

DIVISION 296 HAS PASSED – WHAT ARE THE STRATEGIES?

With Division 296 now passed through both Houses of Parliament, the focus shifts from understanding the rules to actively managing its impact.

We have previously outlined how the rules work, including how the tax is calculated, indexation rules, transitional provisions, and the treatment of asset revaluations. While often positioned as an additional superannuation tax, Division 296 has broader implications across cash flow management, portfolio construction, and estate planning.

Importantly, the legislation includes a transitional period through to 30 June 2027, which provides a valuable window to review existing arrangements and proactively manage the impact. As part of this process, we have identified several factors for consideration:

Age-related implications

The available strategies will vary significantly depending on a member's age, proximity to retirement and their ability to access superannuation.

For members who are approaching or already in retirement, a broader range of options is generally available. These may include managing withdrawal patterns, implementing reallocation strategies between spouses, and carefully timing the commencement of pensions to help reduce the fund's total effective tax rate.

For members without access to superannuation, strategies to mitigate the impact of Division 296 are more limited. In these cases, greater emphasis is placed on asset allocation, forward planning for future cash flow requirements, and managing ongoing additional tax liabilities.

Overall structure review

Under Division 296, the effective tax rate on large superannuation balances between \$3 million and \$10 million can be as high as 30%, increasing to up to 40% for balances above \$10 million.

While tax effectiveness has traditionally been a key factor in determining where to hold assets, alongside other considerations such as asset protection, Division 296 reduces the relative tax advantage of superannuation for members with higher balances.

For those impacted, particularly at the upper threshold above \$10 million, it may be appropriate to consider alternative structures such as discretionary family trusts and companies. Where superannuation no longer provides a material tax benefit, these structures may offer greater flexibility and more effective ways to manage and distribute wealth.

Asset revaluation

The Division 296 tax applies only to earnings accrued from 1 July 2026. Any capital gains accumulated before this date are excluded from the calculation. To reflect this, SMSF trustees may elect to revalue fund assets as at 30 June 2026 and reset the cost base accordingly. This election must be made using the approved form and lodged by the due date of the fund's 2026–27 annual tax return.

While this approach can significantly reduce future Division 296 exposure, it operates on an all or nothing basis. If elected, it applies to all SMSF assets and is irrevocable. Importantly, it may also result in less favourable outcomes for assets in a loss position at 30 June 2026. For example, if an asset's cost

base is reduced to its market value on 1 July, and the asset subsequently recovers and is sold, the Division 296 calculation may include capital gains that have not fully accrued over the relevant period.

Importantly, this election is not limited to funds with members above the total superannuation balance (TSB) threshold. Members may still consider opting in where their current investments are expected to grow over time, effectively locking in the benefit for future years.

Estate planning considerations

Division 296 adds a further layer of complexity when a member dies. Where superannuation death benefits are paid to adult children, the following considerations now apply:

- Taxable components of superannuation benefits may be taxed at up to 17%.
- Capital gains tax may apply where fund assets are sold to pay benefits.
- Division 296 may still apply in the year of death, as the liability is determined by the total superannuation balance at the start of the relevant financial year.

Executors should also be mindful of Division 296, particularly where they do not have full visibility over the deceased's superannuation interests. Where a death benefit is paid directly to beneficiaries, often in the year of death, the Division 296 tax assessment may be issued after the benefit has already been distributed.

In these circumstances, the executor may have to recover the tax liability

from the beneficiaries if the estate does not have sufficient funds to pay the tax. This could also result in an inequitable outcome where the superannuation beneficiaries differ from the estate beneficiaries. Any sale or transfer of superannuation assets undertaken to fund a death benefit payment may itself increase the Division 296 liability.

Division 296 also has implications for the use of reversionary pensions as a straightforward mechanism for transferring superannuation to a surviving spouse. Where the combined superannuation balances are close to, or exceed, \$3 million, a reversionary pension may push the surviving spouse above the Division 296 threshold, resulting in additional tax exposure. Removing the reversionary nomination can provide greater flexibility for the surviving spouse to manage their superannuation position.

Cashflow implications

Division 296 is assessed at the individual level rather than the fund level and

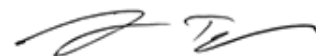
applies to earnings relating to the portion of a member's TSB that exceeds the large and very large balance thresholds. While the tax applies only to earnings (not unrealised gains), liquidity pressures may still arise if the liability is not appropriately planned for.

Trustees should therefore consider maintaining higher liquidity buffers to avoid being forced to sell assets at unfavourable times. Without proper planning, this additional tax payment may compound the cash flow pressures faced by members drawing larger annual pensions.

Despite the wide-ranging implications of Division 296, the period leading up to 30 June 2026 should be focused on planning rather than implementation. This includes identifying potential exposure, confirming asset valuations, assessing whether a CGT cost base reset would be beneficial, and reviewing estate planning arrangements to ensure they continue to operate as intended once Division 296 applies.

Next steps

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



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