

# EXPOSURE DRAFT

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Inserts for  
**Treasury Laws Amendment (Measures  
for Consultation) Bill 2023: Non-arm's  
Length Expense Rules for  
Superannuation Funds**

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Schedule X	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	

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## Schedule X—Non-arm’s length expenses of superannuation funds

### *Income Tax Assessment Act 1997*

#### **1 Subsection 295-545(2)**

Repeal the subsection, substitute:

(2) If an entity is not of a kind referred to in paragraph 295-550(8)(a), the *non-arm’s length component* for an income year is the entity’s \*non-arm’s length income for that year less any deductions to the extent that they are attributable to that income.

(2A) If the entity is of a kind referred to in paragraph 295-550(8)(a), the *non-arm’s length component* for an income year is the lesser of:

(a) the sum of:

(i) each amount of the entity’s \*non-arm’s length income under any of subsections 295-550(1) to (5) for that year less any deductions to the extent that they are attributable to that income; and

(ii) each amount of the entity’s non-arm’s length income under subsections 295-550(8) or (9) for that year; and

(b) the entity’s taxable income for the income year:

(i) less the contributions that are included in the entity’s assessable income under Subdivision 295-C for the income year; and

(ii) plus any deductions to the extent that they are attributable to those contributions.

#### **2 Paragraphs 295-550(1)(b) and (c)**

Repeal the paragraphs, substitute:

(b) if the entity is of a kind referred to in paragraph (8)(a):

(i) in gaining or producing the income, the entity incurs a loss, outgoing or expenditure of an amount that is less than the amount of a loss, outgoing or expenditure that the entity might have been expected to incur if those parties had been dealing with each other at arm’s length in relation to the scheme; and

(ii) the loss, outgoing or expenditure is not a loss, outgoing or expenditure to which subsection (8) applies;

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- 1 (c) if the entity is of a kind referred to in paragraph (8)(a):  
2 (i) in gaining or producing the income, the entity does not  
3 incur a loss, outgoing or expenditure that the entity  
4 might have been expected to incur if those parties had  
5 been dealing with each other at arm's length in relation  
6 to the scheme; and  
7 (ii) the loss, outgoing or expenditure not incurred is not a  
8 loss, outgoing or expenditure to which subsection (9)  
9 applies.

### 3 At the end of subsection 295-550(1)

10 Add:

11 Note: The application of previous paragraphs 295-550(1)(b) and (c), as  
12 inserted by the *Treasury Laws Amendment (2018 Superannuation*  
13 *Measures No. 1) Act 2019* is affected by [*Schedule X to the Treasury*  
14 *Laws Amendment (Measures for Consultation) Act 2023*].  
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### 4 Paragraphs 295-550(5)(b) and (c)

16 Repeal the paragraphs, substitute:

- 17 (b) if the entity is of a kind referred to in paragraph (8)(a)—in  
18 acquiring the entitlement or in gaining or producing the  
19 income, the entity incurs a loss, outgoing or expenditure of  
20 an amount that is less than the amount of a loss, outgoing or  
21 expenditure that the entity might have been expected to incur  
22 if those parties had been dealing with each other at arm's  
23 length in relation to the scheme;  
24 (c) if the entity is of a kind referred to in paragraph (8)(a)—in  
25 acquiring the entitlement or in gaining or producing the  
26 income, the entity does not incur a loss, outgoing or  
27 expenditure that the entity might have been expected to incur  
28 if those parties had been dealing with each other at arm's  
29 length in relation to the scheme.  
30

31 Note: The application of previous paragraphs 295-550(5)(b) and (c), as  
32 inserted by the *Treasury Laws Amendment (2018 Superannuation*  
33 *Measures No. 1) Act 2019*, is affected by [*Schedule X to the Treasury*  
34 *Laws Amendment (Measures for Consultation) Act 2023*].

### 5 At the end of section 295-550

35 Add:  
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*Certain small complying superannuation entities—general expenses*

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3 (8) If:

4 (a) a \*complying superannuation entity is:

5 (i) a regulated superannuation fund with no more than 6  
6 members; or

7 (ii) a self managed superannuation fund; and

8 (b) as a result of a \*scheme the parties to which were not dealing  
9 with each other at \*arm's length in relation to the scheme:

10 (i) in gaining or producing the \*ordinary income and  
11 \*statutory income of the entity (but not in gaining or  
12 producing income in relation to any particular asset or  
13 assets of the entity), the entity incurs a loss, outgoing or  
14 expenditure of an amount; and

15 (ii) the amount is less than the amount of a loss, outgoing or  
16 expenditure that the entity might have been expected to  
17 incur if those parties had been dealing with each other at  
18 arm's length in relation to the scheme; and

19 (iii) the loss, outgoing or expenditure is not of capital or of a  
20 capital nature;

21 an amount of the entity's ordinary income and statutory income  
22 equal to twice the difference between the amount that the entity did  
23 incur and the amount that the entity might have been expected to  
24 incur is ***non-arm's length income*** of the entity.

25 (9) If:

26 (a) a \*complying superannuation entity is of a kind referred to in  
27 paragraph (8)(a); and

28 (b) as a result of a \*scheme the parties to which were not dealing  
29 with each other at \*arm's length in relation to the scheme:

30 (i) in gaining or producing the \*ordinary income and  
31 \*statutory income of the entity (but not in gaining or  
32 producing income in relation to any particular asset or  
33 assets of the entity), the entity does not incur a loss,  
34 outgoing or expenditure that the entity might have been  
35 expected to incur if those parties had been dealing with  
36 each other at arm's length in relation to the scheme; and

37 (ii) the loss, outgoing or expenditure would not have been  
38 of capital or of a capital nature;

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1 an amount of the entity's ordinary income and statutory income  
2 equal to twice the amount that the entity might have been expected  
3 to incur is *non-arm's length income* of the entity.

## 4 **6 Application of amendments**

5 The amendments of the *Income Tax Assessment Act 1997* made by this  
6 Schedule apply in relation to:

- 7 (a) income derived in the 2023-24 income year or a later income  
8 year; and  
9 (b) a loss, outgoing or expenditure that is incurred in the 2023-24  
10 income year or a later income year; and  
11 (c) a loss, outgoing or expenditure that was not incurred in the  
12 2023-24 income year or a later income year, but might have  
13 been expected to have been incurred in the 2023-24 income  
14 year or a later income year.

## 15 ***Treasury Laws Amendment (2018 Superannuation Measures*** 16 ***No. 1) Act 2019***

### 17 **7 Item 4 of Schedule 2**

18 Before "The amendments", insert "(1)".

### 19 **8 At the end of item 4 of Schedule 2**

20 Add:

- 21 (2) Despite subitem (1), the amendments do not apply, and are taken never  
22 to have applied, in relation to:  
23 (a) a loss, outgoing or expenditure that is incurred before the  
24 2018-19 income year; and  
25 (b) a loss, outgoing or expenditure that was not incurred before  
26 the 2018-19 income year, but might have been expected to be  
27 incurred before the 2018-19 income year.

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