

# KnowHow

## Government's proposed changes to the taxation of super

5 October 2023

The Government has announced its intention to change superannuation tax concessions if you have a total super balance of more than \$3 million. While it's important to understand that this is just a proposal at this time, we appreciate that you may have some questions about whether this could apply to you if it becomes law.

Note: At this stage, the measure is a proposal only and hasn't been made law. The information included below is based on the announcements made by the Government and draft legislation which was released for public consultation on 3 October 2023. It's necessary to wait until the measure is legislated as some of the details relating to this proposal may change.

### What's proposed to change?

Currently, tax on investment earnings within the accumulation phase of superannuation is at a maximum rate of 15%. If you have a 'retirement phase income stream', such as an account-based pension after you've retired, earnings on investments in these accounts are generally tax free.

It's proposed that from 1 July 2025, if you have a 'total super balance' (TSB) that exceeds \$3 million at the end of the financial year, additional tax of 15% will apply on a portion of your earnings. The new tax will be called 'Division 296 tax'.

If your TSB is less than \$3 million on 30 June 2026 (the end of the first year it will apply) or the end of any of the following financial years, this change won't impact you. Investment earnings on your accumulation phase super balance will continue to be taxed at the maximum rate of 15%.

There are caps on how much you can contribute to super, as well as the total amount you can use to start certain income streams. This change won't impact those caps. It will only limit the total amount of earnings that are taxed at the concessional rate of 15%.

### What is 'total super balance'?

Generally, your TSB is the sum of all amounts you have in the superannuation system, with limited exceptions.

At a high level, it includes:

- your accumulation account balances, and
- your superannuation pension accounts.

There are a few ways you can track your TSB. A useful source of information is your myGov account. Other options include contacting your superannuation funds and looking at your fund's statements and records. When reviewing your annual statement, the TSB figure your fund reports to the ATO is usually referred to as 'exit value' or 'withdrawal benefit'. This may be different to the 30 June 'closing balance'. For instructions on how to access this information on myGov see 'KnowHow: How to track your total super balance'.

### When will this change start?

It's intended that this change will start from 1 July 2025 and will impact anyone on 30 June 2026 (ie the end of that financial year) who has a TSB that exceeds \$3 million. For anyone liable for Division 296 tax, the first notices for the additional tax liability will be sent in the 2026/27 financial year.

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## How will earnings on my account be determined and any tax liability calculated?

Actual account earnings won't be used to calculate additional tax payable. A formula been proposed to calculate fund earnings and any resulting tax liability. Broadly, this looks at your TSB at the beginning and end of the relevant financial year. It then makes adjustments for certain contributions and withdrawals made during the year to determine 'earnings' for this purpose.

This additional tax only applies to the proportion of earnings that relate to your super balance that exceeds \$3 million. Earnings below this threshold continue to be taxed at normal rates. A formula will be used to determine how much of your fund earnings will be liable for this new tax.

If based on these workings, you're instead assessed as having a calculated loss (or negative earnings) for the year, you'll be able to carry this loss forward to a future year to offset any Division 296 tax liability. As this tax is considered based on an individual's super savings, you can't use this loss to reduce:

- Division 296 tax for any other members of your fund (for example, if you're the member of a self-managed super fund (SMSF))
- your personal tax liability, or
- liability for any other types of tax related to your super contributions or accounts.

## Will unrealised gains be taxed?

Generally, capital gains tax is payable on the increase in the value of certain assets (such as shares and property) when that asset is sold (ie a realised capital gain). The simplified earnings calculation doesn't look at your actual fund income (such as a capital gain made on the sale of an asset). Instead it looks at the change in the *value* of your super interests over the course of a year. This means that if the value of the assets in your fund increase, then this amount may increase your tax liability (ie an unrealised capital gain). For example, if you hold shares in your account and the share price rises, this increase will be captured in the 'earnings' even though you haven't sold those shares. Despite this consequence, there are no other changes to the taxation of realised capital gains or the tax concessions available to super funds on realised gains.

## Can I withdraw any of my superannuation to reduce my balance below \$3 million to avoid the tax?

Unless you've met a 'condition of release', you won't be able to withdraw any amounts from super above this threshold to prevent the additional tax. Super law limits the conditions under which you can access your funds. Generally, this is limited to when you reach age 65, meet the definition of retirement, and in certain other limited circumstances. For more information about conditions of release, see [ato.gov.au](http://ato.gov.au).

## What if I have more than one fund?

Your TSB takes into account the sum of all of your superannuation interests, including all of your accumulation accounts and superannuation income streams. The \$3 million threshold also considers the total of all your savings within the super system and will combine all balances.

## How will I know if I have to pay Division 296 tax and will I need to report my balances to the ATO?

The ATO will use data provided by superannuation funds to work out who is liable for the additional tax and will calculate the amount of tax payable. For many funds, reporting of superannuation interests as at 30 June doesn't occur until the end of October each year. However, other funds may report this information at a later date. Once the ATO has the necessary information, it issues a tax determination which is separate to personal income tax. Remember, this change is proposed to commence from 1 July 2025 and the first assessments would be received in the 2026/27 financial year. As this is an individual tax, not an additional tax on the super fund, you'll receive the determination personally.

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## How will the additional tax be paid?

The excess tax can be paid:

- directly by you to the ATO, or
- by making an election to release the funds from super.

If you hold multiple funds, you can elect the fund from which the tax is paid.

## I have a defined benefit fund. Will this apply to me?

Yes. Defined benefit funds will be included. Limited exemptions apply and generally only relate to Commonwealth judges and constitutionally protected funds.

Defined benefit funds operate differently to other types of super funds, such as public offer funds and SMSFs.

As a result, special rules will apply when calculating the value of these accounts to determine if a member of these funds needs to pay Division 296 tax.

## I have an SMSF. Will this apply to me?

Yes. There is no exemption for SMSFs. The \$3 million threshold applies per individual and the total amount you have in the super environment. For example, if the total value of your SMSF is \$4 million, but each of the two members has an account balance of \$2 million, the additional taxation won't apply. However, if your SMSF has \$4 million and one member has \$3.5 million and the other member has \$500,000, the additional tax only applies to the member with the balance over \$3 million.

## Will there be any exemptions from Division 296 tax?

There are limited exemptions from Division 296 tax which are:

- Children in receipt of a child pension. In this case, the child will be exempt, and the exemption will continue to apply once the child reaches 25, or if they continue the income stream and are disabled, and
- individuals who have received a structured settlement contribution to superannuation due to injury.

Temporary residents who leave Australia and apply to withdraw their super as a 'Departing Australia super payment' will receive a refund of Division 296 tax paid. However, this won't apply for periods that the person was a resident of Australia for tax purposes (as opposed to being a temporary resident).

Division 296 tax also won't apply for the income year if you pass away.

## I pay Division 293 tax. What's the difference and will I also need to pay Division 296 tax?

Division 293 tax is an additional tax of 15% that's payable on concessional contributions if the individual has income from certain sources that exceeds \$250,000. Although they sound similar, these are in fact two different taxes, and you may be liable for both. You can read more about Division 293 tax on [ato.gov.au](http://ato.gov.au) or check out

KnowHow: Division 293 tax – additional tax on concessional contributions.

## Should I make any changes now to my retirement savings strategy and is superannuation still worthwhile?

At this time, it's best to be aware of the possible change, await the final legislation and detail before considering the best option for your circumstances. Remember this measure is proposed to commence from 1 July 2025. It's important to understand that the most appropriate option can be different for everyone and may even change as your personal circumstances change.

For many people with super savings above \$3 million, superannuation may still offer concessional tax rates on earnings such as when compared to your marginal rate of tax, which could be as high as 47%.

There are other potential benefits to superannuation, aside from what for many is a concessional rate of tax on earnings. For example, superannuation doesn't automatically form part of your estate. This could be a valuable estate planning tool. Where certain conditions are met, superannuation savings may also be protected from creditors and bankruptcy.

Please contact your financial adviser if you'd like more information about how this proposal could apply to you if it does become law, and to ensure the strategies you put in place are right for you.

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