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Client Information Newsletter - Tax & Super
April 2026

Div 296 tax is now law: What it means for your super

There's been a lot of talk about changes to super, and one of the biggest updates is now official.

The government has passed the Division 296 tax, which will start from 1 July 2026. While it mainly affects people with large super balances, it's still important to understand what's changing and why.

Contact Us

Welcome to our client information newsletter, your monthly tax and super update covering the important issues, news and hot topics affecting you. For further information on any of the topics covered, please contact us via the details below.

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A quick recap

When this tax was first proposed back in 2023, it caused quite a stir.

The original plan included:

» Taxing unrealised gains (basically, increases in value on paper that you haven't actually received yet)

» A $3 million threshold that wasn't going to increase over time

continued overleaf ⇨

Div 296 tax is now law ... cont

Understandably, many people were concerned this wasn't fair.

After strong feedback, the government has revised the rules. The final legislated version aligns more closely with how tax usually works, that being, taxation of actual income not paper gains.

What's changed in the final version?

Here's what the new rules look like now:

» You'll only pay tax on actual earnings, not paper gains

» Your super fund calculates your earnings and reports them to the ATO

» The $3 million threshold will increase over time with inflation

» A new $10 million threshold has been added

» The rules start from 1 July 2026, giving people limited time to prepare

» Defined benefit pensions are included, so all types of super funds are treated the same

How does the tax work?

Think of it like a tiered system:

» Up to $3 million – earnings are taxed as normal (up to 15%)

» $3 million to $10 million – a portion of earnings are taxed up to 30%

» Above $10 million – a portion of earnings are earnings taxed up to 40%

Importantly, if your balance is only slightly above $3 million, only a small share of your earnings will be subject to the higher tax rate.

Put simply, the more you have in super above these thresholds, the higher the tax applied to that portion of your earnings.

Who does it apply to?

This tax only applies to individuals with more than $3 million in super or pension phase.

A few key things to know:

» The threshold applies per person, not per fund

» That means a couple could have up to $6 million combined and not be affected

» Even if an SMSF has more than $3 million, you won't be impacted unless your personal share exceeds the $3 million threshold

The first time this will apply is based on your balance at 30 June 2027.

How do you pay it?

You don't need to calculate the tax yourself.

Here's how it works:

1. Your super fund reports your balance and earnings to the ATO
2. The ATO works out if you owe extra tax
3. You'll receive a notice if you're affected

If you do have a tax bill, you can choose to:

» Pay it from your own money, or

» Have it released from your super fund

What does this mean for you?

For most people, this change won't apply at all.

But if you have a high super balance, it could mean:

» Paying more tax on part of your super earnings

» Rethinking how your super is structured over time

The new rules start from 1 July 2026, with the first tax assessments expected in 2027–28.

Don't rush into decisions

If you think this might affect you, it's important not to act too quickly.

Taking money out of super might seem like a solution, but:

» It can be difficult to put it back in due to contribution limits

» You could lose long-term tax advantages

Getting the right advice before making any changes is key.

Final word

While Division 296 tax is a big change, it's targeted at people with large super balances and has been refined to be fairer than originally proposed.

If you're unsure how it affects you, we're here to help you understand the new rules and what they could mean for your situation.

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.

Granny flats:
Beware of the CGT consequences

Granny flats are becoming more of a common feature of the urban environment. No doubt this is due to the ongoing and unremitting nature of the housing affordability crisis, and the relaxing of regulations about where and how they can be built.

And they do seem to offer a very viable solution to the problem – at least in the short term.

However, if you are thinking of constructing one, or already have one in place, you need to be aware of all the tax implications – and they can be very significant.

Firstly, if you rent it at commercial or arm's length rates, then not only will you be assessable on the rent (albeit being able to claim a portion of the deductions), but you will lose a part of the capital gains tax (CGT) exemption on your home. This is because you are using your home to produce income.

But in most cases, this partial CGT liability should be taxed concessionally by giving you a market value cost (at the time you first rent it) from which to calculate the gain (or loss).

Furthermore, the CGT 50% discount (or whatever is in place after the May Budget) should, in most cases, be available to reduce the amount of your assessable income.

However, where you do not rent your granny flat at commercial rates (including where the occupants may only pay their share of outgoings, such as electricity and rates) then you will not lose any CGT exemption on the home.

This will typically be the case where your granny flat is occupied by a relative, such as an adult child – or by a granny (and/or granddad), themselves!

It should also be noted that it is becoming common for the owner of the home (young adult children) to come to some sort of agreement with a parent or parents, whereby the parent/s agree to pay the price for building the granny flat in exchange for the "right to occupy" for a number of years. Likewise, such agreements may bring to an end a right to occupy.

The making of an agreement whereby "granny-flat" rights are created in another party (or bought to an end) can technically have immediate CGT consequences – despite the fact that it is made in relation to the CGT-exempt home and among family members.

However, the CGT rules provide that this will not be the case where the person acquiring the granny flat right has reached pensionable age (or has a relevant disability) and the arrangement is in writing and is not of a "commercial" nature.

These and other granny flat arrangements require good professional advice – particularly in terms of determining if such an agreement is "commercial".

So, if you currently own a granny flat or you are thinking of constructing one for any purpose, it is important to come and speak to us – especially in terms of preserving the CGT exemption on your home (or at least maximising it).

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Higher super contribution caps from 1 July 2026:

What it means for you

From 1 July 2026, the amount you can contribute to super will increase, creating new opportunities to boost your retirement savings.

The annual concessional contribution cap will rise from $30,000 to $32,500. These are contributions made from pre-tax money, such as employer contributions, salary sacrifice and personal deductible contributions.

Non-concessional contributions

The annual non-concessional contribution (NCC) cap will also increase from $120,000 to $130,000. These are contributions made from your after-tax money.

For people who are eligible to use the bring-forward rule, the higher caps will allow even larger contributions. From 1 July 2026, the three-year bring-forward cap will increase from $360,000 to $390,000.

Whether you can use these higher NCC caps will depend on your total super balance (TSB) at 30 June 2026. Your TSB is the total amount you have across all of your super accounts at that date, including money in accumulation and pension phase.

The table below highlights how the TSB thresholds and NCC caps will change from 2025–26 to 2026–27.

One important trap to watch is that if you have already triggered a bring-forward period before 1 July 2026, you do not get access to the new higher caps for that existing period. For example, if you triggered a three-year bring-forward in 2025–26, you remain limited to the current maximum of $360,000 across that three-year period, being until 1 July 2028. You do not get to use the new $390,000 cap.

Concessional contributions

The higher concessional cap may also create extra opportunities through catch-up concessional contributions. If your TSB is less than $500,000 at 30 June of the previous year, you may be able to use unused concessional cap amounts from the previous five years. In some cases, this could allow a very large deductible contribution to be made.

This means the lead-up to 30 June 2026 could be an important planning window. In some cases, it may make sense to delay a contribution until the new financial year to access the higher caps. In others, if you have already met a condition of release, taking a small amount out of super before 30 June may help keep your balance below a key threshold and preserve access to valuable contribution strategies.

The key message is that the higher caps could create valuable opportunities, but the rules around timing and TSB are also important. Now is a good time to check how these changes may apply to you.

THRESHOLDS AND CAPS IN 2025-26		THRESHOLDS AND CAPS IN 2026-27	
TSB at 30 June 2025	**NCC cap**	**TSB at 30 June 2026**	**NCC cap**
Less than $1.76 million	$360,000 (3 years)	Less than $1.84 million	$390,000 (3 years)
At least $1.76 million but less than $1.88 million	$240,000 (2 years)	At least $1.84 million but less than $1.97 million	$260,000 (2 years)
At least $1.88 million but less than $2 million	$120,000 (1 year)	At least $1.97 million but less than $2.1 million	$130,000 (1 year)
$2 million or more	Nil	$2.1 million or more	Nil

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CGT still applies even if you are "forced" to sell an asset

During the COVID pandemic years, we all suffered in one way or another – in particular the small businesses who relied on customers coming through their doors.

Mr Lewis was one such small businessman who operated a "multi-gym business" and who as result of the COVID pandemic found it impossible to keep his business operating and pay staff without additional financing. In his own words:

> *"...the government imposed lockdowns shut down my business operations virtually overnight. I had no income, no relief fast enough to respond, and no option but to sell personal assets just to meet my basic obligations — to pay rent, staff, escalating legal costs and debts."*

So that is exactly what he did.

He arranged for the family trust of which he was a beneficiary to sell shares and to distribute the gain to him. (Luckily, the trust had made some good investments.) As a result, a $200,000 capital gain was distributed to him which he used to keep his business going and to pay staff, etc.

The problem was he was clearly assessable on that capital gain – and he sought to challenge the decision by arguing he was forced to sell the shares and that he did not really make a gain because he had to use the money to save his business.

In short, Mr. Lewis argued the Tribunal should consider his intention and his hardship, claiming the gain was not a true "profit" since proceeds offset business losses from lockdowns.

However, the Tribunal had to conclude that he had realised the capital gain and that there was no discretion in the law to exclude it or exempt it.

Furthermore, there were no CGT concessions available – and, in particular, the 50% discount was not available as the shares were not held by the trust for more than 12 months.

The moral of this story is that where a capital gain has duly been realised or come home to the taxpayer there is no discretion for the amount to be excluded from the assessment process (unless the tax law specifically provides one: eg, a roll-over).

This is the case, despite the circumstances under which gain arose – including where the taxpayer was "forced" to sell an asset or the gain "accidentally" arose. The only exception is where there has been a compulsory acquisition of an asset under relevant legislation.

Otherwise, a taxpayer can only seek relief after the assessment process by making a hardship relief application – and even then it is very difficult to succeed, especially if there were any reasonable measures a person could have taken to avoid the hardship.

If you find yourself in such circumstances, come and speak to us about the matter – and preferably before you think you may be "forced" to sell some CGT assets.

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Car logbooks: Back to basics

Three recent Administrative Review Tribunal (ART) decisions on claims for car expenses have shone a light on what the law requires in relation to car logbooks.

Where you use your car for business purposes, there are two ways of making a claim – the cents per kilometre method for up to 5,000 business kilometres, or the logbook method based on the business percentage of your actual expenditure. The logbook method will generally result in a bigger deduction where your business use of the car is high and the actual car expenditure plus depreciation is significant. Bear in mind that travelling between home and work is not generally deductible.

To work out your business percentage, you can't just make an estimate. You need to maintain a logbook for a representative period of 12 weeks. Unless your work or personal circumstances change, the resulting business percentage can then continue to be applied for five years.

For each car journey made for business purposes during the 12-week period the logbook has to record:

- The day the journey began and the day it ended
- The car's odometer readings at the start and the end of the journey
- The number of kilometres the car travelled on the journey
- Why the journey was made

To calculate your deduction, you use the car's odometer readings at the start and end of the 12-week test period to work out the total number of kilometres travelled during the period and apply the total business kilometres recorded in the logbook to arrive at the business percentage.

Importantly, and this is something that is sometimes overlooked, the law requires that the record in the car logbook is made "at the end of the journey or as soon as possible afterwards". And this is where some taxpayers come to grief.

People are busy, and promise themselves they'll do it later, but the longer they wait the more likely they are to make mistakes. It's actually quite difficult to accurately recall various trips you think you must have made weeks ago, and the Tax Office can usually spot the difference between a genuine logbook that has been more or less contemporaneously completed and one that has been stitched together well after the event.

While recording all your car use every day for a twelve-week period may seem burdensome, once you've done it you're generally good for another 248 weeks, which isn't a bad trade-off. You also have some flexibility about which 12-week period you use.

The three taxpayers involved in the three ART decisions referred to above were seen by the Tax Office and the Tribunal as not having made contemporaneous logbook entries, having logbook odometer readings that were inconsistent with service records, having several versions of the logbook for the same test period and in one case being a complete fabrication.

In each of the three cases there were other reasons why their claims for car expenses failed, but the Tax Office will have noted the Tribunal decisions and must be more likely in future to critically examine logbooks supporting large car expense claims to ensure they comply with the law.

It's never too late to fix these things, so if you have any doubts about the reliability of the logbook you are using to make your motor vehicle claim, come in and see us and we'll see if we can sort things out.

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