DIVISION 296 TAX –
A POLITICAL HOT POTATO

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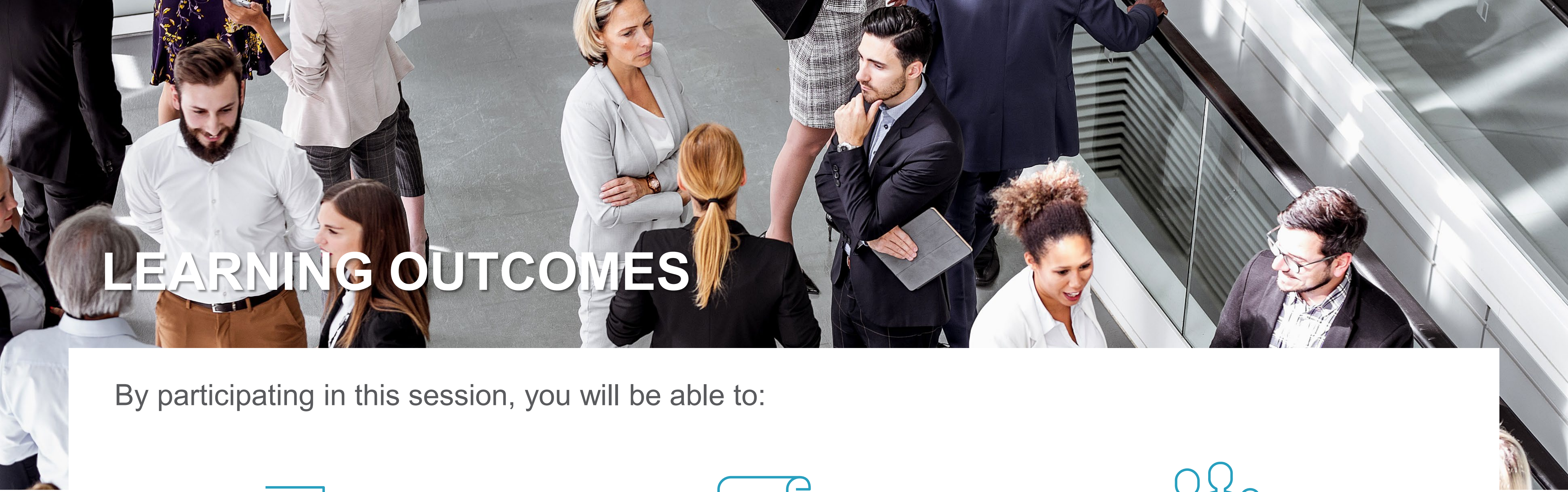
AGENDA

1. What is Division 296 tax
2. How is it calculated
3. Case studies
4. Where to from here?



LEARNING OUTCOMES

By participating in this session, you will be able to:

- Explain the purpose of Division 296 tax
- Calculate the Division 296 tax liability
- Evaluate planning options for affected clients.

FACT CHECK

There has been renewed attention since the election on the two-year-old Labor proposal to double the earnings tax on super balances of at least $3 million, from the current 15 per cent to 30 per cent.

Not the real story

Reference: ABC News – 4 June 2025

A BRIEF HISTORY

28/2/23	1/10/23	18/10/23	31/11/23	7/12/23	10/5/24	10/10/24	28/3/25
Div 296 announced	Consultation opened	Consultation closed	Bill tabled	Referred to Committee	Committee report tabled	Introduced to the Senate	47th Parliament prorogued

WHERE DO THE PARTIES SIT?

Australian Labor

$3,000,00 threshold unindexed

Taxes growth in TSB

LIBERAL THE NATIONALS

Threshold to be indexed

No tax on unrealised gains

THE GREENS

Reduce threshold to $2m

Indexation?

PRIMARY CONCERNS

1. Division 296 is just plain wrong
2. Potential to indirectly tax unrealised capital gains
3. Non-indexation of the threshold
4. It potentially opens the door for other tax reform

POLLING QUESTION

How many clients do you have you believe will be impacted by Division 296 tax?

a. None
b. 1 to 3
c. 4 to 10
d. More than 10

DIVISION 296 TAX – THE DETAILS

- A tax levied on the increase in an individual's "adjusted" TSB, where it exceeds $3m
- Tax is based on increase in TSB, not on actual investment earnings or unrealised capital gains
- Adjustment is made for contributions and lump sum/pension payments
- Three step process:

Calculate earnings → **Calculate proportion of earnings on balance over $3m** → **Calculate tax liability**

DIVISION 296 TAX – THE FORMULA

Step 1

Calculate "earnings" (i.e. increase in TSB)

TSB current FY – TSB previous FY + Withdrawals – Contributions = Earnings*

Step 2

Calculate the proportion of earnings corresponding to funds above $3m

Not indexed

$$\frac{\text{TSB current FY} - \$3\text{m}}{\text{TSB current FY}} \times 100 = \text{Proportion of earnings}$$

Step 3

Calculate tax liability

15% X Earnings X Proportion of Earnings = Tax Liability

* Less contributions tax

CASE STUDY

Jack is 65 years old

He has a SMSF – sole member

Assets @ 30 June 2025:

Asset	Value
Real property	$2,750,000
Cash	$ 250,000
Direct shares	$ 500,000

CASE STUDY – DO NOTHING

TSB 30/06/2025 = $3,500,000

Withdrawal = $0

Contributions = $0

TSB 30/06/2026 = $3,750,000

Plus tax on fund earnings of between 0% and 15%

1. Calculate earnings

   $3,750,000 – $3,500,000 + $0 – $0 = ***$250,000***

2. Calculate proportion

   $$\frac{\$3,750,000 - \$3,000,000}{\$3,750,000} \times 100 = \mathbf{20.00\%}$$

3. Division 296 tax liability

   15% x $250,000 X 20.00% = ***$7,500***

CASE STUDY – REDUCE TSB TO $3M

TSB 30/06/2025 = $3,500,000

Withdrawal = $750,000 (by 30 June 2026)

Contributions = $0

TSB 30/06/2026 = $3,000,000

Consider:
CGT on sale of assets
Tax on earnings if invested o/s super

1. Calculate earnings

   $3,000,000 – $3,500,000 + $750,000 – $0 = ***<u>$250,000</u>***

2. Calculate proportion

$$\frac{\$3,000,000 - \$3,000,000}{\$3,000,000} \times 100 = \mathbf{0\%}$$

3. Division 296 tax liability

   15% x $250,000 X 0% = ***<u>$0</u>***

CASE STUDY - NEGATIVE GROWTH

Eva has a TSB on 30 June 2026 of $3,900,000.

She made no contributions or withdrawals.

Her TSB on 30 June 2025 was $4,200,000.

How will this affect her Division 296 tax?

CASE STUDY - NEGATIVE GROWTH

TSB 30/06/2025 = $4,200,000

Withdrawal = $0

Contributions = $0

TSB 30/06/2026 = $3,900,000

Calculate earnings:

$3,900,000 – $4,200,000 = ($300,000)

As Eva's earnings are less than $0, her Division 296 tax liability for FY26 is $0.

In addition, she can carry forward the negative earnings of $300,000 from FY26 to future years.

POLLING QUESTION

Division 296 tax is a tax directly on:

a. Contributions
b. Benefit payments
c. Increase in TSB
d. Unrealised capital gains

CASE STUDY TSB <$3,000,000 AT START

Enrico has a TSB on 30 June 2025 of $2,900,000.

He made contributions $30,000 in FY26, but no withdrawals

His TSB on 30 June 2026 was $3,200,000

What is his Division 296 liability?

CASE STUDY TSB <$3,000,000 AT START

TSB 30/06/2025 = $2,900,000

Withdrawal = $0

Contributions = $30,000

TSB 30/06/2026 = $3,200,000

1. Calculate earnings

   Not $2,900,000

   $3,200,000 – $3,000,000 - $25,500 = $174,500*

2. Calculate proportion

$$\frac{\$3{,}200{,}000 - \$3{,}000{,}000}{\$3{,}200{,}000} \quad X\ 100 = 6.25\%$$

3. Calculate tax liability

   15% x $174,500 X 6.25% = $1,636

* $30,000 less contributions tax

EXEMPTIONS FROM DIVISION 296 TAX

1. Child pensions
2. Structured settlement contributions
3. Individuals that pass away before the end of the financial year.
4. Temporary residents – Division 296 tax refunded on receipt of DASP.

HOW IS DIVISION 296 TAX PAID?

- Division 296 tax is generally due for payment 84 days* after a notice of assessment is issued.
- For defined benefit accounts, tax is deferred to a Division 296 tax debit account.
- The tax is assessable to the taxpayer, not their super fund. May be paid:
  1. Personally, from own resources, or
  2. Be released from super, or
  3. By a combination of 1 and 2.

* This is longer than the payment due date for other taxes such as Division 293 tax, allowing additional time for taxpayers with less predicable sources of income.

POLLING QUESTION

Division 296 tax is legislated to commence on:

a. 30 June 2025
b. 1 July 2025
c. 1 July 2026
d. None of the above

DIVISION 296 TAX – WHERE TO FROM HERE?

- Division 296 tax is not yet law – it may change
- Originally due to commence on 1 July 2025 – parliament not due to sit until 22 July
- First assessments will occur in 2026-27 – or later if legislation commencement is deferred

DIVISION 296 TAX – STRATEGIC IMPLICATIONS?

- If planning to withdraw higher balances from super now or in the future:
  - Has a condition of release been met?
  - Tax consequences at the super fund level (e.g. CGT)
  - If investing outside super, consider how earnings and future capital gains be taxed?
  - Remember, if removed from super it may be difficult to get it back into super.

- Exiting super over time may be a useful estate planning strategy – where benefits are likely to pass to non-tax dependants .

But that is a **different** story – for another day

KEY TAKEOUTS

1. Will Division 296 be implemented?
2. Will there be changes?
3. When will it take affect from?
4. Will it adversely affect clients now or in the future?
5. If withdrawing from super, what alternative investments will be used?
6. Generally, there is no need to act before 30 June 2025

IF IN DOUBT – REACH OUT

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