






**YOUR CONFERENCE COMPASS:
HIT THE GROUND RUNNING
WITH THIS LEGS & REGS UPDATE**

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#NC2020




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Peter Burgess is General Manager, Technical Services and Education at SuperConcepts. Peter is SuperConcept's specialist on government policy, regulation and technical issues, and acts as SuperConcepts' SMSF media spokesperson. Peter has a strong reputation as an authority in SMSF technical matters and Government policy design. He is an adjunct lecturer with the University of Adelaide and is a widely published author and media commentator on SMSFs. Peter holds an MBA from the University of Adelaide and an Economics degree and postgraduate qualifications in finance and superannuation management. In 2016, in recognition of his outstanding contribution to the SMSF sector, Peter was awarded the SMSF Association's Chairman's Award.


Session overview

1. Enacted changes
2. Announced but not law
3. Other developments






1. Enacted changes



Treasury Laws Amendment (2018 Superannuation Measures No.1) Bill 2019

Schedule 1	Schedule 2	Schedule 3
SG opt-out	NALI	TSB




SG opt-out

Observations

- Must apply for an 'employer shortfall exemption certificate' (NAT 75067) at least 60 days before the first quarter for which the certificate is sought
- Must still receive contributions from at least one employer
- Certificates are **irrevocable** and cannot be varied once issued
- Certificate is **not binding** on employers and does not override the terms of an award, workplace agreement or employment agreement
- Cannot make an application that covers **more than 4 quarters** or more than one financial year.

SG opt-out



Section C: Employers for whom you are seeking a super guarantee exemption

7 is it likely that you will breach your concessional cap for the application year?
 Yes No Catch-up concessional contributions


8 Estimate your super guarantee contributions for the year you are seeking an exemption (this is before any exemption certificate is provided)
 \$

16 Quarters for which you are seeking an exemption from super guarantee for this employer

Quarter	Yes	No
1 July to 30 September	<input type="checkbox"/>	<input type="checkbox"/>
1 October to 31 December	<input type="checkbox"/>	<input type="checkbox"/>
1 January to 31 March	<input type="checkbox"/>	<input type="checkbox"/>
1 April to 30 June	<input type="checkbox"/>	<input type="checkbox"/>

To add more employees, copy and complete this page and send it to us with this application.

NALI (s295-550)




From 1 July 2018, income taxed as NALI if:

...exceeds amount expected from an arm's length dealing

or in gaining or producing it, the entity incurs a loss, outgoing or expenditure that is less than the amount expected from an arm's length dealing.

Story so far...



Explanatory Memorandum	Whether the NALI rules apply depends on the capacity in which the trustees undertakes those activities
Draft Law Companion Ruling (LCR 2019/D3)	Capacity - Individual/Trustee Can apply to general fund expenses as well
Draft Practical Compliance Guideline (PCG 2019/D6)	ATO will not apply compliance resources for the 2018/19 and 2019/20 income years if fund incurred non-arm's length expenditure of a general nature

Unresolved issues...



- Application to general expenses – will Treasury accept the industry's 'lack of sufficient nexus' argument?
- If not, will there be a 'safe-harbour threshold'?
- ATO's 'general expense' transitional rules – does it apply to fixed trust entitlements held by an SMSF?
- Services provided in an individual capacity - will a 'materiality' test apply if equipment and business assets are used to provide the service?
- Application to staff discounts and other arrangements which may give rise to the SMSF receiving discounted prices.

What about FY19 and FY20?



- SMSF trustees who are providing professional services to their fund using the resources of their business and there is a **direct relationship** to a particular amount of ordinary or statutory income derived by the fund (real estate agents, trade persons, professional art dealers, lawyers, financial planners)
- Services provided by **related entities on non-arm's length terms** and there is a **direct relationship** to a particular amount of ordinary or statutory income derived by the fund.




TSB

For FY19 and beyond, 'LRBA amount' must be included in the member's TSB calculation if:




- 1 The fund is an SMSF or has less than 5 members
- 2 The LRBA arose under contracts entered into on or after 1 July 2018
- 3 The LRBA asset supports the member's super interest in the fund
- 4 The member has satisfied a full CoR or its a related party loan

Refinanced loan taken to arise under a contract entered into before 1 July 2018. If the original LRBA was made under a contract entered into before 1 July 2018, and the new borrowing is secured by the same asset and the amount of the new borrowing doesn't exceed the amount of the original borrowing.




2. Announced but not law




2019/20 Federal Budget

Flexibility for older Australians	<ul style="list-style-type: none"> • Work test changes • Extension of the bring-forward arrangements • Increased age limit for spouse contributions
Reducing red tape and cost	<ul style="list-style-type: none"> • ECPI • Delayed start for electronic SMSF rollovers



Work test changes for voluntary contributions

- From 1 July 2020, allow voluntary contributions (both concessional & non-concessional) to be made by those aged 65 and 66 **without needing to meet the work test**



Under 65	65	66
✓	✓	✓

Extension of the bring-forward arrangements



- If age 65 or 66, able to make up to 3 years of non-concessional contributions under the bring-forward rule
- Must be under age 67 at any time in the first year (i.e. must be 66 at the start of the income year)
- Client turning 65 in 2019/20 and have capacity to make a \$300k non-concessional contribution?
- Play safe and trigger now?



2020 Parliamentary sitting days

February							March						
Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun
1	2	3	4	5	6	7	8	9	10	11	12	13	14
15	16	17	18	19	20	21	22	23	24	25	26	27	28
29	30	31											

May							June						
Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun
1	2	3	4	5	6	7	8	9	10	11	12	13	14
15	16	17	18	19	20	21	22	23	24	25	26	27	28
29	30	31											

ECPI claim – streamlining admin requirements



- From 1 July 2020, super fund trustees with interests in both the accumulation and retirement phases during an income year, will be allowed to **choose their preferred method** of calculating ECPI.

ECPI % only applied to income derived from unsegregated assets (current law) **or** ECPI % applied to all income derived for the entire income year (Industry approach pre 2017/18)?



ECPI claim – streamlining admin requirements



- From 1 July 2020, the Government will also **remove** a redundant requirement for super funds to obtain an actuarial certificate when calculating ECPI using the proportionate method, where **all members of the fund are fully in the retirement phase for all of the income year**

Investment earnings	Member's pension balance creeps above \$1.6m
Multiple funds	Member's pension balance less than \$1.6m but TSB exceeds \$1.6m

Treasury Laws Amendment (2019 Measures No.3) Bill 2019 ...passed the House of Reps on 12/2/2020



Miscellaneous amendments	Detail	Applies from
Downsizer contributions	<ul style="list-style-type: none"> Main resident test – rule applied correctly if dwelling was acquired prior to 20 September 1985, and held by the individual's spouse Individual's cap not impacted by downsizer contributions made by spouse in relation to the disposal of an interest in another property Market value substitution rule cannot increase the capital proceeds counted against the cap → From Royal Assent 	1 July 2018
TBC & capped defined income streams	<ul style="list-style-type: none"> Inserts a TBC DR for MUIS which are commuted and restarted on or after 1 July 2017 	1 July 2017
Death benefit rollovers	<ul style="list-style-type: none"> Ensures any untaxed element as a result of the rollover, is not required to be included in the assessable income of the new fund 	1 July 2017

Other proposed amendments...



New Director Identification Number (DIN) regime:

- Unique identifier for each person who consents to being a director of a company
- Will require all directors to confirm their identity – aimed at reducing repeated unlawful activity including illegal phoenix activity
- Must apply for a DIN prior to being appointed as a director (transitional rules apply for the first 12 months)
- Will commence 2 years after the Bill receives Royal Assent

Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019 – removes the hyphen in 'self-managed superannuation fund' in certain subregulations to accord with modern conventions.

...some left overs



2018 Federal Budget measures

6 member SMSFs	3 yearly audits for some SMSFs
'Remains Government policy and will be progressed in line with other legislative priorities'	'...this measure and the outcomes of the consultation are currently being considered'

3. Other developments



Increased audit scrutiny

Focus on obtaining sufficient audit evidence...

ATO's audit of the top 100 SMSF auditors

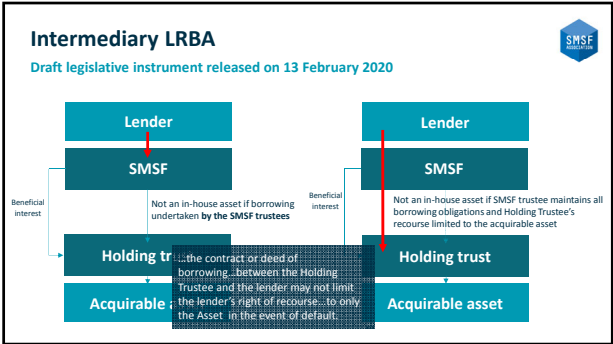
23 auditors failed to obtain sufficient evidence to verify the fund's compliance status

Concurrent session 4D

ATO's investment diversification review

Does the fund have a compliant investment strategy? If not, notify the trustees in the management letter, or lodge an ACR if trustees have previously been advised

Concurrent session 4C



TBC data access...its time!


TBC, TSB, bring forward arrangements

Tax Agents
Financial Planners
Administrators




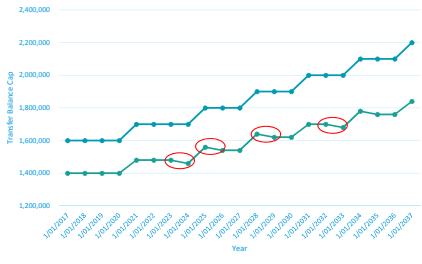

Indexation...friend or foe?

TBC - CPI, CC cap - AWOTE



01-July-2017	no change	01-July-2024	CC NCC change	01-July-2031	CC NCC TBC change
01-July-2018	no change	01-July-2025	TBC change	01-July-2032	no change
01-July-2019	no change	01-July-2026	CC NCC change	01-July-2033	CC NCC change
01-July-2020	no change	01-July-2027	no change	01-July-2034	TBC change
01-July-2021	CC NCC TBC Change	01-July-2028	TBC change	01-July-2035	CC NCC change
01-July-2022	no change	01-July-2029	CC NCC change	01-July-2036	no change
01-July-2023	no change	01-July-2030	no change	01-July-2037	CC NCC TBC change

Indexation...friend or foe?

Transfer Balance Cap

Year

Transfer Balance Cap

TSB Bring Forward Threshold

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