



## Tax Insights

### How the new Division 296 tax will affect individuals with high super balances

Division 296 tax is a new Australian tax on superannuation earnings for those individuals with a total superannuation balance (TSB) of more than \$3 million. As from 1 July 2026, a 15% tax will be imposed on superannuation earnings attributable to balances above \$3 million and a further 10% tax will be imposed on earnings attributable to balances above \$10 million.

#### Division 296 tax formula

Division 296 tax will be calculated as follows:

- 15% x proportion of super balance over \$3 million ("large super balance threshold") x relevant superannuation earnings; plus
- 10% x proportion of super balance over \$10 million ("very large super balance threshold") x relevant superannuation earnings.

## Timing of TSB assessment

In year one of the new tax, TSB on 30 June 2027 will be used to determine whether an individual is subject to Division 296 tax for that year.

In subsequent years, the greater of TSB at the beginning of the year and the end of the year will be used to determine whether an individual is subject to Division 296 tax.

## Superannuation earnings

Superannuation earnings for Division 296 purposes include the taxable income of the fund that is attributable to the member, with some modifications, including:

- Concessional contributions will not be included;
- Exempt current pension income (ECPI) is added back. ECPI is income that is not taxed in the self-managed super fund (SMSF) because it is derived from assets supporting income streams being paid to fund members in the retirement phase; and
- Modifications for realised capital gains (see below). Where the capital gains are modified, the amount of ECPI added back may also change.

Most super funds will work out their Division 296 fund earnings this way. The manner in which earnings are attributed to individual members will be detailed further in regulations. A fair and reasonable approach is expected for larger funds and a more prescriptive method for small funds, including SMSFs.

## Capital gains

SMSF trustees will be able to make an irrevocable election to use the market value of assets as at 30 June 2026 as the cost base to determine realised capital gains that will be included in the calculation of superannuation earnings for Division 296 purposes. This amount will be used instead of the actual realised capital gain made by the SMSF.

If an election is made, it must be on all assets held on 30 June 2026. That is, it cannot be made with respect to individual assets. SMSF trustees will need to carefully consider assets in a loss position at 30 June 2026 to determine whether making the election on all assets is beneficial.

An election can be made by an SMSF even if no members of the fund hold more than \$3 million in superannuation.

Larger super funds (not SMSFs or small Australian Prudential Regulation Authority regulated superannuation funds) will not be able to make this adjustment for capital gains for these purposes but rather, will have a reduction in their capital gains for the first four years to 2029/30. The actual capital gain will be reduced by a factor (less than one) to be prescribed in regulations.

## Indexation of thresholds

The thresholds noted above will be indexed in future years in line with increases in the consumer price index but only in increments as follows:

Threshold	Threshold on commencement (\$)	Incremental increases (\$)
Large super balance threshold	3 million	150,000
Very large super balance threshold	10 million	500,000

## Administration

The ATO is responsible for determining who is subject to Division 296 tax based on super balances reported to them by super funds.

A Division 296 notice of assessment is issued by the ATO to the individual.

The individual may choose to pay the tax personally or they can request a release authority from the ATO to have the tax paid by their super fund. Generally, Division 296 tax will be due and payable at the end of 84 days after the ATO issues the notice of assessment.

## Example

	Amount (\$)
Contributions (not included for Division 296 purposes)	30,000
Dividends	150,000
- franking credits	31,500
Interest	15,000
Capital gains (\$300,000 less one-third discount)	200,000
Expenses	(10,000)
Taxable income (fund)	416,500
<b>Earnings for Division 296</b>	<b>386,500</b>

	Example 1	Example 2
Member super balance	\$4,000,000	\$12,000,000
Proportion greater than \$3 million	25%	75%
Proportion greater than \$10 million	Nil	16.67%
<b>Division 296 tax liability</b>	<b>\$14,494</b> (15% x 25% x \$386,500)	<b>\$49,924</b> ((15% x 75% x \$386,500) <u>plus</u> (10% x 16.67% x \$386,500))

## Exclusions and modifications

Some individuals will be excluded from Division 296 tax, including:

- Child recipients of death benefit income stream; and
- Anyone who has ever made a structured settlement contribution to their super.

Individuals with defined benefit interests are still subject to Division 296 tax but it will be calculated differently.

Special rules may also apply to some Judges, Justices, and members of constitutionally protected super funds.

In the year of an individual's death, TSB at year end will be taken to be zero. Division 296 tax may still apply for that year if their TSB at the beginning of the year was above the large super balance threshold.

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