DIVISION 296 AND DEATH BENEFITS: A COMPLICATED RELATIONSHIP

As a brief recap, Division 296 is an additional personal tax on superannuation earnings that applies to individuals with total superannuation balances exceeding the large and very large balance thresholds, currently $3 million and $10 million respectively. The measure took effect from 1 July 2026.

Whether Division 296 applies is determined by the member's total superannuation balance (TSB). For the 2026/27 transition year, TSB is measured at 30 June 2027. From 2027/28 onwards, the higher of the member's TSB at the beginning or end of the financial year applies.

The death of a member has Division 296 consequences for both the deceased member's estate and the beneficiary who receives the death benefit, with different considerations applying to each.

The deceased member

From the date of death, a member's TSB is deemed to be nil. As a result, any Division 296 liability in the year of death is determined by the member's TSB at the start of that financial year, i.e. at 30 June of the previous year. If that balance exceeded $3 million and the member had positive superannuation earnings, Division 296 tax will apply. The exception is the 2026/27 transition year, when TSB is measured only at year end. As a result, no Division 296 tax is payable if a member dies during that year.

Importantly, all of the deceased member's Division 296 earnings are included in the year of death, regardless of when they arise. This can include earnings realised in the year of death, such as capital gains on assets sold to pay out the death benefit, as well as earnings realised in later financial years before the benefit is paid out. Any resulting Division 296 assessment is issued to the deceased member's estate and must be managed as part of the estate administration process. The member's legal personal representative (LPR) must therefore allow for any potential Division 296 tax when administering the estate.

In many cases, the liability will not be known until well after the member's death because of delays in receiving the information needed to calculate the assessment. If estate assets are distributed before allowances are made for any Division 296 tax liability, the LPR may be personally liable for any unpaid tax.

The beneficiary: how the death benefit is paid matters

For the beneficiary, the Division 296 outcome depends largely on how the death benefit is paid. A death benefit can be paid as a lump sum, as a new death benefit pension, or, if a reversionary nomination is in place, it can remain as a reversionary pension.

Reversionary pensions

A reversionary pension is an estate planning arrangement whereby, on the death of a member, the pension automatically reverts to a nominated beneficiary, usually their spouse, allowing the income stream to continue seamlessly.

Its key tax advantage is that the reverted pension does not count against the surviving spouse's transfer balance cap for 12 months. During this period, the spouse can receive tax-exempt earnings on both the reversionary pension and their own pension, even if the combined balance exceeds their personal transfer balance cap. Before the 12-month anniversary, the beneficiary should adjust their affairs to stay within their cap, typically by commuting part of their pension back to the accumulation phase.

The Division 296 mismatch

The difficulty is that Division 296 has no equivalent 12-month concession. While the reversionary pension is deferred for transfer balance cap purposes, it is immediately included in the beneficiary's TSB from the date of the member's death. This can push the beneficiary over the Division 296 threshold in the year of death.

For example, a couple each have $2 million in super, comfortably below the $3 million large superannuation balance threshold. When one member dies, the reversionary pension immediately takes the survivor's balance to $4 million, bringing them within the scope of Division 296.

In this example, withdrawing the balance above $3 million before 30 June, the end-of-year measurement date, could avoid Division 296. However, doing so shortens the period during which those funds benefit from tax-free pension phase earnings. While this may reduce a member's Division 296 liability, it can also reduce the tax benefits available within the superannuation system.

Should the reversionary nomination be removed?

Not necessarily. A reversionary nomination remains a useful estate planning tool, and the certainty and simplicity it provides to the surviving spouse has real value that should not be discarded automatically for a potential tax saving.

Removing a nomination may also not be straightforward. Depending on the

fund's trust deed, a trustee resolution may be sufficient. In other cases, the pension may need to be fully commuted and restarted.

If the nomination is removed, the pension will cease on the member's death. The surviving beneficiary then has greater flexibility to take the death benefit as a lump sum, a new death benefit pension, or a combination of both, rather than having their TSB automatically increased by a reversionary pension.

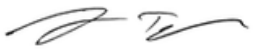
Who should pay attention?

Couples whose combined super balances exceed $3 million are most likely to be affected, even where each member is individually below the threshold.

Because Division 296 applies only to earnings on the balance above $3 million, the additional tax may be modest where those earnings are small and may be outweighed by the benefit of maximising tax-free pension phase earnings. Where earnings are significant, withdrawing the excess before the 30 June measurement date may produce a better outcome.

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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