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# Division 296

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Your financial future,
tailored your way

# Why are we here today?

- **Division 296 is not yet law** — but it's expected to pass once Parliament resumes on **22 July 2025.**
- **Still in draft form -** subject to change.
- There's been a lot of **confusion and misinformation** circulating.
- Today is about **clarifying the facts** and helping you understand:
  - What the proposed legislation involves
  - How it might affect you
  - What to consider **before making any decisions**
- **Our goal:** To help you feel informed, not alarmed, so you can plan with confidence.
- Please save your **Questions** until the end.

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# General Advice Disclaimer

The purpose of this presentation is to provide you general advice and insight. Where this presentation provides general advice, we must explain that this advice has been prepared at this time without taking into account your individual personal needs, objectives, or financial situation, and the personal information we hold about you has not specifically been considered in forming our views.

You should not act on any advice that has not been tailored to you or considered in light of your full individual personal circumstances, as there is a risk that such actions may not be appropriate for you or be in your best interests.

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# What is Division 296

- New tax targeting individuals with very large super balances.
- Applies to individuals with a **Total Super Balance (TSB) over $3m at financial year-end.**
- Taxes ***earnings attributable*** to super balances above the $3 million threshold. ***Not your balance over $3m!***

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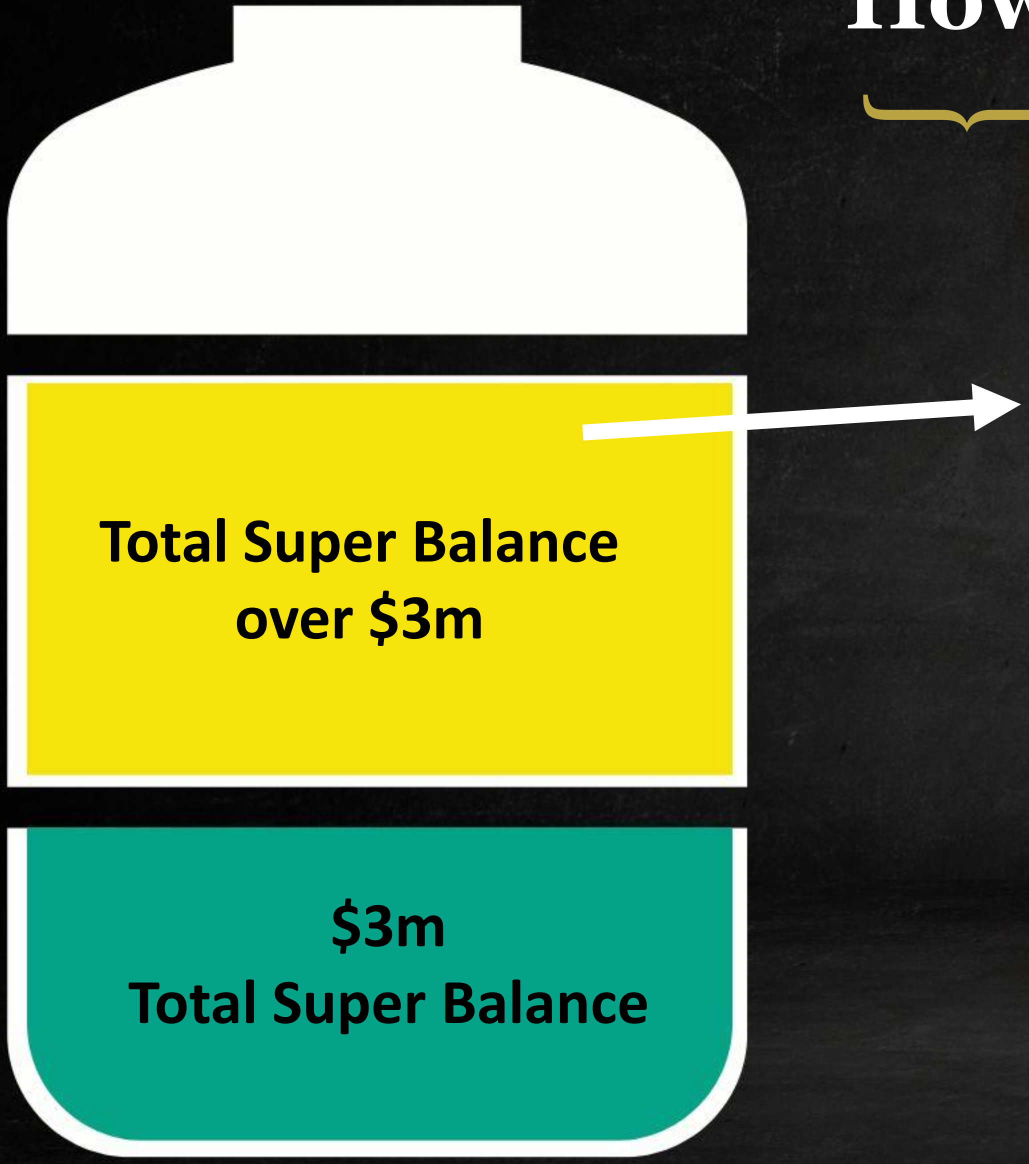
# When Does Division 296 Start?

- Proposed start date: **1 July 2025**
- First affected financial year: 2025–26 (**applies to over $3m balances at 30 June 2026**)
- Applies annually based on end-of-year Total Superannuation Balances.

# How does Division 296 Work?




- Tax applies to the portion of earnings attributable to your TSB that is over $3m at the end of the financial year.
- The $3m cap applies regardless of pension or accumulation stage.
- The tax is levied on the individual and completely separate from your income tax returns at a fund or personal level.
- You can pay personally or request the for your super fund to pay.

# First Step: Is Div 296 Payable?

Is your Total Super Balance at the end of the financial year over $3m (30 June 2026)?

Yes – Div 296 is payable.

No - Div 296 is not applicable!

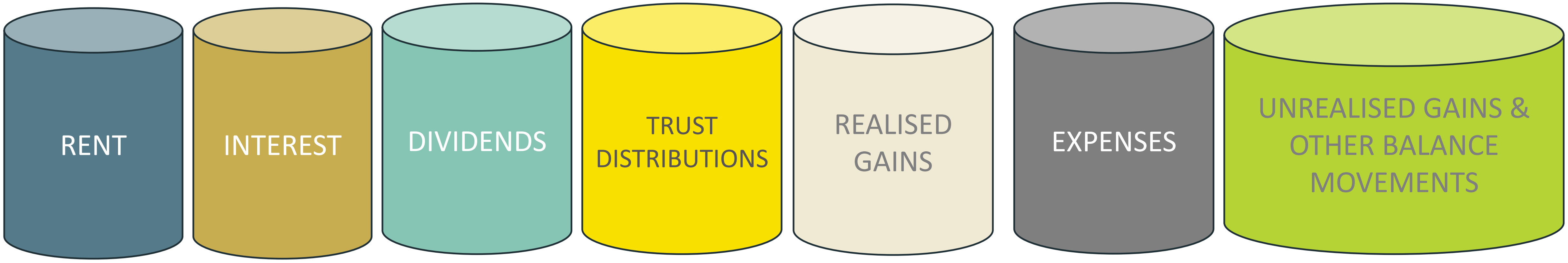
# The Tax Calculation Formula

**‘Earnings’ × Proportion of TSB over \$3m × 15%**

- Earnings is the growth in an individual’s super balance (excluding contributions, pensions or lump sums withdrawals) during the financial year.
- Proportion of your TSB that is over \$3m at the ***end of the financial year***
- **15% is the applicable tax rate**

# What counts as ‘earnings’?

Includes everything that changes your super balance during the year, excluding contributions, pensions and/or lump sum withdrawals.



# How Does the ATO calculate ‘Earnings’?

- These figures are reported annually to the ATO by **every super fund** for **every individual**.

OPENING TOTAL SUPER BALANCE

PLUS CONTRIBUTIONS NET OF TAX

LESS PENSIONS OR LUMP SUM WITHDRAWALS

PLUS EARNINGS

EQUALS CLOSING TOTAL SUPER BALANCE

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# How does the ATO calculate earnings

The ATO calculates earnings using the following formula:

Closing TSB
*Less* Opening TSB
*Less* Net Contributions
*Plus* Pensions and Lump Sum Withdrawals
= Earnings

# How Does the ATO calculate the proportion of your balance that is over $3m?

Calculated using the following formula:

(**Closing** TSB - $3m) ÷ **Closing** TSB

This means that it is based on your total super balance at year end ***only.***

Consider an individual who has a TSB of $4m at 30 June 2026

The proportion of their balance over $3m is calculated as follows:

($4m - $3m) ÷ $4m = 25%

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# A simple example with no contributions or withdrawals

Earnings

$5.5m – $5m - $0 + $0 = $500k

Proportion of balance over 3m

($5.5m - $3m) ÷ $5.5m = 45.45%

$500k × 45.45% × 15%

Div 296 Tax = $34k

OPENING TSB
$5m

CONTRIBUTIONS: $0

PENSIONS OR LUMP SUM $0

EARNINGS: $500k

CLOSING TSB:
$5.5m

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# An example with contributions and withdrawals

Earnings

\$5.5m – \$5m - \$120k + \$200k = \$580k

Proportion of balance over 3m

(\$5.5m - \$3m) ÷ \$5.5m = 45.45%

\$580k × 45.45% × 15%

Div 296 Tax = \$39.5k

OPENING TSB
\$5m

NET CONTRIBUTIONS: \$120k

PENSIONS OR LUMP SUM (\$200k)

EARNINGS: \$580k

CLOSING TSB:
\$5.5m

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# What if I make a large withdrawal and reduce my closing TSB?

| No withdrawals | With withdrawal |
|---|---|
| OPENING TSB $5m | OPENING TSB $5m |
| CONTRIBUTIONS: $0 | CONTRIBUTIONS: $0 |
| PENSIONS OR LUMP SUM $0 | PENSIONS OR LUMP SUM **($2.3m)** |
| EARNINGS $500k | EARNINGS $500k |
| CLOSING TSB $5.5m | CLOSING TSB $3.2m |
| Div 296 Tax = $34k | Div 296 Tax = $4.7k |

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# Why the big difference?

Earnings

$3.2m – $5m - $0 + $2.3m = $500k

Proportion of balance over 3m

($3.2m - $3m) ÷ $3.2m = 6.25%

$500k × 6.25% × 15%

Div 296 Tax = $4.7k

OPENING TSB
$5m

CONTRIBUTIONS: $0

**WITHDRAWALS $2.3m**

EARNINGS $500k

CLOSING TSB:
$3.2m

Div 296 Tax = $4.7k

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# Frequently Asked Questions

# Let’s set things straight

**Does Division 296 apply to everyone?**

No, only individuals with total super balances over $3m at year-end. Regardless of their balance at the start of the financial year.

**Is it a flat tax on the entire balance?**

No, the tax only applies on the earnings attributed to your balance above $3m.

**Are contributions or pensions/lump sum withdrawals taxed under Division 296?**

No, theses are excluded from the earnings calculations.

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# Let’s set things straight

**Am I going to be taxed on unrealised gains in super?**

Yes, a proportion of your unrealised gains during the year is taxed under Div 296.

**Am I taxed on prior accumulated unrealised gains?**

No, only unrealised gains made during the current financial year are included in the calculation.

**How are negative earnings in any year treated for Div 296 purposes?**

If your closing TSB is over $3m and you have negative 'earnings', a Div 296 loss is calculated. This loss can be carried forward and offset against future Div 296 tax, but it is not refundable.

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# Let’s set things straight

**Is this tax in addition to my annual super or personal income tax?**

Yes. There are no changes to your annual personal and super fund income tax calculations. This is an additional tax levied on the individual.

**Can my super fund pay the tax on my behalf?**

Yes, you can choose to have your super fund pay any Div 296 tax

**Does this affect the amount I can have in pension phase?**

No, the cap on pensions remains the same. There are no changes here.

**What if I have multiple super funds?**

The $3m cap applies to your combined super balances.

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# Let's set things straight

### Should I change my super strategy now?

No, not until legislation is finalised and you have obtained licensed financial advice.

### Can I avoid the tax by withdrawing money?

Yes, you can minimise or avoid the tax by making withdrawals before 30 June 2026. This gives you time to wait for legislation to pass and consult with a licensed advisor.

### Is there any offset for Division 296 when super assets are actually realised in the future?

No, realised gains are assessed under the normal super tax rules and are not affected by previously paid Division 296 tax.

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# Let’s set things straight

**Surely, I’m better off avoiding Division 296?**
Not necessarily, withdrawing funds to avoid the tax may have other tax consequences that result in higher tax outside super. Always seek licensed financial advice before you take any action.

**What other factors should I consider in planning my approach?**

You need to consider many factors including, cash flow, outside super tax implications and more. This is why obtaining licensed financial advice is essential.

**Will my trust deed need updating?**

Potentially. We are currently undertaking a review of all of our clients trust deeds. We will contact you in the coming months if an update is recommended.

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# Considerations before making a decision


# What factors need to be considered?

It’s critical to undertake thorough modelling and seek professional advice from a **Licensed Financial Advisor.** Several factors that need to be considered include:

- Conditions of release (are you allowed to access your super?)
- Tax implications outside superannuation
- Capital Gains Tax (CGT) implications of any realised superannuation assets
- Estate planning and death benefit tax considerations
- Personal circumstances and objectives
- Updating your investment strategy

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# Investment Considerations

**Restructuring Your Underlying Super Fund Assets**

- Liquid investments (cash/shares) vs illiquid investments (property).
- Direct transaction costs (brokerage, stamp duty, capital gains tax).
- Indirect transaction costs (time out of the market, implementation leakage).

**Do these potential costs outweigh paying the Div 296 tax?**

**Should Your Super Fund Investment Strategy Change?**

- Income producing assets are still suitable for Super.
- Capital growth assets are still suitable for Super (subject to liquidity constraints).
- Highly speculative and volatile assets may not be suitable for Super.

**Restructuring depends on your total family investment strategy.**

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# Asset Class Considerations & Tax

The tax implications for different structures across investment asset classes is below, noting that **Super may still be the lowest taxed structure even with Div 296**.

| | Personal Name | Family Trust | Company* | Super | Div 296 |
|---|---|---|---|---|---|
| Cash Interest | Up to 47% | Up to 47% | 30% | 15% | <15% |
| Term Deposit Interest | Up to 47% | Up to 47% | 30% | 15% | <15% |
| Listed Shares Income<br>Listed Shares Cap Gains | Up to 47%<br>23.5% Discounted | Up to 47%<br>23.5% Discounted | 30%<br>30% | 15%<br>10% | <15%<br><15% |
| Direct Property Rent<br>Direct Property Cap Gains | Up to 47%<br>23.5% Discounted | Up to 47%<br>23.5% Discounted | 30%<br>30% | 15%<br>10% | <15%<br><15% |
| Alternative Assets Income<br>Alternative Assets Cap Gains | Up to 47%<br>23.5% Discounted | Up to 47%<br>23.5% Discounted | 30%<br>30% | 15%<br>10% | <15%<br><15% |
| Private Assets Income<br>Private Assets Cap Gains | Up to 47%<br>23.5% Discounted | Up to 47%<br>23.5% Discounted | 30%<br>30% | 15%<br>10% | <15%<br><15% |
| Venture Capital Gains (ESVCLP) | 0% | 0% | 0% | 0% | Up to 15% |

** Note, the company tax rate is payable inside the company, but excludes any 'top-up' tax when paid out to shareholders.*

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# What should you do now?


1. Wait for legislation to pass before making any major changes.
2. Avoid taking irreversible action — once money is withdrawn from super, it is often difficult or impossible to recontribute.
3. Despite Div 296 tax, super remains tax-effective for retirement savings.
4. Trust Deed may need to be reviewed.
5. **Seek licensed financial advice to ensure you are making informed decisions.**

# Questions?

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