



# Division 296: The big picture

Michael Hallinan

**D**ivision 296 tax applies to the taxable superannuation earnings of a taxpayer. These are superannuation earnings of the taxpayer which are attributable to a total superannuation balance (TSB) of the taxpayer greater than \$3 million (tax rate - 15%) and which are attributable to a TSB balance greater than \$10 million (an additional tax rate of 10%).

Alternatively, Division 296 tax can be considered as applying to the superannuation earnings, will be attributed to each tranche — or slice, level or portion—of a taxpayer’s TSB and taxed at the rates shown by Table 1.

## When does it start?

Division 296 tax will first be paid in respect of the 2026/27 income year and all subsequent income years. The first assessments of Division 296 tax—in respect of the 2026/27 income year—are likely to be issued in mid to late 2028.

## Who pays Division 296 tax?

The tax is imposed on the taxpayer—and *not* the superannuation fund or the trustee of the superannuation fund.

In most cases, the taxpayer is likely to arrange for the Australian Taxation Office (ATO) to collect the tax from the taxpayer’s superannuation accounts. This will be done by means of a release authority issue by the ATO to a fund holding superannuation accounts for the taxpayer, where the fund releases the money to the ATO, to

discharge the debt arising from the Division 296 tax assessment. However, the taxpayer could personally pay all or a portion of the Division 296 tax.

Table 1. Division 296 tax rates

Superannuation earnings attributed to tranche of the total super balance	Division 296 tax rate on attributed superannuation earnings
Up to \$3 million	Nil
\$3 million or more up to \$10 million	15%
Balance over \$10 million	25%
Complaints about superannuation death benefit distributions	No later than 90 calendar days after the expiry of the 28-calendar-day period for objecting to a proposed death benefit distribution referred to in section 1056(2)(a) of the Corporations Act.

Source: SUPERCentral

## Are the thresholds indexed?

Yes, they are. The \$3 million and \$10 million thresholds will be indexed to increases in the CPI index and will be adjusted in increments of \$150,000 and \$500,000 respectively.

## Does it make any difference whether the taxpayer is entirely in pension phase?

No, it does not. To take an extreme example, Dianne, attained age 75, has only one superannuation interest, which is in pension phase. Let us assume that her total superannuation balance at 30 June 2027 was \$7 million, and her superannuation earnings were \$1,000,000. Dianne has obviously had remarkable investment earnings!

The superannuation fund will pay no income tax in respect of Dianne's superannuation earnings as the superannuation interest is entirely within the retirement phase.

However, Division 296 tax is not a tax on the taxable income of the superannuation fund – it is a tax on the superannuation earnings of Dianne which are attributable to each tranche of her TSB as shown in Table 2:

**Table 2. Division 296 tax liability for Diane**

Total super balance tranche	Attributed superannuation earnings to the tranche	Division 296 tax
First tranche – first \$3 million	\$428,571	Nil
Second tranche – more than \$3m but less than \$10m	\$571,428	15% (tax = \$85,714)
Third tranche – more than \$10m	Nil (as Dianne's TSB is less than \$10m)	N/A

Source: SUPERCentral

Consequently, Dianne is still liable for Division 296 tax even though she is entirely in pension phase.

## How are the 'taxable superannuation earnings' of an income year of a taxpayer calculated?

This is a four-step process.

### First step

The trustee must determine the Division 296 fund earnings of the superannuation fund for the relevant income year.

The simplified calculation is:

*Division 296 fund earnings = Taxable income - assessable contributions + Net ECPI*

Where taxable income is the taxable income of the fund for the relevant income year; assessable contributions are the total of the contributions included in taxable income of the income year and Net ECPI is net exempt current pension income of that income year.

This is a simplified formula as it assumes that there is no non-arm's length income and investments in pooled superannuation trusts. If there are, a more complicated formula applies.

Assessable contributions are deducted as they do not constitute fund earnings but were included in taxable income of the fund. The formula makes no reference

to non-concessional contributions as these contributions are not included in the assessable income of the fund.

Net exempt pension income is added, as this income constitutes superannuation earnings (even if not subject to income tax).

If the fund has a net loss (rather than taxable income) – the formula still applies – with the net loss included as a negative value for the taxable income.

It is possible for a fund to have negative fund earnings for an income year. In this case, the Division 296 fund earnings will be treated as having nil fund earnings. Consequently, negative Division 296 fund earnings of one fund cannot offset the positive Division 296 fund earnings from another fund. Additionally, the formula for Division 296 fund earnings has no variable representing the carry forward of prior year negative fund earnings.

### Second step

The trustee of the fund must allocate the Division 296 fund earnings amongst each superannuation interest which existed at any time during the income year.

This allocation must be fair and reasonable. Regulations will be issued in relation to the attribution of Division 296 fund earnings and which, may require the trustee to have regard to the length of time that the interest existed in the fund during the income year—possibly, which portion or portions of an income year as well—and, if the fund had different investment portfolios, the portion of and duration during which the superannuation interest was in those investment portfolios.

The regulations may require the trustee to obtain an actuarial certificate to support the attribution.

### Third step

The trustee must report to the ATO, the amount of Division 296 fund earnings attributed to each superannuation interest that existed at any time during the income year and the TSB value of each superannuation interest which existed at the end of the income year.

### Fourth step

The ATO will, from the amounts and figures reported at the third step, determine the total superannuation balance of the taxpayer and the aggregate of the Division 296 fund earnings of each taxpayer. The ATO will also receive information from superannuation entities (other than SMSFs) which are concessional taxed such as industry funds, public offer funds, approved deposit funds, retirement savings accounts and rollover annuities.

The ATO will then issue Division 296 tax assessments to taxpayers who have taxable superannuation earnings for the income year, and which have a TSB greater than \$3 million.

The TSB used will normally be the greater of the TSB at the end of income year or the TSB immediately before the beginning of the income year. (However, there are two important exceptions – which are discussed later).



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### The quote

*The trustee must report to the ATO, the amount of Division 296 fund earnings attributed to each superannuation interest that existed at any time during the income year and the TSB value of each superannuation interest which existed at the end of the income year.*

Using the greater value of the TSB ensures that Division 296 Tax for an income cannot be avoided by cashing out superannuation amounts to reduce the year-end TSB to be less than \$3 million.

### Example 1 - Single superannuation interest in one SMSF in accumulation phase

Bert is the sole member of the 'Bert SMSF' and his total superannuation balance at 30 June 2028 is \$12 million. The year end TSB balance is used, as this is greater than the TSB immediately before the start of the 2027/28 income year. His superannuation earnings for 2027/28 are \$1,100,000.

Table 3 demonstrates how Division 296 tax would be applied to Bert's superannuation earnings:

**Table 3. Division 296 tax liability for Bert**

Total super balance tranche	Attributable earnings (\$1,100,000)	Division 296 tax rate	Division 296 tax
Up to \$3m	\$275,000	Nil	Nil
\$3m or more and up to \$12m	\$825,000	15%	\$123,750
\$10m or more	\$183,333#	10%	\$18,333
<b>Total</b>	<b>\$1,100,000</b>	<b>\$142,083</b>	<b>\$142,083</b>

*Note: The \$183,333 is included within the \$825,000 so has been taxed at 15% and will be taxed again at 10% giving the total Division 296 Tax rate to 25% for taxable superannuation contributions attributed to the tranche of the TSB greater than \$10m.*

*Source: SUPERCentral*

Alternatively, another way of considering how to determine Bert's tax liability is demonstrated in Table 4.

**Table 4. Division 296 tax liability for Bert**

Total super balance tranche	Attributable earnings (\$1,100,000)	Effective Division 296 tax rate (on each tranche)	Division 296 tax
First \$3m	\$275,000	Nil	Nil
Balance of TSB over \$3m – but less than \$10m = \$7m	\$641,667	15%	\$96,250
Balance TSB over 10m = \$2m	\$183,333	25%	\$45,833
<b>Total: \$12 million</b>	<b>\$1,100,000</b>		<b>\$142,083</b>

*Note: Totals may be subject to rounding discrepancies.*

*Source: SUPERCentral*

### Example 2 – Two superannuation interests in one SMSF, one interest in pension phase (value \$2 million) and another interest in accumulation phase (value \$10 million)

In this example, Bert is still the sole member of the 'Bert SMSF' and his total superannuation balance is still \$12 million at 30 June 2028. His superannuation earnings for 2027/28 income year are still \$1,100,000. However, Bert now has two superannuation interests: one in pension phase—value of \$2 million at 30 June 2028, and the other superannuation interest in accumulation phase—value \$10 million at 30 June 2028.

Bert's superannuation earnings would be attributable as follows - assume the superannuation earnings pension interest superannuation earnings were \$700,000 while the accumulation earnings were \$400,000 (total \$1,100,000 earnings).

In this case the attribution of the aggregate super earnings is based upon a straight-line apportionment of the aggregate superannuation earnings to each TSB tranche as shown by Table 5.

**Table 5. Pension interest considered within the \$3 million tranche**

Total super balance tranche	Attributable earnings (\$1,100,000)	Effective Division 296 tax rate (on each tranche)
First \$3m	\$275,000	Nil
Balance of TSB over \$3m – but less than \$10m = \$7m	\$641,667	15%
Balance TSB over 10m = \$2m	\$183,333	25%
<b>Total: \$12 million</b>	<b>\$1,100,000</b>	

*Note: Totals may be subject to rounding discrepancies.*

*Source: SUPERCentral*

The important point is that the total Division 296 tax liability is the same whether the pension interest is treated as being in the first tranche or the last tranche of the TSB as demonstrated in Table 6. Also, it is irrelevant whether the pension interest was in one SMSF and the accumulation interest was in another SMSF (assuming the same aggregate superannuation earnings).

**Table 6. Pension interest considered within top tranche**

Total super balance tranche	Attributable earnings (\$1,100,000)	Division 296 tax
First \$3m – Accumulation interest	\$275,000	Nil
Second \$7m – Accumulation interest	\$641,667	\$96,250 (15%)
Final \$2m – Pension interest	\$183,333	\$45,833 (25%)
<b>Total: \$12 million</b>	<b>\$1,100,000</b>	<b>\$142,083</b>

*Note: Totals may be subject to rounding discrepancies.*

*Source: SUPERCentral*

### Why use the 2027/28 income year in the example and not the 2026/27 income year?

There is a simple reason—for the 2026/27 income year special transitional measure applies whereby the Division 296 tax calculation will be based upon the year end TSB of the taxpayer.

For all other income years, the TSB will be based upon the greater of the year-end balance and the balance immediately before the start of the income year.

By using only the year-end TSB for the 2026/27 income year, Division 296 tax will not apply if the year-end balance is reduced to \$3 million or less. This reduction could be achieved by cashing out sufficient superannuation to reduce the year-end balance to below \$3 million—or \$10 million if the taxpayer wishes to avoid the additional Division 296 tax rate of 10%.

This transitional measure effectively only applies to taxpayers who have attained an unrestricted release condition – such as the attained age 65 condition, or taxpayers who have attained their preservation age and retired or otherwise satisfied an unrestricted release condition.

Additionally, this transitional measure can apply to taxpayers in respect of an income stream funded by a death benefit, as the superannuation interest supporting the income stream is entirely unrestricted non-preserved and, as such, the taxpayer can cash out all or part of the balance of that income stream to reduce their year-end TSB.

However, careful consideration must be given to this cashing out strategy. Generally, amounts cashed out cannot be automatically returned to the superannuation system except as new contributions within the relevant contribution cap space (if any). Further, unless the cashing out occurs after age 60, the taxpayer may incur income tax on the amount cashed out.

### Will taxable superannuation earnings include capital growth accrued before 30 June 2026?

There is a second transitional measure which can be used to ensure that only capital growth since 30 June 2026 is included in the calculation of Division 296 fund earnings—and only for the purposes of calculating Division 296 fund earnings. The transitional measure does not apply to the calculation of the taxable income of the fund.

In this case the trustees may elect to reset the capital gain tax (CGT) cost base of CGT assets held by the fund on 30 June 2026 to their market value as at 30 June 2026.

This election is an ‘all or none’ election. If an election is made, then the election applies to every CGT asset held by the fund on 30 June 2026. The effect of the election is that the first element of the cost base will be the market value as at 30 June 2026 and each other element of the cost base (if any) is taken to be nil.

However, as the election is an ‘all or none’ election, there may be CGT assets held as at 30 June 2026 where it is not desirable for the market value to be reset. Careful consideration must be given whether to take advantage of this transaction measure. **FS**

Note. The regulations supporting the operation of Division 296 have not been finalised as at the date of publication.



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*Trustees may elect to reset the capital gain tax (CGT) cost base of CGT assets held by the fund on 30 June 2026 to their market value as at 30 June 2026.*