

DIVISION 296 TAX PASSES BOTH HOUSES OF PARLIAMENT

Division 296, which imposes an additional tax on a portion of superannuation earnings for individuals with a balance exceeding \$3 million, has passed both Houses of Parliament and will take effect from 1 July 2026.

The proposal initially faced strong resistance, largely driven by the inclusion of unrealised earnings and the lack of indexation. However, following industry feedback, the final legislation reflects several key changes from the original draft, including:

- The introduction of a very large super balance threshold of \$10 million
- A higher tax rate of 25% applying to earnings attributable to balances exceeding \$10 million
- Indexation of both the large (\$3 million) and very large (\$10 million) super balance thresholds
- The introduction of another total superannuation balance testing date
- The removal of taxation on unrealised capital gains

Under the final legislation, Division 296 tax will apply progressively to taxable super earnings as follows:

- Up to the large super balance threshold (\$3 million in 2026/27): Nil
- Above the large super balance threshold (\$3 million in 2026/27): 15%
- Above the very large super balance threshold (\$10 million in 2026/27): an additional 10% (resulting in a total Division 296 tax rate of 25%)

Importantly, both thresholds will be indexed in line with the consumer price index, increasing in increments of \$150,000 (for the \$3 million threshold) and \$500,000 (for the \$10 million threshold).

Division 296 tax applies in addition to the existing superannuation tax regime and is levied regardless of whether an individual's superannuation is held in accumulation phase, pension phase, or a combination of both.

For example, where a superannuation balance is above the very large super balance threshold and it is held entirely in accumulation phase, earnings would be subject to the existing 15% accumulation phase tax, plus up to an additional 25%

Division 296 tax, resulting in an effective total tax rate of 40% on the relevant earnings over the very large super balance threshold.

When is Division 296 calculated?

Division 296 tax applies to the portion of taxable super earnings relating to balances exceeding \$3 million, where an individual's total super balance (TSB) is above the large super balance threshold (\$3 million) at either the start of the financial year (prior 30 June) or the end of the financial year (end 30 June). The amount subject to Division 296 tax is determined by the proportion of the individual's TSB that exceeds the relevant threshold.

This means attempts to withdraw funds and reduce a member's TSB below the \$3 million threshold during the income year may not prevent a Division 296 tax liability.

Transitional provisions

Transitional provisions will apply in the 2026-27 financial year. For this initial year, Division 296 tax will be determined solely by an individual's TSB at 30 June 2027. This means those affected will have until 30 June 2027 to make any necessary changes to their superannuation strategy.

Asset revaluation

The Division 296 tax applies only to earnings from 1 July 2026, and any capital gains accrued before will be excluded from the calculation. To account for this, SMSF trustees may revalue fund assets as at 30 June 2026 and record the cost base accordingly. This is completed by making an election using the approved form by the due date of the fund's 2026/27 annual tax return.

The election is made at the fund level, meaning the cost bases of all fund assets will be adjusted where an election is lodged. SMSFs without members who are currently impacted may also make this election, as it could become relevant in the future.

How is Division 296 calculated?

The following example shows how Division 296 tax is calculated.

David has a TSB of \$15 million at the end of the 2026/27 income year. That year, he is attributed with \$800,000 of taxable super earnings for Division 296 tax purposes.

Step 1 - Work out percentage of TSB above the large super balance threshold (\$3 million in 2026/27)

$$(\$15\text{m} - \$3\text{m}) / \$15\text{m} \times 100 \text{ (rounded to 2 decimal places)} = 80\%$$

Step 2 - Work out percentage of TSB above the very large balance threshold (\$10 million in 2026/27)

$$(\$15\text{m} - \$10\text{m}) / \$15\text{m} \times 100 \text{ (rounded to 2 decimal places)} = 33.33\%$$

The formula to determine David's Division 296 tax payable is:

$$= [(80\% \times \text{earnings} \times \text{large balance tax rate}) + (33.33\% \times \text{earnings} \times \text{very large balance tax rate})]$$

$$= (80\% \times \$800,000 \times 15\%) + (33.33\% \times \$800,000 \times 10\%)$$

$$= \$96,000 + \$26,664$$

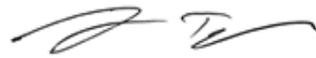
$$= \$122,664$$

The tax is assessed to the individual, not the superannuation fund, and operates separately from personal income tax. The tax may be paid personally or elected to have the amount released from superannuation.

While having the certainty of legislation is welcome, the supporting regulations are yet to be released, which will provide further clarity on the administration of Division 296 and the attribution of earnings.

Next steps

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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