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Additional Div 296 tax on total superannuation balances over \$3 million from 1 July 2026

The new Division 296 (**Div 296**) rules commence on 1 July 2026 and will introduce additional 15% tax on a portion of attributed "superannuation earnings" above a member's total superannuation balance (**TSB**) above \$3 million (**large balance**) at 30 June 2027.

Also, a further additional 10% tax (resulting in a total additional 25% tax) on a portion of attributed "superannuation earnings" above a member's TSB above \$10 million (**very large balance**) at 30 June 2027.

The Div 296 tax will only apply to realised earnings (ie. dividends, interest, rent, net capital gains) and not be applied to "unrealised gains" on assets that have not been sold.

The additional tax rates on attributed "superannuation earnings" will apply as follows:

Earning relating to proportion of TSB	Tax rate	Notes
\$0 – 3 million	15%	Standard 15% (TSB up to \$3 million)
\$3 – \$10 million	30%	Standard 15% plus 15% Div 296 (TSB \$3 > \$10 million)
\$10 million +	40%	Standard 15%, plus 15% Div 296 (TSB \$3 > \$10 million), plus 10% (TSB >\$10 million)

Note the 2026-27 income year (**the transitional year**) will be the first year these measures apply, and the first Div 296 tax assessments would be issued during 2027-28.

For income years starting after 1 July 2027, the higher TSB at the start and end of the income year will be used to determine whether a member is subject to Div 296.

TSB thresholds will be indexed

Both the large balance threshold of \$3 million and the very large balance threshold of \$10 million will be indexed to the Consumer Price Index (**CPI**). The \$3 million threshold will be indexed in increments of \$150,000 and the \$10 million threshold in increments of \$500,000.

How will super earnings be calculated?

Superannuation funds will continue to report member balances to the ATO, and the ATO will calculate each member's TSB.

After the ATO notifies the superannuation fund it has a member(s) with a TSB that is within scope of Div 296 (ie. \$3 million or more), the fund will be required to calculate the attributed fund earnings to those members within scope and report this back to ATO.

The methodology to calculate attributed "superannuation earnings" will follow these steps:

A. The ATO calculates the proportion of the TSB exceeding the \$3 million threshold:

$$\text{Proportion of TSB (Component A)} = \frac{\text{TSB (Current year)} - \$3 \text{ million}}{\text{TSB (Current year)}}$$

B. The ATO calculates the proportion of the TSB exceeding the \$10 million threshold (if applicable):

$$\text{Proportion of TSB (Component B)} = \frac{\text{TSB (Current year)} - \$10 \text{ million}}{\text{TSB (Current year)}}$$

C. The ATO calculates the total Div 296 tax liability for all that member's interests:

$$\text{Tax Liability} = \mathbf{15\% \times \text{Super Earnings} \times \text{Proportion of TSB (Component A)}} \\ \mathbf{Plus 10\% \times \text{Super Earnings} \times \text{Proportion of TSB (Component B)}}$$

This approach results in an additional 15% tax on a proportion of earnings between \$3 to 10 million, plus an additional 25% (being 15% + 10%) tax on a proportion of earnings over \$10 million.

To be clear, these rates (ie. 15% + 10%) are in addition to the standard 15% superannuation tax rate on income.

Where the ATO determines a Div 296 tax liability arises, they will issue a tax assessment to the relevant member of the fund. The Div 296 tax will be separate to the individual's personal income tax and the superannuation fund tax (15%). Individuals will have the option of paying their tax liability by either releasing amounts from their superannuation or using amounts outside of the superannuation system.

Calculation of attributed "superannuation earnings"

Superannuation earnings will be based on income tax concepts, with various add-backs and deductions, calculated as follows:

Relevant taxable income or loss	-	Assessable contributions	+	Net exempt current pension income	-	The entity's non-arm's length component for the year (if any)	+	Pooled superannuation trust component
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Each of the above components of superannuation earnings for Div 296 tax purposes:

- **Relevant taxable income:** This is the fund's taxable income as it would normally be calculated. It will include the grossing up of imputation credits from franked dividends and foreign income tax offsets from eligible foreign income. This figure may be adjusted to only include the post 30 June 2026 portion of a capital gain arising from the disposal of a fund asset.
- **Assessable contributions:** Assessable contributions do not represent an amount of earnings so should be removed. Further, they are already subject to an additional 15% tax where an individual's relevant income for a financial year exceeds \$250,000.

- **Net exempt current pension income (ECPI):** Fund income claimed as ECPI is added back so that the additional tax is applied to assessable income prior to the exemption for retirement phase pension income.
- **Non-arm's length income (NALI) component:** Where a fund has NALI, as this is already taxed at the top marginal personal income tax rate, currently 45%, effectively it does not enjoy any tax concessions. Thus, there are no income tax concessions to pare back.
- **Pooled superannuation trust (PST) component:** PSTs are subject to tax on their own income, while a fund that hold units in a PST are fully exempt from income tax relating to the PST units.

There may be one further adjustment to determine super earnings in relation to realised capital gains in a financial year.

CGT adjustments to cost base of certain CGT assets

The transitional provisions of the legislation allow a fund trustee to make an (irrevocable) election to reset the cost base of certain CGT assets held on 30 June 2026 to be equal to the market value of the asset on that date. The due date for making this election will be the due date for the 2027 fund income tax return.

The election, where made, is at the fund level and will apply to all fund CGT assets held for Div 296 purposes only and not applied on an asset-by-asset basis. Furthermore, the election will not affect the CGT cost base for the purpose of calculating the capital gains or loss arising from the actual disposal of the asset for fund income tax purposes.

Whether or not an SMSF should or should not make the election will be dependent upon the specific facts and circumstances of the fund.

The CGT adjustment (for Division 296 purposes) can only be applied to assets directly owned by the super fund (ie. real property, units in unit trusts or shares in a companies). The CGT adjustment cannot be applied to indirect assets (ie. real property held by unit trusts or companies).

Will any individuals be excluded or receive special treatment?

Certain people are excluded from being assessed for Div 296 tax, including children receiving super income streams (ie. pensions), which would typically be a death benefit pension received following the death of a parent. Also, people who have made a structured settlement contribution from a qualifying personal injury payment are excluded.

Special rules apply to exclude earnings from certain superannuation interests from Div 296 tax, for example, a superannuation interests in a constitutionally protected fund, certain interests held by current or former Justice of the High Court and interests in a non-complying superannuation fund. However, these interests will be used to determine the individual's TSB and whether Div 296 tax will be applied to earnings from other superannuation interests outside of these special categories.

How will Div 296 be applied to deceased members?

The Div 296 tax will still be applied to a deceased's member balance in the year of their death.

Only their opening TSB will be considered in relation to testing the \$3 million threshold for applying the Div 296 tax, as it was considered too onerous on the super fund to calculate the deceased member's TSB at their date of death (to be used as a closing balance).

From 1 July 2027 onwards, deceased members will be subject to the Div 296 tax, even where their superannuation balance has been fully administered and distributed to their beneficiaries before an assessment is issued.

This is particularly unfair for the executor (or legal personal representative) of the deceased's estate, imposing Div 296 tax after their estate has been fully administered and estate assets distributed. This effectively is applied in detriment to the estate beneficiaries. In certain circumstances, the executor may even become personally liable to pay an outstanding Div 296 assessment.

Furthermore, there may be circumstances where a married couple have managed their super balances to the exclusion of the Div 296 rules and following the death of a spouse, the surviving partner will be automatically drawn into the rules even if both were in the pension phase.

Payday Superannuation

The new Payday Super changes apply from 1 July 2026.

The following is a checklist of tasks that employers need to consider and complete to prepare for the Payday Super changes.

1	Set a start date. Employers need to make a super contribution for eligible employees for each payday from 1 July.
2	Review cash flow. Update business process to ensure employer can pay super with each pay cycle. <i>(This is explained in more detail below).</i>
3	Review payroll governance. Check all super fund details for all eligible employees are up to date. Check this information is correct (such as member account numbers and unique superannuation identifiers) to prevent any errors.
4	Review payroll processes. Review and correct error messages received from super funds. Any payments currently made that receive a warning or information message could be rejected after 1 July 2026, causing a late payment. Set up a process to quickly correct any errors with your super contributions so the super fund receives the contribution within 7 business days after payday. <i>(This is explained in more detail below).</i>
5	Confirm payroll software is updated and will be ready for 1 July. Contact payroll software provider or payroll services provider to confirm functionality will be ready.
6	Confirm clearing house will be ready for 1 July. If employer uses a clearing house or super fund portal, check they are ready and if you need to make any updates.
7	If the employer is still using the Small Business Superannuation Clearing House (SBSCH). This service ends on 1 July 2026 and you should transition to an alternative provider and download all historical information from SBSCH before it closes.

8	Understand the new concept ‘qualifying earnings’ (QE). QE replaces the current ordinary time earnings (OTE) category for calculating the employer’s super guarantee (SG) payments for their employees from 1 July. <i>(This is explained in more detail below).</i>
9	New Payday Super rules start on 1 July 2026.
10	Pay June 2026 quarter (April to June) promptly. There will be a transitional period in July 2026 for the overlap payments of the June 2026 quarter payments and the first Payday Super payment (ie. for the first pay cycle in July, which could be weekly or fortnightly). <i>(This is explained in more detail below).</i>
11	Pay all Payday Super payments promptly. Ensure all SG contributions are received by, and can be allocated by, your eligible employees’ super funds within 7 business days after payday. Report QEs and super liability in your Single Touch Payroll (STP) enabled software. <i>(This is explained in more detail below).</i>

Various new concepts and requirements need to be considered in further detail.

Understanding ‘qualifying earnings’

From 1 July 2026, employers will calculate super using ‘qualifying earnings’ (QE) instead of the current ‘ordinary time earnings’ (OTE). For many employers, the new concept of QE is broader than OTE, but it should not change the way they pay superannuation or the amount they need to pay for their employees.

However, it may require updates to payroll software configuration and reporting. Employers should review and prepare to correctly map pay codes now to meet reporting obligations and ensure readiness when their updated payroll software is available.

QE include the following payments:

- OTE (ie. payments for ordinary hours of work), including certain types of paid leave, allowances, bonuses and lump sum payments. There are no changes to what payments are considered OTE under Payday Super.
- All commissions paid to an employee.
- Salary sacrifice amounts that would qualify as QE had they not been sacrificed to superannuation.
- Earnings paid to workers who fall under the expanded definition of employee, including payments to independent contractors paid mainly for their labour.

Some payments may fall into more than one category of QE, such as commissions, and those payments are covered only once to the extent of the overlap in categories.

The total QE for a pay period is determined by aggregating all qualifying payments made to or for an employee on the relevant day, forming the basis for calculating SG contributions.

Each payday, employers will need to report both year-to-date QE and superannuation liability for each employee through STP. Employers should confirm their updated payroll software has this reporting functionality built in.

Understanding new timing requirements for super contributions

From 1 July, employers are responsible for ensuring that super contributions reach super funds **within 7 business days of the relevant payday**, calculated on the QE amount. Where a super contribution is received after more than 7 business days, a super guarantee charge (**SGC**) will be imposed, including interest compounding daily and an administrative uplift amount based on the employer's history of meeting SG obligations. Under the new rules, the SGC is tax deductible for the employer.

Super funds will have 3 business days (down from 20 days) to allocate or return contributions that cannot be allocated. There is currently no obligation for the Super fund to confirm that an employee contribution has been allocated successfully, however if 3 days have elapsed we can accept that the employee contribution has been processed correctly.

A super payment only counts once it is received by the employee's superannuation fund, not when it is submitted. Submitting on day seven may not allow enough time, and we note there is no extension for rejected payments - so employers must ensure there is enough time to correct any errors and for SG contributions to reach funds within the 7 business days.

Understanding importance of testing payroll software before 1 July 2026

Prepare now, review your payroll system readiness, engage with payroll software providers and ensure the functionality for these new changes will be supported. It has been widely suggested that new payroll software functionality is tested and everything is running smoothly before 1 July.

Note that super payments for pay cycles in July 2026 may be due before your final quarterly super payment is due on 28 July 2026 (ie. for the June 2026 quarter, being April to June). Contributions received on or before 28 July 2026 will reduce any super owing for the June 2026 quarter **first**. If there is any remainder, contributions will then be used under Payday Super. If you pay on time for the June 2026 quarter **and** Payday Super you do not risk incurring penalties.

Understanding cash flow pressure

Employers may have multiple super payments due during July 2026, including:

- super payments for each Payday (after 1 July 2026); plus
- the final quarterly super payment due 28 July, for June 2026 quarter (ie. April to June).

Employers should review their expected pay cycles for July 2026 to understand the impacts of paying super each payday after 1 July 2026. Employers may consider setting aside additional funds to make sure they can meet their obligations.

We recommend that all employers take actions as soon as possible (if they have not already) to be best prepared for the Payday Super changes coming in from 1 July 2026.

Retirement Income Streams

Individuals who commence a retirement phase income stream (ie. pension) for the first time after 1 July 2026 will have access to the full \$2.1 million limit.

For some individuals there may be a benefit in deferring the commencement of a retirement income stream until on or after 1 July 2026, which may allow more assets to be moved into the tax-free retirement phase. In the interim before 1 July, members will continue paying accumulation phase tax at 15%.

Members who currently have a retirement income stream in place (or commence one before 1 July 2026) may also be entitled to a proportional increase in their TBC based on any unused amount of their TBC. This may allow additional assets to be moved into the tax-free retirement phase, after a complicated calculation has been performed.

If a member has already fully utilised their TBC, they will not be entitled to an increase.

This does not apply to “transition-to-retirement pensions”, unless they are moving into the retirement phase.

Please contact your Lowe Lippmann representative if you wish to discuss any of these matters further.

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