

NUA Group Quarterly updates are designed to provide you with important information relevant to your role as Trustee of your SMSF. Each Quarter we will bring you a topic of interest, a tip to help you stay compliant, information about upcoming changes, and insights from an industry expert.



The Future: 6 Member SMSFs

Up until 30th June 2021, the SIS act s17(1)(a) required an SMSF to have fewer than 5 members. On the 17th June 2021, the Senate passed Treasury Laws Amendment (Self Managed Superannuation Funds) Bill 2020 that amended SIS Act s17(1)(a) from 1st July 2021 to require an SMSF to have fewer than 7 members.

Why?

There are a number of reasons why the Federal Government pushed through this change including making SMSF's accessible to larger families and attempting to lower administration costs.

What are the changes?

In addition to the changes to the maximum number of members, the bill also amends how many trustees are required to sign documents. From 1st July 2021, the legislation will require that at least 50% of the Trustees, or Directors of the Trustee company, sign documentation including Financial Statements for their Accountant, Trustee Representations for their Auditor, and document executions for their Lawyers.

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For Larger Families

These changes make it possible for families with more than two adult children to pool their superannuation.

More to Invest

More members equal more super which may give the SMSF access to investments previously out of reach such as residential and commercial property.

Reduced Operating Costs

Whilst it is yet to be proven, it would make sense that the administration cost per member should decrease with the introduction of six member SMSFs.

NUA Group has a team of proactive Accountants, bookkeepers and administration personnel who are dedicated to help you and your business evolve into a successful one through the various services we offer:

- Tax Returns (Individual, Partnership / Trust & Company),
- SMSF Tax Returns,
- Business Activity Statements,
- Bookkeeping,
- And much more.

The Good ✓

Residency

By having more members it may make it easier for the SMSF to meet the residency requirements.

Use of Corporate Trustee

Some States restrict the number of Individual Trustees to less than six meaning that a corporate trustee may be the only way to have 6 members in the SMSF. This may make the administration of the SMSF simpler.

Diversification

Having a bigger pool may allow the SMSF to access types of investments previously unavailable, giving the SMSF a better ability to diversify.

Multi-Generational

Six member funds could potentially allow an SMSF to have three generations of members. This is a great opportunity to start looking at SMSF's as something that can be handed down to future generations. There may be the opportunity for the younger generations to fund benefit payments for their Grandparents and in turn, there is less risk that the benefit of carried forward income tax and capital losses will be lost.

The Bad

Decision Making

6 members may create barriers when it comes to decision making in the SMSF. This could impact anything from choosing an Accountant to buying or selling investments.

Trust Deed

Trust Deed amendments may be required to add the additional members. Depending on the quality of the chain of Trust Deeds, this may be an expensive exercise for the SMSF.

Control

Adding additional members to the SMSF may create issues around the control and management of the fund. Voting rules will need to be considered.

When Things Change

Marriage breakdowns, kids no longer speaking to parents or friends no longer speaking are a greater risk with six members funds. There will be an increased risk that the fund will be involved in legal disputes.

ATO releases final ruling on Non-Arm's Length Income

The ATO has recently released an important ruling further clarifying when SMSF income will be included in the non-arm's length component (subject to top marginal tax rates).

Usually, SMSF income will be included in the low tax component subject to tax at 15% (or lower for SMSFs paying pensions). So having any SMSF income considered non-arm's length (NALI) is expensive and best avoided. Further, an SMSF paying pensions cannot claim any income determined as NALI as exempt from 15% tax!

Previous ATO rulings have focussed on NALI by identifying situations where the SMSF income itself is inflated due to non-arm's length arrangements. LCR 2021/2 shines the light on NALE (non-arm's length expenditure) and how it impacts what SMSF income is considered non-arm's length.

Expenditure in an SMSF will be NALE if it is less than it would be if the parties to the transaction had been dealing with each other on an arm's length basis. It also includes outgoings and losses that are less than arm's length, even in situations where the amount is \$Nil.

WHAT IS NON-ARM'S LENGTH?

READ OUR SPRING EDITION'S EXPERT TIP AT THE END OF THE NEWSLETTER FOR A SERIES OF FAQ'S



DOWNLOAD THE ATO'S FULL RULING ON NON-ARM'S LENGTH INCOME

Extention of Superstream to include SMSF Rollovers

SuperStream standards require employers and superannuation funds, including SMSFs, to provide specific superannuation data electronically in a prescribed format.

Usually SMSFs register and comply with the SuperStream requirements via the software platform used by their Accountant. The ATO is responsible for ensuring compliance with the SuperStream rules.

When an SMSF registers for SuperStream they receive an Electronic Service Address (ESA) which each member provides to their employer to input into their payroll system.



When an employer pays super, the data relating to that contribution, such as who it is for and the type of contribution are all communicated electronically via SuperStream from the employer to the super fund.

This improves the accuracy and efficiency of information relating to superannuation contributions and helps super funds provide more timely information to members.

A couple of exemptions to SuperStream that are relevant to SMSFs are:

- Related employer contributions (for example, contributions from your family business to your family SMSF)
- Personal contributions you make to your SMSF

So while most SMSFs will already be registered for SuperStream, some may not be due to the above exemptions.

From 1 October 2021, the use of SuperStream for SMSFs will be expanded beyond contribution data to include rollovers in and out of the SMSF.

So any SMSFs not already registered for SuperStream will need to arrange registration with their Accountant if they want to roll money into or out of their SMSF.

Here at NUA Group we pride ourselves on our 'big firm capabilities, small firm personality', our mission is to grow together with our clients. We want to continuously provide our clients with exceptional service that makes your business simple.

Non-Arm's Length Income - FAQs

Question: My SMSF owns a rental property and rather than engage a real estate agent to manage the property, we take care of collecting the rent, organising repairs, and doing general maintenance. We don't charge the SMSF for this service, is our SMSF going to be caught by the NALE rules?

Answer: No, these services are being provided in the capacity of trustee and not in an individual capacity. A trustee of an SMSF is generally prohibited from being remunerated for services provided, as trustee, unless certain conditions apply. The ruling states that the restrictions that prevent a trustee or director of a corporate trustee from charging for the services performed will mean that the NALE provisions will not apply, despite no charge for the services performed by the trustee in that capacity.

However, this should be contrasted with example 11 of the ruling concerning Sharon who provides rental property management services to her SMSF. In this example, Sharon is providing services to her SMSF in her individual capacity, via her real estate business, and not in her capacity as director of the SMSF's corporate trustee. Sharon's SMSF is not prohibited from remunerating her real estate property management business, but the fee charged is less than commercial. Consequently, the NALE provisions will apply and the net rental income from the SMSF's rental property will be treated as NALI and taxed at 45%, rather than 15%. Further, if the SMSF sells the property in a year where the NALE provisions apply, any capital gain made will be treated as NALI.

This NALE is an example of recurrent expenditure and consequently provided Sharon fixes the NALE by charging her SMSF an arm's length fee, later income years will not have NALI in respect to the rental property.

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Non-Arm's Length Income - FAQs

Expert insights from Mark Ellem - Head of Education at Accurium



With the finalisation of non-arm's length expenditure (NALE) ruling, we look at frequently asked questions from SMSF trustees about how these rules will apply to their SMSF.

Question: Where my SMSF has NALE, how does that affect the income of the SMSF?

Answer: This will depend upon whether the NALE was specific to an asset of the SMSF or was general in nature.

An example of NALE specific to an SMSF asset is a rental property expense. If the rental property expense is treated as NALE, then only the net rental property income will be NALI and taxed at 45%. The balance of SMSF's net income will be taxed at 15% and may also be claimed as exempt income where the SMSF has paid retirement pensions.

An example of NALE that's general in nature is accounting fees. The ruling states NALE that's general in nature can have a nexus (connection) to all of the SMSF's ordinary and statutory income. This would result in the taxable income of the SMSF being taxed at 45%! Consequently, an SMSF can have NALE that's general in nature and of a relatively small value that has a significant tax implication.

Question: If my SMSF has NALE will that taint my SMSF's income forever?

Answer: It depends.

Where an SMSF incurs NALE of a recurrent nature, that does not relate to the acquisition of an asset and only has a nexus (connection) to income derived in a particular year, if the NALE is fixed in a later income year, the income of that later income year will not be NALI. Refer example 2 of the ruling.

Where an SMSF incurs NALE in relation to the acquisition of an asset, this is likely to taint the asset forever. Consequently, all ordinary income, e.g. net rental income and all future capital gains, will be treated as NALI. Refer examples 1 & 4 of the ruling.

Question: Can I continue to do the bookwork for my SMSF?

Answer: Yes, this would be a service being provided in your capacity as trustee for which you cannot be remunerated for and would be regarded as an internal arrangement. The NALE rules would not apply.

However, care must be taken where the SMSF trustee is also an accountant and uses the equipment of their business or of their employer, as well has their own Tax Agent license or of their employer to lodge the SMSF tax return. In this scenario, it would likely be regarded as a service being provided in an individual capacity and be subject to the NALE rules if an arm's length price is not charged. Refer example 6 of the ruling.