

## 2022-23 October Federal Budget SMSF Recap

On the 25<sup>th</sup> October 2022 the Labour Government handed out its first Federal Budget outlining how it aims to deal with the ever-changing economic climate.

With regards to the SMSF sector, it was a relatively quiet budget, however the announcements that were made will have a very positive benefit on the sector at large.

### Three Year SMSF Audits Policy Cancelled

The previously announced change of a three-year audit cycle was declared to no longer be proceeding. Since its original announcement, this proposed change received major criticism, particularly from the SMSF sector.

### Downsizer Contribution Eligibility Age Reduced

From 1 July 2022, members who are 60 years or older are eligible to make a downsizer contribution of up to \$300,000 upon the sale of their main residence.

However, it was announced the eligibility age will further be reduced to 55 years old.

The change will provide more members the opportunity to further contribute into super without needing to rely on their concessional or non-concessional contribution caps.

### Residency Requirement Improvements

For a member to be deemed an eligible member under s.17A of the SIS Act, they must meet the residency requirements. These include:

- Establishment Test - The SMSF was established in Australia, or at least one of the SMSF's assets must be located in Australia
- Central Management & Control Test - The central management and control of the SMSF is ordinarily undertaken in Australia; and
- The Active Member Test - At least 50% of the SMSF Membership must be in Australia, measured by market value

In the 2022 Federal budget it was announced the following changes would be made to these requirements:

- The central management and control test "safe harbour" would be extended from two years to five years. This allows a member to be deemed temporarily overseas for up to five years while still meeting the central management and control test
- The removal of the active member test. This will allow members who are overseas the ability to contribute into their SMSF which would previously be difficult without failing the active member test

Although these changes were proposed to take effect from 1 July 2022, this never eventuated.

The Labour government has confirmed both measures will go ahead, however a set date has not been confirmed.

### **Penalty Unit Rate Increased**

From 1 January 2023 the Commonwealth penalty unit will increase from \$222 to \$275. This amount is indexed every three years in line with CPI.

Where SMSF trustees breach the SIS Act/Regulations and therefore receive an administrative penalty from the ATO, it should be noted the overall fee required to be paid will now increase based on the rise per penalty unit.

Fees are charged to either each individual trustee or where the SMSF has a corporate trustee it will be charged to the company (therefore a strong argument for SMSF's to appoint a corporate trustee).

Below are the current administrative penalties:

Provision in SISA	Description	Administrative penalty
Subsection 34(1)	Operating standards	20 penalty units
Subsection 35B(1)	Accounts and statements	10 penalty units
Subsection 65(1)	Lending to members and relatives	60 penalty units
Subsection 67(1)	Borrowings	60 penalty units
Subsection 84(1)	In-house assets	60 penalty units
Subsection 103(1)	Duty to keep minutes	10 penalty units
Subsection 103(2)	Duty to keep minutes of meetings	10 penalty units
Subsection 103(2A)	Retention of copy of section 71E election	10 penalty units
Subsection 104(1)	Duty to keep records of changes of trustees	10 penalty units
Subsection 104A(2)	Declaration of recognition of obligations and responsibilities	10 penalty units
Subsection 105(1)	Duty to keep and retain member or beneficiary reports	10 penalty units
Subsection 106(1)	Duty to notify of significant adverse events	60 penalty units
Subsection 106A(1)	Duty to notify of change in status of entity	20 penalty units
Subsection 124(1)	Written appointment of investment managers	5 penalty units
Subsection 160(4)	Education direction	5 penalty units
Subsection 254(1)	Information to be given to the regulator	5 penalty units
Subsection 347A(5)	Participation in the regulator's statistical program	5 penalty units

