



# How to navigate NALI

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# Session overview

- Arm's length considerations
- How did we get here?
- NALI & NALE considerations in light of LCR 2021/2



# Arm's length considerations

- Would a prudent person enter in to such a transaction?
- Investments must be made and maintained on strict commercial basis.
- Income from assets must reflect market expectations – what is this?
- Have independent valuations been obtained?
- Transactions no more favourable to related party than market

# NALI & NALE – at a glance

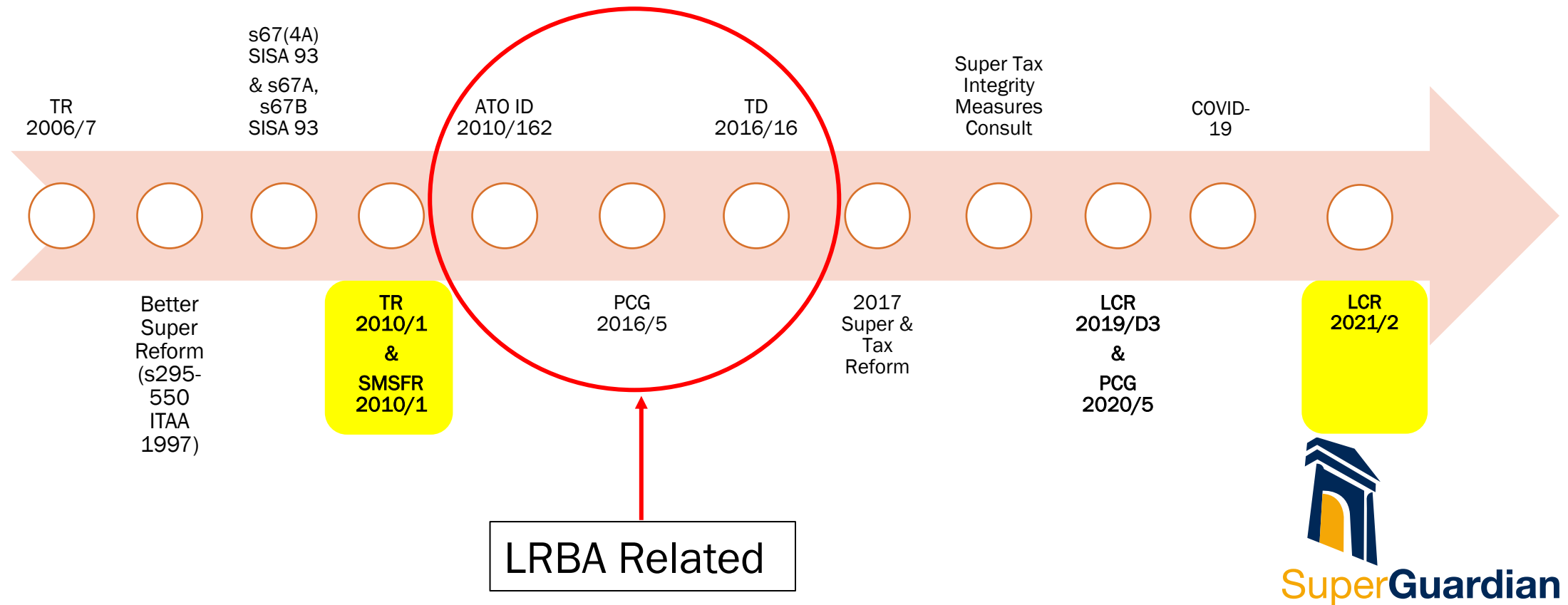
- What is the purpose of NALI provisions
- “...*designed to prevent income from being unduly diverted into superannuation entities as a means of sheltering that income from the normal rates of tax applying to other entities, particularly the marginal rates applying to individual taxpayers.*” (EM to former section 273, ITAA 1936)



# NALI & NALE – the law (a summary)

- Parties to a scheme not dealing with each other at arm's length;
- income more than expected to derive if dealing at arm's length;
- a loss, outgoing or expenditure that is less than (including NIL) expected if dealing at arm's length;
- Also applies to acquiring an entitlement in a fixed trust and earning income from that trust
- Includes capital and revenue expenses

# NALI & NALE – key events



# What trustee relationships are impacted?

- Administrators
- Accountants
- Brokers
- Advisers (incl platform fees)
- Property managers
- Building & Constructions
- ???





# LCR examples – it's a fine line

## Example 2

Non-arm's length expenditure incurred has a nexus to all income of the fund – NALI

Mikasa engages her accounting firm to provide accounting services for fund at no cost = NALI\*

## Example 6

Internal arrangement within an SMSF – trustee provides services to the fund

Leonie (also an accountant) uses her own equipment and doesn't charge her fund – this is ok

\* If Mikasa rectifies following year NALI won't apply

# Other considerations

- When we are contemplating these issues we should also contemplate what has come before us
  - 17B Superannuation Industry (Supervision) Act 1993
  - TR 2010/1 Income Tax: superannuation contributions
  - SMSFR 2010/1 – the application of subsection 66(1) acquisition of an asset by a SMSF from a related party
- What relevance do these now have and why do these NALE provisions seem to target SMSFs?



# TR 2010/1 & SMSF 2010/1 examples

TR 2010/1 - Example 2  
No contribution made by a free  
service

Jasmine has a self-managed superannuation fund of which she is the sole member. She is a CA. Jasmine prepares the accounts and income tax and regulatory return for her self-managed superannuation fund each year without remuneration.

**By not incurring a liability the capital of the fund is not increased.**

SMSFR 2010/1 - Example 5  
Performance of service –  
insignificant value

A member of an SMSF fixes taps in rental properties owned by the SMSF by replacing the tap washers. As the tap washers are insignificant in value and function the substance of the transaction is the performance of a service.



# What other transactions are impacted

- Acquiring assets from related parties
  - TR 2010/1 Draft amendment – contract v in-specie contributions
- Property maintenance
  - Example 9 plumbing v Example 10 electrician
- Property improvements



# Other considerations

- SIS 17B - Remuneration of SMSF Trustees can occur if:
- Relates to duties or services other than in capacity of trustee
- Trustee appropriately qualified and licensed to perform duties/services
- Performs in ordinary course of business
- No more favourable to trustee than if dealing at arm's length
- TR 2010/1 – If no liability is raised in the Fund and no payment made then this is not considered a contribution



# Other considerations

- Trustee remuneration can create other issues:
- What if appropriately qualified & don't charge?
  - Is this a contribution?
- If undercharging is a contribution difference between market rate & amount actually charged?
- Who will determine this?
- Overcharging is financial assistance to a member?
- Overcharging is breach of s109

# Link between COVID-19 & NALE

- How has the ongoing nature of Covid-19 impacted the NALI & NALE rules
  - Rent relief
  - LRBA deferrals



# Administrative issues

- What do you need to consider as an SMSF service provider
  - How to handle telephone conversations
- What income items might need further investigation (ie fixed trust distributions - unlisted)
- What expenses don't you know about





# In summary

- ATO have verbally indicated that there will be a certain level of common sense
- If a business currently offers discounts to staff then LCR 2021/2 will have immediate relevance – review circumstances to maintain consistency
- Always be recommending that all transactions are undertaken and maintained on commercial terms

# Questions & thank you

