

# SMSF Tech Update

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# Agenda



# Division 296 tax

## Exposure draft legislation

Released 3 October

Responses due 18 October

## Main points

Proposed methodology same as previous announcements

- tax earnings attributable to balances over \$3m at 15%
- earnings calculated based on changes in Total Super Balance

Confirmed exclusions

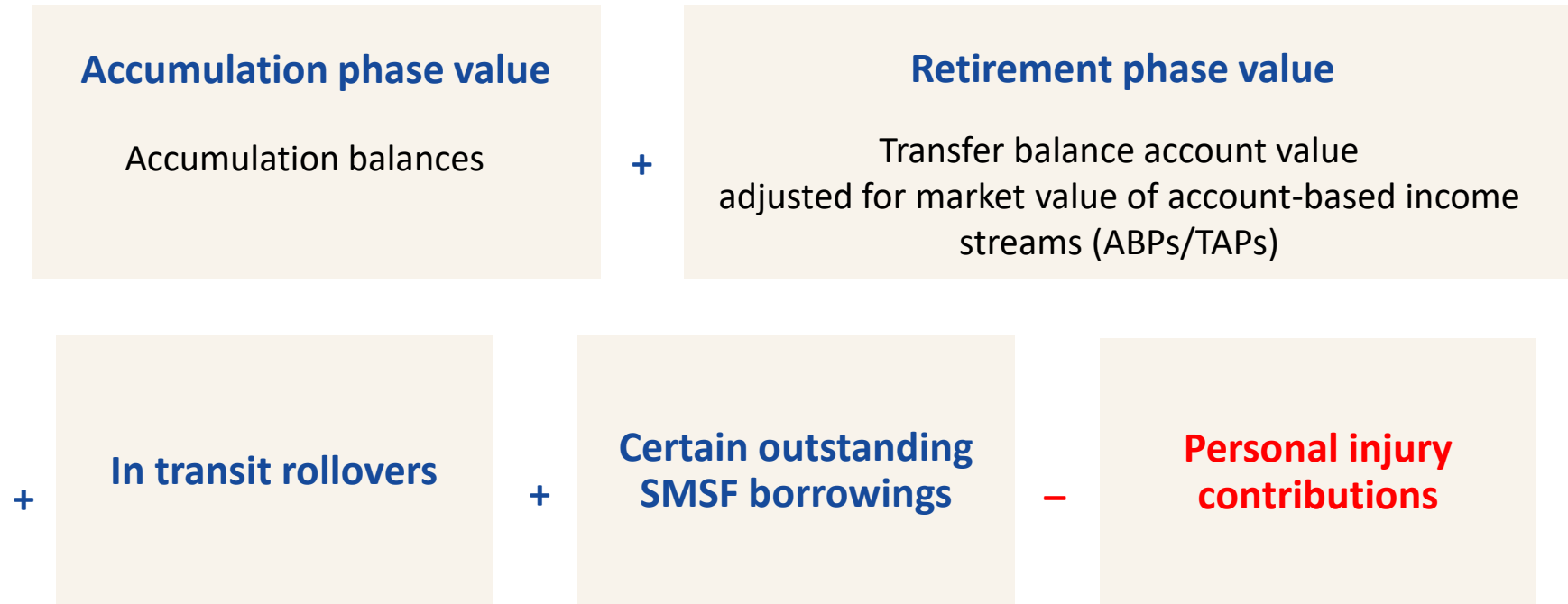
Further clarification on how to calculate 'earnings'

Significant change to Total Super Balance formula

- broader implications

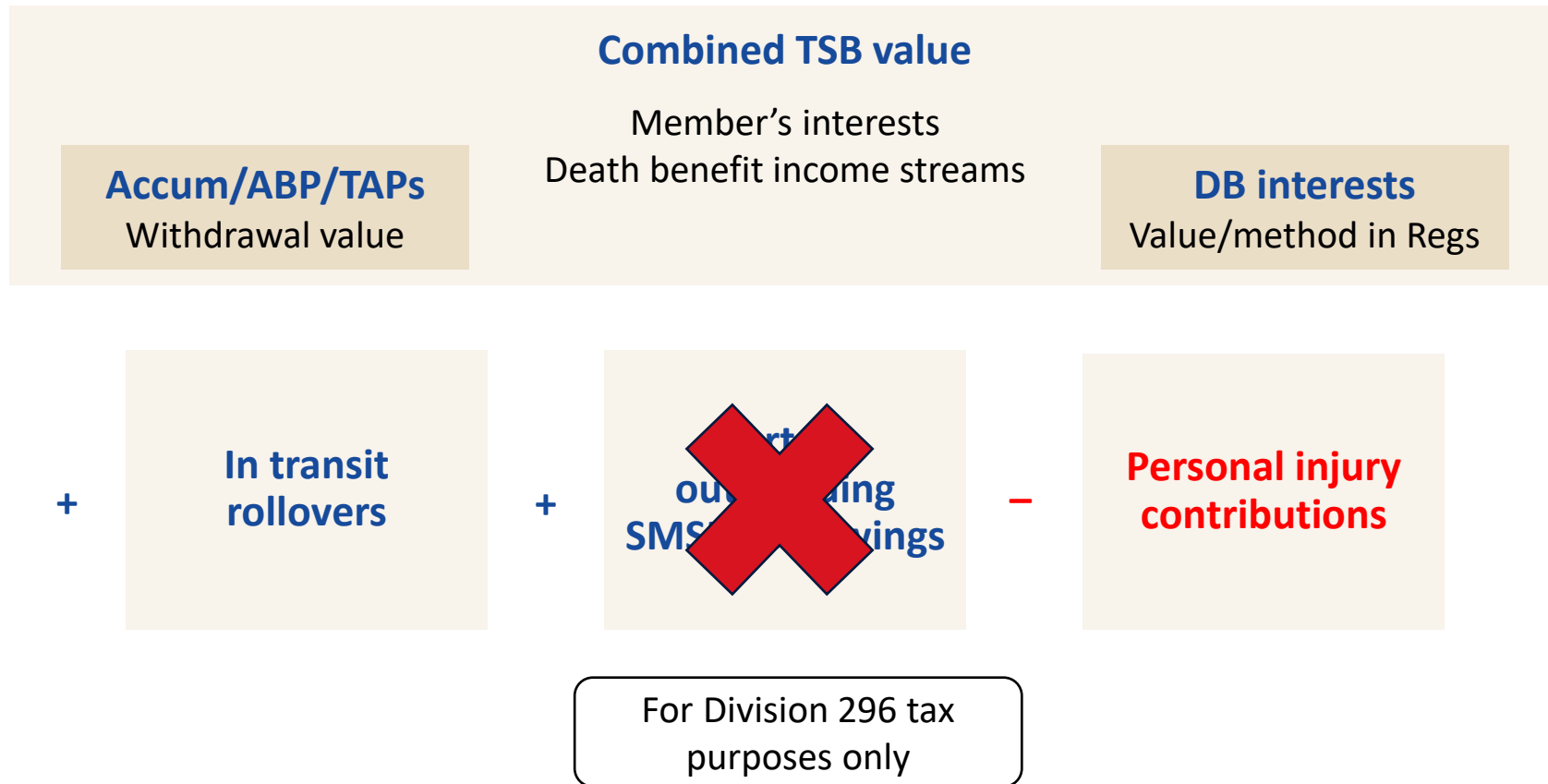
# Total Super Balance changes

## Existing

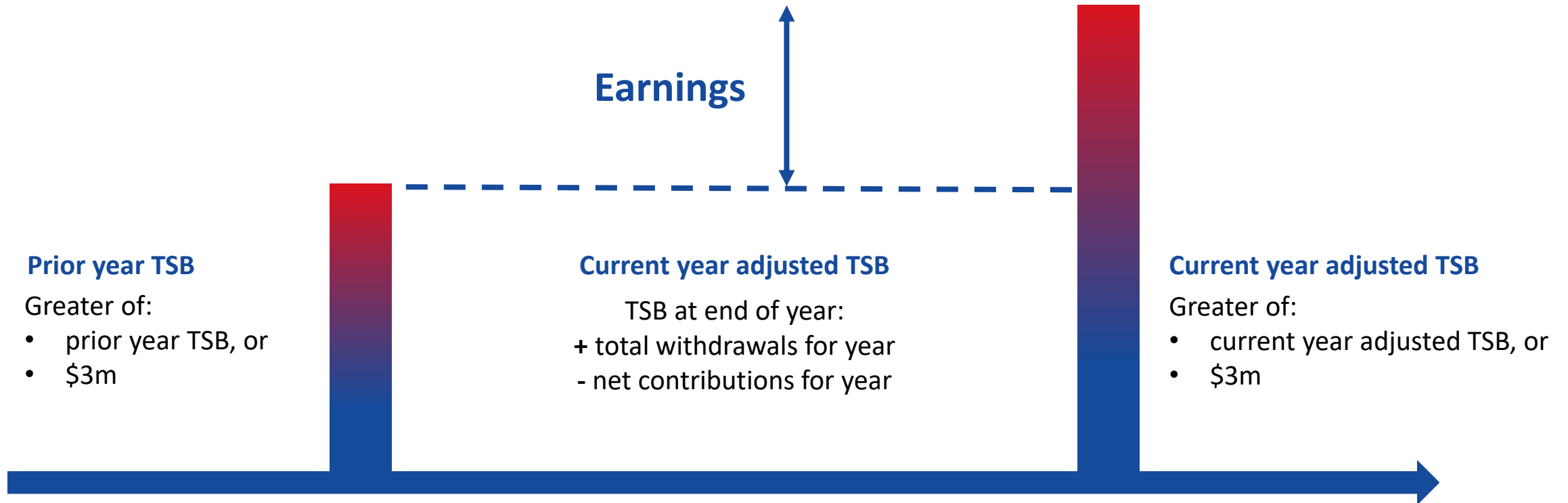


# Total Super Balance changes

From 30 June 2025



# Earnings calculation



# Adjusted TSB

## Withdrawals

Super benefit payments

Spouse contribution splitting transfers / rollovers out

Benefits transferred out via a family payment split

Amounts released under release authority

- FHSS releases adjusted to ignore earnings released

Amounts withheld from excess untaxed rollovers out

Amounts prescribed in regs

## Not withdrawals

Rollover super benefits

Continuous disability policy payments

Withdrawal arising due to fraud / dishonesty

Amounts paid under unclaimed money act

Amounts paid from foreign super fund

Amounts prescribed in regs



# Adjusted TSB

## Contributions

### Contributions

- downsizer + lifetime CGT cap + 85% of CCs

TSB value of death benefit pension

Death or TPD insurance proceeds

Contribution splits received

Family law payment splits received

Amounts allocated from reserves

Transfer from a foreign super fund

Remediation / compensation for loss / fraud

Amounts prescribed in regs

## Not contributions

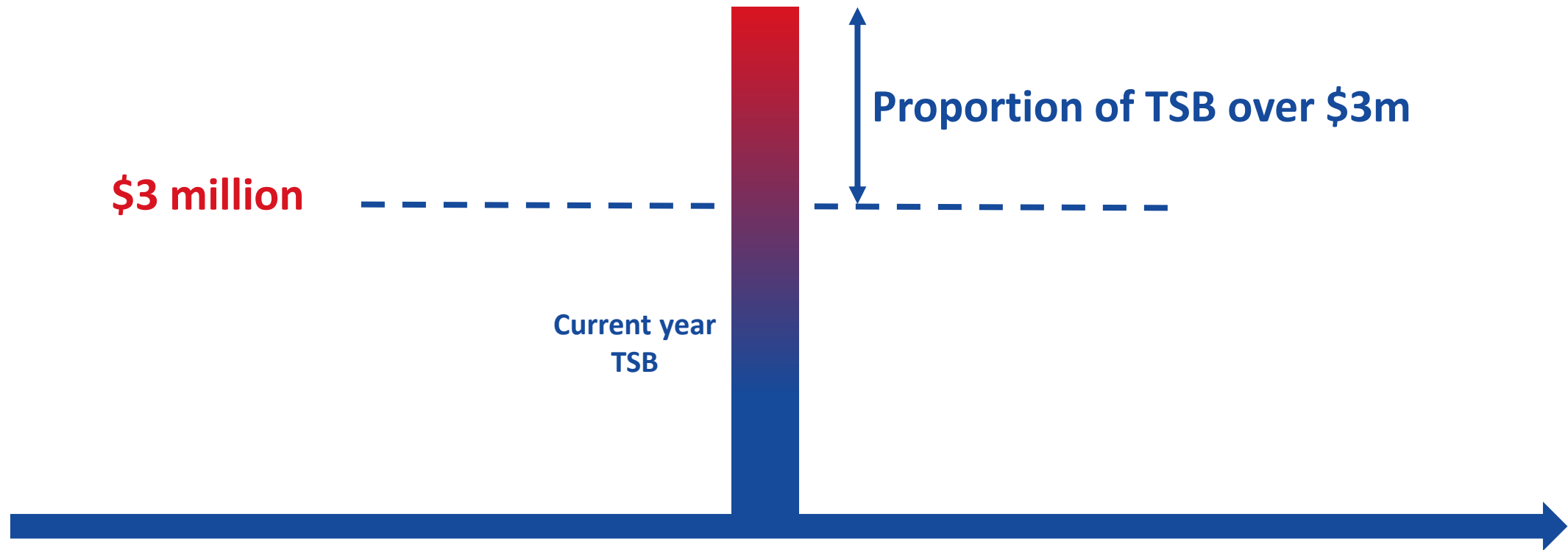
Rollover super benefits

Contributions to foreign funds

Amounts received under unclaimed money act

Amounts prescribed in regs

# Proportion of earnings taxable



**Current year TSB includes amounts removed from earnings calculation**

- Value of life/TPD insurance proceeds
- Value of death benefit pension

# Tax calculation

$$\text{Tax} = \text{Earnings} \times \text{Proportion of TSB over } \$3\text{m} \times 15\%$$

## **Tax**

Levied on member

Due in 84 days

Pay personally or release from super  
(60 days to request)

## **Tax on accruing DB interests**

Can be deferred to debt account

Debt payable within 21 days of end benefit becoming payable

Make voluntary payments

# Reductions and exclusions

## Carry forward earning losses

Where current year adjusted TSB falls to below \$3m

- defaults to \$3m

### Example

- TSB start of yr: \$3.2m
- Adjusted TSB end of yr: \$2.8m

Carry forward \$200,000 negative earnings

## Members excluded

Tax not be levied on:

- child receiving death benefit as pension
- member who has ever made structured settlement contribution for personal injury
- member who died before the last day of the year

## Earnings excluded

Interests ignored when calculating super earnings:

- interests in constitutionally protected funds for certain individuals\*
- interests of some sitting judges and justices
- interests in non-complying funds

Still counted when determining whether TSB > \$3m

\*State high level office holders

# Practical issues

## Total Super Balance changes

Way TSB is calculated will change for members with DB interests

May impact:

- carry forward CCs
- NCCs
- whether SMSF has disregarded small fund assets

## New reporting requirements

Value of DB interest each year

Contribution/withdrawal amounts not reported separately in SMSF annual return

- life/TPD insurance proceeds

Options

- change annual return?
- request further info from funds with potentially impacted members
  - insurance proceeds
  - contribution splitting/family law splits

NALI/NALE changes

# NALI/NALE

## Amendments

Large APRA funds excluded from NALE rules

Apply to SMSFs and SAFs

Rules for general fund expenses modified

## General expenses

Amount NALI is lesser of:

- 2 x difference between what was paid and what should have been paid
- total taxable income less assessable contributions<sup>1</sup>

Previously resulted in all income (excluding cap gains) being NALI

<sup>1</sup> Reduced by deductions relating to assessable contributions

# NALI/NALE

## Example

Min has SMSF and is a lawyer

Provides general legal services to her SMSF

- charged \$5,000
- arm's length amount \$10,000

Other income

- \$23,000 rent

Deductions

- \$10,000 repairs
- \$5,000 legal advice

## Outcome

NALI

- $\$5k \times 2 = \$10k$

Taxable income

- $\$23k - \$10k - \$5k = \$8k$

NALI is lesser of:

- \$10k
- \$8k

Tax:

- NALI:  $\$8k @ 45\% = \$3,600$
- Low tax component = Nil

## What if fund had no NALI?

Min charged her fund \$10,000 for the legal advice

NALI = Nil

Taxable income

- $\$23k - \$10k - \$10k = \$3k$

Tax:

- $\$3k @ 15\% = \$450$

**But which fund better off overall?**

- Total outlay with NALI: \$18,600
- Total outlay no NALI: \$20,450



# NALI/NALE

## Specific expenses

No changes

Part-purchase/part contribution

- documents critical

Beware undertaking improvements

- LCR 2021/2 – Trang example
- taint whole asset

## Issues

**Specific expense** – expense related to earning income from a particular asset

- asset repair/maintenance
- investment advice for a particular pool of assets/LRBA
- expenses related to holding or acquiring units in a unit trust

**General expense** - expense not related to gaining or producing income from any particular asset or assets

## NALE and Catch 22

Must charge for services provided other than as trustee

- material use of biz equipment/tools
- must hold license or qualification to perform service
- work covered by insurance

Can only charge in accordance with 17B

- runs a biz of providing those services to the public

# NALI/NALE

## Example



Dan has SMSF

Employed as qualified electrician

Re-wires property owned by fund without charging

### Outcome

Not acting as trustee as service can only be performed by licensed electrician – must charge

But can't charge as not running a business of providing electrical services to the public

NALE or breach of 17B?

### Potential solution

TR 2010/1DC: Paragraph 171A<sup>1</sup>:

*Where... the super fund would record the market value of the increase in capital as a contribution...the 'non-arm's length income' provisions in section 295-550 will not apply*

Still draft!

<sup>1</sup> See also Appendix 2

# Regulatory issues

# TBAR reporting changes

## TBAR reporting

All funds quarterly reporters from 1 July 2023

## Current issues

Previous annual reporters that have unreported TBAR events from 2022-23

- must be reported by 28 October

Re-contribution strategies due to work test changes

- commutations
- new pensions

## Future issues

Do all pensions really start 1 July?

- lodge TBAR by 28 October
- what if administrator consistently lodges late?

Beware TBAR events occurring on last day of quarter

- 28 days to report

Can estimate TBAR credit

- value assets/interim accounts
- cancel/re-report if wrong

# Payday super

## Budget announcement

SG paid at same time as salary and wages

From 1 July 2026

## Consultation paper

Define 'payday'

Update the SG charge rules

Compliance mechanisms

Reporting requirements

- unified database to match employer STP data with super fund contribution data
- near real SG position

## SMSFs

Proposed reporting and data-matching models don't work

- annual reporting
- no proposed change

But for how much longer?

# Pension minimums back to 100%

## Pension minimums

Returned to 100% from 1 July

Pension payments potentially double

## Current issues

Sufficient liquidity?

- what if market downturn before end of the year?

What if fail?

- exemptions (minor breaches)
- pension ceases 1 July
  - tax
  - TBAR reporting (EOFY)
  - new pension/estate planning

## TAPs

Getting close to end of term

Balances artificially high

- drawing 45% since 2019-20
- 90% extended period

PVF in final year = 1.0

Triggering large pension payments

- defined benefit income cap
- age pension entitlements

Consider rollover and extend term

Other important changes

# Carry forward concessional cap

## Reaches maturity this year

Final year can use unused cap amounts from 2018-19

### Eligibility

- TSB on 30 June 2023 < \$500,000

Use it or lose it

## Tax cuts

Stage 3 tax cuts apply from 1 July 2024

- reduce 32.5% rate to 30%
- remove 37% tax rate
- raise 45% threshold to \$200,000

30% tax rate from \$45,000 to \$200,000

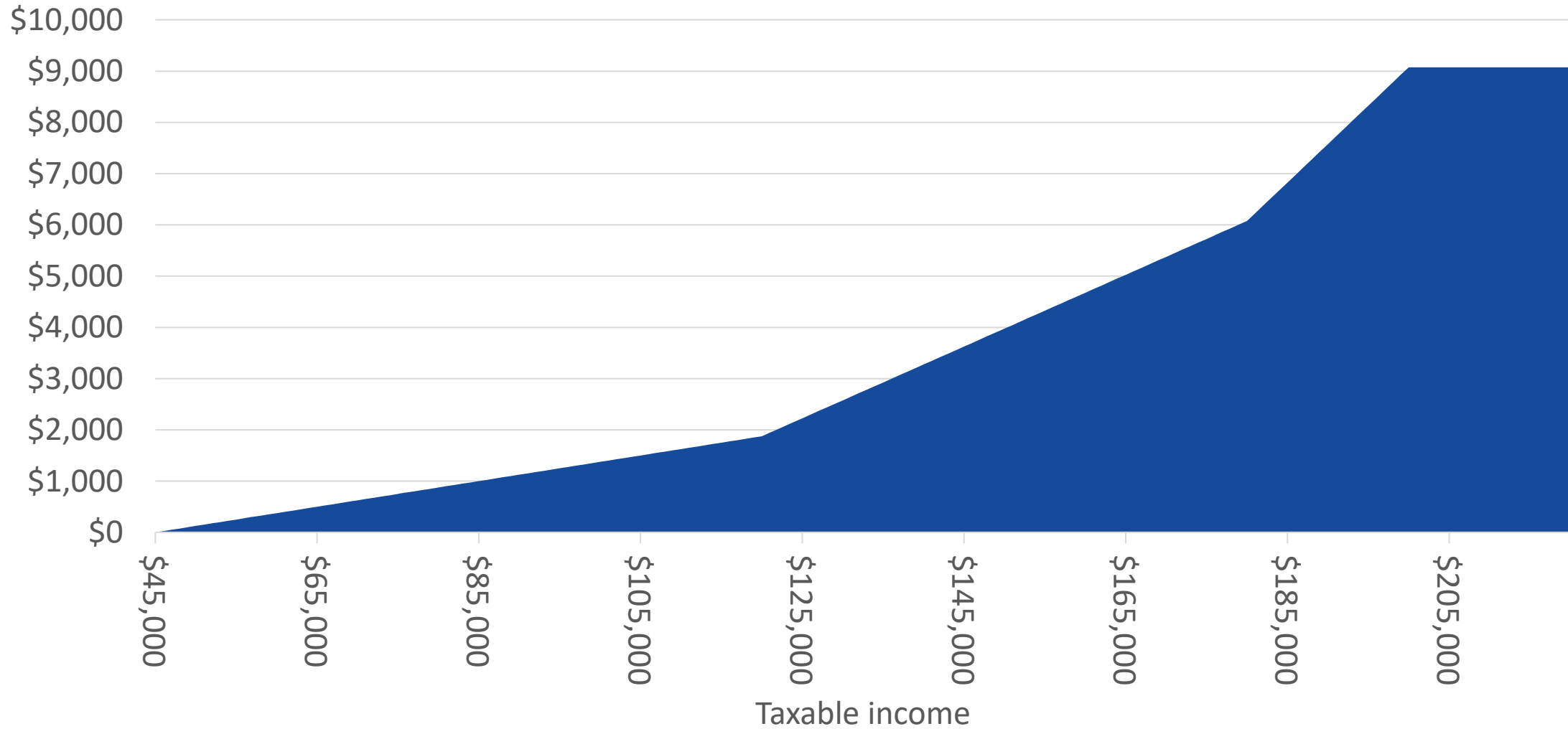
## Tax planning 101

Bring forward deductions to this year

- carry forwards
- contribution reserving



# Stage 3 tax cuts



# Stage 3 tax cuts and super

## Strategies

Person earning \$200,000

- effective pre-tax pay rise \$17,123

If salary sacrifice up to cap (\$7,000<sup>1</sup>)

- still left with \$4,315 extra in the hand

## Pre-retiree strategy

Combined salary sacrifice/NCC strategy

Extra super balance (in today's \$):

- 5 years: \$54,585
- 10 years: \$117,713
- 15 years: \$190,724

## Alternatives

Non-super savings strategy

- kids
- grand kids

<sup>1</sup> Assumes SG 11.5% and concessional cap of \$30,000

# Proposed legislative changes

## Commute complying pensions

Proposed 2-year window to commute complying pensions

- complying lifetime, life expectancy and TAPs

Hopefully soon!

## CM&C test

Extend 2-year safe harbor to 5 years

Allow members to control fund from overseas for up to 5 years

Nothing

## Active member test

Abolish active member test

Allow members to contribute to fund while non-resident

Nothing

Thanks