HEWISON
PRIVATE WEALTH

Understanding Division 296

A Guide for SMSF Trustees & Their Families.

What the new tax on large superannuation balances means for you, how we're approaching it with our clients, and the decisions worth making now, whatever your Total Super Balance looks like today or in the years ahead.



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Who This Guide Is For

If you have more than $3 million in superannuation or you think you will get there within the next few years, Division 296 is relevant to you.

In our experience, the same questions come up time and again: what the changes mean, how they are calculated, and what, if anything, should be done in response. This guide answers those questions clearly and in one place, providing clarity and confidence around the changes.

You don't need to be extraordinarily wealthy to be affected. Some of the people we work with who are now subject to Division 296 spent careers saving prudently rather than accumulating extraordinary balances, and found themselves above the threshold because of a life event, often the death of a spouse or a loved one, rather than a deliberate accumulation strategy.

What Division 296 Actually Is

Division 296 is a new personal tax that sits entirely on top of your existing superannuation and personal income taxes. It doesn't replace anything you already pay, it's an additional tax.

From 1 July 2026, it applies to you if your Total Super Balance (TSB) exceeds $3 million. There are two tiers:

- 15% tax on the proportion of your super earnings that relates to your balance above $3 million.
- An additional 10% tax (25% effective) on the proportion of earnings attributable to any balance above $10 million.

The thresholds are indexed to inflation, but only in large increments, $150,000 for the $3 million threshold and $500,000 for the $10 million threshold, so it may be several years before either move.

THE YEAR ONE WINDOW.

The first year of operation, 2026/27, works differently to every year after it, and this is worth understanding regardless of when you're reading this guide, because it shaped the decisions many trustees made in that window.

For 2026/27 only, your liability is determined solely by your balance at 30 June 2027. Your opening balance (1 July 2026) isn't used. That meant trustees who could bring their TSB below $3 million by 30 June 2027 would not be subject to Division 296 tax.

From 2027/28 onwards, the rule reverts to whichever is higher: your balance at the start of the year, or at the end. If your balance grows across the year, the higher end-of-year figure applies. If it falls, because you've made withdrawals, the higher opening figure still applies regardless. This is one of the more important design features of the tax: withdrawing money after the year has started doesn't necessarily reduce that year's liability, because the starting balance is already locked in.

The practical implication going forward: the timing of any balance-reduction strategy matters enormously.

Acting early in a financial year, or planning ahead of one, carries far more weight than reacting once the year is already underway.

THE POINT MOST PEOPLE MISS

This is a personal tax, not a fund tax. The ATO calculates it and issues the assessment to you individually, with 84 days to pay.

It doesn't arrive with your SMSF's annual return or get handled by your fund's accountant as part of the usual cycle, it arrives like an income tax bill, addressed to you.



How The Tax Is Calculated?

The formula behind Division 296 is straightforward once you've seen it applied:

15% × (TSB − $3M ÷ TSB) × SUPER EARNINGS

**Total Super Balance (TSB)*

For example:

Say your TSB is $5 million. The proportion of that balance above $3 million is 40% ($2m ÷ $5m). If your super earnings for the year were $250,000, your Division 296 tax would be:

15% × 40% × $250,000 = $15,000

That proportion is recalculated every year based on your balance at that time, which is why two people with identical super balances in different years can end up with quite different Division 296 outcomes, depending on how their earnings and balance moved together.



What Counts as ‘Super Earnings’ and What Doesn’t?

This is where we see the most surprise from clients. It’s reasonable to assume that if your super is in pension phase, the earnings supporting that pension sit outside Division 296’s reach. It’s a reasonable assumption, however it’s wrong.

Funds paying pensions are normally exempt from tax on the income and capital gains supporting those pensions. Division 296 specifically adds this exempt income back in for the purposes of its own calculation. The upshot: your fund’s investment income contributes to your Division 296 earnings whether it was tax exempt or not. Being fully in pension phase does not meaningfully reduce your Division 296 earnings compared to an identical balance in accumulation phase.

INCLUDED

- Investment income, whether earned in accumulation or pension phase.
- Realised capital gains on assets sold during the year.

EXCLUDED

- Unrealised capital gains: Growth your fund hasn’t yet locked in by selling.
- Contributions: Division 296 is about investment earnings, not money going in.
- Non-arm’s-length income (NALI): Already penalised at the top marginal rate.
- Pre-2017 deferred capital gains: Relating to the 2017 pension reforms.



SMSFs With More Than One Member

If your SMSF has more than one member, earnings aren't simply split evenly. An actuarial calculation divides the fund's Division 296 earnings between members in proportion to each member's average account balance across the year, relative to the fund as a whole.

This matters for structuring. Where balances differ significantly between members of a couple's SMSF, there can be real value in reviewing strategies to even up balances over time, subject, of course, to contribution caps and your broader circumstances. It's a conversation we have regularly with couples where one partner's career or contribution history has left a material imbalance.

Worked example: Sophie's account averaged $7 million across the year and James's averaged $2.8 million, in an SMSF that earned $500,000. Sophie is allocated roughly $357,000 of the fund's Division 296 earnings (71.43%) and James roughly $143,000 (28.57%). Because James's balance sits below $3 million, only Sophie's portion attracts the tax.



The Capital Gains Relief Election

WHY THE RELIEF EXISTS.

Many SMSFs hold assets bought years or decades ago that have appreciated considerably. Without relief, selling those assets after Division 296 begins would mean paying the new tax on growth that accumulated long before the tax existed, and long before anyone could plan around it. The legislation addresses this directly: the capital gains relief election lets your SMSF record a new, adjusted cost base for its assets, set at market value as at 30 June 2026, for Division 296 purposes only.

This does not change your fund's normal tax. Your SMSF's actual cost base for standard tax calculations is unchanged. The adjusted cost base exists solely to reduce Division 296 earnings on assets sold in the future.

HOW IT WORKS IN PRACTICE.

Consider an SMSF that bought a commercial property in 2011 for $800,000. By 30 June 2026 it's worth $1.9 million. The fund sells it in 2029 for $2.4 million.

The fund's actual tax bill is calculated on the true $800,000 cost base is unchanged either way. Only the Division 296 figure moves. In this example, the election reduces Division 296 earnings by roughly $740,000 on this one asset. For a member allocated 55% of the fund's earnings above $3 million, that could mean a Division 296 tax saving in the order of $60,000–$70,000 on this gain alone.



	WITHOUT THE ELECTION	WITH THE ELECTION
DIVISION 296 COST BASE	$800,000 (original)	$1.9m (30 June 2026 value)
DIVISION 296 CAPITAL GAIN	$1.6m	$500,000

THE ALL-OR-NOTHING CONSTRAINT.

This is where the decision gets genuinely complex, as the election isn't asset-by-asset, if your fund elects, it applies to every eligible asset at 30 June 2026. You can't protect the gain on the property while excluding shares that have fallen in value. For assets sitting at a loss, the election resets the cost base to today's (lower) market value. If those assets recover and are later sold at a profit, the Division 296 gain is measured from that depressed 2026 value, which could mean more Division 296 earnings than if you'd never elected at all.

Electing is a trade: less Division 296 exposure on assets that have appreciated, for potentially more on assets currently below cost. The right answer depends entirely on your fund's asset composition, expected holding periods, and return outlook.

This is where the value of expert advice cannot be underestimated, with careful analysis and forward planning essential to making the right decision for your fund.

CARRIED-FORWARD CAPITAL LOSSES MATTER HERE TOO.

Losses your fund has carried forward, even from years before Division 296 existed, can be applied against future Division 296 earnings when assets are sold. A fund with significant carried-forward losses may find the election less critical than a fund with a clean slate. Where a fund has both large gains and large losses sitting in different assets, the calculation needs care.

THE DEADLINE IS CLOSER THAN MOST TRUSTEES EXPECT.

The election must be made via an approved form before your SMSF's 2026/27 annual return is due. For most funds using a tax agent, that's **15 May 2027**. But for funds whose prior year return was lodged late, or that lodge without a tax agent, the deadline can be as early as **31 October 2026**.

No extensions, no late cure. If your fund's annual return is lodged after the due date without the election having been made in time, the election is gone permanently. If you're not certain when your SMSF's return is due, confirm with your administrator now don't assume it's May.

YOU DON'T NEED TO BE AFFECTED BY DIVISION 296 TO MAKE THIS ELECTION.

An SMSF can elect the relief even if no current member exceeds $3 million, for instance, where one member's balance is approaching the threshold, or the fund holds assets with large unrealised gains likely to be sold once it's crossed. The election is made at the fund level, not the member level, and once made applies to all members, including anyone who joins later.





IF YOU'RE CONSIDERING RESTRUCTURING INTO A NEW SMSF.

The relief is specific to the fund that makes the election, it doesn't follow an individual member. If you leave a fund that has elected and join or establish a new one, the adjusted cost bases don't come with you. Conversely, joining an existing fund that has already elected means you inherit the benefit of those adjusted cost bases. Sequencing matters if any restructuring involving fund establishment or wind-up is on the table.

HOW THIS COMPARES FOR NON-SMSF MEMBERS.

Members of APRA-regulated funds such as industry, retail, corporate super funds etc. don't need to elect anything. These funds receive an automatic phased reduction in the capital gains counted toward Division 296 earnings:

2026/27	Only 20% of capital gains count
2027/28	40%
2028/29	60%
2029/30	80%
2030/31 onwards	100%

SMSF trustees, by contrast, have to actively elect, or the opportunity passes them by. It is, in our view, the clearest example of why active SMSF trustees need advice that is specifically across this election, its tradeoffs, and its deadlines.

The Reversionary Pension Risk Couples Don't See Coming

The most underappreciated Division 296 risk for couples isn't one partner's balance crossing $3 million on its own. It's what happens to the other partner's balance when the first one dies.

We've worked with clients in Margaret's position. She and her husband David were retired, comfortable, and for years superannuation tax was a fairly academic conversation for them, the 15% fund rate, franking credits, nothing that felt threatening. That changed when David passed away and his account-based pension automatically reverted to Margaret. His $1.85 million balance merged with her $2.3 million. Overnight, her Total Super Balance became $4.15 million, and she became subject to Division 296, a tax she'd never had reason to think about, on a balance she hadn't set out to build.

When a pension reverts automatically to a surviving spouse, that balance becomes part of the survivor's TSB immediately, not after twelve months, as applies for some other super rules. A couple with $2.5 million each isn't a Division 296 household while both are alive. The day one partner dies and their pension reverts, the survivor's TSB becomes $5 million. They're now subject to the tax, on a balance they didn't accumulate for themselves, with little room left to plan around it. While both partners are alive and options still exist, the following questions are worth considering:

- Has your super position been modelled on the assumption that one partner predeceases the other? The combined TSB on the death of the first partner is often materially higher than either individual balance alone suggests.
- Is a reversionary pension the right structure for your account-based pension? It's administratively simple and provides income continuity, but creates immediate TSB attribution. A binding death benefit nomination may offer more flexibility in some circumstances. This involves real trade-offs and isn't right for everyone, but it's worth the conversation.
- Would a surviving spouse actually be able to manage the resulting Division 296 liability? If an assessment would create genuine cashflow difficulty, that's something to plan for now, not discover later.

The Estate Planning Mismatch

Division 296 has exposed a tension in estate planning that most people haven't yet confronted. Superannuation doesn't form part of your estate. It's directed by your fund's trustee, guided by binding death benefit nominations or reversionary pension arrangements, most commonly to a spouse, for good reasons including tax efficiency, income continuity, and simplicity. The rest of your estate: property, portfolios, cash, personal assets, passes according to your Will.

Here's the problem Division 296 creates: your tax liability is personal, and it doesn't disappear when you do. On death, a Division 296 assessment is issued to your estate, and your executor must pay it from estate assets. They can't elect to have it paid from your superannuation, that election belongs to you personally, and it lapses at death.

Consider someone who dies with $5 million in super, directed via reversionary pension to their spouse, and a $2 million estate directed by their Will to children from a prior marriage. The Division 296 tax bill lands on the $2 million estate. The spouse receives all the super. The children whose inheritance generated none of the earnings in question, receive less, because the tax was generated by the super but paid by the estate. That may be entirely consistent with what the person intended. In our experience, it usually hasn't been considered at all. For a $5 million balance in a reasonable-return year, the Division 296 liability alone could sit in the range of $20,000–$40,000 or more.

What we recommend to every client with a blended family, a testamentary trust, or simply more than one beneficiary group:

- Review your Will and your death benefit nominations together, not separately. The interaction between them, in light of Division 296, can produce outcomes you never intended.
- Check whether your testamentary trust structure accounts for a potential Division 296 liability landing on the estate. This is a conversation best had between your adviser and estate planning solicitor, who can work together to identify any gaps and ensure your plans are aligned.
- If you have a blended family or want to treat beneficiaries differently, decide deliberately where the Division 296 liability will land. This isn't optional once you're aware of it.



Should You Just Get Below $3 Million?

This is the question we hear most often, and it's a reasonable instinct: withdraw enough to drop below the threshold and avoid the whole thing. In almost every case, our answer is it depends, and the analysis is more layered than it first appears.



WHERE DOES THE MONEY ACTUALLY GO?

Super is concessionally taxed. Money withdrawn and held personally is taxed at your marginal rate on future earnings. 32.5%, 37%, or 45% plus Medicare for many of our clients. Division 296 at 15% on a proportion of earnings is, for many people, the cheaper outcome.

ASSET PROTECTION.

Super carries meaningful protection in bankruptcy and legal proceedings that personally held assets don't. For business owners and professionals in practice, this is a genuine factor.

CONTRIBUTION RESTRICTIONS WORK AGAINST YOU.

Money withdrawn isn't necessarily easy to put back. You're giving up future optionality, not just today's tax position.

THE EFFECTIVE RATE IS WHAT MATTERS, NOT THE HEADLINE RATE.

Division 296 applies to a proportion of earnings, not all of them. At $3.5 million, only 14.3% of your earnings sit above the threshold, so your effective additional tax rate is closer to 2.1% of total earnings than the 15% headline figure suggests.

SEQUENCING.

Even where withdrawing ultimately makes sense, doing it without factoring in tax on realised gains, pension minimums, and how it interacts with your other structures can create new problems while solving the original one.

Asset Location:
What Sits Inside Super and What Sits Outside

For clients and families with assets both inside and outside superannuation, Division 296 reopens a question that had largely been settled: which assets belong where?

Assets generating high current income such as high-yield equities, fixed income, cash and can contribute more to Division 296 earnings in the year they're held. For members well above $3 million, there can be merit in holding some income-generating assets outside super (in a trust, company, or personal name) while retaining growth-oriented assets inside, where unrealised gains don't attract Division 296 until sold.

We weigh this against:

- The tax rates applying to income and gains in the alternative structure.
- The transaction costs and tax triggered by moving assets.
- The estate planning and asset protection implications of each structure.
- Your Total Super Balance trajectory over the longer term.

For many clients, the disruption of relocating assets won't be worth the benefit. For those with very large balances and significant income-producing assets, it can warrant genuine consideration. This is exactly the kind of conversation that benefits from an adviser examining your circumstances including super, personal investments, trusts, and your family's long-term goals together, not in isolation.

A Note On Defined Benefit Interests

If you or your spouse holds a defined benefit entitlement through a government employer, a corporate scheme, or a professional superannuation fund, Division 296 still applies, but the calculation is different, and in some cases considerably more complex.

The value of a defined benefit interest is no longer simply calculated as 16 times the annual pension. New actuarial methods now apply, and in many cases these reduce the assessed value of lifetime pensions. For some members, this reduction is enough to bring their TSB back under $3 million and remove them from Division 296 altogether.

If this applies to you or your spouse, contact your fund directly for your recalculated figures. We work from the same numbers your fund provides, so getting the current assessed value early avoids surprises later.

Questions To Work Through With Your Adviser

We've pulled together the questions flagged in this guide into a single checklist.

YOUR POSITION AND TRAJECTORY

- What is your projected Total Super Balance, and is it likely to cross $3 million in the foreseeable future?
- If you're an SMSF trustee, has your fund made, or considered, the capital gains relief election, and do you know your fund's annual return due date?
- Does your SMSF hold assets currently below their cost base that would be affected by the election?
- How do your fund's carried-forward capital losses factor into the election decision?

COUPLES AND SUCCESSION

- Has your super position been modelled on the assumption that one partner predeceases the other?
- Is a reversionary pension still the right structure for your account-based pension, given the immediate TSB attribution it creates?
- Would a surviving spouse be able to comfortably manage the resulting Division 296 liability?

ESTATE PLANNING

- Have you reviewed your Will and your death benefit nominations together, rather than separately?
- Does your will and testamentary trust structure account for a Division 296 liability that could land on your estate?
- If you have a blended family, have you decided deliberately where that liability should fall?

STRUCTURING DECISIONS

- Would withdrawing super to sit below $3 million genuinely leave you better off, once marginal tax, asset protection, and contribution restrictions are factored in?
- Does your current mix of assets inside and outside super still make sense under Division 296, or is there a case for relocating income-generating assets?
- If you or your spouse hold a defined benefit interest, do you have a current actuarial valuation from the fund?





How We Can Help

Division 296 is now part of the landscape every client with a substantial super balance has to navigate and not as a single event, but as an ongoing feature of how their wealth is structured. The clients who come through this well aren't the ones who make dramatic last-minute changes. They're the ones who take the time to understand their position, model the realistic scenarios, and make deliberate decisions well ahead of the deadlines that matter.

At Hewison Private Wealth, the conversations we have with clients about Division 296 are rarely just about the tax itself. They're about estate plans that account for where a liability will actually land. They're about super structures that reflect what really happens when one partner dies, not just what's administratively simplest today. They're about whether holding assets inside or outside super still suits the shape of a family's wealth as it stands now. These aren't quick conversations. They're the ones that matter.

Talk To Us About Your Position

Whether you're already above the $3 million threshold, expect to be in the coming years, or simply want a second opinion on whether your current adviser has the breadth to manage this alongside your broader wealth and estate planning, we'd welcome the conversation.

hewison.com.au/contact-form



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