

AIST

7 July 2023

Retirement, Advice and Investment Division
Treasury
Langton Cres
Parkes ACT 2600

Email: superannuation@treasury.gov.au

Dear Treasury

Treasury Laws Amendment (Measures for Consultation) Bill 2023: Non-arm's length expense rules for superannuation funds

Brief

AIST supports the proposed legislation to amend the Income Tax Assessment Act 1997 (consistent with the 2023-24 Budget measure) to limit the application of the NALE rules to self-managed superannuation funds (SMSFs) and small Australian Prudential Regulation Authority (APRA) regulated funds (SAFs).

In order to give full effect to this policy intent, AIST seeks legislative clarity that the limited application of the NALE rules applies from 2018-19 for large APRA funds in relation to specific expenses (as well as general expenses), as the proposed Bill does not provide certainty about the historic treatment of specific expenditures.

About AIST

Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public sector superannuation funds.

As the principal advocate and peak representative body for the \$1.9 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST advocates for financial wellbeing in retirement for all Australians regardless of gender, culture, education, or socio-economic background. Through leadership and excellence, AIST supports profit-to-member funds to achieve member-first outcomes and fairness across the retirement system.

Submission

AIST supports the exemption of large APRA-regulated funds, including exempt public sector superannuation funds, from the non-arm's length income rules related to non-arm's length expenses, by the Bill.

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We agree with the comments in paragraph 1.12 and 1.16 of the Explanatory Materials that large APRA-regulated funds are at lower risk of gaining a tax advantage by engaging in schemes with related parties to incur losses or outgoings at less than arm's length.

The nature of the transactions large APRA-regulated funds entities engage in also means they have less incentive to enter into schemes of the kind which result in tax arbitrage (such as arrangements to circumvent contribution caps).

We strongly support the view that, due to the lower risk and the nature of these transactions, exempting these funds will remove the need for additional unnecessary compliance burdens.

This lower level of risk and these characteristics of APRA-regulated funds is endemic to these types of fund and supports the view that the non-arm's expenses rules should not apply to large APRA-regulated funds and exempt public sector superannuation funds at any time, including all times prior to promulgation of the Bill, and in relation to both general and specific expenses.

If the Bill only applies the exemption for large APRA-regulated funds prospectively, this will result in additional unnecessary compliance burdens, the same burden the Bill seeks to ameliorate in respect of prospective periods. The policy rationale for the exemption applies equally across both past and future years.

In order to give full effect to the Government's policy intent, AIST seeks legislative change to clarify that the limited application of the NALE rules applies from 2018-19 for large APRA-regulated funds in relation to specific expenses (as well as general expenses), as the proposed Bill does not provide certainty about the historic treatment of specific expenditures.

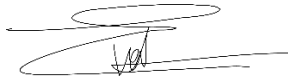
In the alternate, if the Government is not prepared to amend the Bill as proposed by AIST, AIST submits that the Explanatory Material restate the Government's policy intention for the exemption of large APRA-regulated funds, including exempt public sector superannuation funds, from the non-arm's length income rules related to non-arm's length expenses, and state an expectation that APRA would not take compliance action in relation to these types of funds for the period between 1 July 2018 and 30 June 2023. Compliance action in relation to this period would be an inappropriate use of ATO resources and at odds with the Government's policy intent.

AIST also notes that the requirement to prepare 'transfer pricing' type documentation to establish the arm's length basis of expenses imposes a significant compliance burden on funds, thereby increasing fund expenditure that is ultimately borne by members.

AIST also supports the legislative amendments proposed to Treasury by the Australian Retirement Fund, including the proposed exemption of wholly-owned entities of large APRA-regulated funds from the non-arm's length income rules

For further information regarding our submission, please contact AIST Senior Policy David Haynes at dhaynes@aist.asn.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Eva Scheerlinck', with a large, sweeping flourish underneath.

Eva Scheerlinck

Chief Executive Officer