Proposed super tax changes

2 March 2023

The Government has released **further information** to support the **announced proposal** to cap tax concessions on certain high balance super accounts from 1 July 2025. If legislated, this measure could have tax, estate planning and retirement planning implications for higher super balance clients.

The Government intends to consult with the industry on the implementation of this measure.

Current vs proposed taxation of accumulation phase

Tax on earnings within accumulation phase is currently capped at 15% and there is no limit on the total amount that an individual can hold in accumulation.

Under the proposed changes:

- individuals with a total super balance (TSB) greater than $3 million at the end of a financial year (first tested on 30 June 2026), will be subject to additional tax
- earnings on amounts in accumulation phase above $3 million will be taxed at an additional rate of 15% on top of the existing rate of tax, bringing the total tax payable to 30%
- the additional tax will only be payable on the earnings attributable to the balance that exceeds $3 million
- earnings for this purpose will not be actual fund earnings, but will instead be based on the individual's TSB at the start and end of the year, after adjusting for any contributions or withdrawals made
- if the individual has 'negative earnings' for a year, they may carry this forward to offset any additional tax which they become liable for in a future year
- existing capital gains tax concessions available to the super fund will not be impacted
- the additional tax will only apply to earnings from the commencement date and not be applied retrospectively
- the additional tax will be able to be paid by the individual, or released from superannuation, similar to Division 293 tax
- the changes will also apply to defined benefit funds, and
- further consultation will be required.

Based on statements made to the media by Government officials, it does not appear that the $3 million cap will be indexed. It is also important to note that if a condition of release is not met, it will not be possible to remove amounts in excess of $3 million from super.

Calculation of earnings and tax liability

The following formulas have been proposed to calculate earnings and tax payable.

Earnings = TSB at end of current financial year – TSB at end of previous financial years + withdrawals – net contributions

Proportion of earnings that are taxable = (TSB at the end of the current financial year - $3 million) / TSB at the end of the current financial year

Tax liability = 15% x Earnings x Proportion of earnings that are taxable

A range of case studies demonstrating the way in which earnings are calculated and tax is applied can be found in the **Treasury Fact Sheet**.

Fund reporting processes and notification to individuals of tax liability

The proposed new tax commences from 1 July 2025 and the 2026/27 financial year is expected to be the first year that impacted individuals will be issued with a notice of tax liability by the ATO. It is the Government's current intention that existing fund reporting provided to the ATO will be used. Individuals can access details about their TSB via myGov.

Impact on advice strategies if legislated

A range of advice opportunities may arise for higher super balance clients if the proposal becomes law. It will be important to review superannuation, investment and estate planning strategies to ensure they are appropriate for the client's individual circumstances, objectives and needs.

From a tax perspective, the proposed 30% tax on earnings may still make super an attractive investment option for high income earners who are currently paying tax at the top marginal rate of 47% (including Medicare levy). However, the relative longer-term tax effectiveness and appropriateness of superannuation strategies may be impacted when the legislated stage three tax cuts take effect on 1 July 2024.

Other considerations may include:

- maximising total super tax concessions available between members of a couple by recommending spouse contributions and/or spouse contribution splitting strategies
- alternative investment options, such as investment bonds and other personally owned investments
- the timing of withdrawals from super, given the way in which earnings are to be calculated (see formula above), and
- seeking tax and legal advice to assess the benefits of a family trust.

Next steps

The media release indicated the Government intends to introduce legislation shortly to give effect to this change and will consult with the industry on the proposal. More information will be provided as it becomes available.

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