LGT Crestone SMSF Webinar

End of year checklist & Div 296 update

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Disclaimer

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Prepared as of 4 June 2025

Session outline

Today's session

- The impact of total superannuation balance on SMSF planning
- Contribution considerations
- Pension considerations
- Other considerations
- Div 296 Update

Learning outcomes

1. How total superannuation balance can impact contribution strategies
2. Satisfying notice of intention to claim a deduction requirements
3. The importance of satisfying minimum pension requirements
4. How Div 296 may impact your clients

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Total superannuation balance

Biggest influence on SMSF strategies

Total Superannuation Balance

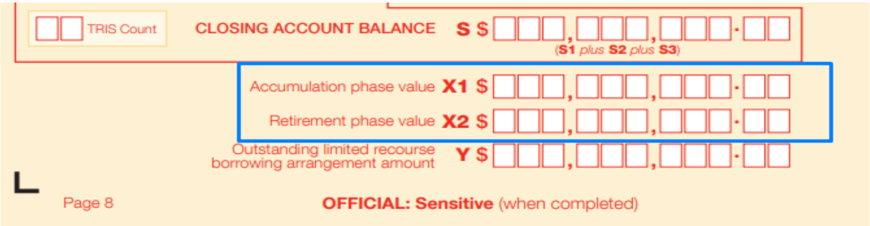
Total Superannuation Balance is **determining factor** with regards to contributions for:

- Non-concessional contributions (and bring-forward rules)
    - Subject to General Transfer Balance Cap, currently $1.9 million (moving to $2.0m)
- Other items impacted by General Transfer Balance Cap:
    - Government Co-contributions
    - Spouse Contribution Tax Offset
- Carry forward unused concessional contributions - $500,000 (non-indexed)
- **Post 67:** 12-month work test exemption - $300,000 for Personal deductible contributions (non-indexed)
- Will be vital in calculating Division 296 liabilities

Previous Div 296 laws proposed the introduction a new concept of TSB value - removes the link to a member's transfer balance account (TBA) in the retirement phase value.

TSB calculation

- Consider what strategies might be used to reduce TSB i.e. splitting, drawdown, alternate contribution allocation strategies
- Remember that Total Super Balance (TSB) contemplates **‘termination value’** for eligibility to contribute.
- In determining TSB value, allows for the adjustment of:
  - Disposal costs (property sales costs, brokerage and other commissions)
  - Wind up costs
  - Capital Gains Tax (tax-effect accounting)
- **Important:** must have evidence that supports the revised TSB calculation


TRIS Count
CLOSING ACCOUNT BALANCE S $,,,.
(S1 plus S2 plus S3)
Accumulation phase value X1 $,,,.
Retirement phase value X2 $,,,.
Outstanding limited recourse borrowing arrangement amount Y $,,,.
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End of year contribution considerations

Increases in contribution rates & thresholds

Item	Threshold 2024-25	Threshold 2025-26
General Transfer balance cap	$1.9 million	$2 million
Concessional contributions	$30,000	$30,000 (no movement)
Non-concessional contributions	$120,000	$120,000 (no movement)
CGT cap amount	$1,780,000	$1,865,000
Super co-contributions	Lower income threshold = $45,400 Higher income threshold = $60,400	Lower income threshold = $47,488 Higher income threshold = $62,488
SG Rate	11.5%	12%
Maximum contribution base	$65,070 income per quarter	$62,500 income per quarter

Contribution strategies

Non-concessional

- Recontribution
- Bring-forward

Concessional

- Salary Sacrifice
- Personal deductible
- Carry forward unused
- Super Guarantee opt out

Spouse

- NCC (eligibility for Spouse contribution Tax Offset)
- Splitting (not family law)

Less-standard strategies

- Contribution reserving
- Reserve Allocations
- Downsizer
- Small Business CGT
- Foreign Transfers
- Personal injury contributions
- Child contributions
- COVID release recontribution

Legal early release strategies

- First home super saver scheme

The impact of indexation on NCCs

Bring-forward contribution considerations

TSB - 30 June 2024	NCC cap for the first year	Bring forward period	TSB - 30 June 2025
Less than $1.66 million	$360,000	3 years	Less than $1.76 million
$1.66 million to less than $1.78 million	$240,000	2 years	$1.76 million to less than $1.88 million
$1.78 million to less than $1.9 million	$120,000	**No bring forward period**, general non-concessional contributions cap applies	$1.88 million to less than $2.0 million
$1.9 million or more	Nil	N/A	$2.0 million or more

Bring-forward rule – reaching age 75

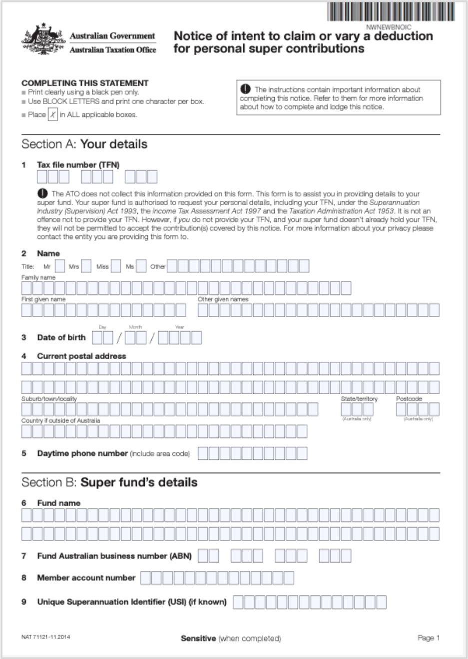
Age at 1 July	64	65	66	67	68	69	70	71	72	73	74	75	76
			NCC	✓	✓	NCC	✓	✓	NCC	✓	✓		
3 year bring forward	NCC	✓	✓	NCC	✓	✓	NCC	✓	✓	NCC	✓	✗	
		NCC	✓	✓	NCC	✓	✓	NCC	✓	✓	NCC*	✗	✗

✓ Can contribute (subject to TSB) if 3-year NCC bring forward cap not made in year 1 (Y2)
✗ Cannot contribute as no longer eligible

NCCs made for an individual who is 74 years at 1 July in a financial year, will only have up to 28 days after the month in which they turn 75 years to make a voluntary contribution – i.e. they do not have the rest of the financial year.

Notice of intent – personal deductible

- Since 1 July 2017 greater flexibility available for individuals to claim a personal tax deduction for super contributions to their CC cap
- Importance of validity with s.290-170 notice – **not valid** where one of these conditions is satisfied:
  - The notice is not in respect of the contribution;
  - The notice includes all or part of an amount covered by a previous notice
  - When the notice was provided:
    - Not a member of the fund;
    - The trustee no longer holds the contribution; or
    - The trustee has begun to pay a super income stream based in whole or part of the contribution



NWNEWBNOIC

Australian Government
Australian Taxation Office

Notice of intent to claim or vary a deduction for personal super contributions

COMPLETING THIS STATEMENT
- Print clearly using a black pen only.
- Use BLOCK LETTERS and print one character per box.
- Place X in ALL applicable boxes.

The instructions contain important information about completing this notice. Refer to them for more information about how to complete and lodge this notice.

Section A: Your details

1 Tax file number (TFN)

The ATO does not collect this information provided on this form. This form is to assist you in providing details to your super fund. Your super fund is authorised to request your personal details, including your TFN, under the *Superannuation Industry (Supervision) Act 1993*, the *Income Tax Assessment Act 1997* and the *Taxation Administration Act 1953*. It is not an offence not to provide your TFN. However, if *you* do not provide your TFN, and your super fund doesn't already hold your TFN, they will not be permitted to accept the contribution(s) covered by this notice. For more information about your privacy please contact the entity you are providing this form to.

2 Name

Title: Mr Mrs Miss Ms Other

Family name

First given name

Other given names

3 Date of birth Day / Month / Year

4 Current postal address

Suburb/town/locality

State/territory (Australia only)

Postcode (Australia only)

Country if outside of Australia

5 Daytime phone number (include area code)

Section B: Super fund's details

6 Fund name

7 Fund Australian business number (ABN)

8 Member account number

9 Unique Superannuation Identifier (USI) (if known)

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End of year pension considerations

Meeting the pension standards

- SISR 1.06
  - Can't add to capital by way of contribution or rollover (including allocation from reserves)
  - Commutation rules provided for by Reg 1.07D
- SISR 1.06(9A) – meaning of a pension, including minimum payment rules
  - Payment made at least annually
  - Payment (excluding commutations) in accordance with Schedule 7 – minimum payment amount factors
  - Pension is transferrable to another person only on death (Reg 6.21)
  - Capital value nor income can be used as a security for borrowing

Age	Minimum pension payment 2024-25
Under 65	4%
65-74	5%
75-79	6%
80-84	7%
85-89	9%
90-94	11%
95 or more	14%

Quarterly TBAR lodgement requirements

Pre-retirement – tax optimisation strategies

Transition to Retirement Income Streams

- Fell out of favour from 1 July 2017
  - Assets no longer exempt from tax (0%)
  - Concessional cap reduction back to $25,000

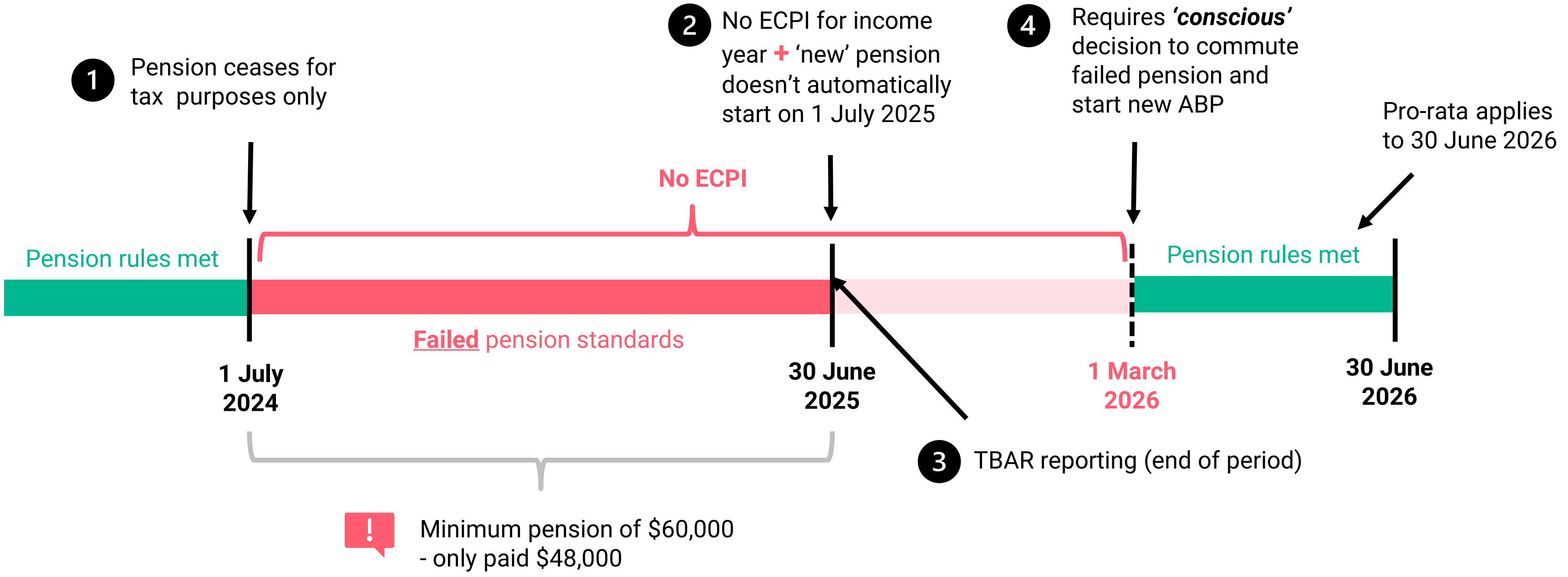
Tax cuts & preservation age considerations

- Salary sacrifice opportunities
- < $500,000 carry forward unused concessional
- Lower tax rate on income from investments outside super (retirees)
- TRIS - 60 – 65 years

Conversion to Retirement Phase

- Satisfy COR & notify trustee
  - Retirement
  - Permanent incapacity
  - Terminal illness
- Turn age 65 – auto conversion
- Reversionary TRIS reverts on death

Failing the pension standards – how it now works



Pension planning both current and future years

Greater focus on planning a pension payments with members:

- **#1 now more significant than ever**
- Future estate planning issue may arise with the transfer balance cap.

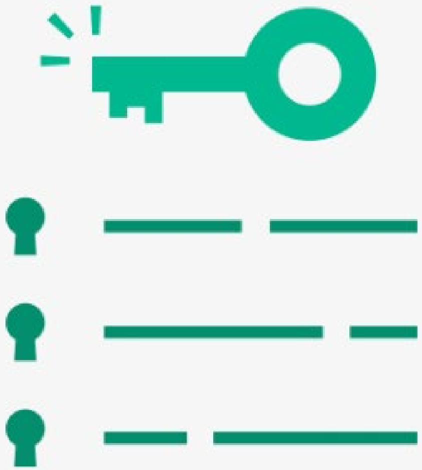
Order	Payment type	Description
#1	**Satisfy the minimum pension**	**This ensures that the fund is entitled to its earnings tax exemption for the income year as a superannuation income stream in the retirement phase.**
#2	Take lump sums from a member's accumulation interest	This will ensure that the fund is maximising its ability to claim the earnings tax exemption for the current and future years by increasing the level of retirement phase assets as a % of the fund's total assets.
#3	Undertake a partial commutation	This will provide a debit on the member's transfer balance cap that provides the opportunity for future amounts (including death benefits as a tax dependant) to be credited.

Final checks and balances

- Asset valuations are they up to date and will they satisfy audit requirements
- Section 17A definition still met?
  - When did you last check?
- Is the fund’s trust deed up-to-date?
- What about the Company Constitution?
  - linked to fund’s deed (special purpose)
- Death Benefit Nominations – following the terms of deed?
  - BDBN - renewal or non-lapsing in light of Hill v Zuda High Court decision
- Enduring Powers of Attorney – dealing with incapacity or residency?
  - Residency – Alternate director?

Key takeaways

- A range of contribution opportunities are available in a more flexible landscape, with the ability to ‘stack’ strategies – but opportunities come with some hazards.
- Take advantage of opportunities with the treatment of benefit payments, but getting your documentation right is critical – greater scope for contributions and pensions to interact much more!
- Investment issues to consider, including ATO’s compliance approach to market valuations and NALE.
- Make sure decisions are documented with increased focus by auditors across many key SMSF areas (e.g. investment strategy, market valuations, etc).



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Division 296 considerations

Div 296 – state of play

- Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023 lapsed due to the election being called.
- New Government have maintained their position on re-introducing the measure
    - Legislation needs to be re-introduced – will the Government consider any historical feedback?
    - Greens hold the power in the Senate for ease of passage, they want to lower the threshold, Govt have remained consistent they won't do that.
    - What did Division 296 look like before it lapsed?

Division 296 tax – previous model

1. **Determine if Div. 296 tax liability exists?**
2. **Calculate 'earnings' for Div. 296 tax purposes**
3. **Calculate proportion of 'earnings' subject to Div. 296 tax**
4. **Calculate the Div. 296 tax liability**

If 1 = 'Yes'

Specific **exceptions** apply to the following individuals who have taxable superannuation earnings for an income year to pay Division 296 tax:

- **Child recipients** of a super income stream at the end of the income year.
- Individual who has a **structured settlement contribution** made in respect to them for a personal injury.
- Individuals who **died** before the last day of the income year (i.e. 30 June)

Division 296 tax

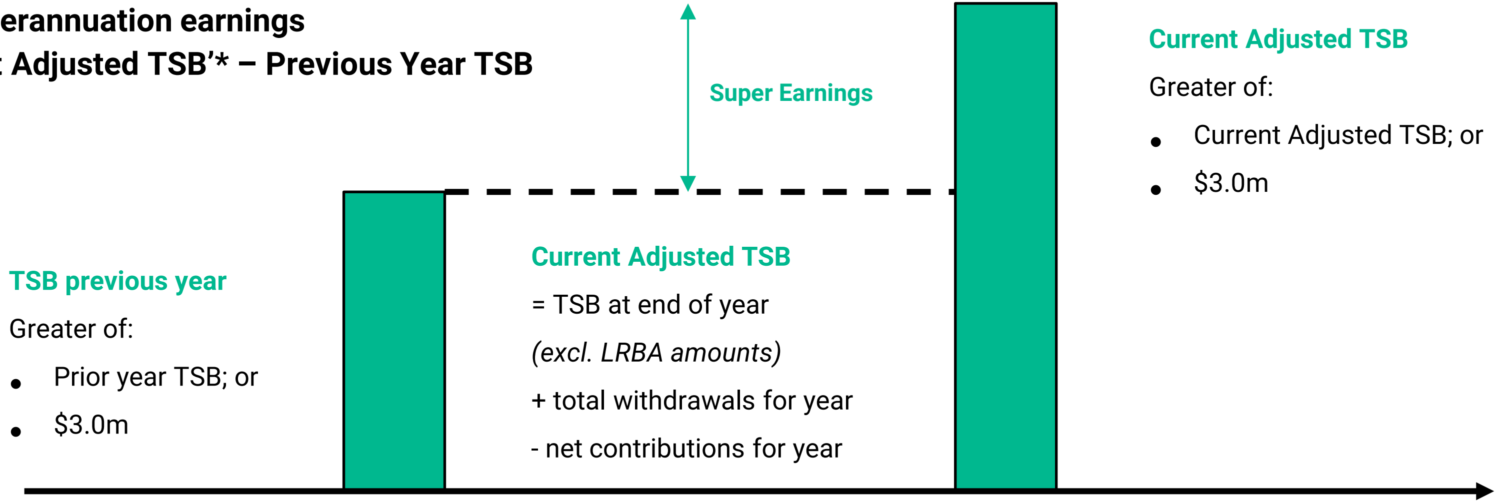
1 Determine if Div. 296 tax liability exist?

2 **Calculate 'earnings' for Div. 296 tax purposes**

3 Calculate proportion of 'earnings' subject to Div. 296 tax

4 Calculate the Div. 296 tax liability

Basic superannuation earnings
= 'Current Adjusted TSB'* – Previous Year TSB



Calculating super earnings

- What is an individual's 'Current Adjusted TSB'?
  - Modified closing balance of ***withdrawals*** and ***contributions*** that would otherwise overstate or understate the investment earnings generated within super.

Withdrawals (+ add back)
Super benefit payments (lump sum & pensions)
Contribution splitting (paid to spouse)
Family law splitting payments (paid to spouse)
Amounts withheld from an excess untaxed rollover amount
Amounts released under a valid requested release authority
Any amounts prescribed by the regulations
FHSSS valid release authority (using formula)

Not withdrawals
Rollover super benefits
Continuous disability policy payments
Withdrawal arising due to fraud / dishonesty
Amounts paid under unclaimed money act
Amounts paid from a foreign super fund
Amounts prescribed in the regulations

Calculating super earnings

Contributions (- deduct)
Contributions - 85% of CCs, downsizer & CGT cap
Contribution splitting (received from spouse)
Family law splitting payment (received from spouse)
TSB value of super death benefit income stream
Death or TPD insurance proceeds
Allocated amounts from reserves – captured under s.291-25(3)
A transfer from a foreign super fund
Remediation payment / compensation for loss because of fraud or dishonesty
Any amounts prescribed by the regulations

Not contributions
Rollover super benefits
Contributions to foreign funds
Amounts received under unclaimed money act
Any amounts prescribed by the regulations

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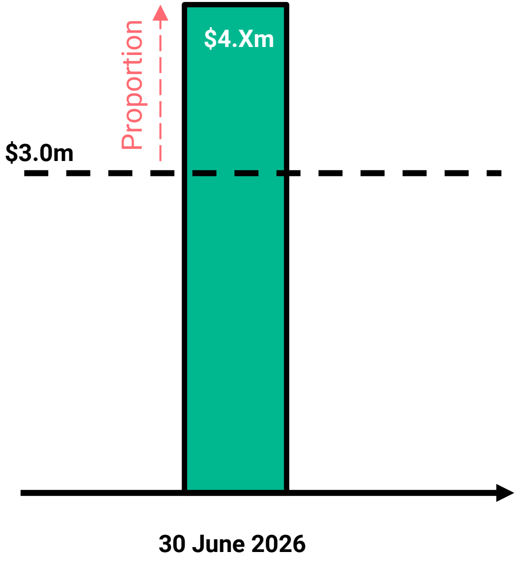
Division 296 tax

1 Determine if Div. 296 tax liability exist?

2 Calculate ‘earnings’ for Div. 296 tax purposes

3 Calculate proportion of ‘earnings’ subject to Div. 296 tax

4 Calculate the Div. 296 tax liability



Apply proportion# to superannuation earnings

$$= \frac{\text{Closing TSB [end FY] - \$3.0 million}}{\text{Closing TSB [end FY]}} \times 100\%$$

Proportion calculated using TSB (less LRBA amounts), not ‘adjusted’ TSB

Formula is rounded to two decimal places

Division 296 tax

1 Determine if Div. 296 tax liability exist?

2 Calculate 'earnings' for Div. 296 tax purposes

3 Calculate proportion of 'earnings' subject to Div. 296 tax

4 **Calculate the Div. 296 tax liability**

Calculate the Division 296 tax liability

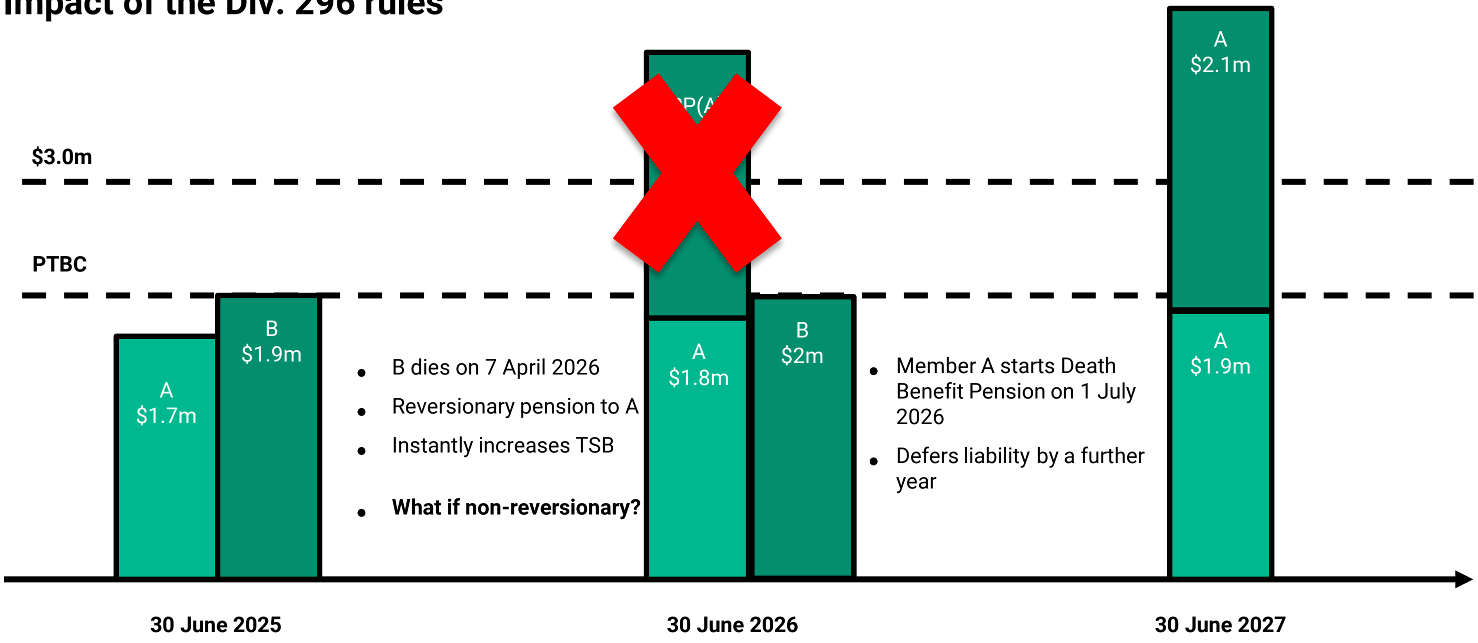
Tax liability = Proportion% x earnings x 15%

Division 296 tax liability raised to individual – 84 days to pay

- The individual can choose either:
  - To pay the tax personally; or
  - To release from their super fund (60 days to request)
- Where released from the super fund:
  - If individual has multiple super interests, they can choose which interest(s) to release the money from
    - e.g. highest taxable component (%)

Death of a member

Reversionary vs. non-reversionary pensions - Impact of the Div. 296 rules



Alternatives

Options	Considerations	
1.	Retaining 100% of funds within superannuation (subject to Div. 296 tax)	
2.	Transfer excess >$3.0m to:	(i). Personal name
		(ii). Family trust
		(iii). Corporate entity
		(iv). Other (i.e. insurance / investment bonds)
3.	Transfer excess > $3.0m - Other options	(i). Gifting
		(ii). Primary residence (PPR) improvements
		(iii). Other

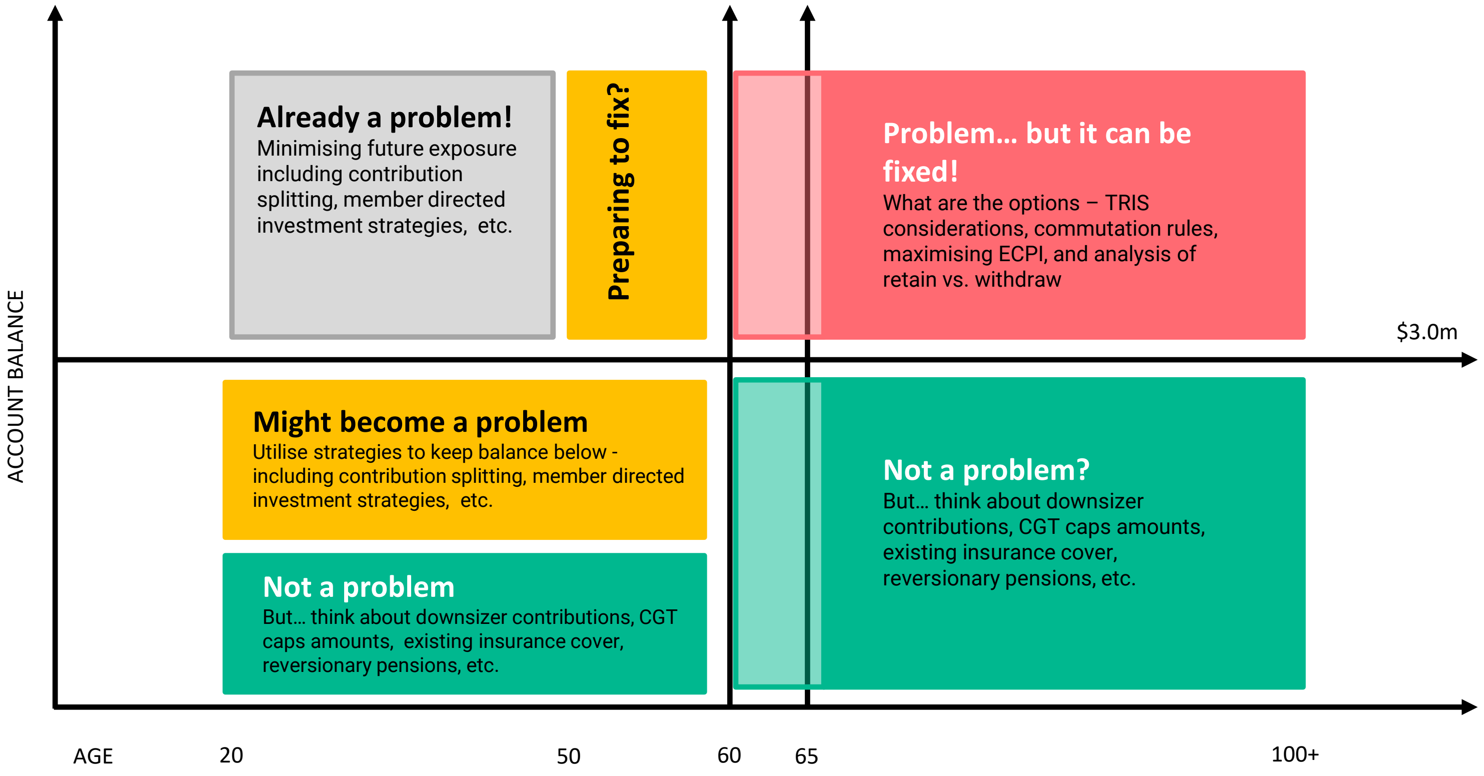
Proliferation of ~30% tax regimes?

Weighing it up

Pro’s to transferring excess > $3.0m	Con’s to transferring excess > $3.0m
Removed from exposure to Division 296 tax	Inability to contribute monies back into super if change of Government and repeals legislation
Limits future exposure of monies to super death benefits tax	Likely to be an ‘exit’ cost with the monies / assets leaving the SMSF – e.g. CGT, transaction costs, stamp duty, etc.
Discretionary trust provides flexibility on income and capital distribution	Need to consider the TF% of the member balance – may not be any super death benefits tax to consider (i.e. 100% TF income stream)
	Personal income tax position of individual (or beneficiaries) may be significantly higher than within SMSF (incl. Div. 296 tax) – need to understand the marginal tax positions.

Any other thoughts?

Division 296 – client strategy matrix



Thank you!

Questions?

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