

QUARTERLY UPDATE

December 2023

NALI Legislation – Introduced to parliament

The [Treasury Laws Amendment \(Support for Small Business and Charities and Other Measures\) Bill 2023](#) was introduced into Parliament.

This Bill contains the previously proposed amendments to the non-arm's length expense (NALE) rules and is substantially unchanged from the exposure draft.

Where NALE arises with respect to a "general expense" the amount of NALE will be calculated as twice the difference between an arm's length and non-arm's length expense, including where the entity did not incur any expense.

Two important changes made from the exposure draft consultation:

1. Once legislated, the NALE measures will apply to expenses incurred from 1 July 2018, rather than from 2023-2024 financial year as previously proposed.
2. The exclusion of general expenses of a capital nature has been removed, ensuring that all fund general expenses are treated consistently.

FHSSS – Improved flexibility Bill – Now law

The [Treasury Laws Amendment \(2023 Measures No. 3\) Bill 2023](#), introduced to improve the flexibility of the FHSSS, is now law.

Accordingly, individual's will now be able to:

- amend or revoke their application to the ATO to release super under the FHSSS. Under the previous law, an individual was unable to amend or revoke their application.
- request a release authority within 90 days of entering into a contract to buy or construct a home.



PayDay Super – Securing Australian's Super

Following the 2023-24 Federal Budget announcement, the Government has released a [consultation paper](#) titled: 'Securing Australians' Superannuation Budget 2023-24' for comment.

Among other things, the Government is proposing to legislate a requirement for employers to pay their employees' SG contributions at the same time that they pay salary and wages.

This change is proposed to apply to all employers from 1 July 2026.

The Government is also proposing to amend the SG compliance framework, including amending the calculation of the SG charge and adding new penalties to encourage compliance and align it with payday super.



Strengthening incentives to work for pensioners and income support recipients

The Government has introduced [Social Security and Other Legislation Amendment \(Supporting the Transition to Work\) Bill 2023](#) – which seeks to encourage and support social security and veterans' entitlement recipients to engage in paid employment.

The Bill, once legislated, will enable eligible recipients:

- over qualifying age, to earn up to \$4,000 before the income test is applied and their payments are affected – via a \$4,000 increase in the work bonus unused concession balance for all newly commencing eligible recipients. Further, the current temporary \$4,000 increase to the maximum unused concession balance, from \$7,800 to \$11,800, will be available to all eligible pensioners on an ongoing basis.
- to benefit from an extended employment income nil rate period of 24 weeks. This will allow more recipients to continue to access supplementary benefits, such as concession cards and additional child care subsidy, where their own and/or their partner's income (including some employment income) is above the relevant income limit, for a longer period.

SMSF News: ATO Newsroom

The ATO issued a number of useful [reminders and updates](#).

Some of the reminders, that are not discussed elsewhere in this bulletin include:

- TBARs are due by 28 January 2024. All fund trustees are required to lodge their TBAR by this date if a transfer balance account event occurred for a fund member between 1 October and 31 December 2023.
- The SMSF Annual Return (SAR) for some SMSFs are due by 28 February 2024. Failure to lodge their SAR by the due date, may result in further compliance action being taken.
- Fund trustees must appoint an approved SMSF auditor to audit their fund each year. Fund trustees will need to ensure this appointment is made no later than 45 days before the fund's SAR needs to be lodged.
- For the September 2023 quarter, the ATO disqualified 223 SMSF trustees, which have now been added to the [disqualified trustees register](#).



Diamonds as collectables? – ATO regulatory update

The ATO has published an [article](#) on the technical issue surrounding SMSF investments in pink diamonds.

In this article, the ATO confirms that natural diamonds (including pink diamonds), when held in loose form, are not considered collectable or personal use assets under the superannuation legislation. As such, the specific storage and insurance requirements that usually apply to collectables and personal use assets do not apply to these types of investments.

However, the ATO stresses that these rules only apply for 'diamonds held in loose form'. This means the diamond cannot in any way be mounted, integrated into or used as an item for adornment or other purposes which would be inconsistent with the holding of the diamond in loose form for investment purposes



Tax deductibility of financial advice fees

Following a review to its position on the tax deductibility of financial advice fees, which was set in 1995, the ATO has issued Draft Tax Determination [TD 2023/D4](#) for industry consultation.

This draft Determination sets out when an individual may be entitled to a deduction for fees paid for financial advice. It outlines the requirements that need to be satisfied for an individual to claim a deduction for financial advice fees.

The ATO has stated that while the new guidance replaces TD 95/60, as a result of regulatory reforms to the financial services industry in recent years, it does not reflect a change in the Commissioner's view on the deductibility of financial advice fees as outlined in TD 95/60.

The draft Determination includes a case study that considers the deductibility of retirement planning advice that includes advice on the establishment of a SMSF.

Submissions are due by 2 February 2024.

2023-24 Mid-Year Economic and Fiscal Outlook (MYEFO)

The Government released the 2023-24 [MYEFO](#). The MYEFO provides an update on the budget position and economic outlook at around the mid-way point of the year. In it, the following new measures of interest were announced:

Increase in value of penalty units

The value of a penalty unit is proposed to increase by 5.4% from \$313 to \$330. If legislated, this change will only apply to offences committed after the start date. The penalty unit amount will then be indexed every three years in line with CPI, as per the existing schedule.

General interest charge and shortfall interest charge to no longer be tax deductible

It is proposed that a tax deduction will no longer be available where a General Interest Charge (GIC) or Shortfall Interest Charge (SIC) is incurred on or after July 1, 2025. Currently, a tax deduction is available for both the GIC and SIC.

Access to offenders' superannuation – Victims and survivors of child sexual abuse

The Government is proposing to enable victims and survivors of child sexual abuse to seek access, via a court order, to additional personal or salary sacrifice superannuation contributions made by the offender after the first offence occurred where a related court order for compensation remains unpaid after 12 months. Such payments would not be subject to taxation or applied to any existing Commonwealth debt.