



01:
Anne-Marie Esler
co-founder
Padua Solutions



02:
Rudy Haddad
head of data, research
and technical advice
Padua Solutions

Division 296: A practical guide

After many years of Parliamentary debate and industry lobbying, the *Treasury Tax Laws Amendment (Building a Stronger and Fairer Super System) Act 2026* and the *Superannuation (Building a Stronger and Fairer Super System) Imposition Act 2026*, received Royal Assent on 13 March 2026 and are now law. These Acts, fondly known as Division 296, reduce the tax concessions for people with larger superannuation balances.

Division 296 applies a new, additional tax on superannuation earnings for individuals with total superannuation balances over \$3 million. The additional tax sits on top of the existing 15% fund-level tax and is levied directly on the individual, not the fund. It applies to a proportion of earnings that exceed an individual's total superannuation balance.

Total superannuation balance

An individual's total superannuation balance (TSB) is the combined value of all their superannuation interests across all funds in Australia. TSB is determined either immediately before or at the end of the financial year. For the 2026/27 financial year, TSB is calculated at the end of the financial year on 30 June 2027. For future years, a person's TSB is the greater of their TSB just before the start of the year and their TSB at the end of that financial year. This is termed TSB reference amount. Using the higher of the two balances prevents a person from artificially reducing their balance just before June 30 to avoid a liability. An exception to this approach is where a person dies during a financial year (discussed below).

If an individual's TSB exceeds \$3 million (the large super balance threshold), the additional tax is 15%. If an individual's TSB exceeds \$10 million (the very large super balance threshold), the additional tax is 25%. These rates effectively apply a 30% and 40% tax rate, respectively, to the proportion of superannuation fund earnings that exceeds the applicable threshold in the accumulation phase and 15% and 25% respectively in the retirement phase.

Both the \$3 million and \$10 million thresholds are indexed to CPI from the 2027/28 financial year. The \$3 million threshold is indexed in \$150,000 increments and the \$10 million threshold is indexed in \$500,000 increments. Indexation is based on the CPI for the quarter ending December 31 just before the relevant financial year. This means the indexed threshold for any given financial year will be known before the financial year begins.

The examples to the right illustrate how Division 296 tax is calculated and paid for two individuals.

Calculating earnings

Earnings for Division 296 purposes are the fund's taxable income - the same income re-

ported in the fund's annual tax return. This includes interest, dividends (including the franking credit gross-up), rental income and realised capital gains after the one third CGT discount. Unrealised capital growth is not included.

Within industry funds, master trusts and retail funds, funds calculate their total Division 296 earnings at a fund level and then attribute earnings to each member on a fair and reasonable basis as determined in the draft regulations. Within wrap super funds, because each member's assets are held and tracked individually, the fund's earnings attributable to that member are calculated on their specific parcel of shares, managed funds and cash.

In SMSFs or small APRA funds that have at least two members, an actuarial certificate is required to determine the earnings attributable to each member's TSB. Single member funds do not need an actuarial certificate as all earnings are attributable to the sole member. Importantly, SMSFs have a one time option to reset the cost base of all CGT assets within the fund as at 30 June 2026. This impacts only the future calculation of Division 296 earnings and does not trigger a CGT event.

Defined benefit funds face different rules based on a change in value formula that is described in the draft regulations.

Funds report each member's relevant earnings to the ATO after June 30.

How and when is the Division 296 tax paid?

Division 296 is not self-assessed. Clients do not need to calculate or lodge anything. The ATO aggregates earnings across all funds, calculates the liability, and issues a notice of assessment to the individual. The individual may either pay the liability personally, elect within 60 days of the assessment to release the funds from one or more of their superannuation interests or use a combination of the two.

Who does not have to pay?

There are two exceptions to paying Division 296 tax; children receiving a superannuation income stream and a person for whom a structured settlement contribution has been made. For permanently disabled child recipients this exemption continues indefinitely. For non-disabled child recipients, it applies until age 25. A person for whom a structured settlement contribution has been made (this is a payment received from a personal injury claim) is never liable, regardless of balance size.

What happens on death?

If a person dies at any time during the 2026/27 income year, they have no Division 296 liability for that year. This is an explicit statutory exemption.

Example 1

Amy, total superannuation balance over \$3 million

- Total superannuation balance, 30 June 2027 = \$4.5 million
- Attributable earnings = \$150,000

Division 296 tax:

$$\begin{aligned} &= 15\% \times \text{attributable earnings} \times (\text{TSB reference amount} - \$3\text{m}) / \text{TSB reference amount} \\ &= 15\% \times \$150,000 \times (\$4.5\text{m} - \$3\text{m}) / \$4.5\text{m} \\ &= 15\% \times \$150,000 \times 33.33\% \\ &= \$7,500 \end{aligned}$$

Note, only a portion of the total superannuation balance that exceeds the threshold, \$50,000 (33.33%) is subject to Division 296 tax and therefore the remaining portion of Amy's earnings, \$100,000 (66.67%) is not subject to tax.

Example 2

Marcus, total superannuation balance over \$10 million

- Total superannuation balance, 30 June 2027 = \$12m
- Attributable earnings = \$600,000

Division 296 tax:

$$\begin{aligned} &= 15\% \times \text{attributed earnings} \times (\text{TSB reference amount} - \$3\text{m}) / \text{TSB reference amount} + 10\% \times \text{attributed earnings} \times (\text{TSB reference amount} - \$10\text{m}) / \text{TSB reference amount} \\ &= 15\% \times \$600,000 \times (\$12\text{m} - \$3\text{m}) / \$12\text{m} + 10\% \times \$600,000 \times (\$12\text{m} - \$10\text{m}) / \$12\text{m} \\ &= 15\% \times \$600,000 \times 75\% + 10\% \times \$600,000 \times 16.67\% \\ &= \$67,500 + \$10,000 \\ &= \$77,500 \end{aligned}$$



The quote

For those clients looking to reduce their total superannuation balance prior to the first assessment on 30 June 2027, there are a variety of alternatives to explore.

From 2027/28, a person who dies during the year may have a Division 296 liability if their TSB at the start of the year exceeded \$3 million. The closing TSB is taken to be nil (since they are deceased), so the opening TSB always determines the reference amount in the year of death.

Other options

For those clients looking to reduce their total superannuation balance prior to the first assessment on 30 June 2027, there are a variety of alternatives to explore. A withdrawal and re-contribution to a family member's superannuation account (within the allowable limits of course), investments outside of superannuation and for those looking for a philanthropic alternative, a charitable donation. A structured giving fund with an organisation such as Australian Philanthropic Services (APS), allows excess funds to be invested while in the structure, which is income tax exempt, and given away to charities over time. The donations are 100% tax deductible and the deduction can be used in the year of donation or can be spread over up to five years, making this option extremely tax efficient and more importantly, provides a feel good outcome for clients. **FS**