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# UNDERSTANDING THE NEW $3 million SUPERANNUATION TAX

The much debated tax on superannuation balances over $3 million is inching closer and those who may be affected should ensure they have considered the implications.

Although it is not yet law, the Division 296 tax should be taken into account when it comes to investment strategy and planning, particular in relation to any end-of-financial-year (EOFY) contributions into super.

## Tax for higher account balances

The new tax follows a Federal Government announcement it intended to reduce the tax concessions provided to super fund members with account balances exceeding $3 million.

The draft Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023 was introduced to Parliament on 30 November 2023.[i]

The legislation has been referred to the Senate Economics Legislation Committee, with its report due on 19 April 2024.

Once it passes through Parliament and receives Royal Assent, Division 296 will take effect from 1 July 2025.

## Who Division 296 applies to

Division 296 legislation imposes an additional 15 per cent tax (on top of the existing 15 per cent) on investment earnings of a super account where your total super balance (TSB) exceeds $3 million at the end of the financial year.[ii]

The extra 15 per cent is only applied to the amount that exceeds $3 million.

When law, Division 296 will represent a significant change to the super rules, particularly for fund members with significant account balances.

Given the complexity of the new rules, it will be important to seek professional advice so you can make informed decisions about your super and wealth creation strategies in coming years.

## How the new rules work

A crucial part of the new legislation is the Adjusted Total Super Balance (ATSB), which determines whether you sit above or below the $3 million threshold.

When assessing your ATSB, the ATO will consider the market value of assets regardless of whether or not this value has been realised, creating a significant impact if your super fund holds property or speculative assets. The legislation also introduces a new formula for calculating your ATSB for Division 296 purposes.

The legislation outlines how deemed earnings will be apportioned and taxed, based on the amount of your account balance over the $3 million threshold.

Negative earnings in a year where your balance is greater than $3 million may be carried forward to a future financial year to reduce Division 296 liabilities at that time.

If you are liable for Division 296 tax, you can choose to pay the liability personally or request payment from your super fund.

## Strategic rethink may be needed

For many fund members, superannuation remains an attractive investment strategy due to its favourable tax treatment.[iii]

But those with higher account balances need to understand the potential effect of the Division 296 tax and check their investment strategies offer the best possible outcomes.

For example, you may need to consider whether high-growth assets should automatically be held inside super given the new rules.

Holding long-term investments that may be more difficult to liquidate, such as property, within super may be less attractive in some cases, because the new rules create the potential to be taxed on a gain that is never realised. This could occur where the value of an asset increases during a financial year but drops in value by the time it is actually sold.

For some, holding large commercial property assets (such as your business premises) within your SMSF may be less attractive.

## Reconsider your investment vehicles

If you are likely to be affected by Division 296, an important issue will be to review the most tax-effective investment structures in which to hold assets.

Super has been the clear winner in the past but, once the new rules are in place, other vehicles such as companies or discretionary trusts may also be useful options.

It will also be important to balance asset protection against tax effectiveness. For some people, the asset protection provided by the super system may outweigh the tax benefits of other investment vehicles, such as a family trust.

Division 296 will require more frequent and detailed asset valuations, so you will need to balance this administrative burden with the tax benefits provided by super.

## Estate planning implications

Your estate planning and the succession plan for your SMSF will also need to be revisited once Division 296 is law.

The tax rules for super death benefits are complex and will need to be carefully reviewed to ensure you don't leave an unnecessary tax bill for your beneficiaries.

If you still have many years to go before retirement and decide to hold high-growth assets in your fund, you will need to closely monitor your super balance.

*If you want to learn more about how Division 296 tax could affect your super savings, contact our office today.*

## Quick ways to grow your super

If your super balance is under $3 million, you will be unaffected by Division 296 and the current concessional tax rates continue to apply.

For most people, super remains the most attractive place to save for retirement and making additional contributions prior to EOFY is a sensible idea. Options to consider include:

- Take advantage of any concessional cap amounts you have not used since 2018-19 to make a carry-forward contribution, if your total super balance is less than $500,000 at June 30 of the previous year
- Make a personal tax-deductible contribution to give your account a boost and provide a tax deduction
- Make a personal (non-concessional) after-tax contribution
- Make a larger non-concessional contribution using a bring-forward arrangement
- Talk to your employer and put in place a salary sacrifice arrangement to make pre-tax contributions
- Make a contribution for your spouse (provided they are under age 75), which may also give you a tax offset of up to $540
- Consider a downsizer contribution of $300,000 if you are aged 55 and over and plan to sell your current home.

*Most contributions have eligibility criteria and annual caps you must not exceed, so talk to us before you make any contributions.*

i https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7133

ii https://treasury.gov.au/sites/default/files/2023-09/c2023-443986-em.pdf

iii https://www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/super/growing-and-keeping-track-of-your-super/caps-limits-and-tax-on-super-contributions/understanding-concessional-and-non-concessional-contributions

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