

LCR 2021/2A3 - Addendum - Non-arm's length income - expenditure incurred under a non-arm's length arrangement

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Addendum

Law Companion Ruling

Non-arm's length income – expenditure incurred under a non-arm's length arrangement

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Law Companion Ruling LCR 2021/2 to clarify how the amendments to section 295-550 of the *Income Tax Assessment Act 1997* operate in a scheme where the parties do not deal with each other at arm's length and the trustee of a small complying superannuation fund (a complying superannuation entity with no more than 6 members including a self-managed superannuation fund (SMSF)) incurs non-arm's length expenditure (or where expenditure is not incurred) in gaining or producing ordinary or statutory income, and address accessibility requirements.

LCR 2021/2 is amended as follows:

1. Preamble

Omit '(excluding appendix)'.

2. Table of Contents

Omit the Table of Contents; substitute:

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3. Paragraph 1

- (a) Omit the wording of the paragraph; substitute:

This Ruling clarifies how the amendments to section 295-550 of the *Income Tax Assessment Act 1997* (ITAA 1997)¹ (2024 amendments) operate in a scheme where the parties do not deal with each other at arm’s length and the trustee of a small complying superannuation fund (a complying superannuation entity² with no more than 6 members including a self-managed superannuation fund (SMSF)) incurs non-arm’s length expenditure (or where expenditure is not incurred) in gaining or producing ordinary or statutory income.

- (b) Omit the wording of footnote 1; substitute:

See Schedule 7 to the *Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Act 2024* (TLA Act 2024).

- (c) Omit footnote 3.

- (d) After the paragraph, insert new paragraph 1A:

1A. The 2024 amendments apply in relation to income derived and a loss, outgoing or expenditure that is incurred (or not incurred but might have expected to be incurred) in the 2018–19 income year and later income years. These amendments supersede amendments made by the *Treasury Laws Amendment (2018 Superannuation Measures No. 1) Act 2019* (TLA Act 2019).^{3A}

- (e) At the end of paragraph 1A, insert new footnote 3A:

^{3A} See paragraphs (1) to (3) of item 5 of Schedule 7 to the TLA Act 2024.

4. Paragraph 2

Omit the wording of the paragraph; substitute:

For the purposes of readability, a reference in this Ruling to ‘non-arm’s length expenditure’ includes where no loss, outgoing or expenditure is incurred under the relevant scheme, as outlined in paragraph 11 of this Ruling.

5. Paragraph 3

After ‘All’, insert ‘further’.

6. Paragraph 4

Omit ‘The amendments in the TLA Act 2019 apply to income derived in the 2018–19 income year and later income years, regardless of whether the scheme was entered into prior to 1 July 2018.’.

7. Paragraph 5

- (a) In the heading, after ‘Overview of’, insert ‘the 2024’.
- (b) Omit ‘two’; substitute ‘2’.
- (c) After ‘non-arm’s length component’, insert (NALC).

8. Paragraph 6

- (a) Omit the wording of the paragraph; substitute:

The 2024 amendments have modified the calculation of the NALC for an income year for small complying superannuation funds.

- (b) Omit footnotes 4 and 5.

- (c) After the paragraph, insert new paragraphs 6A to 6D, including heading:

Non-arm’s length component

6A. For a superannuation fund, other than a small complying superannuation fund, the NALC for an income year is the amount of that entity’s non-arm’s length income (NALI) less any deductions to the extent that they are attributable to that income.^{5A}

6B. For a small complying superannuation fund, the NALC for an income year is the lesser of ('lesser of' calculation) the:

- sum of
 - each amount of NALI (other than NALI as a result of a general expense that is a non-arm's length expense) less deductions attributable to that NALI, and
 - each amount of NALI as a result of a general expense that is a non-arm's length expense^{5B}
- fund's taxable income for the year less assessable contributions plus any deductions to the extent they are attributable to those contributions.^{5C}

6C. The formula outlined in paragraph 6B of this Ruling introduces a cap on the NALC to ensure that assessable contributions (minus related deductions) are not subject to the higher tax rates under the NALI provisions.^{5D}

6D. The amount of NALI as a result of a general expense that is a non-arm's length expense is calculated using the 'twice the difference' approach.^{5E}

(d) At the end of new paragraph 6A, insert new footnote 5A:

^{5A} Subsection 295-545(2).

(e) In new paragraph 6B, after 'each amount of NALI as a result of a general expense that is a non-arm's length expense', insert new footnote 5B:

^{5B} Paragraph 295-545(2A)(a).

(f) At the end of new paragraph 6B, insert new footnote 5C:

^{5C} Paragraph 295-545(2A)(b).

(g) At the end of new paragraph 6C, insert new footnote 5D:

^{5D} Paragraph 7.24 of the Explanatory Memorandum to the Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023 (EM to the TLA Bill 2023).

(h) At the end of new paragraph 6D, insert new footnote 5E:

^{5E} Subsection 295-550(8) or (9).

(i) After new paragraph 6D, insert new heading:

Other changes made by the 2024 amendments – for complying superannuation funds

9. Paragraph 7

(a) Omit the wording of the paragraph; substitute:

For all complying superannuation funds, the low tax component of a complying superannuation fund's taxable income is the amount of the fund's taxable income less its NALC.^{6A} The ordinary and statutory income of any complying superannuation fund that is NALI is not exempt current pension income.^{6B}

(b) Omit footnote 6.

(c) After 'less its NALC.', insert new footnote 6A:

^{6A} Subsection 295-545(3).

- (d) At the end of paragraph 7, insert new footnote 6B:
^{6B} Paragraphs 295-385(2)(a), 295-390(2)(a) and 295-400(2)(a).

10. Paragraph 8

- (a) Omit the wording of the paragraph; substitute:
 Following the 2024 amendments the NALI provisions continue to apply where a complying superannuation fund:
- derived ordinary or statutory income under a scheme where
 - the parties to the scheme 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 scheme⁷
 - derived an amount of ordinary or statutory income (unless that amount is consistent with an arm’s length dealing) if it is either
 - a dividend paid to the fund by a private company, or
 - ordinary income or statutory income that is reasonably attributable to such a dividend^{7A}
 - derived income as a beneficiary of a trust, other than because of holding a fixed entitlement to the income of the trust^{7B}
 - derived income under a scheme as a beneficiary of a trust through holding a fixed entitlement to the income of the trust where
 - the parties to the scheme 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.⁸
- (b) Omit the wording of footnote 7; substitute:
 Paragraph 295-550(1)(a).
- (c) After ‘attributable to such a dividend’, insert new footnote 7A:
^{7A} Subsection 295-550(2).
- (d) After ‘fixed entitlement to the income of the trust’, insert new footnote 7B:
^{7B} Subsection 295-550(4).
- (e) Omit the wording of footnote 8; substitute:
 Paragraph 295-550(5)(a).
- (f) After paragraph 8, insert new paragraphs 8A to 8C:
 8A. From 1 July 2018, the non-arm’s length expenditure provisions will apply to small complying superannuation funds. As explained later in this Ruling, these

provisions will apply where the small complying superannuation fund incurs a non-arm's length expense that:

- relates to a specific expense in respect of a particular asset or assets of the fund, or
- is of a general nature that does not relate to a specific expense of the fund.

8B. The non-arm's length expenditure provisions do not apply to expenditure incurred or expected to have been incurred before 1 July 2018.^{8A}

8C. Superannuation funds other than a small complying superannuation fund, including large APRA-regulated funds, exempt public sector superannuation funds, pooled superannuation trusts and approved deposit funds (large APRA funds), are exempt from the NALI rules arising from non-arm's length expenditure for both general and specific expenses. These large APRA funds are still subject to the other NALI rules.^{8B}

(g) At the end of new paragraph 8B, insert new footnote 8A:

^{8A} Paragraphs (1) to (3) of item 5 of Schedule 7 to the TLA Act 2024. This exclusion does not limit the potential application of other NALI provisions in section 295-550 where there is non-arm's length expenditure.

(h) At the end of new paragraph 8C, insert new footnote 8B:

^{8B} Paragraphs 295-550(1)(a), subsections 295-550(2), (3) and (4) and paragraph 295-550(5)(a).

(i) After new paragraph 8C, insert new heading:

Non-arm's length expenditure – requirements of paragraphs 295-550(1)(b) and (c), paragraphs 295-550(5)(b) and (c), and subsections 295-550(8) and (9)

11. Paragraph 9

(a) Omit the wording of the paragraph; substitute:

The amount of ordinary or statutory income of a small complying superannuation fund that is NALI will depend on whether the non-arm's length expenditure is a specific expense or a general expense.

(b) Omit footnote 9.

12. Paragraph 10

(a) Omit the wording of the heading; substitute:

Specific non-arm's length expense – paragraphs 295-550(1)(b) and (c)

(b) Omit the wording of the paragraph; substitute:

An amount of ordinary or statutory income will be NALI of a small complying superannuation fund where:

- there is a scheme in which the parties to the scheme were not dealing with each other at arm's length

- in gaining or producing the income of the fund *in relation* to any particular asset or assets of the fund, the fund incurs a loss, outgoing or expenditure of an amount, and
- the amount of the loss, outgoing or expenditure is less than the amount that the fund might have been expected to incur had those parties been dealing with each other at arm's length in relation to the scheme.¹⁰

13. Paragraph 11

(a) Omit the wording of the paragraph; substitute:

An amount of ordinary or statutory income will also be NALI of a small complying superannuation fund where:

- there is a scheme in which the parties to the scheme were not dealing with each other at arm's length, and
- in gaining or producing income *in relation* to any particular asset or assets of the fund, the fund does not incur a loss, outgoing or expenditure that the fund might have been expected to incur if those parties had been dealing with each other at arm's length in relation to the scheme.¹¹

(b) After the paragraph, insert new paragraphs 11A to 11D, including heading:

General non-arm's length expense – subsections 295-550(8) and (9)

11A. An amount of ordinary or statutory income will be NALI of a small complying superannuation fund where:

- there is a scheme in which the parties to the scheme were not dealing with each other at arm's length
- in gaining or producing the income of the fund (*but not* in gaining or producing the income *in relation* to any particular asset or assets of the fund) the fund incurs a loss, outgoing or expenditure of an amount, and
- the amount of the loss, outgoing or expenditure is less than the amount that the fund might have been expected to incur had those parties been dealing with each other at arm's length in relation to the scheme.^{11A}

11B. An amount of ordinary or statutory income will also be NALI of a small complying superannuation fund where:

- there is a scheme in which the parties to the scheme were not dealing with each other at arm's length, and
- in gaining or producing the income (*but not* in gaining or producing the income *in relation* to any particular asset or assets of the fund) the fund does not incur a loss, outgoing or expenditure that the fund might have been expected to incur if those parties had been dealing with each other at arm's length in relation to the scheme.^{11B}

11C. As a result of the 2024 amendments, NALI that results from a non-arm's length general expense will be calculated according to the 'twice the difference'

approach. Where a non-arm's length general expense is incurred, the amount that is NALI is equal to twice the difference of the amount that the entity actually incurred and the amount that the entity might have expected to incur if the parties had been dealing at arm's length. Where no expense was incurred, the amount will be equal to twice the amount that might have been expected if the parties has been dealing at arm's length.

11D. Where a non-arm's length general expense is actually incurred, when calculating the NALC, the amount of NALI using the 'twice the difference' approach is not reduced by the amount actually incurred.^{11C}

(c) At the end of new paragraph 11A, insert new footnote 11A:

^{11A} Subsection 295-550(8).

(d) At the end of new paragraph 11B, insert new footnote 11B:

^{11B} Subsection 295-550(9).

(e) At the end of new paragraph 11D, insert new footnote 11C:

^{11C} Subparagraph 295-545(2A)(a)(ii).

14. Paragraph 12

(a) After 'income derived by a', insert 'small'.

(b) Omit the first dot point; substitute:

- there is a scheme in which the parties to the scheme were not dealing with each other at arm's length

15. Paragraph 13

(a) Omit the wording of the paragraph, excluding footnote 13; substitute:

Other income derived by a small complying superannuation fund as a beneficiary of a trust through holding a fixed entitlement to the income of the trust is also NALI where:

- there is a scheme in which the parties to the scheme were not dealing with each other at arm's length, and
- the fund does not incur a loss, outgoing or expenditure in acquiring the entitlement or in gaining or producing the income that the fund might have been expected to incur if those parties had been dealing with each other at arm's length in relation to the scheme.¹³

(b) After the paragraph, insert new paragraph 13A:

13A. A non-arm's length expense incurred in relation to acquiring the fixed entitlement to the income of a trust or in gaining or producing the income as a beneficiary of such a trust is a specific expense and not a general expense. This is because the income derived is *in relation* to a particular asset or assets of the fund, being the fixed entitlement in the trust.

16. Paragraph 14

Omit 'paragraphs 295-550(1)(b) and (c) or 295-550(5)(b) and (c)'; substitute 'paragraphs 295-550(1)(b) and (c), 295-550(5)(b) and (c), or 295-550(8)(b) and (9)(b)'.

17. Paragraph 16

(a) Omit the wording of the paragraph; substitute:

Within the identified steps of the scheme, it is then necessary to determine whether the small complying superannuation fund incurs non-arm's length expenditure in:

- gaining or producing the ordinary or statutory income^{14A} and whether it is *in relation* to any particular asset or assets of the fund^{14B}, or
- in acquiring the fixed entitlement to the income of a trust or in gaining or producing the income derived as beneficiary of a trust.^{14C}

(b) After, 'ordinary or statutory income', insert new footnote 14A:

^{14A} Paragraphs 295-550(8) and (9).

(c) After 'to any particular asset or assets of the fund', insert new footnote 14B:

^{14B} Subparagraph 295-550(8)(b)(i) and paragraph 295-550(9)(b).

(d) At the end of the paragraph, insert new footnote 14C:

^{14C} Paragraphs 295-550(5)(b) and (c).

18. Paragraph 17

(a) Omit the wording of paragraph 17; substitute:

In identifying whether the small complying superannuation fund has incurred NALI, there must be a sufficient nexus between the non-arm's length expenditure and the relevant ordinary or statutory income. That is, the expenditure must have been incurred 'in' gaining or producing the relevant income (or acquiring the relevant entitlement). Further, to determine whether the income is *in relation* to any particular asset or assets of the fund, there must also be a sufficient nexus between the non-arm's length expenditure and ordinary or statutory income derived in respect of that asset or assets including the disposal of that asset.

(b) Omit footnote 15.

(c) After paragraph 17, insert new paragraph 17A:

17A. While guidance can be obtained from jurisprudence concerning the application of section 8-1 to determine whether there is a sufficient nexus between the non-arm's length expenditure and the relevant income^{15A}, the non-arm's length expenditure does not have to be deductible under section 8-1 for the non-arm's length expenditure provisions to apply. The non-arm's length expenditure may be of a revenue or capital nature¹⁶, or deductible under a specific provision, provided there is a sufficient nexus to the relevant income.

(d) After 'and the relevant income' in new paragraph 17A, insert footnote 15A:

^{15A} See Taxation Ruling TR 93/17 *Income tax: income tax deductions available to superannuation funds*.

19. Paragraph 18

- (a) Omit the wording of the paragraph; substitute:

Non-arm's length expenditure incurred to acquire an asset (including associated financing costs) will be specific expenditure and will have a sufficient nexus to all ordinary or statutory income derived by the small complying superannuation fund in respect of that particular asset. This includes any capital gain derived on the disposal of the asset (see Example 1 of this Ruling).¹⁷ There will still be a sufficient nexus between the initial non-arm's length expenditure incurred to acquire an asset (including associated financing costs) and an amount of statutory income, determined by reference to any capital gain derived by the fund on the disposal of that particular asset^{17A} even where the trustee subsequently refinances the borrowing arrangement on arm's length terms (see Example 4 of this Ruling).

- (b) Omit the wording of footnote 17; substitute:

Paragraphs 7.2 and 7.40 of the EM to the TLA Bill 2023 refer back to the TLA Act 2019. As such, see Example 2.1 and paragraph 2.39 of the Explanatory Memorandum to the TLA Bill 2019 (EM to the TLA Bill 2019).

- (c) After 'the disposal of that particular asset', insert new footnote 17A:

^{17A} See Taxation Determination TD 2024/5 *Income tax: how the non-arm's length income and capital gains tax provisions interact to determine the amount of statutory income that is non-arm's length income.*

20. Paragraph 19

- (a) Omit 'ordinary and/or statutory income derived by the fund.'; substitute:

ordinary income, statutory income, or both, derived by the fund rather than to any particular asset or assets of the fund. A general expense is a loss, outgoing or expenditure of an amount that is incurred in gaining or producing income of the fund *but not in relation* to any particular asset or assets of the fund. A reference to a general expense includes where the fund does not incur a loss, outgoing or expenditure that the fund might have been expected to incur in gaining or producing income of the fund, but not in relation to any particular asset or assets of the fund.

- (b) Omit 'particular amount being derived by the fund but still has a sufficient nexus more generally to all income'; substitute:

particular asset or assets owned or acquired by the fund but still has a sufficient nexus more generally to the income

- (c) At the end of the first dot point, insert new footnote 18A:

^{18A} Expenditure deductible under section 25-5, which would not also satisfy the requirements of section 8-1, does not have a sufficient nexus to ordinary or statutory income and accordingly the NALI provisions will not apply to this expenditure.

- (d) At the end of the second dot point, insert new footnote 18B:

^{18B} See footnote 18A of this Ruling.

21. Paragraph 20

- (a) Omit the wording of paragraph 20; substitute:

Where the fund incurs non-arm's length general expenditure of the nature outlined in paragraph 19 of this Ruling, the amount of income that is NALI is calculated using the 'twice the difference' approach as follows (see Example 2 of this Ruling):

- where an amount of non-arm's length general expense is incurred – the amount that might have been expected to be incurred if the parties to the scheme had been dealing at arm's length, minus the amount actually incurred, with the resulting number multiplied by 2^{18C}, or
- where no amount of non-arm's length general expense is incurred – twice the amount that might have been expected to be incurred if the parties to the scheme had been dealing at arm's length.^{18D}

- (b) After 'resulting number multiplied by 2', insert new footnote 18C:

^{18C} Subsection 295-550(8).

- (c) At the end of the paragraph, insert new footnote 18D:

^{18D} Subsection 295-550(9).

- (d) After the paragraph, insert new paragraph 20A:

20A. Where a non-arm's length general expense is actually incurred, when calculating the NALC, the amount of NALI using the 'twice the difference' approach is not reduced by the amount actually incurred.^{18E} This is because the 'twice the difference' approach already takes into account the amount actually incurred by subtracting it from the amount that might have been expected to be incurred if the parties had been dealing with each other at arm's length, before multiplying the result by 2 to arrive at the amount of NALI.^{18F}

- (e) After 'reduced by the amount actually incurred.', insert new footnote 18E:

^{18E} Subparagraph 295-545(2A)(a)(ii).

- (f) At the end of new paragraph 20A, insert new footnote 18F:

^{18F} Paragraph 7.23 of the EM to the TLA Bill 2023.

22. Paragraph 21

- (a) After 'Where a', insert 'small'.
- (b) Omit 'of a recurrent nature ('.
- (c) Omit 'an asset¹⁹'); substitute 'any particular asset¹⁹'.
- (d) Omit 'example of recurrent expenditure'; substitute 'example of expenditure'.

23. Paragraph 22

- (a) Omit '2019–20', insert '2022–23'.
- (b) Omit '*as trustee of his self-managed superannuation fund (SMSF)*'; substitute '*as a trustee of his SMSF*'.

24. Paragraph 23

Omit '*Further, there will be a sufficient nexus between the non-arm's length expenditure and any capital gain derived on the disposal of the property for the capital gain to be NALI.*'; substitute:

Further, there will be a sufficient nexus between the non-arm's length expenditure and an amount of statutory income, determined by reference to any capital gain derived by the fund on the disposal of that particular property. The non-arm's length expenditure incurred by the SMSF in acquiring the property is a specific expense. The SMSF's NALC is calculated using the 'lesser of' calculation referred to in paragraph 6B of this Ruling.

25. Paragraph 24

- (a) Omit '*Mikasa as trustee of her SMSF*'; substitute '*Mikasa (as a trustee of her SMSF)*'.
- (b) After '*tax affairs and obligations*', insert '*, which are ordinarily deductible under section 25-5*'.

26. Paragraph 25

Omit '*As such, all of the SMSF's income for the 2020-21 income year is NALI.*'; substitute:

The non-arm's length expenditure incurred by the SMSF in acquiring the accounting services (nil amount) is a general expense. As such, for the 2020–21 income year, the amount of NALI as a result of the general expense will be twice the difference between the amount of the expense that might have been expected to be incurred had the parties been dealing at arm's length and the amount the entity incurred. The SMSF's NALC is calculated using the 'lesser of' calculation referred to in paragraph 6B of this Ruling.

27. Paragraphs 27 and 28

Omit '*complying superannuation fund*'; substitute '*small complying superannuation fund*'.

28. Paragraph 29

- (a) Omit the wording of paragraph 29; substitute:

An in specie contribution can be made in conjunction with a complying superannuation fund purchasing part of an asset where a contract makes it clear the fund is only acquiring part of the asset. In such situations, the fund:

- purchases the interest in the asset specified under the contract, and
- receives the in specie contribution of the remaining interest in the asset.

- (b) After the paragraph, insert new paragraph 29A:

29A. The small complying superannuation fund will not have incurred non-arm's length expenditure for the purposes of subsections 295-550(1) or (5) where that part of the asset acquired under the contract is purchased at market value. However, if the fund pays less than market value for the part of the asset

purchased under the contract, then the non-arm's length expenditure provisions apply for the reasons outlined in paragraph 27 of this Ruling. This would be the case even if the in specie contribution relating to the other part of the asset is recorded at market value in the fund's accounts and is allocated to the member's superannuation interest.

29. Paragraph 30

At the beginning of the paragraph, insert 'The non-arm's length expenditure incurred by the fund in acquiring the property is a specific expense.'

30. Paragraph 31

Omit the wording of the paragraph; substitute:

During the 2018–19 income year, Russell (as a trustee of his SMSF) purchases listed shares from a related entity for \$500,000. The market value of the shares at the time of purchase is \$900,000. The terms of the agreement specify the purchase price as \$500,000, rather than \$900,000. Accordingly, the arrangement does not involve an in specie contribution being made to the SMSF.

31. Paragraph 32

Omit the wording of the paragraph; substitute:

The non-arm's length dealing between Russell's SMSF and his related entity amounts to a scheme, which has resulted in his SMSF incurring expenditure that was less than would otherwise be expected if those parties were dealing with each other at arm's length in relation to the scheme. The expenditure was incurred in gaining or producing the dividend income. The non-arm's length expenditure incurred by the SMSF in purchasing the listed shares is a specific expense. Any dividend income derived by the SMSF from the shares will be NALI. The SMSF's NALC is calculated using the 'lesser of' calculation referred to in paragraph 6B of this Ruling.

32. Paragraph 33

Omit the wording of the paragraph; substitute:

The non-arm's length expenditure incurred in acquiring the shares would also result in any future amount of statutory income, determined by reference to any capital gain being derived by the fund on the disposal of those particular shares being NALI. Refer to Example 13 of this Ruling for an explanation of how this operates in conjunction with the market value substitution rule.

33. Paragraph 34

Omit the wording of the paragraph; substitute:

During the 2018–19 income year, Kellie (as a trustee of her SMSF) enters into a non-commercial LRBA with herself in her individual capacity to purchase a commercial property valued at \$2 million. Her SMSF borrows 100% of the purchase price and the terms of the loan include interest being charged at a rate of

1.5% per annum and repayments only being made on an annual basis over a 25-year period. Kellie's SMSF receives a commercial rate of rent from the property of \$12,000 per month.

34. Paragraph 35

- (a) Omit '*have occurred*'; substitute '*occur*'.
- (b) Omit '*loan to market*'; substitute '*loan-to-market*'.

35. Paragraph 36

Omit '*The rental income derived from the commercial property by the SMSF for all income years is therefore NALI, regardless of whether the LRBA is subsequently refinanced on arm's length terms.*'; substitute:

The non-arm's length expenditure incurred by the SMSF in purchasing the commercial property is a specific expense. The rental income derived from the commercial property by the SMSF for all income years is therefore NALI, regardless of whether the LRBA is subsequently refinanced on arm's length terms. The SMSF's NALC is calculated using the 'lesser of' calculation referred to in paragraph 6B of this Ruling.

36. Paragraph 37

Omit the wording of the paragraph; substitute:

The non-arm's length expenditure incurred under the LRBA would also result in any future amount of statutory income, determined by reference to any capital gain derived by the fund on the disposal of that particular property being NALI. This will be the case regardless of whether the LRBA is subsequently refinanced on arm's length terms.

37. Paragraph 38

- (a) In the heading, omit '***part purchase/part in specie***'; substitute '***part purchase and part in specie***'.
- (b) Omit '*2018–19*'; substitute '*2023–24*'.
- (c) Omit '*premises have a market value of*'; substitute '*premises has a market value of*'.

38. Paragraph 39

Omit '*disposal of the factory*'; substitute '*disposal of the commercial premises*'.

39. Paragraph 40

Omit '*a SMSF*'; substitute '*an SMSF*'.

40. Paragraph 41

- (a) In the first dot point, omit ‘, and’.
- (b) In the second dot point, omit ‘, and’.

41. Paragraph 42

- (a) Omit the wording of the paragraph; substitute:

Given the statutory restrictions that prevent a trustee or director of a corporate trustee from receiving remuneration, paragraphs 295-550(1)(b) and (c) or subsections 295-550(8) and (9) will not be enlivened due to the trustee or director not charging for the services performed in relation to the fund.²⁴ Therefore, the non-arm’s length expenditure provision will not apply where:

- a trustee acting in that capacity, provides services to the fund for no remuneration, or
- a trustee acting in a capacity other than as trustee, provides services to the fund for no remuneration where the requirements in section 17B of the SISA are not met.

- (b) Omit the wording of footnote 24; substitute:

See paragraphs 7.28 to 7.32 of the EM to the TLA Bill 2023.

42. Paragraph 43

Omit the wording of the paragraph; substitute:

However, the fund does incur non-arm’s length expenditure under either paragraph 295-550(1)(b) or (c) or subsection 295-550(8) or (9) when the trustee or director of a corporate trustee operates in another capacity and they can receive remuneration for their service under section 17B of the SISA, but either:

- does not receive any remuneration for those services, or
- receives remuneration that is less than what parties dealing with each other at arm’s length might have been expected to receive.

43. Paragraph 44

Omit ‘a SMSF’; substitute ‘an SMSF’.

44. Paragraph 46

Omit both instances of ‘a SMSF’; substitute ‘an SMSF’.

45. Paragraph 47

- (a) Omit ‘paragraphs 295-550(1)(b) and (c),’; substitute ‘295-550(1)(b) and (c) or subsection 295-550(8) or (9),’.
- (b) Omit ‘that indicate that the’; substitute ‘to be considered when determining whether an’.

- (c) Omit both instances of 'and/or'; substitute 'or'.

46. Paragraph 49

- (a) Omit both instances of 'complying superannuation fund'; substitute 'small complying superannuation fund'.
- (b) At the end of the paragraph, insert new footnote 24A:

^{24A} See paragraph 19 and footnote 18A of this Ruling concerning when accounting fees may not be a general expense that is non-arm's length expenditure.

47. Paragraphs 50 and 52

Omit 'complying superannuation fund'; substitute 'small complying superannuation fund'.

48. Paragraph 51

Omit the wording of the paragraph; substitute:

A small complying superannuation fund might enter into arrangements that result in it receiving discounted prices. Such arrangements will still be on arm's length terms where they are consistent with normal commercial practices, such as an individual acting in their capacity as trustee (or a director of a corporate trustee) being entitled to a discount under a discount policy where the same discount is provided to all employees, partners, shareholders or office holders. Where this is not the case, or where the trustee (or director of a corporate trustee) of the fund is able to influence the discount policy, this may indicate that the discount policy is not consistent with normal commercial practices.

49. Paragraph 53

- (a) Omit the wording of the paragraph; substitute:

Other than arrangements covered in paragraph 51 of this Ruling, pricing based on a cost-recovery basis is considered to be for less than market value when applying ordinary commercial pricing policies to the goods and services provided and will not be consistent with an arm's length dealing.

- (b) Omit footnote 25.

50. Paragraph 54

Omit '*and annual return for the SMSF.*'; substitute '*for the SMSF. The accounting services include services other than those relating to complying with, or managing, the SMSF's income tax affairs and obligations, which are ordinarily deductible under section 25-5.*'.

51. Paragraph 55

- (a) Omit '*Levi is the trustee*'; substitute '*Levi is a trustee*'.
- (b) Omit '*financial advisor*'; substitute '*financial advisor*'.

- (c) Omit both instances of '*Levi and Co Financial Services Pty Ltd*'; substitute '*Levi and Co Financial Services*'.

52. Paragraph 57

After the paragraph, insert new paragraphs 57A and 57B, including heading:

Example 7A – SMSF trustee carrying out duties – trustee capacity

57A. *Mina is a trustee of her SMSF of which she is the sole member. She is a chartered accountant and she operates Once Accounting Services as a sole trader. Whilst at the office, Mina receives a phone call on her office phone from her SMSF auditor during her business hours. The call is related to supporting documentation for an investment made by her SMSF required by the SMSF auditor to complete the audit process. After the phone call, Mina sends a follow-up email to the SMSF auditor using her business computer providing the relevant supporting documentation.*

57B. *Mina performs these activities as trustee of her SMSF and does not charge her SMSF. Although Mina undertakes the activities at her business premises where she operates her accounting business, the use of the business supplied computer and the office telephone is minor and incidental in nature, and would not, of itself, indicate that Mina is acting in any capacity other than as trustee for her SMSF. Accordingly, the non-arm's length expenditure provisions will not apply.*

53. Paragraph 58

- (a) Omit '*Sasha is the trustee*'; substitute '*Sasha is a trustee*'.
- (b) Omit the ampersand; substitute '*and*'.

54. Paragraph 59

- (a) Omit both instances of '*Eren & Co*'; substitute '*Eren and Co*'.
- (b) After '*services to her SMSF*.' insert '*The accounting services include services other than those relating to complying with, or managing, the SMSF's income tax affairs and obligations, which are ordinarily deductible under section 25-5.*'.

55. Paragraph 60

Omit the wording of the paragraph; substitute:

The discounted rate is consistent with the normal commercial practices of Eren and Co Accountants. It is available to all staff and is not able to be influenced by Sasha. Accordingly, the discounted rate has been provided on an arm's length basis and the non-arm's length expenditure provisions will not apply.

56. Paragraph 61

- (a) In the heading, after '*carrying out duties*', insert '*and services*'.
- (b) Omit '*Trang is the trustee*'; substitute '*Trang is a trustee*'.

57. Paragraphs 62 and 83

Omit 'two'; substitute '2'.

58. Paragraph 68

- (a) After '*which resulted in the SMSF*', insert '*not*'.
- (b) After '*producing rental income that*', omit '*was less than*'.

59. Paragraph 69

Omit '*The non-arm's length expenditure will also result in any capital gain that might arise from the subsequent disposal of the second SMSF rental property being NALI.*'; substitute:

The non-arm's length expenditure incurred by the SMSF in acquiring the plumbing services for the second SMSF rental property is a specific expense. The SMSF's non-arm's length component is calculated using the 'lesser of' calculation referred to in paragraph 6B of this Ruling. The non-arm's length expenditure will also result in any future amount of statutory income, determined by reference to any capital gain derived by the fund on the disposal of the second SMSF rental property, being NALI.

60. Paragraph 70

- (a) In the heading, omit '**carrying out duties**'.
- (b) Omit the first 2 sentences; substitute '*Jean is a trustee of his SMSF of which he is the sole member. He is also a licensed electrician by trade, operating an electrician business as a sole trader.*'.

61. Paragraph 71

Omit the wording of the paragraph; substitute:

Jean undertakes electrical work on the rental property done in his capacity as a licensed electrician. The electrical work is covered under his businesses professional indemnity insurance and he utilises the business' equipment and tools of trade. In that instance, the work done by Jean is not as trustee of his SMSF but in his individual capacity. Jean charges the SMSF the commercial rate for the work undertaken on the rental property. Accordingly, the non-arm's length expenditure provisions will not apply.

62. Paragraph 72

- (a) In the heading, omit '**carrying out duties**'.
- (b) Omit all instances of '*Ringo Real Estate Pty Ltd*'; substitute '*Ringo Real Estate Co*'.

63. Paragraph 73

- (a) Omit '*Ringo Real Estate Pty Ltd*'; substitute '*Ringo Real Estate Co*'.

- (b) At the end of the paragraph, insert '*The non-arm's length expenditure incurred by the SMSF in acquiring the property management services with respect to the residential property is a specific expense.*'.

64. Paragraph 74

At the end of the paragraph, insert '*The SMSF's NALC is calculated using the 'lesser of' calculation referred to in paragraph 6B of this Ruling.*'.

65. Paragraph 75

Omit the wording of the paragraph; substitute:

Due to the nature of the non-arm's length expenditure, there will not be a sufficient nexus between the non-arm's length expenditure and any future amount of statutory income, determined by reference to any capital gain derived by the fund on the disposal of that particular residential property.

66. Paragraph 76

- (a) Omit 'paragraphs 12 and 13'; substitute 'paragraphs 12 to 13A'.
- (b) Omit both instances of 'complying superannuation fund'; substitute 'small complying superannuation fund'.

67. Paragraph 77

Omit the wording of the paragraph; substitute:

During the 2018–19 income year, Scott (as a trustee of his SMSF) enters into a non-commercial LRBA with himself in his individual capacity to purchase units, valued at \$50,000, in a stock exchange-listed unit trust. The SMSF borrows 100% of the purchase price and the terms of the loan include no interest being charged and repayments of principal not being required until the end of the 25-year term of the loan. The units provide the SMSF with a fixed entitlement to the income of the unit trust. The unit trust distributes \$8,000 to the SMSF at the end of the 2020–21 income year.

68. Paragraph 78

- (a) Omit '*have occurred*'; substitute '*occur*'.
- (b) Omit '*would have been*'; substitute '*would be*'.

69. Paragraph 79

Omit the wording of the paragraph; substitute:

For the purposes of subsection 295-550(5), the scheme involves the SMSF entering into the LRBA with Scott, complying with the terms of the LRBA, purchasing the units in the unit trust, and deriving income from those units. The terms of the LRBA constitute a non-arm's length dealing between the SMSF and Scott, which result in the SMSF incurring expenditure in gaining or producing

income that was less than would otherwise be expected if those parties were dealing with each other at arm's length in relation to the scheme. The non-arm's length expenditure incurred by the SMSF in entering into the non-commercial LRBA to purchase the units in the unit trust is a specific expense. The \$8,000 distribution derived from the units in the unit trust in the 2020–21 income year, and any distribution derived in future years, is therefore NALI. The SMSF's NALC is calculated using the 'lesser of' calculation referred to in paragraph 6B of this Ruling.

70. Paragraph 80

Omit the wording of the paragraph; substitute:

The non-arm's length expenditure under the LRBA will also result in any future amount of statutory income, determined by reference to any capital gain derived by the fund on the disposal of those particular units being NALI.

71. Paragraph 81

Omit the wording of footnote 28; substitute:

Paragraph 7.2 of the EM to the TLA Bill 2023 refers back to the TLA Act 2019. As such, see paragraphs 2.46 to 2.48 of the EM to the TLA Bill 2019.

72. Paragraph 86

At the end of the paragraph, insert '*The SMSF's NALC is calculated using the 'lesser of' calculation referred to in paragraph 6B of this Ruling.*'.

73. Paragraphs 88 to 94

Omit the paragraphs, including headings.

This Addendum applies from 1 July 2018.

Commissioner of Taxation

24 September 2025

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