CARISMA SOLUTIONS

CASE STUDY



DIVISION 296

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Quick summary

Division 296 introduces an additional 15 per cent tax on earnings attributable to the portion of an individual's total superannuation balance that exceeds $3m.

Tax is assessed to the individual and is based on an aggregation of all super accounts.

Strategic planning is essential before 30 June 2026 for those likely to be impacted by the tax.

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Key components of Division 296

Tax on unrealised gains

No refund for negative earnings

Individual assessment

Payment of Tax

Calculation methodology

Tax on unrealised gains

Unrealised gains refer to the increase in the value of investments that have not been sold. Taxing these gains raises several issues, including the potential for individuals to pay tax on ‘imaginary profits’ if the value of their investments subsequently declines.

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No refund for negative earnings

If an individual experiences negative earnings or their TSB falls below $3m, no refund is available for Division 296 tax paid in a prior year. Instead, losses can be carried forward to offset future Division 296 earnings. In some instances, these losses may never be utilised.

Individual assessment

The tax is assessed per individual, aggregating all their superannuation accounts. For those with a Self-Managed Superannuation Fund (SMSF), each member's balance is assessed individually.

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Payment of Tax

The tax is assessed to the individual, not the superannuation fund

The Individual will have the option to pay the tax personally or elect to have the payment released from the superannuation fund.

You will typically have **84 days** from the date of your assessment to pay the tax. If you elect to release funds from your super, you usually have **60 days** from the date of the release authority to make this election to your fund before general interest charges may apply to the unpaid amount.

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Calculation methodology:

Step 1: Calculate the earnings, defined as the movement in the individual's total superannuation balance adjusted for any withdrawals and net contributions.

Step 2: Determine the proportion of earnings attributable to the balance above $3 million.

Step 3: Apply a 15 per cent tax rate to the earnings amount derived from the previous steps.

Planning considerations

With the tax expected to apply for the 2026 financial year, even with a start date of 1 July 2025, there is still time to assess any plans and implement strategies prior to 30 June 2026 to reduce the impact of the Division 296 tax.

It's critical to wait until the final legislation is passed rather than withdrawing funds prematurely in anticipation of the tax, as re-contribution may not be possible if the legislation does not proceed as expected.

Selling investments prematurely will only trigger capital gains tax consequences, it will not impact the amount of Division 296 tax, which is based on the balance movement.

For many, superannuation will remain a tax-effective structure even with the new tax. For others, it may be an opportunity to review their current and alternative investment vehicles to identify the most tax effective strategies moving forward.

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Special Considerations and Exemptions

The Division 296 legislation includes specific rules and exemptions for certain situations:

Defined Benefit Interests: For individuals with defined benefit superannuation interests, special actuarial calculations will be used to determine the value of their interest for Division 296 purposes. In some cases, the tax liability attributable to a defined benefit interest may be deferred until the benefit is paid.

Special Considerations and Exemptions

Exemptions:
Child Recipients: Superannuation income streams paid to children (e.g., from a deceased parent's super) are generally exempt from Division 296 tax.

Structured Settlement Contributions: Certain contributions made as part of a structured settlement for personal injury are excluded from the TSB calculation.

Death Before End of Financial Year: If an individual dies before the end of the financial year, the Division 296 tax will not apply for that year.

Constitutional Exemptions: Very specific exemptions apply to certain individuals (e.g., State Supreme Court judges) due to constitutional requirements.

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Case study 1

Anne has a superannuation balance of $3.2m at the end of the financial year and no contributions or withdrawals. Her balance increases to $3.4m the following year. The tax liability is calculated based on the proportion of earnings above $3m, resulting in a relatively modest tax amount. The following steps to calculate this are:

Earnings = ($3.4M + $0 – $0) - $3.2M = $200K

Proportion = $3.4M - $3M ÷ $3.4M = 11.76%

Division 296 Tax Liability
= $200K x 11.76% x 15%
= $3,528

Case study 2

Bob has a superannuation balance of $9m, which increases to $9.5m the following year. The tax liability for Bob is significantly higher due to the larger proportion of earnings above the $3m threshold. The following steps to calculate this are:

Earnings = ($9.5M + $0 – $0) - $9M = $500K

Proportion = $9.5M - $3M ÷ $9.5M = 68.42%

Division 296 Tax Liability
=$500K x 68.42% x 15%
= $51,315

Case study 3

Gail has a superannuation balance of $5m, which increases to $5.3m the following year. Gail makes concessional contributions of $30,000 and takes pension withdrawals of $150,000. The following steps to calculate this are:

Earnings = ($5.3M + $150,000 – $25,500) - $5M = $424,500

Proportion = $5.3M - $3M ÷ $5.3M = 43.40%

Division 296 Tax Liability
= $424,500 x 43.40% x 15%
= $27,635

Case study 4

John has a superannuation balance of $3.2m, which decreases to $2.9m the following year. John takes pension/lump sum withdrawals of $400k. The following steps to calculate this are:

Earnings = ($2.9M + $400K - $0) - $3.2M = $100K

Proportion = $2.9M - $3M ÷ $2.9M = negative 3.45%

Division 296 Tax Liability = Nil due to negative proportion

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Impact on Australians

*High-balance members: Angry – say it's unfair.

*Average citizens: Supportive – see it as a fair move.

*Concerns about taxing paper profits and compliance burden.

*Many SMSFs rethinking strategies

Political Reaction

- Passed by Australian Labor Government in Parliament February 2024 by Australian Prime minister.

- Opposed by Liberal Party with a motive of “No changes to Super”.

Thank You