

TechKnow Podcast - October 2025 – **958 days of super tax reform: what's changed?**

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Transcript

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958 days of super tax reform: what's changed?

They say a week is a long time in politics. 958 days is the amount of time that has passed between the initial announcement from the Government about a Division 296 tax until the recent changes announced on 13 October 2025 to the way the tax will operate. In this podcast, Bryan Ashenden looks at the new announcements, how they work and the areas that still need to be clarified.

They say a week is a long time in politics. So, what about 958 days? That is how much time passed between the initial announcement from the Government about a Division 296 tax on 28 February 2023 to the recent changes announced on 13 October 2025 to the way the tax will operate. Sure, at time of this recording it has actually only been 927 days since the first consultation paper was released, and only 741 days since we first saw draft legislation for consultation on how Division 296 was originally proposed to be implemented.

Hello, and welcome to this TechKnow podcast, brought to you by the BT Technical Services team. My name is Bryan Ashenden, and I have the pleasure of leading the BT Technical Services team – a team of qualified individuals who are here to help you, as advisers, deliver strategies to clients that will make a difference to their future.

Before we begin, I'd like to acknowledge the traditional owners of 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.

Since a Bill was first introduced into Parliament just under 2 years ago to introduce the Division 296 tax on total super balances over \$3 million, there have been two major sticking points that largely caused the Bill to be stalled in the previous Parliament and ultimately not enacted into law. Those were the non-indexation of the \$3 million threshold, and the calculation methodology for what the tax would be levied against and, in

particular, the inclusion of unrealised gains (or paper profits) in that calculation. And given the delays in legislating the change, concerns have also been raised about the initial commencement date of 1 July 2025.

The announcements from the Government on 13 October 2025 have addressed all of these concerns, and for the better. Whilst the new proposals alleviate these previous concerns, the new proposed calculation methodology still has potential complications to be worked through. Indeed, it would seem the Government recognises this as they have said they will look to consult with industry around the implementation, and that legislation will be introduced as early as possible in 2026 to give effect to the new announcement.

Before we look at the potential issues that will need to be addressed as part of the new measures, let's look at how the initial concerns have now been addressed.

First off – commencement. The start date of these measures has been pushed out a further 12 months, so will now commence 1 July 2026. Whilst that might seem rather close, especially given the absence of detail around how the new version of Division 296 will work, it's important to remember that whilst it is proposed to start from 1 July 2026, it is 30 June 2027 that is the critical date, as it is the balance at the end of the relevant financial year that is used for determining any liability.

At this point, the indications are that the methods for who is captured remain unchanged – that is, the starting point is to determine an individual's total super balance at the end of the year – across all their superannuation entitlements, to see if it exceeds the relevant threshold. If it is \$3 million or below, then the individual will have no liability for that income year. This means if you have clients above that threshold, you have over 18 months from now to implement strategies to bring them down below it.

Second, the \$3 million threshold will be indexed. Indexation will occur in increments of \$150,000. The Government fact sheets state that the indexation will be in line with increments with the transfer balance cap, which would indicate that it indexes at 1.5 times the indexation of the transfer balance cap when it indexes, rather than being indexed separately. Interestingly, while current CPI figures (which are used for indexation of the general transfer balance cap) indicate we won't see the cap index from 1 July 2026, it is certainly a possibility that it will index from 1 July 2027. This would mean that the Division 296 tax would apply for total super balances above \$3 million for its first year of operation, but in the next year would potentially move to \$3.15 million.

It is also important to note that the Government has announced that there will be a secondary level of tax under Division 296 for those individuals who have total super balances in excess of \$10 million. Exactly how that works is something I will come back to

later, but this \$10 million threshold will also be indexed, this time in increments of \$500,000, and again tied to the indexation of the general transfer balance cap.

Presumably, again, this means it will index at 5 times the indexation applicable to the general transfer balance cap when it indexes. So just like the \$3 million cap, it's possible that this new threshold will start at \$10 million for the first year of operation, but will then index to \$10.5 million from the second year – ie for the year ended 30 June 2028.

Finally, we come to the initial, most controversial, element of the original Division 296 proposal – the taxation of unrealised gains. Under the initial proposal, Division 296 tax would apply to the level of growth a member experienced in their total superannuation balance from one year to the next, with adjustments for various items bucketed into the broad categories of “withdrawals” and “contributions” to ensure you couldn't minimise the impact of Division 296 by taking money out of the members account (unless it caused them to fall below \$3 million by year end). Similarly though, it ensured contributions or new monies coming into the fund were also not captured as growth in the year they were made – just the returns generated from those investments. It was this method that resulted in the taxation of unrealised gains, or paper profits.

If a member held the same asset throughout the course of the year and it increased in value, Division 296 would tax a portion of that growth. If it fell in value, this would generate a benefit to reduce Division 296 in the future, but only where the member had sufficient other assets in super growing to utilise those paper losses. If the member's total super balance fell below \$3 million without having used these Division 296 losses, then they are foregone and no benefit received.

Much has been said and written about the unfairness of this taxation method on certain sectors, such as farmers who hold their farming land within an SMSF. Those who may be asset rich, albeit in their super fund, but income poor, or subject to seasonality impacts on their cash flow and ability to meet any potential Division 296 liability.

Under the now proposed taxing method in the new version of Division 296, this issue should no longer arise, as the tax will not be applied to the change in total super balance levels from one year to the next. Rather, the tax will be based on superannuation fund's realised earnings, based on the fund's taxable income, that is attributed to the member.

A super fund's realised earnings will be based on its taxable income, adjusted for elements such as concessional contributions (which are taxable income, but not subject to Division 296 tax) and pension phase income (which is ordinarily non-assessable income, but will be taxable for Division 296 purposes).

In-scope members will then be attributed an appropriate share of the fund's realised earnings based on existing reporting mechanisms or on a fair and reasonable basis. This would be supported by guidance from the ATO.

This does raise questions on the operation of the new Division 296 tax and what will undoubtedly be more reporting obligations on super funds than exists for many today. We will come back to some of the issues around this calculation a little later.

But one more item before we take a short break is this new, additional, tax under Division 296 for those with total super balances in excess of \$10million. You may have heard reports that these people will have their super taxed at 40%. I would say that while there are some elements of truth to that, it may also be slightly misleading. To understand how it works, we need to go back to the basics of the Division 296 tax – an element that is unchanged between the two proposals.

Division 296 operates on the basis of determining how much of a member's total super balance is above \$3 million. So, in a simple (but extreme) example, assume a member ends the year with a total super balance of \$15 million. \$12 million of their \$15 million is above the \$3 million threshold – this is 80% of their total super balance. This 80% is then applied to their newly calculated attributed realised earnings within super, and that amount is taxed at 15%. To the extent the member had monies in accumulation phase, that is 15% on top of the standard 15% that would already have been levied directly in super – bringing us to 30% – but only on that 80% portion of attributed earnings – the rest is only taxed at 15%. To the extent the member had some monies in a retirement phase pension, they would have paid no direct taxes in that part of their super, so the Division 296 tax brings the total tax to 15% – but again only on that portion of attributed earnings.

Then we come to the amount above \$10M. A similar apportionment approach applies. Using our example of a person with \$15M in super, \$5M or one third of their balance is over \$10M, so one third of their attributed earnings will attract an additional 10% tax (on top of the 15% already calculated) on that portion. If in accumulation phase, when added to the standard 15%, this brings us to $15 + 15 + 10 = 40\%$ on that portion. Of course, to the extent it is in pension phase, it's a total of 25% tax.

OK, with all that in mind, it's time for a short break but don't go anywhere as we will be back in less than a minute to continue talking about the changes to the Division 296 tax proposal.

<BREAK>

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Welcome back.

Before the break I was talking about the how Division 296 tax is now proposed to be levied on a member, based on their attributed share of the fund's realised earnings, based on existing reporting mechanisms or on a fair and reasonable basis. This would be supported by guidance from the ATO.

On the face of it, this seems a reasonable and perhaps appropriate approach, and certainly fairer than the taxing of paper profits. But it is not without some questions of its own – and we hope many of these will be appropriately addressed, so they can be understood, before the legislation takes effect.

One of the issues asked is in relation to capital gains that have been realised within the fund. It is assumed that as the starting point is based on the fund's taxable income position, then this mean any capital gain attributed to an asset owned for more than 12 months will already have been discounted by one third, as it is the discounted value of a capital gain that forms part of the taxable income. On this basis, Division 296 taxes should only apply to the discounted value of the gain.

However, what happens where the member has money that is wholly within pension phase? In this case, no tax would have been payable on the gain. If the fund had been operating on a segregated basis, there would have been no tax to pay. If adjustments are to be made for the purposes of Division 296, will any capital gain added back into the calculation be adjusted to ensure it is only the discounted value of the gain? Similarly, if the fund had exempt income, no deductions would have been claimed. Will allowance be

made to reduce the attributed taxable amount for what would otherwise have been allowable deductions?

Another area that will need to be watched is in relation to franked dividends. Where a super fund received a franked dividend, its assessable income is grossed up for the value of the imputation credits attached to the franked dividends, with the benefit then gained with a tax offset to the tax payable for the value of any imputation credits.

If the starting point is the fund's taxable income, this will be an amount that has been grossed up for the imputation credits. As a result, will there be adjustments made to discount for this gross-up before Division 296 tax is applied.

And finally, no doubt there will be much discussion about what is a fair and reasonable allocation across the different types of superannuation funds that exist. To the extent it is possible, the easiest and most transparent approach will likely occur in retail super funds and the self-managed superfund environment, where members are offered direct choice for their underlying investments. In these superannuation arrangements, just like investment returns flow to the member's account based on their actual investment holdings, so does the tax. For example, a member gains the full benefit of imputation credits that have arisen from investments that they hold within their super account. Other members don't benefit. In some other industry funds however, true investment choice is not as broad (if at all offered), with investments made on a pooled basis, with member's owning units in the pooled investment arrangement. This generally means that members have no choice over when underlying assets are purchased or sold, and have no influence over the level of capital gains their returns contain, and whether those underlying investments have been held long enough to qualify for CGT discounting.

On a similar basis, the benefits of imputation credits are generally realised at a fund level, rather than member level, so members could be missing out on the full value of those imputation benefits.

And finally, defined benefit arrangements will also create difficulties. Under the initial version of Division 296, as the calculation revolved around member balances at the end of each year, rules had been proposed to determine a valuation of a member's defined benefit for Division 296 purposes, with the methodology the same as that used by the courts for defined benefits in super split decisions when a marriage ended. This methodology will presumably still be used for the purposes of determining whether a particular individual is subject to the new Division 296 as their total super balance is still relevant to that extent. However, how the taxable income of a defined benefit fund is

attributed on a fair and reasonable basis to members, especially those who still only have a contingent benefit, remains to be seen.

It is perhaps worth noting that the ATO is expected to release guidance on how the attribution can or should occur, so there is perhaps much consultation still to occur in this space.

In amongst all the discussion around Division 296, it is important to not overlook the other announcement the Government made at the same time, which were changes to the low income superannuation tax offset (or LISTO) regime, which makes more of the LISTO available to more people.

Now, LISTO is designed to refund some of the 15% tax payable on concessional contributions made to a super fund for individuals with adjusted taxable incomes of \$37,000 or less. The maximum LISTO is currently \$500 and has not changed since first introduced, with it essentially calculated from working out what was the level of tax payable on super guarantee contributions for a person earning \$37,000 when the SG rate was 9%.

Today, the SG rate is now 12%. Also, the LISTO helped to reduce any disparity between the level of tax payable for additional deductible contributions to super compared to marginal rates of tax. Again we have seen changes to the marginal tax rate regime since LISTO was first introduced, which makes extra contributions to super less attractive from a tax perspective for lower income individuals right now.

To address this, from 1 July 2027 the maximum adjusted taxable income for a person to be eligible for LISTO will rise from the current \$37,000 to \$45,000, and the maximum LISTO payment will increase from the current \$500 to a new maximum of \$810.

There is nothing clients need to do in order to claim the LISTO, other than ensuring their super fund has their tax file number, and for the client to lodge their tax return. The ATO uses its data matching to work out how much LISTO a client is eligible for and sends the LISTO payment direct to the client's superfund.

This increase will be beneficial for lower income clients who are looking at topping up their super as it makes those contributions more tax effective.

As I mentioned at the start of this podcast, it's taken 958 days of consultation and work from across the industry to drive towards an outcome, particularly for the operation of Division 296, that is fairer for the affected individuals. But there is still more consultation to come, and important consultation, to ensure the implementation is as effective as possible.

Just a reminder, if you have any questions about the content of today's podcast, or other advice strategy questions in general, and you are a registered adviser with BT Panorama, you can contact our BT Technical Services team via the BT Panorama mobile app. To call, simply open the app, head to the Contact us section, and navigate to the option to initiate a call with BT technical services. Or you can simply email the team at technical@btfinancialgroup.com.

And don't forget to join us for our fortnightly BT Academy Webinar series where we talk all things regulatory and technical. Our next webinar will be held at midday AEST on Wednesday 5 November 2025 when Tim Howard from our BT Technical team will be presenting on super contributions – the rules, the risks and the strategies.

Superannuation contributions are a cornerstone of effective retirement planning, with challenges often appearing in translating the rules into clear, actionable strategies. This session will break down the latest legislative changes, and explore how age, super balances, and contributions history affect eligibility. Tim will also examine the risks of exceeding caps and misapplying strategies to ensure you're in the best position to deliver appropriate and compliant advice.

To register for that session, simply head to www.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 that are available on demand and qualify for CPD points if originally held within the last 12 months.

Once again, thanks for joining us today, and until next time, bye for now.