charge his clients $5,000).

Currently, where expenses are not at arm's length and below market rates, all income derived by the fund could be deemed to be non-arm's length income and taxed at the top marginal tax rate.

Expenses are divided into two categories, general and specific. General expenses relate to all of the income of the fund, for example accounting and audit fees. Specific expenses relate to a specific asset such as maintenance expenses on a property owned by an SMSF.

The Government has announced that they will change the way NALI for general expenses is dealt with. The recent 2023-24 Federal Budget confirmed that they intend to cap the amount of fund income taxable as NALI to two times the discount on the general expense.

We'll bring you more when the rules are confirmed. But just be careful of family discounts and 'mates rates'.

Downsizer contribution age drops to 55

From 1 January 2023, those aged 55 and over can make a 'downsizer' contribution of up to $300,000 into superannuation from the proceeds of the sale of their home (previously age 60 or over).

Downsizer contributions are exempt from the age 75 limit, work test, and the total super balance rules when making a contribution (but are limited by your transfer balance cap when considering moving the contributions to pension).

For couples, both members of a couple can take advantage of the concession for the same home. That is, if you and your spouse meet the other criteria, both of you can contribute up to $300,000 ($600,000 per couple). This is the case even if one of you did not have an ownership interest in the property that was sold (assuming they meet the other criteria).

To be eligible to make a downsizer contribution:

- You have reached the eligible age at the time the contribution is made (age 55 from 1 January).
- The home was owned by you or your spouse for 10 years or more prior to sale.
- The home is in Australia and not a caravan, houseboat, or mobile home.
- Proceeds from the sale of the home are either fully or partially exempt under the main residence exemption.
- The *Downsizer Contribution into Super* form (NAT 75073) is provided either before or at the time the contribution is made.
- The contribution is made within 90 days of receiving the proceeds of the sale (generally settlement).
- You have not accessed the downsizer rules previously.
- The contribution(s) cannot be greater than the total proceeds from the sale of the home.

What is staying the same?

Concessional and non-concessional contribution caps

The concessional contribution cap for the 2023-24 financial year will remain at $27,500. Concessional contributions are contributions made into your super fund before tax such as superannuation guarantee, salary sacrifice or personal deductible contributions.

You may be able to utilise your concessional contributions cap to make a personal deductible contribution of up to $27,500 (less any employer contributions) plus any unused amounts back to 1 July 2019 if you meet the eligibility requirements to make carry forward unused concessional contributions (see *Carry forward unused concessional contributions* below). This can save you tax and may be particularly beneficial if you have higher than usual income such as a capital gains.

The non-concessional cap will remain $110,000 for the 2023-24 financial year. Non-concessional contributions are after tax contributions made into your super fund. Due to the increase in the general transfer balance cap from $1.7m to $1.9m, the TSB limits to make a non-concessional contributions will change. This is outlined in the tables below.

The bring forward rule enables those under the age of 75 (age 67 prior to 1 July 2022) to contribute three years' worth of non-concessional contributions to their super in one year. That is, you may be able to contribute up to $330,000 in one year depending on your total superannuation balance.

Making a non-concessional contribution in financial year 2022-23

Total Superannuation Balance (TSB)	Contribution and bring forward available
Less than $1.48m	$330,000
$1.48m - $1.59m	$220,000
$1.59m - $1.7m	$110,000
Above $1.7m	Nil

Making a non-concessional contribution in financial year 2023-24

Total Superannuation Balance (TSB)	Contribution and bring forward available
Less than $1.68m	$330,000
$1.68m - $1.79m	$220,000
$1.79m - $1.9m	$110,000
Above $1.9m	Nil

The total super balance caps to utilise the spouse contribution offset and the government co-contribution will also be lifted to $1.9m in line with indexation.

Carry forward unused concessional contributions

If members have unused concessional contributions, that is, they did not contribute the full concessional contribution cap in 2019-20, 2020-21, 2021-22 or 2022-23, then they can carry forward these amounts for five years on a rolling basis if their total superannuation balance is below $500,000 on the prior 30 June (of the year you intend to access the unused amount).

For example, if a member's total concessional contribution in the 2022-23 financial year was $10,000 and they meet the eligibility criteria, then they can 'carry forward' the unused $17,500. They may then be able to make a higher deductible personal contribution in a later financial year. If they are selling an asset and likely to make a taxable capital gain, a higher deductible personal contribution may assist in reducing their tax liability in the year of sale.

Remember:

- Your total superannuation balance must be below $500,000 on 30 June of the prior year before you utilise any carried forward amount (within the 5 year term); and
- In some cases, an additional 15% tax can apply (30% total) to concessional contributions made to super where income and concessional contributions exceeds certain thresholds ($250,000 in 2022-23 and 2023-24). Your income could be higher than usual in a year when you sell an asset for a capital gain.

This is an excellent concession to help you top up your superannuation.

Fund 'housekeeping'

Cryptocurrency in the ATO spotlight

Managing cryptocurrency is not simply an issue of recognising transactions correctly, it is also about ensuring fund compliance.

SMSF Trustees need to ensure that any investment in cryptocurrency is in line with the investment strategy of the fund, the trust deed allows for it at the time the investment is made, and it is an appropriate investment. In particular, the sole purpose test in the *Superannuation Industry (Supervision) Act 1993* requires that the fund is maintained for the sole purpose of providing retirement benefits to its members, or to their dependants if a member dies before retirement. Trustees need to ensure that the risks associated with cryptocurrency are in the best interests of the fund members. A minute documenting a decision to invest would be beneficial.

For tax purposes, gains and losses in the fund are generally treated in the same way as other assets in the fund. That is, capital gains tax may apply to any gains made on the sale of cryptocurrency.

If your fund invests in cryptocurrency, there are a few practical issues. Your SMSF auditor needs to confirm the ownership, existence, and value of the cryptocurrency. As a result, the digital wallet for the currency should be in the name of the fund or the trustee. If the investment can only be recorded in the name of an individual, it is up to the trustees to verify that the investment is kept separate from personal assets. Also, you need to be able to trace transactions to identify trades, the value of the trade, and the time and date they occurred.

SMSF compliance status removed if annual returns late

If your SMSF's annual return is more than two weeks overdue and you have not requested a deferral, the ATO will move your fund's status on Super Fund Lookup from 'Complying' to 'Regulation details removed'. The result is that your fund may not be able to accept contributions from employers or rollovers from APRA regulated funds.

Valuing SMSF assets

SMSFs are required to value their assets at market value. Depending on the situation, a market valuation may be undertaken by a:

- Registered valuer
- Professional valuation service provider
- Member of a recognised professional valuation body, or
- A person without formal valuation qualifications but who has specific experience or knowledge in a particular area.

For real property, the valuation may be undertaken by anyone as long it is based on objective and supportable data. A valuation undertaken by a property valuation service provider, including online services or a real estate agent may be acceptable.

However, where the value of the asset represents a significant proportion of the fund's value or where the nature of the asset indicates that the valuation is likely to be complex, you should consider using a qualified independent valuer.

In general, real estate does not necessarily need a formal valuation each year by a licenced valuer unless there is a significant event that occurs during the year which may affect the previous valuation. A significant event could be one that directly involves the property itself, the fund on a general level such as one of the fund's members going into pension mode, or if the asset represents a significant portion of the fund's value.

Contributions must be received by 30 June

To claim a tax deduction for super contributions (as an employer or as an individual), the payment needs to be received by the fund no later than 30 June. Merely incurring a liability is not enough, the fund needs to receive the contribution.

If you are making a personal superannuation contribution that you want to claim as a tax deduction, you need to lodge a notice of intent with the super fund and advise them of the amount you intend to claim as a deduction. The superannuation fund then needs to acknowledge your notice of intent and agree to the amount you intend to claim as a deduction. This will normally be in the form of a notice or certificate from the fund to confirm the tax deductibility of the contribution.

Review and rectify any outstanding compliance issues

If your auditor has highlighted any breaches or issues in previous year fund audits, you should review and rectify these issues by 30 June.

The ATO have a number of powers to address non-compliance:

- Education directions - require the trustee/director to complete an ATO approved education course within a specific timeframe. An administrative penalty applies for non-compliance.
- Rectification directions - requiring the SMSF's trustee/director to take specific action to rectify the contravention within a specific timeframe.
- Administrative penalties - penalties from $1,375 to $16,500 apply to specific breaches. Each individual trustee is liable for the penalty and directors of a corporate trustee are jointly and severally liable. The penalties are payable by the trustee/ director and not refunded by the SMSF.
- Informal arrangements to rectify minor breaches.
- Enforceable undertakings.
- Disqualification of a trustee.
- Allowing the SMSF to wind up.
- Notice of non-compliance.
- Freezing an SMSF's assets.
- Civil and criminal penalties where the fund:
  - Breaches the sole purpose test.
  - Lends to members of the fund.
  - Breaches the borrowing rules.
  - Breaches the in-house asset rules.
  - Enters into prohibited avoidance schemes.
  - Fails to notify the regulator of significant adverse events.
  - Breaches the arm's length rules for an investment.
  - Promotes an illegal early release scheme.

These powers also enable the ATO to look back to any breaches from previous years that were unresolved at 30 June 2023.

Review the fund's investment strategy

Trustees are required to 'regularly review' the fund's investment strategy. We recommend that trustees review the strategy and document the review at least annually or when the circumstances of the fund change.

Where an SMSF has entered into a borrowing arrangement to acquire an asset, trustees should seek advice to structure insurance cover either inside or outside the SMSF to assist in meeting the ongoing obligations of the debt repayments. The fund's ability to meet the ongoing debt repayments can be severely jeopardised where one member of the fund dies, as the fund may have needed to utilise contributions that were being made for that member to meet the repayments. Such a scenario could result in the fund having to sell the property.

Review insurance inside your SMSF

SMSF trustees need to consider the need for insurance cover for the fund members when formulating and reviewing the fund's investment strategy.

Superannuation funds are only able to offer or take out new insurance cover where the definitions are consistent with the death, terminal illness, permanent incapacity and temporary incapacity conditions of release under the *Superannuation Industry Supervision Act*.

It's important that you review insurance inside your SMSF not just for compliance with the law but also effectiveness. An important issue to consider is how any insurance inside your fund should be structured; that is, from where the premiums are paid from the fund and what interest any policy proceeds will be paid to inside the fund.

Correctly structuring insurance inside your fund can be complex. We recommend that SMSF Trustees seek the advice of their financial adviser to achieve the most tax effective outcomes for insurance proceeds, especially on the death of a member. *If your firm provides financial planning insert: (Adviser Name) is available to assist you with any questions you might have or to help you correctly structure your insurances. You can reach him/her on (insert email) or by phone on (insert phone).*

Lodgement deferrals

If you are having trouble paying your tax liability, please let us know as soon as possible so we can negotiate a deferral or payment plan with the ATO on your behalf.

Contributions you didn't know you made

A contribution to a fund can be more than just a deposit of money into the bank account of a superannuation fund. It could include:

- In-specie asset transfers
- Paying fund expenses
- Increasing the value of a fund asset
- Forgiving a fund's debt
- Meeting a fund liability
- Guarantor arrangements

Trustees can often be surprised by what is considered to be a contribution, for example:

- **In-specie transfer -** If an asset is transferred or acquired from a related party for less than fair market value, the difference may be treated as a contribution.
- **Capital improvements -** Capital improvements to existing fund assets for no consideration or less than arm's length consideration may be treated as a contribution.

- **Debt forgiveness -** A contribution is made if a loan, entered into by the fund is forgiven by the lender (related party). The contribution is made when the deed of release is executed that then relieves the fund from the obligation of repaying the debt.
- **Guarantor arrangements -** A contribution occurs if a guarantor to a debt of the fund (trustees in their own right) satisfies a loan obligation of the fund and then forgoes the right of redemption against the fund (trustees) itself.

There may also be non-arms length income (NALI) implications on in-specie transfers or capital improvements to SMSF assets if not documented correctly.

What we need from you

This is a general list of what we need to complete your fund's tax and accounting requirements.

- Bank statements (including any new accounts including term deposits) from 1 July 2022 to 30 June 2023.
- Contributions:
    - A breakdown by member of the types of contributions received by the fund.
- Pensions:
    - Documentation supporting any pensions commenced during the 2022-23 financial year.
- Investments:
    - Portfolio valuation as at 30 June 2023 and transaction history reports (if applicable).
    - All documentation from your portfolio or wrap provider including year end tax statements
    - All dividend & tax statements.
    - Buy & sell contracts for shares sold or purchased.
    - Any other documentation received during the year that relates to takeovers, restructures, bonus shares, consolidations etc., for shares held by the fund. Usually these documents advise you to retain them for taxation purposes.
    - Any other document relating to an investment held within the fund which has not been covered above.
- Property:
    - Agent statements (either monthly or annual) if using an agent to manage property, otherwise, all invoices and rent receipts for the year ending 30 June 2023.
    - A copy of the current lease/rental agreement (if not already provided).
    - Documents for property bought or sold, including the date you entered the contract and the date the asset was first used or installed ready for use.
    - Rental appraisal & market valuation from an agent (if you are using one to manage your property).
- Rollovers:
    - Copy of any Rollover Benefits Statements for money rolled into the fund during the period 1 July 2022 to 30 June 2023.
- Insurance:
    - Copy of life insurance policy annual renewal documentation form (the ownership of the policy should always be in the name of the superannuation fund).
    - Copy of documentation relating to any new insurance policies from 1 July 2022.
- Other:
    - If you have transactions in your fund that do not fall into the above categories, please ensure that you provide us with full details.