



From the Up Wealth team

Division 296, the \$3m Super cap rule, has now been passed

On 10 March 2026, the [Bill](#) to legislate Division 296 tax passed both Houses of Parliament and is set to commence on 1 July 2026.

What is Div 296 tax?

Div 296 tax is an additional tax levied on a portion of taxable super earnings of individuals whose total super balance (TSB) is above the large super balance threshold set at \$3m. The tax is assessed to the individual and is separate from personal income tax. The individual may pay the tax personally or request the super fund release the amount.

Changes since original draft legislation

The measure passed with important changes from the original draft legislation, which includes:

- addition of a very large super balance threshold (\$10m)
- 25% tax rate for the portion of taxable super earnings relating to the amount of the individual's TSB exceeding the \$10m
- indexation of the large and very large super balance thresholds
- additional TSB testing date
- removal of taxing unrealised capital gains, and
- changes to when this tax is applied to death benefits.

Large super balance thresholds

The \$3m and \$10m large super balance thresholds will be indexed in line with the consumer price index in \$150,000 and \$500,000 increments respectively. An individual's TSB, which is calculated each 30 June, is measured against the large super balance thresholds. The amount of taxable super earnings subject to Div 296 tax is based on the percentage of the person's TSB that exceeds the large balance thresholds.

When is Div 296 tax payable?

Div 296 tax will apply to a portion of taxable super earnings relating to the balance exceeding \$3m, if the individual's TSB is more than the large super balance threshold (\$3m) at the start of the income year (prior 30 June) or at the end of the income year (end 30 June). This means withdrawals to reduce a client's TSB below the \$3m large balance threshold during the income year can still result in a Div 296 tax liability.

Transitional rule

Transitional provisions apply in the 2026/27 income year. For this income year, Division 296 tax will be determined solely by the individual's TSB at 30 June 2027. This means clients will have until 30 June 2027 to make any recommended changes to their retirement strategy.



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Death

Upon death, an individual will have a nil TSB. This means where the individual passes away:

- in 2026/27, no Division 296 tax liability can arise, as TSB is nil at the end of the year
- from 2027/28 income year, Division 296 tax will apply if TSB exceeds the large super balance threshold either on 30 June prior or at the end of the income year; where Division 296 tax will be payable by their estate, and
- no Division 296 tax will apply to the deceased in the year after death, even if their death benefit proceeds have not been paid.

Total super earnings

An individual's total super earnings are their attributed share of fund earnings from each super interest they hold. Certain Judges' pension and constitutionally protected fund earnings are excluded.

Unrealised capital gains will not be taxed and adjustments will be applied to remove capital gains accrued prior to 1 July 2026. A formula will apply to determine taxable super earnings for defined benefit members.

A super fund can elect to adjust the CGT cost base of its assets for Div 296 purposes (only). The original cost base will continue to apply for determining income of the fund for ordinary tax purposes.

Div 296 tax rates

Taxable super earnings will be taxed at the following rates.

In-scope member's taxable super earnings attributed to:	Division 296 tax rate
Balance up to the large super balance (\$3 million in 2026/27)	Nil
Above the large super balance (\$3m in 2026/27)	15%
Above the very large super balance (\$10m in 2026/27)	An additional 10% (ie total tax of 25%)

Calculating Div 296 tax payable

The following formula is applied to calculate Division 296 tax.

(% of TSB reference amount X above large super balance (\$3m in 2026/27) X taxable super earnings x 15%)

plus

(% of TSB reference amount X above very large super balance (\$10m in 2026/27) x taxable super earnings x 10%)



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Example

Emily has a TSB of \$4 million at the end of the 2026/27 financial year. Emily has \$2m of her member balance in 'pension' phase and \$2m in accumulation phase. That year, she is attributed with \$200,000 of taxable super earnings for DIV 296 purposes.

Step 1 - Work out % of TSB above the large super balance threshold (\$3m in 2026/27)

$(\$4m - \$3m) / \$4m \times 100$ (rounded to 2 decimal places) = 25%

Step 2 - Work out % of TSB above the very large balance threshold (\$10m in 2026/27)

$(\$4m - \$10m) / \$4m \times 100$ (rounded to 2 decimal places) = 0%

The formula to determine Emily's Div 296 tax payable is:

= [(25% x earnings x large balance tax rate) + (0% x earnings x very large balance tax rate)]

= (25% x \$200,000 x 15%) + (0% x \$200,000 x 10%)

= \$7,500 + \$0

= \$7,500

The above DIV 296 tax is in addition to the normal tax paid on superannuation. In the case of Emily, the existing tax that she would pay on her \$4m balance is as follows:

\$2 million (in pension phase) x \$100,000 in earnings (as 50% of the account balance) = nil tax

\$2 million (in accumulation phase) x \$100,000 in earnings (as 50% of the account balance) = \$15,000 tax (15% x \$100k)

The total tax including DIV 296 tax would be \$22,500 on earnings of \$200,000 from a \$4 million balance.

At the time of writing, regulations to support the new law had not been released. These regulations are expected to include further guidance for the super industry on how to administer Div 296 tax. This is anticipated to include, among other things:

- guiding principles for super trustees on determining a member's attributed share of taxable earnings, and
- formulas for actuaries to apply to SMSFs or defined benefit funds.

Any advice in this article is of a general nature only and has not been tailored to your personal objectives, financial situation and needs. Before acting on items in this article, you should consider whether it is appropriate having regards to your personal objectives, financial situation and needs.

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