THE SUPER PLAYBOOK 2025

SUPERANNUATION UNDER SIEGE
Preparing for Div 296

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Agenda

- Background – why the change
- The proposed change
- How Div 296 tax is calculated – using examples
- Death benefits
- Exemptions and special rules
- Where to from here?

Background

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Objective of super now legislated

The objective of superannuation is to **preserve savings** to **deliver income** for a **dignified** retirement, alongside **government support**, in an **equitable and sustainable** way.

Preserve savings

restricts access to superannuation savings for a person's retirement only.

Deliver income

emphasises the principle of superannuation – to provide income in retirement.

Dignified

denotes the importance of financial security and wellbeing in retirement.

Government support

intends to encapsulate and highlight the superannuation system's interaction with the Age Pension pillar, as well as other government support.

Equitable and sustainable

signifies that the system should provide similar outcomes for people in similar circumstances and government support should be targeted to those in need. Superannuation also needs to fit within the broader fiscal strategy.

Paves the way for limiting tax concessions on super and caps on balances

Super tax concessions worth $50b in revenue

Measure	Revenue forgone 2024/25 ($m)
Concessional taxation of employer super contributions	$29,150 million
Main residence exemption – discount component	$27 million
Rental deductions	$26,500 million
Main residence exemption	$24,500 million
CGT discount for individuals and trusts	$22,730 million
Concessional taxation of superannuation earnings	$22,200 million
Exemption for NDIS amounts	$11,420 million
Work-related expenses	$11,300 million
Food	$9,500 million
Health – medical and health services	$5,400 million

- Super tax concessions worth over $51.35 billion in revenue forgone
- Source: Revenue forgone for the 10 largest measures (Treasury's *2024/25 Tax Expenditures and Insights Statement*)

Div 296 tax

- *Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023 and the Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2023*
- Status: Bill lapsed on 28/3/25
- Start date: 1/7/25
- Key measures: impose extra 15% tax on a proportion of earnings for individuals whose TSB exceeds $3m
- To proceed, the Bill must be reintroduced into the HOR and go through the full parliamentary process again

Parliamentary sitting dates

- 2025 parliamentary sitting dates:

Month	Both Houses	House of Reps
July	22nd – 31st	
August	25th – 28th	
September	1st – 4th	
October	27th – 30th	7th – 9th
November	3rd – 6th 24th – 27th	
December	N/A	N/A

- Division 296 tax Bill likely to be one of the first pieces of legislation tabled
- Government has majority in the HOR
- Government only needs support from the Greens for Bill to pass the Senate

Senate composition – support for Bill

Senate crossbenchers

Senate composition	Senator numbers	Support for Bill
Australian Labor Party	**30**	**Support**
Coalition	27	Don't support
Australian Greens	**9**	**Support but want amendments**
Independents (Fatima Payman, David Pocock, Lidia Thorpe, Tammy Tyrrell)	4	Won't support without amendments
Pauline Hanson's One Nation (Pauline Hanson, Malcolm Roberts, Warwick Stacey, Tyron Whitten)	4	Don't support
Jacqui Lambie Network (Jacqui Lambie)	1	Don't support
United Australia Party (Ralph Babet)	1	Don't support
Total	**76**	**Govt needs 39 votes in Senate to pass the Bill → highly likely with Greens support**

The proposed change

Div 296 tax basics

1. An extra 15% tax on earnings for individuals whose TSB exceeds $3m
2. 15% tax remains on all taxable income BUT an extra 15% tax on proportion of earnings over $3m now applies
3. Tax bill sent to individual (not their fund) – can be paid personally or withdrawn from super
4. $3m TSB includes everything (accumulation and pensions), applies per member and not indexed
5. Defined benefit funds also impacted
6. Comes into effect on 1 July 2025
7. TSB first tested on 30 June 2026 with first tax assessments issued to individuals in 2026/27

Issues with Div 296

1. Definition of ‘earnings’ unrelated to actual ‘taxable income’ generated by fund
2. A form of double taxation on the same asset(s)
3. Taxing unrealised gains is an unprecedented change
4. Negative earnings/losses can be carried forward but will not result in a tax refund
5. Cashflow and liquidity issues with volatile and illiquid assets
6. Lack of indexation will capture more members overtime
7. Valuations will become critical

Valuation issues for SMSF auditors

- Heightened importance of asset valuations
- Shift from "flag and fix" to reportable issue in ACR
- ATO attention on reported values
- Increased complexity and compliance burden for auditors
- Emerging risk of valuation disputes
- Need for greater rigour and arm's length consistency
- Auditors must prepare for more scrutiny, more complexity, and less tolerance for weak evidence

TSB for Div 296 purposes

- Div 296 tax applies to members whose TSB exceeds $3m
- A member’s TSB for Div 296 tax purposes includes:

TSB = Accumulation interests + Retirement phase interests + Rollovers in transit between funds − Personal injury contributions

No carve for TPD!

- Note – TSB for Div 296 tax purposes will exclude certain outstanding LRBAs
- Can also impact those who inherit their spouse’s pension!

SMSFs reporting termination value to ATO

- Trustees can report the termination value to the ATO
- Assume Diana's account balance in her SMSF at 30 June 2026 are:

Member account	TSB	Termination value
Accumulation	\$1.2m	\$1.140m
Pension	\$1.9m	\$1.850m
Total	**\$3.1m**	**\$2.990m**

- \$3.1m reported as Diana's "closing balance" on her SMSF annual return (SAR)
- This is the default position – ATO will use this amount in Diana's TSB calculation
- However, the termination values of Diana's account balances at 30 June 2026 are \$2.990m
    - ➢ If these are reported at specific labels on the SAR, ATO will use these in its TSB calculation instead

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SMSFs reporting termination value to ATO

Other transactions

Accumulation phase account balance

S1 $ 1,200,000.00

Retirement phase account balance – Non CDBIS

S2 $ 1,900,000.00

Retirement phase account balance – CDBIS

S3 $

TRIS Count

CLOSING ACCOUNT BALANCE **S** $ 3,100,000.00

(**S1** *plus* **S2** *plus* **S3**)

O $

Inward rollovers and transfers

P $

Outward rollovers and transfers

Q $

Lump Sum payments

R1 $

Income stream payments

R2 $

Accumulation phase value **X1** $ 1,140,000.00

Retirement phase value **X2** $ 1,850,000.00

Outstanding limited recourse borrowing arrangement amount **Y** $

ATO will use termination values for TSB purposes if reported here

Paying Div 296 tax

- ATO issues member with notice of assessment (NOA) – not their fund
- Tax cannot be reduced by personal tax or super fund tax deductions, losses or franking credits
- Div 296 tax is due within 84 days of NOA being given
- Members can pay Div 296 tax:
  - From own pocket
  - By withdrawing from their fund(s) – like Div 293 tax, or
  - Combination
- Election to release from super must be requested within 60 days of NOA
- Tax on defined benefits deferred for payment until 21 days of benefit becoming available

How Div 296 tax is calculated

3 step process to calculate Div 296 tax

1
- Calculate ‘earnings’ for Div 296 tax

2
- Calculate proportion of ‘earnings’ subject to Div 296 tax

3
- Calculate Div 296 tax liability

Step 1 – calculate earnings

Step 1. Calculate superannuation earnings:

Earnings = Current adjusted TSB – Previous TSB

Where:

- *Adjusted TSB = Your TSB at the end of the year + Your withdrawals total for the year – Your contributions total for the year*
- *Previous TSB = If < $3m, substitute with $3m*

What counts towards ‘withdrawals’ and ‘contributions’?

Step 1 – adjustments to TSB

Withdrawals (added back to TSB)	Contributions (deducted from TSB)
Super benefit payments (lump sums, pension payments)	Contributions (CCs net of tax, NCCs, etc)
Spouse contributions split to member’s spouse	Spouse contribution splits received by a spouse
Family law splits to an ex-spouse	Family law splits received by an ex-spouse
Amounts taken out via release authorities	Reversionary pension (value on the day it’s inherited)
Tax withheld from a rollover benefit that contains an untaxed element, including tax paid by receiving fund on untaxed element	Death benefit pension (value on the day it starts)
Amounts prescribed in the regs	Death and TPD insurance proceeds added to super
	Certain reserve allocations (**ones that count towards NCC cap**)
	Foreign superannuation fund transfers
	Remediation/fraud compensation payments
	Amounts prescribed in the regs

Steps 2 and 3 – calculate earnings and tax

Step 2. Calculate proportion of earnings to be taxed:

$$\textit{Proportion of earnings} = \frac{\textit{TSB* at the end of the year} - \$3m}{\textit{TSB* at the end of the year}} \times 100\%$$

** Actual TSB used here, not the 'adjusted' TSB*

Step 3. Calculate Div 296 tax liability:

Tax liability = earnings x proportion of earnings x 15%

Example 1 – Bill withdraws to avoid Div 296

- Bill has a TSB of $3m on 30 June 2025
- He expects it to grow by $300k but withdraws that growth before 30 June 2026, keeping his TSB at $3 million on 30 June 2026
- His adjusted TSB = $3.3m ($3m + 300k)
- **Will this withdrawal avoid Div 296 tax?**
- Using the 3-step calculation process:

1. Earnings	$3.3m (adjusted TSB) – $3m (previous TSB)	= $300k
2. Proportion of earnings >$3m	($3m end of year TSB – $3m) / $3m end of year TSB x 100%	= 0%
3. 2025/26 tax liability	$300k x 0% x 15%	= $0

RESULT?

Whilst withdrawals increase earnings (Step 1), they aren't added back when calculating the % over $3m (Step 2) as this step uses the actual end of year TSB, not the adjusted TSB.

In Bill's case, withdrawing the predicted growth before 30/6/2026 means no Div 296 tax is payable!

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Example 2 – Jess pays Div 296 tax

- Jess has a TSB of $4m on 30 June 2025 which grows to $4.5m on 30 June 2026
- She receives CCs of $30,000 in 2025/26 (ie, $25,500 net of contributions tax)
- Her adjusted TSB = $4,474,500 ($4.5m – $25,500)
- Using the 3-step calculation process:

1. Earnings	$4,474,500 – $4m	= $474,500
2. Proportion of earnings >$3m	($4.5m – $3m) / $4.5m x 100%	= 33.33%
3. 2025/26 tax liability	$474,500 x 33.33% x 15%	= $23,723

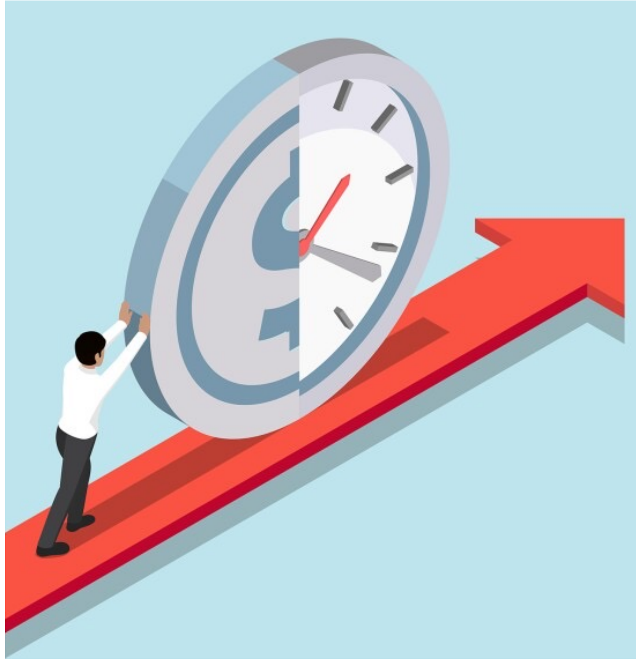
- Jess will pay 15% extra tax every year if TSB continues to grow

NOTE – if Jess's TSB reduces to <$3m by 30 June 2027:

- Won't pay extra 15% tax, but
- Has paid $23,723 in tax that her fund can't get back!

Example 3 – Jamal's carry forward negative losses

- Jamal's TSB is $3.2m on 30 June 2025. It reduces to $2.8m on 30 June 2026
- His adjusted TSB = $2.8m (no contributions or withdrawals during 2025/26)
- As Jamal's adjusted TSB at the end of the year is < $3m, his adjusted TSB is replaced with $3m value
- Therefore, his earnings = $3m – $3.2m = **($200k)**
- Jamal has no taxable earnings (as earnings are a loss in 2025/26)
- However, Jamal can carry forward losses to offset future earnings



Example 3 cont'd – Jamal now has earnings

- What if the opposite happened?

- Assume Jamal's TSB on 30 June 2025 was $2.8m and his TSB on 30 June 2026 was $3.2m:

  - Jamal's previous TSB would be $3m instead of $2.8m to ensure the calculation only captures the earnings for the part of his TSB over $3m

  - This means Jamal's earnings would be $200k (ie, $3.2m – $3m) rather than $400k (ie, $3.2m – $2.8m)

Example 4 – Jacob's carry forward negative losses

- Jacob has a TSB of $9m on 30 June 2025
- During 2025/26, he withdraws $150k from his SMSF and makes no contributions
- At 30 June 2026, his TSB is $8m
- His adjusted TSB = $8.150m ($8m + $150k)
- His earnings are a loss in 2025/26:

Earnings	$8.150m – $9m	= **($850k)**

- These losses can be carried forward to offset future earnings

Example 4 cont'd – Jacob's carry forward negative losses

- Jacob's TSB is now $8.5m on 30 June 2027
- During 2026/27, he withdraws $150k from his SMSF and makes no contributions
- His adjusted TSB = $8.650m ($8.5m + $150k)
- His earnings in 2026/27 are as follows:

Earnings	$8.650m – $8m	= $650k

- However, his earnings will be **($200k)** after deducting $850k of unapplied carry forward losses from 2025/26 (ie, $650k – $850k)
- Therefore Jacob has no taxable earnings (as earnings are a loss in 2026/27)
- Jacob can continue to carry forward his losses **($200k)** to offset future earnings

Example 4 cont'd – summary of carry forward negative losses

	2025/26	2026/27	2027/28	2028/29
Start balance	$9,000,000	$8,000,000	$8,500,000	$8,550,000
Withdrawals	$150,000	$150,000	$150,000	$150,000
End balance	$8,000,000	$8,500,000	$8,550,000	$8,800,000
Adjusted TSB	**$8,150,000**	**$8,650,000**	**$8,700,000**	**$8,950,000**
Earnings	($850,000)	$650,000	$200,000	$400,000
Earnings for Div 296 tax	$0	$0	$0	$400,000
Negative earnings carried forward	**$850,000**	$200,000	$0	$0

Then work through step 2 and 3 of calculation process → end tax liability of $39,546 (ie, $400k x 65.91% x 15%)

Death benefits

Example 5 – Jill inherits a reversionary pension

- Jack and Jill have the following accounts:

At 30 June 2025	Jack	Jill
Pension (ABP)	$1.9m	$1.9m
Accumulation	$1m	$600k

- Jack dies in October 2025 and his pension reverts to wife Jill

- How will Jack's death benefit impact Jill?

Jill’s Div 296 tax liability

- Figures to work out Jill’s Div 296 tax amount:

	Jill’s ABP	Jill’s accum	Reversionary pension	Total
30 June 2025 TSB	$1,900,000	$600,000	$0 (was part of Jack’s TSB)	$2,500,000
Contributions	$0	$0	$1,900,000	$1,900,000
Withdrawals	$80,000	$0	$80,000	$160,000
30 June 2026 TSB	$2,000,000	$800,000	$2,000,000	$4,800,000

- Using the 3-step calculation process:

1. Earnings	$3,060,000 (adjusted TSB) – $3,000,000^ (previous TSB)	= $60,000
2. Proportion of earnings >$3m	($4.8m end of year TSB – $3m) / $4.8m end of year TSB x 100%	= 37.50%
3. 2025/26 tax liability	$60,000 x 37.50% x 15%	= $3,375

^ As previous TSB was $2.5m, substitute with $3m

Jill's TSB vs TBC

30 June 2025

$1.9m Jack's ABP
$1.9m Jill's ABP
$600k Jill's accum

1 Oct 2025

Jack dies
Jack's $1.9m ABP reverts to Jill

30 June 2026

Reversionary ABP now worth $2m and included in Jill's TSB

Jill's TSB is $4.8m, eg:
$2m reversionary ABP
$2m own ABP
$800k own accum

Jill liable for Div 296 tax ($3,375 for 2025/26)

1 Oct 2026

Jill receives credit of $1.9m to her TBA (date of death value of reversionary ABP)

What if pension was non-reversionary?

- Jack's ABP would not be added to Jill's TSB until paid to her as a death benefit pension
- If pension starts after 30 June 2026, this will delay impact on Jill's Div 296 for another year
- Thus, Jill's Div 296 for 2025/26 based on her own super → no Div 296 tax liability as her TSB is <$3m at 30 June 2026
- Could this be a potential drawback of reversionary pensions?

Key differences – to revert or not?

	Reversionary pension	Non-reversionary pension
Pension capital	Pension capital subtracted from reversionary beneficiary's adjusted TSB on the day its inherited. But pension capital counts towards beneficiary's TSB in subsequent income years.	Pension capital subtracted from the recipient's adjusted TSB on the day the new death benefit pension is commenced. But pension capital counts towards beneficiary's TSB in subsequent income years.
Pension payments	The total pension payments made in the income year of death (less any payments made to the primary pensioner pre-death) will be included in the recipient's adjusted TSB.	No min pension payments are required in the income year of death. Thus, the recipient's adjusted TSB will only need to include any pro-rated min payments for the newly commenced death benefit pension (which might occur in the following FY – timing is key!)

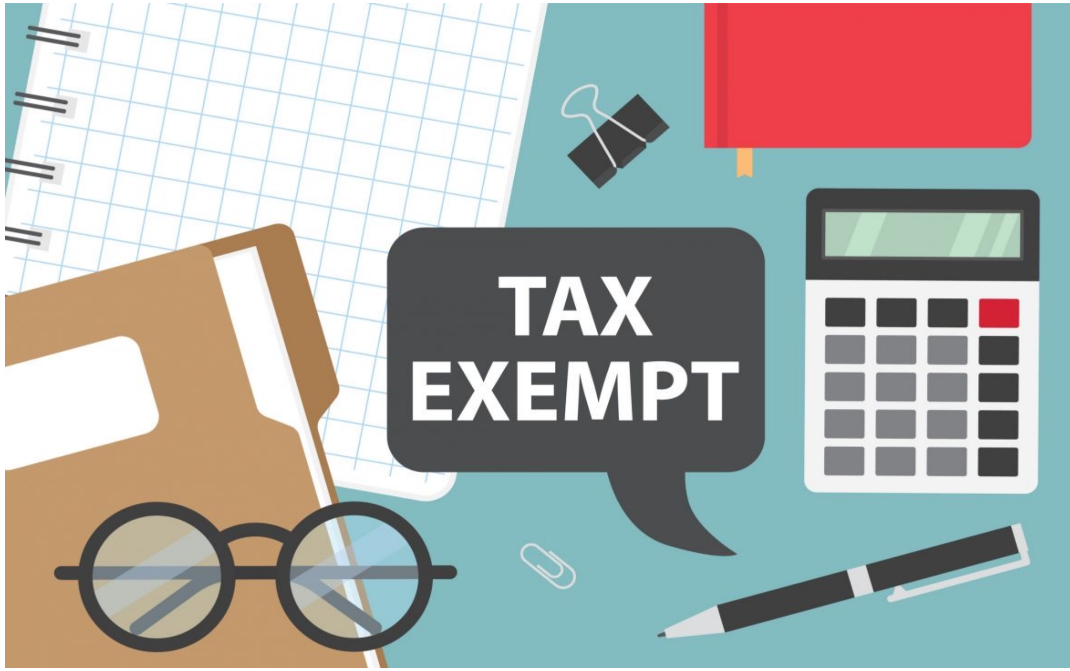
Takeaway – Div 296 weighs against reversionary ABPs → opting for a non-reversionary death benefit pension may help minimise the Division 296 tax impact

Exemptions and special rules

Exemptions from Div 296 tax

Specifically exempt from Div 296 (regardless of TSB):

1. A child receiving a death benefit pension
2. Individuals who have ever made a structured settlement contribution for personal injury to super
3. Individuals who died before 30 June of the relevant year (ie, if die on 30 June → Div 296 tax applies!)



Special rules apply to certain funds

Defined benefit interests	Constitutionally protected funds	Super funds established under *Judges Pension Act 1968*	Non-complying funds
• Subject to Div 296 tax • Regulations yet to be finalised	• Earnings excluded from Div 296	• Earnings excluded from Div 296 if member was appointed prior to 1 July 2025 and remains employed	• Excluded from Div 296

Although earnings are excluded, the value of the interest counts towards TSB for Div 296 purposes

Example 6 – CPF and Div 296 tax

- Lara has a TSB of $4.2m on 30 June 2025 ($1.1m in a CPF and $3.1m in another super fund)
- Lara's TSB grows to $4.5m on 30 June 2026 ($1.2m in a CPF and $3.3m in another super fund)
- Lara's adjusted TSB = $4.5m (no contributions or withdrawals made)
- Tip – the *lesser of* applies when working out earnings for members with 'excluded interests' (ie, CPFs)
  - Step 1 – work out earnings as usual (ie, include all interests)

    Eg: $4.5m adjusted TSB – $4.2m previous TSB = $300k, and
  - Step 2 – work out earnings by excluding the 'excluded interests'

    Eg: $3.3m current non-excluded adjusted TSB – $3.1m non-excluded previous TSB = $200k
- Thus, the lesser amount of $200k is taken to be Lara's super earnings for the year

Example 6 – CPF and Div 296 tax

- Using the 3-step calculation process:

1. Earnings	\$3.3m – \$3.1m	= \$200,000
2. Proportion of earnings >\$3m	(\$4.5m – \$3m) / \$4.5m x 100%	= 33.33%
3. 2025/26 tax liability	\$200,000 x 33.33% x 15%	= \$9,999.00

- Takeaways:
  - While some **earnings** from 'excluded interests' are excluded for Div 296 purposes, their value still counts when calculating their **proportion of earnings**
  - This could still push the member over the \$3m cap, increasing Div 296 tax on other super earnings
  - Only relevant for members with other super funds that may also contribute to breaching the threshold

Where to from here?

Restructure finances – consider other entities?

Transfer excess >$3m to:

- Personal name
- Family trust
- Corporate entity
- Investment/insurance bonds

Let's compare the entities...

Summary of other entities

Entity	Tax rate	Income assessed	Capital gains assessed	Comments
Super	15%	100%*	66.6%^	
Super > $3m	15% + 15%	< 100%	< 100%	Only % of earnings over $3m are taxed
Individual	0%, 16%, 30%, 37%, 45%	100%*	50%^	Death benefits tax key to moving excess out of super
Family trust	Depends on beneficiary's MTR	100%*	100%	Ability for taxable income to be taxed at max of 30% + Medicare
Company	30%	100%*	100%	No CGT discount
Inv/insurance bond	30%	100%*	100%	No CGT discount but no further tax on distributions after 10 years

* Deductions and expenses incurred deriving assessable income may be deductible
^ Discount applies if asset held for 12 months

Final considerations

1. Still a proposal

- Don’t rush to withdraw benefits
- Can trigger immediate tax impost (on pre-30 June 2025 capital gains)

2. Super still concessional tax environment

- Max tax rate of 30%
- Making contributions has other (tax) benefits

3. Equalise super balances

- Couples to even up balances to low balance spouse
- Eg, contribution splitting, recontribution to spouse, etc

4. Revisit investment strategy

- Illiquid funds should increase liquidity to pay the tax
- Review SMSF asset allocation, eg:
  - Hold volatile assets outside super?
  - Consider high income/low growth inside super?

5. Intergenerational wealth transfers

- Conversations with HNW clients may start to accelerate
- A way to avoid death benefits tax

6. Principal residence improvements?

- Upsize rather than downsize?!

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