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MEDIA RELEASE

Division 296 risks unfair outcomes without urgent redesign

The Institute of Financial Professionals Australia (IFPA) has called on Treasury to urgently redesign key elements of the proposed Division 296 tax, warning the current framework risks taxing Australians on notional balances and historical gains that were never intended to be captured.

In its submission, IFPA says that while it does not support the introduction of Division 296, the proposal in its current form is flawed and will produce inequitable and unworkable outcomes if legislated.

Key concerns raised in the submission include:

- **Only closing total superannuation balance (TSB) should be used for Division 296 purposes.** Using the “higher of two balances” approach risks taxing members on balances that no longer exist. IFPA says Division 296 should rely on a modified closing TSB that properly accounts for losses, insurance proceeds, excess contributions and other events outside a member’s control.
- **Death-related outcomes are unworkable and inequitable.** Applying Division 296 in the year a member dies can result in tax being imposed after superannuation benefits have been paid, shifting liabilities onto estates and beneficiaries.
- **The cost base reset is fundamentally flawed.** The all-or-nothing reset election, lack of portability and exclusion of indirect assets risk taxing pre-30 June 2026 gains and even loss recovery.
- **Administrative settings will undermine implementation.** Misaligned payment and release timeframes, variable SMSF return due dates and unresolved earnings attribution issues create unnecessary compliance risk.

Taxing balances that no longer exist

Head of Technical Services Natasha Panagis said the proposed balance test undermines the fairness of the measure.

“Under the current proposal, individuals can be taxed based on an opening balance that no longer exists,” Ms Panagis said.

“If a member’s super falls below \$3 million during the year because of market movements or withdrawals, they can still receive a Division 296 liability based on their higher starting figure. Taxing based on historical balances rather than a person’s actual position is fundamentally unfair.”

Ms Panagis said IFPA supports a modified closing balance test.

“A closing balance approach reflects reality. It ensures Division 296 only applies to members who actually hold more than \$3 million in super benefits at year-end and not to members whose account balances drop below \$3 million by year end – for example due to investment losses like those that occurred due to the collapse of First Guardian or Shield or during the GFC.”

Death outcomes untenable

IFPA also warns Division 296 will apply in the year a member dies, even after superannuation benefits have been distributed.

“This creates a real risk of tax bills landing months after death, when estates have been finalised and executors no longer have access to assets,” Ms Panagis said.

“Members must be excluded from Division 296 in the year they die. Anything else can result in unworkable and deeply unfair outcomes.”

Cost base reset “misses the mark”

IFPA says the proposed cost base reset rules fail to achieve their stated purpose of preventing Division 296 from taxing historical gains.

Phil Broderick, IFPA Board Member and Chair of the Superannuation Technical and Policy Committee, said the all-or-nothing reset is particularly problematic.

“Members can’t selectively reset assets – it’s all or nothing,” Mr Broderick said.

“If assets that have fallen in value have their cost base reset lower, Division 296 tax liabilities can end up being higher than if they had not received the cost base adjustment. Clearly that should not be the case for a transitional rule that is supposed to prevent taxing pre-1 July 2026 capital gains.”

Mr Broderick said the reset should be more flexible or set at the higher of the existing cost base or the 30 June 2026 market value.

He also warned the rules fail to adequately deal with fund portability and indirect assets.

“The cost base uplift should follow the member, not be trapped in a particular fund or structure,” he said.

Call for targeted fixes

IFPA is urging Treasury to adopt targeted amendments to address these issues if Division 296 proceeds.

“If this tax is going ahead, it must be credible, equitable and administratively workable,” Mr Broderick said.

“Right now, it falls short.”

The full submission is available on the [IFPA website](#).

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About the Institute of Financial Professionals Australia (IFPA)

The Institute of Financial Professionals Australia (originally known as Taxpayers Australia, and more recently Tax & Super Australia) has been serving members for over 100 years and is a leading financial professionals association dedicated to fostering excellence and professional development in the tax, accounting, superannuation, financial planning, and advisor fields. With a membership and supporter base of over 35,000 practitioners and a strong commitment to advancing knowledge, promoting ethical practices, and providing valuable resources, the Institute of Financial Professionals Australia empowers professionals to excel in their careers and make significant impact in the industry.

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