TechKnow Podcast - September 2025 – ***What's on the minds of advisers?***

Recorded 10.9.25, due for release 17.9.25

Transcript

Tim Howard (TH)

Hello and welcome to this TechKnow podcast brought to you by the BT Technical Services team. Before we begin, I'd like to acknowledge the traditional owners on the land on which we are recording today, the Gadigal people of the Eora nation here in Sydney and pay my respects to elders past, present and emerging. My name is Tim Howard, standing in today for Bryan, and it's a pleasure to be joined by two of my long term colleagues, Matt Manning and Michael Tran, two members of the Tech team I'm sure a lot of our listeners have had much contact with over the years.

So today I'm going to start with a little section I will call Latest Mail. To a degree it surprised me to see reports appearing to suggest that government is contemplating changes to its Division 296 tax proposal, which, if you haven't been paying attention, would impose an additional 15% tax on earnings, which is a broad term for this purpose on superannuation balances over $3,000,000. Now on Friday 5 September, the Australian Financial Review reported via anonymous sources that the government has discussed amending the tax bill's most controversial aspects, which includes the lack of indexation of the $3,000,000 threshold and the earnings calculation, which would effectively capture tax on unrealised capital gains. The government messaging up until this point has been very consistent since the measure was announced, which was during the previous Parliament and that the Government would continue as intended. So Matt, we'll go across to you first. What is going on here?

Matt Manning (MM)

We'll certainly go into more with Division 296, but just as a lead for I guess the hour version I recently delivered a webinar on this topic. And if you'd like to listen to that and get CPD points google BT Academy plus Division 296. It will take you directly to the presentation. I'm somewhat surprised that that came out. As you said, up to this point, the Government have really stuck to their guns with that and also surprised at the a bit of a delay, considering that the only reason it didn't get through in last Parliament is because of the crossbenchers for in the Senate, whereas now essentially they only need the Greens votes. As for the potential to change, well the biggest one would be quite easy and practical,

would be to index the $3,000,000 threshold, or a while ago the Greens have said that they wanted it to be indexed but reduced to $2 million. So that would actually be reasonably an easy change, but in fact make things more complicated as we get to later financial years. As we saw with the transfer balance cap, everyone got how it operated from 2017 and got used to it and then, throw a spanner in the works with indexation, it gets a lot more complicated. What I can't see how they can really change without throwing it out and going back to the drawing board is the taxation of essentially unrealised gains by using the total superannuation balance. So really that's inherently embedded in the calculation in the system, so I can't see how they'd be able to change that without essentially killing the whole policy or making significant changes to the point that the now lapsed bill would be unrecognisable. The question there is that if they're going to maintain that policy objective of essentially taxing earnings at a higher rate for higher superannuants is that if they're going to start looking at the actual earnings, then the problem there is that that becomes, if not extremely difficult, bordering on impossible for things like a unitised product, as to how you actually track the actual earnings of an individual member.

TH

So you've also been recently travelling around the country sitting on panels in most states, talking to advisers, presenting on Division 296. A lot of commentary in the press is around what clients or individuals are thinking. But what's the sentiment amongst advisers?

MM

Well, probably the biggest thing was I think the overall amazement at the essentially attacks on unrealised gains and also the overall complexity, especially considering the history of the superannuation system as it has previously gotten simpler and this has added back complexity over time. But with this, we would be having a system as complex as ever. Some have commented that they're not going to have clients impacted and that's fine. But also consider in that situation what would happen is more and more of your clients are receiving a higher rate of SG for their working life. If we do end up with a either reduced or unindexed threshold and we have continued over the presumably medium to long term inflation and asset price inflation and also even consider a husband and wife scenario whereby they might have for example, $1,500,000 now and then suddenly in the event of death above the $3,000,000 threshold or even those that perhaps only have a million each now and with a bull market it could well get to the 3 million in the future. A lot have commented about surrounding potential action, and I certainly think it's wise to do nothing for now. Not only do we have what's still a proposal that isn't law, is it even under the lapsed bill, we essentially won't require action until 30 June 2026 even for those who do decide to take action, which I suggest would be still probably the minority. So the key point there is that no action required, and that for those that do want to take action in the future, they'll only have to reduce their total super balance below $3,000,000 by 30 June 2026 in order for the Division 296 to not apply for the 25/26 financial year. So certainly no rush to do anything, and most people will probably do nothing. As a specific question that I did

actually have to look up again based on the now lapsed bill was are insurance proceeds exempt? Now not really, but to explain that further for life policies, that doesn't really matter in the sense that there's an exemption in the event of death for that and future financial years, and the death benefit pension would count as a contribution for the receiving spouse. TPD is a little bit different in the sense. Obviously the person receiving the proceeds are still with us, so they're not exempt, but they don't get the Division 296 on the whole proceeds amount because the TPD proceeds counts as a contribution. So to an extent there there's that offsetting mechanism. But of course going forward, any growth that they receive on those TPD proceeds would be part of their total super balance and therefore be wrapped up in the Division 296 calculation.

TH

So Mike, a lot of technical detail there. I've got a technical question for you actually around Division 296 and this is off the back of an adviser email that came into the team with the following question, which I think will perhaps be relatable to for a number of advisers who have impacted clients. So the question was, “Hi team, I would appreciate your advice on strategies to minimise Division 296 tax for my client. Her background is as follows: She's a 72 year old retiree. She is one of the members of an SMSF and her member benefit in the SMSF includes a $1.8 million pension account and $520,000 in accumulation phase. Alongside her SMSF, she's also got a public offer super fund in accumulation phase with a balance of $1,000,000. And currently she is in the 16% marginal tax rate bracket due to income derived from property investments held outside of super.” Now this adviser’s client has expressed concerns regarding the potential implications of a Division 296 tax and is considering withdrawing a portion of her benefit currently held in the public offer account. She's contemplating making this draw before June 2026 and gifting those funds to her children. This question wanted us to advise whether it would be appropriate or advantageous for her to proceed with the withdrawal before 30 June, taking into account any relevant tax or estate planning considerations. So, Mike, what do you think of this? How should the adviser respond?

Michael Tran (MT)

Yeah. Thanks, Tim. I think probably start off by saying a variation of this question is probably very common. We've seen a lot of these type of questions on the hotline. To respond to this one, probably outside of the anonymous source that we saw in the Australian Financial Review, it did seem like the bill was going to be easily passed through Parliament as Matt kind of touched on, it only needed the support of the Greens in the Senate. But even if we do look at a scenario where it is legislated as Matt touched on as well, the key is taking that total super balance as at 30 June 2026 below $3,000,000. Where that does occur, Division 296 tax is not going to apply. So taking action now is considered somewhat early. We still have some time. Withdrawing now will really depend on where it's going to come from. I know the question did say they’re going to take it from the public offer fund. Let's say if we looked at that or the option of the SMSF, we might need to dispose of

an asset. So capital gains tax may apply there. If the concern really by the client here is tax on unrealised gains, well, perhaps they want to think about the fact that they are realising a gain to avoid that tax on unrealised gains. If we are gifting the funds to the children and that's something that the client wants to achieve rather than having a focus on the Division 296 tax, then probably want to point out as well it's going to be a bit of an ongoing assessment, that $3,000,000. The balance might dip under $3,000,000 by the withdrawal, but if the balance is going to grow due to earnings, et cetera, potentially that's going to be a problem in the future for the client there as well. Gifting as well... don't forget that the funds are no longer going to be the client's. She will have no control over what the kids do with the funds. She would want to really consider her long term needs as to whether or not she might need those funds, for example, if she needs to go into aged care.

TH

So Matt, as an extension to this question, I know all of us have received queries from advisers talking to mitigating or reducing the tax when you're a position where you need to pay it, for example, can I use carry forward capital losses to offset the unrealised capital gain? Can I use a negative gearing deduction within my SMSF to offset the tax payable on a Division 296 liability? Is this double taxation of my superannuation savings? We received an email from an adviser along these lines. The adviser said, "I was just querying whether there has been any update on the Division 296 legislation. I believe part of the proposal is taxing unrealised gains. Do you know whether carry forward losses can be subtracted from unrealised capital gains calculation or whether the proposed legislation ignores carry forward losses in the unrealised CGT calculation?" The adviser goes on to say "I understand carry forward losses come off realised gains in a normal sense. Can we use any of these offsets to offset the tax payable?"

MM

Yes, I guess probably the key principle of that is that Division 296 based on the lapsed bill is completely separate to any other existing taxes, so no, we don't get any credit for the tax that we've paid on the earnings, capital losses, et cetera. None of that is proposed to change. This is completely separate and on top of all of that. So how really that works – there is an adjustment for withdrawals and contributions, but the distinction is completely lost for Division 296 purposes as to whether the increase in the total super balance is related to a dividend or interest, or a realised capital gain or an unrealised capital gain, because the base is total super balance... the distinction gets completely removed. That's all that we assess it on. Now, as far as the double taxation aspect, well, I would say yes, because people in that situation have already paid tax on the earnings and also the realised capital gain. But also consider a situation where somebody chooses to pay the Division 296 liability from their super fund which is what most people would do because the alternative is to pay it personally or accrue a debt.

So they're going to be paying the division 296 via their super fund and in order to get the funds required to pay that liability, they sell an asset then yes, in order to be able to get those funds, if you're selling an asset at a capital gain, then completely separate to Division 296, you'll also pay broadly 10% on that capital gain if it's been held for more than 12 months, and it's in accumulation phase.

TH
The principle here is that the Division 296 is a completely new tax. It's unrelated or unimpacted by any existing tax paid by superannuation funds now. It's a tax levied on the member, the member will get the assessment. The Member has the choice to pay it themselves, or withdraw that amount from superannuation. We continue to wait, as at the time of recording to see if and when this legislation – and in what form – is finally introduced into Parliament.

TH

Final question on this one Matt... calculators. Our team has a suite of calculators across social security, aged care, superannuation benefits and super contributions, particularly bring forwards and NCC's or non-concessional contribution. The question I know I've got is in your view, is there appetite for a Division 296 calculator?

MM

Yes, and everyone in the team is certainly very proud of our existing calculators. And if you're interested in receiving any of those, please feel free to email technical@btfinancialgroup.com. As for a new fifth calculator in the future I'm confident saying yes without being able to provide a definitive time frame. In the event we do get legislation, it shouldn't be too far after that.

TH

So on the horizon are not yet available. Perhaps I'll go out on a limb here and say if you are interested and we could maybe even start a distribution list, even though it's not ready yet. Send an email through as Matt said technical@btfinancialgroup.com and we'll start taking interest on that if and when, or when I should say we get that calculator up and running.

TH

So we're going to take a short break now and when we return, we're going to change tack and take a look at a couple of key Centrelink issues that remain outstanding or have changes coming. Don't go away, we'll be back in less than a minute.

<BREAK>

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TH

Welcome back to this TechKnow podcast. As I mentioned before the break, we're going to focus on Centrelink. Mike – let's get the simple one out of the way. First, deeming. From what seems to have been a very long time, I've just noticed that deeming rates are now increasing at the same time as the 20 September indexation of various Centrelink rates and thresholds. How long has it been since we've seen deeming rates change?

MT
Yeah, it's been a while now. It's been more than half a decade. They've essentially been frozen during the pandemic. We've had multiple commitments to freeze from both the current government and the previous governments, all of which ended on 30 June. However, we only saw the announcement from the Minister of Social Services in late August to change deeming rates from 20 September.

TH

The big question probably is what are they changing to?

MT

Yes, so both the lower and upper rates are going to increase by 0.5%. So currently they're 0.25% and 2.25%. They're going up to 0.75% and 2.75% respectively. The Government has also stated that they will gradually return it to normal levels, but the changes will be staged, so the past five years don't forget, haven't really been the norm as remember, deeming rates are meant to reflect the rate of return that you can earn on a range of financial investments. The change from 20 September is taking a stepped approach to return to these pre-pandemic levels.

TH

So we probably haven't thought about the impact of deeming on clients for a while, given that, like you've said, it hasn't changed for over 5 years. How is this going to impact clients going forward?

MT

So for the income test amounts for your social security clients or your aged care clients, all of the income that's going to be assessable from financial investments as well as non grandfathered account based pensions obviously is going to increase due to the deeming rate increase. Those already income tested will see a reduction in their payments, or an increase in their fees for aged care purposes. Some who are asset tested at the moment might suddenly now become income tested if they were very close in terms of the levels of reduction, whereas others who are asset tested might not see any change at all if they're going to be looking at the assets test being a lot harsher than the income test. I run through further implications in my webinar that will be on that has been delivered on 10 September which can be viewed on demand titled Deem-ystifying grandfathered account based pensions.

TH

So historically, I note that the Minister of Financial Services used to change the deeming rate if and when it was seen as necessary. Do you expect the changes going forward to align with indexation like this change on 20 September or are we going to go back to that ad hoc approach like it used to be?

MT

As part of the announcement in late August, there seems to be a commitment from the Minister to make changes at the same time as the age pension indexation. So that's every 20 September, 20 March. In addition, it seems like the powers to essentially choose what that deeming rate is, is going to be given to the government actuary, but there will still be some discretion provided to the Minister if they need it.

TH

OK, the second issue that has been coming up for advisers is around the ability to exit some of these retirement income products or legacy retirement income products. Just to give the context around this, if we take our mind back to 7 December last year, the Treasury *Law Amendment Legacy Retirement Product Commutations and Reserves Regulations, 2024* – absolute mouthful there – temporarily relaxed the commutation restrictions for certain retirement income stream products known as legacy retirement products. What does this mean? Well, prior to 7 December last year, providers of certain legacy retirement products had to ensure that those products could not be commuted under the relevant

fund rules, contract or terms and conditions of the product, the fund or product rules that is, except in very limited circumstances. The regulations now relax this restriction so that the relevant fund or product rules can also allow the products to be fully commuted within a five year period only, beginning on 7 December 2024 and ending on 6 December 2029. The affected products that can be commuted include lifetime annuities and pensions, life expectancy annuities and pensions, and market linked annuities and pensions.

Now, Mike, I'll stick with you on this. While this obviously seems like a great opportunity and has been somewhat of a long time since this policy was originally announced, there were outstanding concerns advisers had around the Centrelink implications of exiting some of these products that had certain asset exemptions, for example, applied to them. Let's take a look at the following email we received from an adviser. It said, “Hello team. Happy Wednesday. “Always nice to receive a greeting like that. “A client has an SMSF who converted their defined benefit pension to a market linked pension or an MLP, we'll call it last year, possibly two years ago. He is also on a Centrelink part pension.” Now the adviser read that if an individual commutes their legacy pension, they trigger section 1223 of the *Social Security Act*, potentially incurring a debt. The Secretary of the Department of Social Services can waive these debts, but only after a 15 day disallowance period for the legislative instrument has expired. As the disallowance period will not expire until early in the term of the new government following a Federal Election 3 May 2025, those likely to benefit from the debt waiver are recommended to delay commuting their legacy pensions until after the disallowance period has expired. Mike, can you explain what this concern is for us.

MT
Yeah. So the concern really comes from the fact that the ability from a superannuation law’s perspective to commute these legacy pensions has been available from 7 December 2024. Obviously products might have to change their deeds to allow the commutation as well. However, just because you can commute it from a super law perspective doesn't mean it's going to be a great idea from a social security law perspective, because unfortunately they had not yet updated the debts being raised as a result of this commutation. In other words, they haven't really allowed for this commutation under social security law. So there is an instrument that has been registered to affect this change. However, as the adviser points out in their question, there is a disallowance period. The instrument was written in a way where it would only be effective, it would only commence a day after this allowance period ended and we really have to wait until that period ends before we can be confident that there will be no debt raised as a result.

TH

So we had the instrument introduced, we had a new Parliament, we've had the new Parliament for months and months and months now. To me, that's in excess of 15 days, but it's a little bit more complicated than that. What time frames are we currently looking at?

MT

So on my estimates, we're looking at 28 October, which does seem like such a distant time from 7 December 2024. Based on the way that the instrument was written, it will commence the day after the disallowance period ends. The last disallowance sitting day for both Houses of Parliament is 27 October, so the day after is the 28th.

TH

So how exactly does this disallowance period work? And probably more importantly for our listeners, as an adviser, should I be waiting until at least 28 October before exiting one of these products?

MT

Yes. So without going into too much detail, sometimes government can make subordinate legislation without going through the usual parliamentary processes. However, as a safeguard, any instruments made this way need to be tabled and then reviewed in both Houses. Any instruments made this way can also be disallowed. All it requires is a Member of Parliament making a motion and then someone needs to second it and essentially, if that occurs, it's no longer an instrument that's registered and allowed to be law. Someone else has to introduce a different instrument or they would have to look at introducing a bill to affect that change.

TH
So it can be allowed, disallowed, when in disallowance period we've got a date of 28 October, another Member of Parliament can make a motion to disallow it. On top of that, if you were advising a client, Mike, what would you be doing?

MT

I'd look at this and say we really need to wait until the 28th. Once that disallowance period is over, we can look at commuting clients who are impacted by the legacy pensions who do either receive Centrelink now, or have been receiving in the last five years. For those clients that haven't been receiving any Centrelink in the last five years, I'd say you can really proceed... you're not really relying on this debt waiver.

TH

Matt, I know you follow Parliament and what's happening quite closely. I'm not going to let you hook on this either. If you're advising a client, what would you do under these circumstances?

MM

Well, it's interesting we had the 15 sitting day requirement when it was tabled on 22 July, which as Mike said, takes us to the 28 November. So over three months for 15 sitting days, pretty good gig if you can get it. But I can't say it's impossible because obviously I can't control— I mean it's probably just as likely, Tim, that you could be a senator by 28 October, but yes, I agree with Mike. Having waited so long, the conservative view – especially considering what's at stake for the social security clients – would be to wait until 28 October. Something else in addition to the social security – this is, I guess, the other end of town – those that could be impacted by the transfer balance cap is that when we're removing their legacy products and essentially rolling over to an account based pension, it also would be important for those people to make sure that they're not going to cause a breach of the transfer balance cap because the debit event from the closure of the legacy pension may well be not sufficient to offset the credit event of the purchase price of the account based pension. So at that other end of the scale, care needs to still be taken as well. But otherwise yeah, I agree with Mike that if social security is going to be impacted by that change and with the five year period then, being very conservative it's best to just wait a little bit longer.

TH

Perfect. Well, thank you, Matt and Mike for joining us for the TechKnow podcast today, something a little bit different. If you did enjoy our discussion and the topics and the questions that we did bring up, do let us know and we'll look to make a few more discussion type of sessions like this. I'm sure our listeners have learned a lot from both of you today, so thank you. As always, just as a reminder, before we do go, if you have any questions about the content of today's podcast or any other advice strategy questions in general, and you are a registered adviser with BT Panorama you can contact the BT Technical services team via the BT Panorama mobile app. To call us, simply open the app, head to the Contact us session and navigate to the option to initiate a call with the BT Technical services team. You will get either myself, Matt or Mike on that call, so looking forward to talking to you if we can help you any further. You can also simply email the team as well if you do have a question – technical@btfinancialgroup.com. And don't forget to join us for next fortnight's BT Academy Webinar Series, where we'll be talking all things regulatory and technical. Our next technical webinar will be held at midday on Wednesday 24 September, where Bryan Ashenden will be back, providing a timely regulatory update titled 'Don't you forget about me'. We haven't forgotten about him, even though he is not here today. With the new government firmly entrenched, it's time to look at the myriad of announcements that have been made and changes coming from super to Centrelink and all things regulatory this session. You do not want to walk by. To register for the session, simply head to bt.com.au/professional and navigate to the Events and webinars section within BT Academy. At the same time, you can also explore previous webinars and they are available on demand, and qualify for CPD points if originally held within the last 12 months. Thank you for joining us today once again. Thanks to Matt and Mike as well. And until next time bye for now.