

A Practical Guide to Navigating Division 296

For SMSF Trustees, Accountants and Financial
Advisers

Purpose of this Guide

Division 296 represents the most significant change to the taxation of large superannuation balances in more than a decade. For SMSF trustees and their professional advisers, the challenge is not simply understanding how the tax works, but determining **when action is appropriate, what strategies are viable, and which decisions may create unintended consequences.**

This guide has been prepared by **WE SMSF** technical specialist as a practical, high-level reference for trustees, accountants and advisers. It is designed to support informed decision-making, not to encourage reactive or premature restructuring.

1. What Is Division 296?

Division 296 is a proposed additional tax that applies to individuals with **Total Superannuation Balances (TSB)** above specified thresholds. The legislation has passed the House of Representatives and is currently before the Senate, with a proposed commencement date of **1 July 2026.**

Under the current Bill:

- Super balances **below \$3 million** are unaffected.
- Earnings attributable to balances **between \$3 million and \$10 million** are taxed at an effective rate of **30%.**
- Earnings attributable to balances **above \$10 million** are taxed at an effective rate of **40%.**
- Both thresholds are **indexed to inflation.**
- The tax applies to **realised earnings only** and is assessed to the **individual**, not the fund.

The policy intent is clear: to reduce the generosity of superannuation tax concessions for very large balances while retaining super as a concessional environment relative to personal or corporate tax rates.

2. How the Tax Is Calculated (Conceptually)

Division 296 does not operate like traditional fund-level tax. Instead, the ATO calculates a member's **superannuation earnings** for the year using a movement-based formula that compares opening and closing balances, adjusted for contributions and withdrawals.

Only the **proportion of earnings attributable to the balance above the threshold** is taxed at the additional Division 296 rate. This proportional approach is critical and often misunderstood.

Importantly, Division 296 is a **personal tax liability**, although individuals may elect to have the amount released from super, similar to Division 293 tax.

3. Who Is Most Likely to Be Affected?

While Division 296 impacts a relatively small cohort, those affected often share common characteristics:

- SMSF trustees with property-heavy or illiquid portfolios
- Business owners using super as a long-term wealth vehicle
- Individuals approaching or exceeding contribution limits historically
- Members with balances spread across multiple APRA and SMSF arrangements

Couples are assessed **individually**, not collectively. A couple with \$4 million split evenly will not be subject to Division 296, whereas a single member with \$4 million will.

4. Common Strategic Responses — and Their Risks

Withdrawing Funds to Reduce Balances

One of the most common questions is whether members should withdraw funds to bring their balance below \$3 million or \$10 million. While superficially attractive, this strategy carries risks:

- Withdrawn amounts may not be able to be recontributed
- Earnings outside super may be taxed at higher marginal rates
- Estate planning and asset protection outcomes may worsen

Division 296 does not automatically make super an inferior structure. In many cases, it remains the most tax-effective environment available, even after the additional tax.

Asset Re-weighting and Liquidity Planning

For SMSFs with large illiquid holdings, such as property, liquidity planning becomes critical. While unrealised gains are no longer taxed under the revised Bill, asset sales to fund benefit payments or estate planning events may crystallise earnings that fall within the Division 296 framework.

5. Transitional Planning and CGT Reset Election

The draft legislation includes a **one-off CGT adjustment election** for assets held at 30 June 2026. This allows SMSFs to reset asset cost bases to market value **for Division 296 purposes only**.

This election must be applied consistently across all CGT assets and does not affect the fund's normal tax position. It can materially reduce future Division 296 exposure but may disadvantage assets that have declined in value.

This is a highly technical area requiring careful modelling before any election is made.

6. Death, Estate Planning and Division 296

Recent amendments clarify that a member's Total Super Balance is treated as **nil on death**, preventing ongoing Division 296 liabilities after death. However, a final assessment may still arise in the year of death, particularly where large balances and capital gains are realised.

This change has important implications for:

- reversionary pensions
- timing of death benefit payments
- liquidity management within SMSFs

Estate planning strategies should be reviewed alongside Division 296 exposure, not in isolation.

7. When Should Action Be Taken?

The most consistent message from industry specialists is **do not act too early**. Until legislation is finalised, irreversible decisions — particularly withdrawals — should be approached with caution.

For many trustees, the appropriate response today is not implementation, but preparation:

- modelling future exposure
- reviewing liquidity
- stress-testing estate planning outcomes

8. The WE SMSF Perspective

Division 296 is not the end of superannuation's relevance for high-balance members. It does, however, mark a shift toward a more deliberate and strategic use of the system.

At WE SMSF, our focus is on helping trustees and advisers navigate this change **thoughtfully rather than reactively**, ensuring that tax outcomes are balanced against control, flexibility, estate planning and long-term objectives.

Next Steps

If you are a trustee, accountant or adviser supporting clients with large superannuation balances, now is the time to review strategy — not necessarily to change it.

A structured conversation today can provide clarity, identify genuine planning opportunities and avoid unnecessary regret later. We will continue to monitor legislative developments closely and provide guidance as certainty increases.

9. Case Studies: How Division 296 May Apply in Practice

The following case studies are illustrative only. They are designed to help trustees and advisers contextualise how Division 296 may operate in real-world scenarios and to highlight the strategic considerations involved. They do not represent recommendations and should not be relied upon as personal advice.

Case Study 1: The Established SMSF Trustee With a Property-Heavy Fund

Profile

Michael is 62 and the sole member of an SMSF with a Total Superannuation Balance of approximately \$4.2 million. The fund holds a commercial property valued at \$2.8 million and a diversified portfolio of listed shares and cash. Michael is still in accumulation phase and has no intention of retiring in the next five years.

Division 296 Impact

Michael's balance exceeds the \$3 million threshold, meaning a portion of his annual superannuation earnings will be subject to Division 296 tax once the regime commences. While the fund may experience years with minimal realised income, the eventual sale of assets or commencement of pension payments could crystallise earnings that fall within the Division 296 framework.

Strategic Considerations

At this stage, withdrawing funds to reduce the balance below \$3 million would likely create more problems than it solves. Michael may not be able to recontribute withdrawn amounts, and income generated outside super would be taxed at higher marginal rates. Instead, the focus is on liquidity planning, long-term asset sequencing and modelling potential Division 296 exposure under different retirement timing scenarios.

The key takeaway is that Division 296 does not automatically make Michael's SMSF structure inappropriate. With measured planning, superannuation may remain the most effective long-term vehicle despite the additional tax.

Case Study 2: A Couple With Asymmetric Super Balances

Profile

Sarah and James are both 58. Sarah has a superannuation balance of \$3.6 million, while James has \$1.9 million. Their balances are held across an SMSF and an APRA fund. Both intend to retire at age 65.

Division 296 Impact

Division 296 applies on an individual basis. Sarah will be subject to the additional tax, while James will not. Importantly, the fact that they are a couple is irrelevant for Division 296 purposes.

Strategic Considerations

A common initial reaction is to consider equalising balances by withdrawing funds from Sarah's super and investing them in James's name. However, this approach may be constrained by contribution caps, timing issues and estate planning implications.

A more appropriate strategy may involve reviewing future contribution flows, pension commencement timing and reversionary pension arrangements to manage Sarah's exposure without triggering irreversible outcomes. In many cases, accepting a modest Division 296 liability may be preferable to dismantling an otherwise sound strategy.

Case Study 3: The High-Growth Investor Experiencing a Volatile Year

Profile

David is 55 and holds \$5.5 million in superannuation, largely invested in growth assets through his SMSF. One year delivers strong realised gains following asset sales; the following year produces negative returns.

Division 296 Impact

Division 296 applies only when there are positive superannuation earnings. In a year where the fund records negative earnings, no Division 296 tax is payable and losses are not refunded or carried forward. This asymmetry is an important behavioural consideration for trustees accustomed to smoothing outcomes over time.

Strategic Considerations

Rather than attempting to time asset sales purely to minimise Division 296 exposure, the emphasis should remain on investment discipline, diversification and alignment with long-term objectives. Tax outcomes should inform decisions, not drive them.

Case Study 4: Estate Planning and Timing Considerations

Profile

Helen is 78 with a superannuation balance of \$6 million held in an SMSF. She is in pension phase and has adult children as beneficiaries.

Division 296 Impact

Under the revised legislation, Helen's Total Superannuation Balance is treated as nil on death, preventing ongoing Division 296 liabilities after death. However, a final assessment may arise in the year of death, particularly if assets are sold to facilitate death benefit payments.

Strategic Considerations

For Helen, Division 296 planning cannot be separated from estate planning. Liquidity management, the timing of asset sales and the structure of death benefit payments all interact. In many cases, the focus shifts away from minimising tax at all costs and toward achieving certainty, simplicity and equitable outcomes for beneficiaries.

Key Message From the Case Studies

Across each scenario, a consistent theme emerges: **Division 296 rarely justifies rushed or unilateral action.** The most effective responses are typically measured, contextual and integrated with broader retirement and estate planning considerations.

Next Steps

If you are a trustee, accountant or adviser supporting clients with large superannuation balances, now is the time to review strategy — not necessarily to change it.

A structured conversation today can provide clarity, identify genuine planning opportunities and avoid unnecessary regret later. We will continue to monitor legislative developments closely and provide guidance as certainty increases.

This guide is general in nature and does not constitute personal financial or tax advice.

