

\$3M SUPER TAX 2.0 – WHAT DO WE KNOW

Introduced in 2023 as part of the government's *Better Targeted Superannuation Concessions* policy, the proposed additional 15% tax on superannuation balances above \$3 million, officially known as Division 296, has attracted significant criticism for two key reasons:

- It taxes unrealised capital gains.
- The \$3 million threshold is not indexed.

While the government attempted to pass the Division 296 legislation, it stalled in the Senate and ultimately lapsed with the calling of the May 2025 Federal Election.

What has changed?

On 13 October, after months of insisting Division 296 would proceed as planned, which appeared likely given a friendlier Senate following the election victory, Treasurer Jim Chalmers confirmed Division 296 will include the following changes:

- Superannuation realised earnings attributable to balances between \$3 million and \$10 million will be taxed at an effective rate of 30% (the existing 15% rate plus the additional 15% Division 296 charge).
- Earnings attributable to balances above \$10 million will be taxed at 40%.

Both thresholds will be indexed in line with the Consumer Price Index (CPI), and the additional tax will apply only to realised earnings, addressing the two primary areas of criticism. For balances between \$3 million and \$10 million, the CPI adjustment will occur in increments of \$150,000. The second threshold, set at \$10 million, will be indexed in increments of \$500,000.

What hasn't changed

As with the previous version of the bill, the additional tax applies only to the portion of a member's balance that exceeds each threshold, based on their total superannuation balance. For example, a balance of \$3.5 million does not trigger the additional 15% tax on the entire amount. Instead, the additional 15% rate applies solely to the earnings attributed to the \$500,000 above the \$3 million threshold.

The proposed tax also remains an additional charge on top of existing superannuation taxes. It will be assessed as a personal tax, determined by the activity within the member's super fund. Members will have the option to pay it out of pocket or to have the amount withdrawn from their superannuation balance.

Here is an example

David has a total super balance of \$12 million as at 30 June 2027. Therefore:

- 75% of his super is above \$3 million (\$12 million - \$3 million / \$12 million)
- 17% of his super is above \$10 million (\$12 million - \$10 million / \$12 million)

During the year, David generated \$750,000 in earnings through a combination of income and capital gains. His superannuation fund has already paid the standard 15% tax on these earnings. In addition to this, David would receive a Division 296 tax assessment as follows:

$$15\% \times 75\% \times \$750,000 + 10\% \times 17\% \times \$750,000 = \$97,125.$$

What else should I know?

The implementation date has also been postponed from 1 July 2025 to 1 July 2026, providing Treasury with more time to finalise the legislative framework and giving the industry additional time to prepare. Members' total super balances will be measured as at 30 June 2027, with initial assessments expected during the 2027–28 financial year.

Despite the delay, questions around implementation remain. While taxing unrealised gains was widely criticised, it offered a relatively simple mechanism. In contrast, the proposed tiered structure is fairer but significantly more complex to administer.

Under the revised method, when the ATO identifies an individual as being subject to Division 296, the relevant superannuation fund will be notified and required to calculate the portion of realised earnings attributable to that member. This information is then reported to the regulator, who will determine the proportion of the member's total super balance that exceeds either \$3 million or \$10 million. For some large superannuation funds, calculating exact earnings may be challenging, and it appears they may be allowed to report a figure that is 'fair and reasonable' rather than an exact amount for each member.

Another important question is how unrealised gains accrued prior to 1 July 2026 will be treated. It appears that only future realised gains will be included in the calculation, although the final methodology will depend on further consultation with Treasury.

With the 1 July start date fast approaching, the key question is: will the industry be ready?

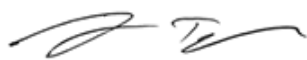
Where to from here?

No action should be taken until the bill passes Parliament. Nonetheless, it is worth noting that superannuation is still the preferred structure for long-term retirement investment for most people. While those with balances above \$10 million are likely to be worse off under this change, there may be opportunities to review structures and strategies to help manage the impact.

The decision to change Division 296 is a welcome one, as it provides greater fairness and predictability and brings the thresholds more closely in line with other measures, such as the pension transfer balance cap.

Learn more

If you have any questions or would like to discuss how these changes may apply to your circumstances, please contact your Bell Potter adviser.



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