SW Accountants & Advisors

Take the lead

Technical summary | Super Balance Cap

11/10/2023

Timing | Effective 30 June 2026

Taxable superannuation balances (TSBs) in excess of $3m will be tested for the first time on 30 June 2026, with the first notice of assessment issued to those impacted in the 2026-27 financial year. The ATO will perform the tax on earnings calculation and issue an assessment to the individuals affected.

Calculating taxable superannuation earnings

An individual has taxable superannuation earnings for an income year if their TSB at the end of that year is greater than the large superannuation balance threshold ($3m) and the amount of their superannuation earnings for the year is greater than nil. Earnings on a TSB less than $3m will continue to be taxed at the concessional headline rate of 15 per cent and are not taxed under this Bill.

The total amount of taxable superannuation earnings for an income year is worked out by first determining the percentage of the TSB at the end of the year that is above the large superannuation balance threshold. The percentage provided by the formula is then multiplied by the amount of superannuation earnings for the year to provide the amount of taxable superannuation earnings.

An individual will have transferrable negative superannuation earnings for an income year if the amount of basic superannuation earnings for the year are less than nil and the TSB immediately before the start of the year is greater than $3 million.

The amount of an individual's basic superannuation earnings for an income year is determined by subtracting their TSB immediately before the start of the year, from their current adjusted balance, which is their adjusted TSB at the end of the year. If they have transferrable negative superannuation earnings to apply from a previous year, then this will reduce their TSB for the current income year. Please note the following:

The total super balance is increased by (ie added back in) the following "withdrawals":

- benefit payments
- spouse contributions split to the member's spouse
- family law splits to an ex-spouse
- amounts taken out via release authorities

Total super balance is reduced by the following "contributions":

- contributions (including 85% of concessional contributions)
- spouse contribution splits received
- family law splits received
- death benefit pensions received
- death or permanent disability insurance proceeds received
- foreign super fund transfers
- remediation payments received as a result of fraud or dishonesty

Additionally, limited recourse borrowing arrangement loan amounts that would otherwise be included in the total super balance, will be excluded for Div 296 tax purposes.

When tax is payable | assessments

Division 296 tax applies at 15% of an individual's taxable superannuation earnings on their superannuation interests with over $3m in value for an income year. The only exceptions are:

- child recipients of superannuation income streams at the end of the income year
- individuals who have a structured settlement contribution made in respect to them as a payment for a personal injury at the end of the income year, or any year prior and
- individuals who have died before the last day of the income year.

The Tax Commissioner issues the individual with a notice of assessment for the tax, which is generally due for payment with around 84 days. Amounts determined to be attributable to a defined benefit interest are deferred to a Division 296 tax debt account.

Individuals can choose how to pay their Division 296 tax liability either by releasing amounts from one or more of their superannuation interests or by paying the liability from outside of the superannuation system (e.g. in cash) or a combination of the two. This will be the case for all individuals (other than those with a defined benefit interest) irrespective of whether they have met a condition of release.

There is a reduced general interest charge interest rate on Div 296 tax assessments. The draft explanatory memorandum explains that this is because:

> *"The lower interest charge on unpaid Division 296 liabilities ensures that it allows relevant taxpayers to have a rate of interest charged that are broadly similar to market rates. This means that the rate of interest does not penalise taxpayers in the very rare circumstance that they do not have liquidity within or outside of superannuation to meet the tax liability. While this provides significant additional payment flexibility for individuals, it maintains the real value of the tax liability over time to ensure it is not abused by taxpayers to reduce the tax they are required to pay."*

The legislation does not seem to expressly allow a deferral measure (subject to interest) but the above comments suggest that the ATO could (should) administer the measure in that way (ie not enforce the tax debt and allow interest to accrue).

Excluded earnings

The following are excluded from taxation, earnings from superannuation interests:

- in a constitutionally protected fund held by individuals declared by the regulations to be an individual to whom an exclusion applies or
- in the superannuation fund established under the Judges Pension Act 1968 held by a sitting Justice of the High Court or a sitting justice of a court created by the Parliament, where that person was appointed prior to 1 July 2025 and whilst they remain employed or
- in a superannuation plan that is a non-complying fund at the end of the year.

Although these earnings are excluded from taxation, the value of interests is counted in an individuals' TSB for the purpose of determining if they exceed the $3 million threshold. If the sum of all superannuation interests including interests that are excluded exceed this threshold, the amount subject to the Division 296 tax will be the earnings less any loss from the excluded interests.

Example

Cameron's TSB at 30 June 2026 is $4.9m. The fund returns 8% for the year to 30 June 2027. The TSB is now $5.292m. The formula below can be used to calculate the Division 296 tax:

		The percentage		Superannuation earnings
15%	x	[(TSB at end of FY – $3M) ÷ (TSB at end of FY]	x	[Current adjusted TSB – previous TSB]

15% x [($5.192m - $3m) /$5.192m] x ($5.292m - $4.9m)

= $24,824.65

Iggy Moro
Director, Business and Private Client Advisory

T +61 8 6277 9409
E imoro@sw-au.com

Simon Tucker
Director, Tax

T +61 3 8635 1954
E stucker@sw-au.com