

ATO publish guidance on Non-arm's length income and proposed changes to TR 2010/1

Today's podcast focuses on the ATO Law Companion Ruling on the Non-arm's length income – expenditure incurred under a non-arm's length arrangement and the ATO draft consolidation outlining proposed changes to Tax Ruling 2010/1 that explain the interactions between non-arm's length income provisions and the rule around superannuation contributions.

Hello and welcome to today's BT TechKnow podcast. I'm Bryan Ashenden, and I have the pleasure of leading the BT Technical Services team – a team of experts that are available to answer any technical advice strategy related queries you may have.

This week has seen some significant and long waiting guidance published by the ATO around the treatment of non-arm's length income.

We started off with the release of Law Companion Ruling 2021/2. This ruling looks at non-arm's length income (or NALI) where expenditure is incurred under a non-arm's length arrangement. The ruling clarifies how the amendments to section 295-550 of the ITAA 1997 operate in a scheme where parties don't deal with each other at arm's length and the trustee of a complying super entity incurs non-arm's length expenditure (commonly referred to as NALE) or where the NALE is not incurred in gaining or producing ordinary or statutory income.

Importantly, that these amendments apply to income derived in the 2018/19 income year and later regardless of whether the scheme was entered into prior to 1 July 2018.

So just what does this ruling mean? As you'd be aware, the taxable income of a complying super fund can be made up of two components – a low tax component, which is taxed at 15%, and a non-arm's length component which attracts the top marginal tax rate.

The non-arm's length component for an income year is the amount of a complying superannuation fund's NALI less any deductions to the extent that they are attributable to that income. To the extent that the ordinary and statutory income of a complying superannuation fund is NALI, the income is not exempt current pension income.

The low tax component of a complying superannuation fund's taxable income is the amount of the fund's taxable income remaining after deducting the non-arm's length component from its total taxable income.

Previously, the NALI provisions apply where a complying superannuation fund either:

- derived ordinary or statutory income under a scheme where:
 - the parties were not dealing with each other at arm's length in relation to the scheme, and

- the amount of income is more than what might have been expected to have been derived if those parties had been dealing with each other at arm's length in relation to the scheme, or
- derived income as a beneficiary of a trust through holding a fixed entitlement to the income of the trust where:
 - the fund acquired the entitlement under a scheme, or the income was derived under a scheme, the parties to which were not dealing with each other at arm's length, and
 - the amount of income is more than what might have been expected to have been derived if those parties had been dealing with each other at arm's length.

Although these rules remain, the amendments from the LCR remove ambiguity in the application of the NALI provisions by clarifying their application where a complying superannuation fund incurs a loss, outgoing or expenditure (or does not incur a loss, outgoing or expenditure) in certain circumstances.

This week we also saw the ATO release a draft consolidation outlining proposed changes to TR 2010/1 to explain the interactions between the non-arm's length income provisions and the rules concerning superannuation contributions. The draft TR also contains changes to reflect the removal of the maximum earnings test for the purpose of deducting personal contributions, which commenced from 1 July 2017. It is expected that when this ruling is finalised, it will be a public ruling for the purposes of the *Taxation Administration Act 1953*.

TR 2010/1 DC looks at contributions made to a super fund, an approved deposit fund or retirement savings account. It explains the Commissioner's views as to the ordinary meaning of the word 'contribution' in so far as 'contribution' is used in relation to a superannuation fund, approved deposit fund or retirement savings account in the *Income Tax Assessment Act 1997* (ITAA 1997).

Importantly, parts of this Ruling are also relevant to the meaning of 'contribution' in the *Superannuation Industry (Supervision) Act 1993* (SISA) and the Superannuation Industry (Supervision) Regulations 1994 (SISR).

For example, where funds are electronically transferred to the super fund, the contribution is deemed to be made when the funds are credited to the super providers account. While a personal cheque contribution is post-dated and presented and honoured with cash or its electronic equivalent, the contribution is deemed to be the date on the cheque as long as the cheque is promptly presented and honoured.

Both of the releases provide many examples and are very worthwhile reviewing for your clients particular circumstances.

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To register for this webinar, head to www.bt.com.au/professional and follow the links to the BT Academy webinar series. You can also view previous webinars and all sessions qualify for CPD points.

And, as always, remember if you have any technical advice strategy questions, you can call our BT Technical Services team on 1800 655 901 or send the team an email at technical@btfinancialgroup.com.

Until next time, bye for now!

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