

## Division 296 – Exposure Draft Legislation Released

On the Friday before Christmas (19 December 2025), the exposure draft legislation on the ‘new’ Division 296 was released by Federal Treasury for consultation. Submissions on this draft legislation are due on 16 January 2026 (a consultation period of just 28 days despite the intervening Christmas and New Year holiday period).

As noted in our flyer of 15 October 2025, the key changes to Division 296 announced by Federal Treasury in October 2025 compared to the measures announced two years ago are:

- Two-tiered approach with total concessional tax rates for large balance holders:
  - 30% tax rate on the proportion of earnings corresponding to balances between \$3m and \$10m; and
  - 40% tax rate on the proportion of earnings corresponding to balances above \$10m.
- Both the \$3m and \$10m super balance thresholds will be indexed in \$150K and \$500K increments respectively.
- The additional tax only applies to realised earnings (and not to unrealised gains).
- Proposed start date of 1 July 2026.

The exposure draft legislation has also confirmed various other details and raised some other interesting points, including:

1. The super fund will be responsible for calculating the amount of the realised earnings attributable to each individual member and reporting that amount to the ATO, noting that Division 296 is a personal tax calculated for each individual.
  - a. For a SMSF, the method to split super fund earnings between members will be set out in regulations (yet to be released) and may require obtaining an actuarial certificate.
  - b. For APRA regulated funds, the method to split super fund earnings must be ‘fair and reasonable’ taking into account the regulations, which require consideration of investment strategies and member tenure across different investment options and products.
2. Previously, Division 296 was applicable if a member had a total super balance of \$3m or more at the end of the relevant year. This has been changed and is now based on the individual’s total super balance at the end of the year or just before the start of the year, whichever is greater. This is effectively an integrity measure to prevent avoidance of Division 296 tax by reducing the total super balance of an individual by the end of the year.

Note, transitional arrangements apply for the 2026-27 income year such that Division 296 tax is only applicable for this first year by reference to an individual’s total super balance at the end of this year. This means that if an individual does not wish to be taxed under Division 296, then they have until 30 June 2027 to restructure their affairs where possible.

3. A transitional CGT adjustment will allow SMSFs to choose to adjust the cost base of the fund’s CGT assets that it held on 30 June 2026 to the market value of those assets on that day (for Division 296 purposes only). This allows any pre-1 July 2026 gains to not be subject to Division 296 tax. Importantly, this is a choice that must be made by the super fund using an approved form before the due date of the 2026-27 tax return for the super fund. Note, the choice to ‘opt in’ is at the fund level and not at a member or asset level (i.e., it is an ‘all in’ choice) and can be made even if there is no member with a balance above \$3m. The choice is also applicable for any new members to the fund after the choice has been made. Note, the choice only applies to any assets directly held by the super fund (and not to any assets held indirectly through an investment vehicle).

For APRA regulated funds, further details will be required in the regulations though it is noted that the fund’s actual realised capital gains will be adjusted for the first four years only (i.e., up to 30 June 2030).

4. The ATO will calculate a Division 296 liability for an individual and notify them of their tax liability for a given income year. Individuals will have the option of paying their Division 296 liability from super or from amounts outside super.
5. There is no refund for Division 296 tax if earnings are negative (i.e., expenses exceed income). However, the negative earnings may be carried forward and applied in future years.

## QLD Property Developers – expansion of duty and land tax relief

Under announcements made in the 2025-26 Mid-Year Economic and Fiscal Review, certain property developers of residential housing in QLD will have expanded access to relief from additional foreign acquirer duty and land tax foreign surcharge. The key changes to the relief include:

- Lowering the number of dwellings needing to be constructed to qualify for relief from 50 to 20
- A new five-year averaged significant contributor test for the land tax foreign surcharge
- Introducing a pre-approval process for residential developers, and
- Permitting a more holistic consideration of corporate groups and the contributions of group entities.

The Commissioner of State Revenue has issued public rulings in relation to these reforms, including a new public ruling to provide for the expanded relief arrangements for additional foreign acquirer duty arising on or after 15 December 2025 and land tax liabilities arising on or after 30 June 2026.

## Tax Governance for Top 500 Private Groups with Passive Investments

The ATO has issued [guidance](#) to help private groups who hold passive investments to develop tax governance over the material tax issues they have to manage. This guidance was published as part of the Top 500 program for privately owned and wealthy groups but can also be relevant to other taxpayers.

There are three classes of passive investment activity that are considered in the guide, being:

1. Investment in listed shares – this covers dividend income and gains/losses from divestment of shares
2. Investment in financial securities – this covers interest and gains derived from bank accounts, traditional securities and eligible investment securities, and
3. Investment properties – this covers acquisition and disposal of properties and the derivation of rental income.

The guidance also contains governance framework examples which can be used to develop checklists that may help in managing the derivation of passive investment income. It is important to ensure that Top 500 private groups not only have well-designed processes and procedures but to ensure that these are carried out and are effective.

## Review of FBT Exemptions for Electric Cars

Federal Treasury will [review](#) the electric car discount which has been available for eligible vehicles that were first held on or after 1 July 2022. The electric car discount is comprised of an FBT exemption and an exemption from tariffs on eligible cars, and its review after 3 years of operation is required under the *Treasury Laws Amendment (Electric Car Discount) Act 2022*.

The review will consider the operation and effectiveness of the electric car discount, whether the electric car discount should continue and if so, what types of vehicles should attract the electric car discount. The closing date for submissions is 6 February 2026.

## Back-to-back CGT roll-overs

In early 2026, the ATO is expected to release a draft Practical Compliance Guideline (“PCG”) on when it is more likely to apply compliance resources to consider the application of Part IVA of the *Income Tax Assessment Act 1936* to an arrangement that comprises multiple CGT roll-overs. This PCG should hopefully provide useful guidance and examples relevant to common restructures and transactions.

Accompanying the draft PCG will be a draft Taxation Determination on how the CGT provisions apply in circumstances where there are back-to-back CGT roll-overs claimed under both Subdivision 122-A (roll-over for disposal or transfer of assets by an individual or trustee to a company) and Subdivision 124-M (scrip-for-scrip roll-over) of the *Income Tax Assessment Act 1997*.

## Contact

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