

# Practice Update

SEPTEMBER 2023

## Appointing an SMSF auditor

The ATO reminds SMSF trustees that they need to appoint an approved SMSF auditor for each income year, no later than 45 days before they need to lodge their SMSF annual return.

An SMSF's audit must be finalised before the trustees lodge their SMSF annual return, as the trustees will need some information from the audit report to complete the annual return.

An SMSF's auditor is to perform a financial and compliance audit of the SMSF's operations before lodging.

An audit is required even if no contributions or payments are made in the financial year.

An approved SMSF auditor must be independent, which means that an auditor should not audit a fund where they hold any financial interest in the fund, or have a close personal or business relationship with members or trustees.

If a fund doesn't meet the rules for operating an SMSF, the auditor may be required to report any contraventions to the ATO.

## ATO gives 'green light' to lodge

The ATO is giving taxpayers with simple affairs the 'green light' to lodge their annual income tax returns.

ATO Assistant Commissioner Tim Loh said that most taxpayers with simple affairs will find the information they need to lodge has now been pre-filled in their tax return.

Mr Loh also reminded taxpayers that some income may need to be manually added – for example, income from rental properties, some government payments or income from 'side hustles'.

As taxpayers prepare to lodge, they should keep 'Tim's tax time tips' in mind:

- Include all income:** If a taxpayer picked up some extra work, e.g., through online activities, the sharing economy, interest from investments, etc, they will need to include this in their tax return;
- Assess circumstances that occurred this year:** If a taxpayer's job or circumstances have changed this year, it is important they reflect this in their claims;
- Records, records, records:** To claim a deduction for a work-related expense, taxpayers must have a record to prove it.
- Wait for notice of assessment:** Taxpayers should wait for their notice of assessment before making plans for how they will use any expected tax refund this year;
- Stay alert to scams:** The ATO would never send taxpayers a link to log into the ATO's online services or ask them to send personal information via social media, email or SMS.

*Editor: The ATO advises that, when taxpayers lodge their own return, the due date for payment is 21 November, regardless of when they lodge, but if they use a registered agent, their due date can be much later.*

## Different meanings of 'dependant' for superannuation and tax purposes

On a person's death, their superannuation benefits can only be paid **directly** to one or more 'dependants' as defined for **superannuation purposes**, unless they are paid to the deceased's legal personal representative to be distributed in accordance with the deceased's Will.

Super death benefits can be tax-free to the extent that they are paid (either directly or indirectly) to persons who are 'dependants' for **tax purposes**.

However, the meaning of 'dependant' differs slightly for superannuation and tax purposes. For **superannuation** purposes, a 'dependant' of the deceased comprises:

- their spouse (including de facto spouse);
- their child (of any age);
- a person in an 'interdependency relationship' as defined with the deceased; and
- a person who was financially dependent on the deceased.

However, for **tax** purposes, a 'dependant' (or 'death benefits dependant') of the deceased includes their spouse **or former spouse** (including de facto spouse) and only children **under the age of 18**.

Therefore, super death benefits generally cannot be paid **directly** to a former spouse, as they are not a dependant for super purposes.

Also, while a child of any age is a dependant for super purposes, only children under the age of 18 are dependants for tax purposes. This means that, while a child of any age may receive super death benefits directly, those benefits will generally only be tax-free if the child is under 18.

*Editor: If you are thinking about estate planning with your superannuation, please contact our office.*

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## **NALI provisions did not apply to loan structure**

The Administrative Appeals Tribunal ('AAT') has held that interest income derived by a self-managed superannuation fund ('SMSF') as the sole beneficiary of a unit trust was not non-arm's length income ('NALI'), and so this income could still be treated as exempt current pension income.

During the 2015, 2016 and 2017 financial years, the unit trust lent money through two related entities to independent third parties who undertook development activities, through a series of loan arrangements.

The interest income derived by the unit trust through these loan arrangements was distributed to the SMSF as sole unitholder and was treated as exempt current pension income.

Following an audit, the ATO determined that the income was NALI, and therefore should not have been included as exempt current pension income.

The ATO then issued amended assessments for the relevant financial years, along with penalties.

While the AAT found that the parties were not dealing with each other at arm's length, it also concluded that the income that the unit trust derived was **not** more than the amount it might have been expected to derive if the parties had been dealing at arm's length.

Accordingly, the relevant interest income received by the SMSF was **not** NALI, and so the taxpayer's objections to the amended tax assessments and penalties were allowed.

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## **Luxury car tax: determining a vehicle's principal purpose**

The ATO recently explained how to determine the principal purpose of a car for 'luxury car tax' ('LCT') purposes (since LCT is not payable on the supply or importation of cars whose principal purpose is the carriage of goods rather than passengers).

Broadly, a luxury car (i.e., a car subject to LCT) is a car whose LCT value exceeds the LCT threshold. However, a commercial vehicle that is not designed for the principal purpose of carrying passengers is specifically excluded as a luxury car.

The ATO's new determination sets out various factors to be considered in determining the principal purpose of a car, as well as factors to consider when assessing a car's modifications.

The determination states that commercial vehicles are unlikely to have the body types of station wagons, off-road passenger wagons, passenger sedans, people movers or sports utility vehicles, and the supply of these vehicles for an amount above the LCT threshold without LCT being paid may well attract the ATO's scrutiny.