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Superannuation Earnings Tax: What you Need to Know…

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Contents

1. Overview

The proposed legislation to introduce a new tax on earnings derived by superannuation funds from 1 July 2025, to be known as "Division 296 tax", is currently before the Federal Parliament.[1] Now is therefore an opportune time for advisers to clients with superannuation account balances nearing or in excess of $3 million to familiarise themselves with the proposed measures and assess the potential impact on their clients.

If enacted in its current form, the Division 296 tax is likely to have a significant impact on the ongoing attractiveness and viability of self-managed superannuation funds ("**SMSFs**") as asset holding structures when compared against alternatives such as private companies and discretionary trusts. This is particularly so in circumstances where the assets in question are illiquid capital appreciating assets. In the author's view, the new tax is also likely to impact materially on trustees' asset selection, investment strategy, accounting and valuation decisions.

It should be acknowledged at the outset that it is conceivable that the Division 296 tax measures may not ultimately be enacted in their current form, or at all. The Albanese Labor Government will need to garner sufficient support for the measures in the Senate (likely from the crossbench) and, on the basis the Coalition remains committed to repealing the tax, win a second term at the next Federal election. Nonetheless, it is clear that the Albanese Government is steadfastly committed to introducing the new tax.

In light of these circumstances, the implementation of any significant planning or restructuring transactions might be premature at this point. That said, the author's firm has fielded numerous requests from concerned clients wishing to "get on the front foot" in understating the likely impact of the proposed measures in their particular circumstances and considering how the new tax will impact on their overall tax structuring and investment decision making in the lead up to 1 July 2025 and beyond.

It is with the above context in mind that this paper reviews the operation of the proposed Division 296 tax and outlines the key practical issues, planning tips and risk management strategies that advisers should be aware of in planning for the commencement of the proposed measures on 1 July 2025.

[1] *Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023* (Cth) ("**Bill**") and *Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2023* (Cth) ("**Imposition Bill**").

2. State of Play

Before addressing the specific operation of the proposed Division 296 tax and associated planning issues, it is worth briefly summarising the current "state of play" regarding the new measures.

Readers will recall that the new tax was first announced by the Albanese Government in early 2023, with the measures subsequently subject to the release of a Treasury consultation paper on 31 March 2023[2] and inclusion in the 2023/24 Federal Budget.[3]

Exposure draft legislation was released for consultation on 3 October 2023, with a short consultation window that resulted in only very limited changes to the draft legislation before it was introduced to the House of Representatives on 30 November 2023.

On 7 December 2023, the Bill (and the Imposition Bill) was referred to the Senate Economics Legislation Committee for consideration. The report of the Senate Economics Legislation Committee is due on 10 May 2024.

On 15 March 2024, Treasury released for consultation exposure draft regulations containing provisions that are specifically tailored to enable the calculation of Division 296 tax in relation to defined benefit interests.[4]

As stated above, the Albanese Government is effectively taking the Division 296 tax to the next Federal election, which is expected to be held between 3 August 2024 and 17 May 2025.

This paper is based on the latest iteration of the measures, being the Bill (and the Imposition Bill) as currently before Parliament and the Senate Economics Legislation Committee.

[2] Commonwealth of Australia, The Treasury, Consultation Paper: *Better Targeted Superannuation Concessions*, 31 March 2023.
[3] Commonwealth of Australia, The Treasury, Budget Measures (Budget Paper No 2) at page 15 and Budget Overview (Paper) at page 63.
[4] Exposure Draft for the *Treasury Laws Amendment Instrument 2024: Better Targeted Superannuation Concessions* ("**Draft Regulations**").

3. Core Concepts and New Terminology

In broad terms, the Bill proposes to introduce an additional 15% tax on "earnings" on total superannuation balances ("**TSBs**") exceeding $3 million at year-end.

The movement in a member's TSB (subject to certain adjustments – see below) is effectively used as a proxy for earnings, meaning that Division 296 tax will be a tax on both income and capital growth. Importantly, under the Bill, the tax on capital growth is on both realised and unrealised growth, which poses various concerns as discussed further below.

The tax will be levied personally on the member and not the fund, and is separate from the personal income tax regime (much like the existing Division 293 tax on concessional contributions made by those with incomes exceeding $250,000).

In addition, the Bill proposes to introduce a number of new concepts and terminology to the tax legislation, including:

- **large superannuation balance threshold**: the $3 million threshold required for Division 296 tax to apply;[5]
- **taxable superannuation earnings**: the taxable earnings on superannuation balances above $3 million which will be subject to the new tax;[6] and
- **adjusted TSB**: an individual's TSB adjusted upwards for withdrawals and downwards for net contributions made in the income year.[7]

Importantly, the Bill also proposes to modify the definition of a member's TSB by introducing a new concept called the total superannuation balance value ("**TSB Value**").[8]

This proposed amendment applies beyond Division 296 tax and would remove the link between a member's TSB and their transfer balance account. Instead, a member's TSB will broadly equate to their withdrawal benefit on the assumption that the member could cash their benefit. A regulation making power is also included in the Bill allowing for alternative valuation methods to be prescribed for different types of superannuation interests in calculating a member's TSB Value (e.g. defined benefit interests).[9]

[5] Clause 18 of Schedule 1 of the Bill.
[6] Proposed section 296-35 of the *Income Tax Assessment Act 1997* (Cth) ("**ITAA97**").
[7] Proposed section 296-45.
[8] Schedule 2 of the Bill.
[9] Proposed section 296-60 of the ITAA97. See also Part 2 of Schedule 2 of the Draft Regulations.

4. How Does it Work?

4.1 Methodology

Under the Bill, the calculation of Division 296 tax broadly involves the following three-step process:

- first, calculating the difference between an individual's adjusted TSB for the income year (at the end of the year) compared against their TSB for the previous year (which is used as a proxy for "earnings");
- second, calculating the proportion of those earnings that are attributable to a superannuation balance of more than $3 million (the large superannuation balance threshold); and
- third, applying a 15% tax rate.[10]

These steps are illustrated by the following basic example.

Example 1: Basic operation of Division 296 tax

Consider an SMSF member who has a TSB of $9 million as at 30 June 2025, which increases to $10 million as at 30 June 2026. The member has also made withdrawals of $150,000 during the income year (e.g. pension payments or other drawdowns) and a concessional contribution of $27,500.

The relevant earnings will be the difference between the previous year TSB of $9 million and the current year adjusted TSB of $10,126,625 ($10 million plus the $150,000 of withdrawals made during the year less 85% of the $27,500 concessional contribution (which is tax-adjusted under the Bill)).

Under this step, the superannuation earnings are calculated as being $1,126,625.

The superannuation earnings that are attributable to a balance over $3 million are calculated by applying the following formula:

$$\frac{TSB\ (Current\ FY) - \$3\text{ million}}{TSB\ (Current\ FY)}$$

On the above example, this results in a proportion of earnings of 0.7 (or 70%) as follows:

$$\frac{\$10\text{ million} - \$3\text{ million}}{\$10\text{ million}}$$

Multiplying the earnings calculated in the first step ($1,126,625) by the proportion of earnings in step 2 (70%) results in taxable superannuation earnings of $788,637.50. Applying a 15% tax rate to these superannuation earnings results in a Division 296 tax liability for the member of **$118,296**.

The above impost is an entirely new tax imposed on changes in members' superannuation account balances and is in addition to any tax otherwise payable by the fund (or the member) under the existing law.

[10] Proposed sections 296-35 to 296-55 of the ITAA97. See also Section 5 of the Imposition Bill.

4.2 Observations from Example 1

A number of observations can be made arising from Example 1 above:

- Division 296 tax is a liability of the member rather than the superannuation fund. That said, the member may elect for the fund to pay the tax by way of lodging a release notice with the ATO (similar to the existing Division 293 tax).[11]
- The Division 296 tax calculation does not take into account the member's taxable income or other tax attributes such as personal deductions or tax losses (note that this is consistent with the existing Division 293 tax).
- Division 296 tax has the effect of taxing unrealised gains made in the superannuation fund, which makes it a unique proposal under Australian income tax law.
- Given that the Division 296 tax relates to unrealised gains, this may be problematic for superannuation funds or members with illiquid or low yield assets (such as primary production land) as funding the tax will become a significant issue. The new tax might therefore promote a trend to towards higher yield/lower capital growth assets or less volatile assets being held in SMSFs.
- Division 296 tax will impact more significantly as members' TSBs increase above the large superannuation balance threshold of $3 million. This is because the proportion of superannuation earnings attributable to the balance over $3 million will necessarily be lower for members with TSB's closer to $3 million than for those with TSBs significantly higher than $3 million.
- For the same reason, members with very large existing TSBs will bear a far greater tax liability than those whose balances exceed but are closer to the $3 million threshold.

While Example 1 addresses some of the overarching concepts and mechanics of the proposed new tax, this outcome cannot of course be considered in "vacuum" when it comes to making structuring and investment decisions.

A more holistic view of the interaction between the proposed Division 296 tax and the existing tax treatment applying to superannuation funds is illustrated in Example 2 below.

4.3 Interface with Fund Taxation

Example 2: Division 296 tax on fund with rental income and net capital gain

On 30 June 2025, a sole member SMSF acquired real property for $9 million (using the existing cash balance of the SMSF).

The sole member commenced taking a retirement phase pension up to the $1.9 million transfer balance cap (assuming no further indexation) on 1 July 2025.

The property generated net rent of $500,000 during the 2026 income year.

[11] Amendments proposed to Section 4BA of the *Governor-General Act 1974* (Cth): Schedule 1 of the Bill.

The property is sold at the end of the income year on 30 June 2026 for $9.5 million, giving rise to a gross capital gain in the SMSF of $500,000.

It is necessary to calculate two "layers" of tax in this scenario, namely the Division 296 tax on the increase in the member's TSB for the income year as well as the SMSF's tax liability on the capital gain and net rental income.

Division 296 tax

Under step 1 of the calculation, the member's TSB has increased by $1 million for the 2026 financial year (i.e. $500,000 in retained rental income and $500,000 in capital growth on the property).

The proportion of earnings exceeding the large superannuation balance threshold of $3 million is 70%.

The Division 296 tax liability of the member is therefore **$105,000** (i.e. $1 million in superannuation earnings x 70% proportion of earnings x 15% tax rate).[12]

Capital gain and net rental income

A gross capital gain of $500,000 arises on the sale ($9.5 million capital proceeds less $9 million cost base).

By application of the one third discount available to superannuation fund trustees,[13] the gross capital gain is reduced to a net capital gain of $333,333.33.

The assessable income of the SMSF for the 2026 income year before calculating exempt current pension income ("**ECPI**") is therefore $833,333.33 (i.e. net capital gain of $333,333.33 plus net rental income of $500,000).

The ECPI percentage here might be expected to be in the order of 19%.[14]

Applying the ECPI percentage of 19% reduces the SMSF's assessable income to $675,000.

The SMSF's ordinary income tax liability is therefore calculated as **$101,250** (applying the 15% tax rate ordinarily payable by funds on assessable income after application of the one third discount for capital gains and the ECPI percentage).

A summary of the total tax liability referrable to the SMSF's activities in the 2026 income year arising under Example 2 is summarised in the following table.

[12] Note that there would have been pension drawdowns made during the year, which are ignored here as they would be added back into earnings in any event.
[13] Section 115-100(b) of ITAA97.
[14] Average pension balance of $1.9 million divided by average total fund balance of $10 million. In reality, this percentage may be slightly higher as the average pension balance would have grown over the income year. For simplicity, however, this change in the pension balance is ignored for the purposes of this calculation.

Summary of Tax Position – 30 June 2026		
Tax	**Amount of Tax**	**Effective Tax Rate**
Division 296 tax	$105,000	15%
Tax on net rental income	$60,750	15% on net rent less ECPI
CGT	$40,500	15% on gross capital gain less 1/3rd discount less ECPI
Total	**$206,250**	**20.63%**

4.4 Observations From Example 2

A number of observations can be made from Example 2 above:

- The Division 296 tax liability of the member combined with the SMSF's liability on its income and capital gains (whether realised or unrealised) will mean that the same gain/profit is effectively subject to tax twice (i.e. once under the Division 296 tax regime and again under either the CGT regime when the asset is realised or under ordinary principles of fund taxation).
- There is no ability to apply an equivalent one third discount to earnings growth referrable to unrealised capital gains, meaning that inflationary unrealised gains will also effectively become subject to tax under Division 296.
- Nevertheless, the total tax in the SMSF environment must still be equal to or less than 30% once a gain previously subject to Division 296 tax is actually realised (calculated at an effective tax rate of approximately 20.63% on this particular example). Often, the effective tax rate in superannuation (again assuming a gain is realised) will still be materially less than 30% on account of the one-third CGT discount (where available) and the impact of the ECPI concession for funds paying retirement phase income streams.
- For members whose TSBs significantly exceed the large superannuation balance threshold of $3 million, however, the impact of the ECPI concession for SMSFs in pension phase will be relatively marginal given the limitations imposed under the existing transfer balance cap regime.
- There is a question as to whether tax liabilities the SMSF has provisioned for can be taken into account in determining the member's closing TSB. For example, it may be possible for the fund to recognise a liability on account of the tax payable by it on the net rental income and net capital gain in the above example. This might operate to reduce the member's closing TSB and hence the amount of earnings subject to the new earnings tax.
- SMSFs with real property assets are likely to incur significant compliance costs in having to value their land holdings annually to determine any unrealised gain (or loss) in order to calculate each member's liability to the earnings tax. No guidance has yet been offered on the form these valuations will take (e.g. from a licensed land valuer or the existing approach to recognising SMSF assets at market value) and whether any "safe harbours" can be offered to overcome the need for annual valuations.

5. Negative Earnings

A design feature of the Division 296 tax is that where the earnings calculation results in a negative balance, the negative earnings amount can be carried forward and offset against future earnings.[15]

The following example illustrates the mechanics of the negative earnings calculation under the Bill.

Example 3: Negative earnings

Continuing Example 1 above regarding the basic operation of Division 296 tax, say the member's TSB falls from $10 million on 30 June 2026 to $9.5 million on 30 June 2027, giving rise to negative earnings of $500,000 for the 2027 income year.

As negative earnings have been generated, no superannuation earnings tax is imposed. Instead, the negative earnings can be carried forward by the member and offset against positive earnings generated in future income years.

Note here that the negative earnings are non-refundable and can only be applied against positive earnings and not against the tax liability generated.

Assume now that by 30 June 2028, the member's TSB has increased from $9.5 million at 30 June 2027 to $10.5 million on 30 June 2028.

The member's earnings for the 2028 income year are therefore calculated as $500,000 (current adjusted TSB of $10.5 million less previous TSB of $9.5 million, less the $500,000 of negative earnings generated in the previous income year).

Working through steps 2 and 3 of the calculation methodology set out above results in an earnings tax liability in this scenario of **$53,571**.

A number of observations can be made in relation to negative earnings:

- Negative earnings can only be carried forward to reduce future year earnings and not "carried back" to apply against amounts of Division 296 tax actually paid by the member in prior years.
- This could be particularly problematic in a situation whereby an asset has become subject to Division 296 tax on unrealised capital growth in earlier years but subsequently falls in value and does not later recover to the point of allowing the negative earnings to offset the further positive earnings on the asset (or otherwise does not recover before the fund needs to liquidate the asset). In such a case, Division 296 tax would be paid on capital growth that is never actually realised (and can never be realised). In the author's view, this cannot be a sound basis for the imposition of tax.
- As the Division 296 tax is based on members' total TSBs rather than on a fund by fund basis, if a member has interests in more than one fund, it should be permissible for any negative earnings generated in relation to a member's balance in one fund to be applied against positive earnings generated by the member's balance in another fund.

[15] Proposed Subdivision 296-C of the ITAA97.

- It appears from the Bill that where a member dies, any carry forward negative earnings are simply “lost” without the member having been able to realise any benefit associated with those unapplied negative earnings.
- Further, those negative earnings are not able to be applied by any non-death benefits dependants subject to death benefits tax or recipients of death benefit pensions following the death of the member with negative earnings under Division 296.

6. Alternative Investment Structures

A significant issue that taxpayers and their advisers will need to consider in planning for the possible commencement of the Division 296 tax is whether it might be preferable to structure real property holdings and other investments through trusts or private companies rather than through SMSFs.

There are a range of competing considerations to be made in this regard.

A comparison of some of the key tax and commercial attributes of these alternative investment vehicles (including SMSFs assuming members are subject to the new Division 296 tax) is set out in the following table.

Item	SMSF	Private Company	Discretionary Trust
Income tax rate	Between 0% and 30% (taking account of Div 296 tax and ECPI concession and assuming gains are ultimately realised)	30% (for passive investment companies)	Dependent on tax rates of beneficiaries
Discount capital gains	1/3rd discount and ECPI concession	N/A	50% discount available provided gain distributed to qualifying beneficiaries
Taxing of unrealised gains	Yes	No	No
Taxing same earnings / gains twice	Yes	No	No
Multiple layers of taxation	Yes (fund and member)	Yes (company and shareholders)	No (either beneficiary or trustee)
Access to funds	Tax-effective subject to age and must satisfy conditions of release	Often not tax effective	Often tax effective
Compliance burden / investment restrictions	High	Moderate	Moderate
Tax trigger on death	Often (on death of surviving spouse)	No	No

A number of observations can be made in making this comparison between asset holding and investment structures:

- For fund members with significant account balances, and therefore a limited ability to access the ECPI concession, the benefits of an SMSF investment structure may be significantly diminished compared against using a private company or discretionary trust.
- For instance, even where a discount capital gain is assessed to an individual on the highest marginal tax rate (45% plus 2% Medicare levy), the effective rate of tax is likely to be in the order of 23.5% (i.e. 47% x 50% discount) as opposed to 25% in the superannuation environment (i.e. 10% on the capital gain after the one third discount plus 15% due to Division 296 tax on the accretion in the asset's capital value).
- Moreover, discretionary trusts (and companies) will not be subject to tax on unrealised gains as the asset's capital value increases over time, not to mention the significantly more onerous compliance obligations associated with SMSFs as against other investment structures.
- In terms of high yield but low capital growth assets, the author has seen an increasing trend amongst high net worth clients of housing these assets in private company structures to cap the tax rate at no more than 30% and allow for value to be "drip fed" out of the company over time on a tax-effective basis by paying franked dividends as circumstances allow. In the author's experience, this is becoming more common with capital appreciating assets as well.
- The above distinction between SMSF and private company/trust structures is particularly relevant for members who plan for the succession of their wealth to non-death benefits dependants (e.g. adult children), in which case the taxable component of any death benefits paid from the member's superannuation account will be subject to a further amount of tax of 15% (plus Medicare levy where applicable).
- Having said this, superannuation funds may still be seen as a highly tax effective investment vehicle in circumstances where the members will qualify for a material ECPI concession and there is sufficient liquidity to pay the earnings tax on unrealised gains over time. Further, franking credits derived by superannuation funds remain powerful given that, although not able to offset any Division 296 tax liability, they are still able to be applied against the fund's tax liability in the usual course (and refunded if the circumstances permit).

7. Other Observations and Planning Issues

A range of further observations and planning issues in relation to the proposed Division 296 tax should be made for completeness, namely:

- The $3 million large superannuation balance threshold is not, at present, proposed to be indexed. As such, far more individuals are likely to be subject to the superannuation earnings tax over time, especially in a high-inflationary environment.

- Valuations are likely to have a key role in determining TSBs, especially in relation to the capital values of relatively illiquid assets such as real property.

- Following on from the above point, high growth but low yielding assets will need to be carefully managed in terms of fund liquidity issues.

- The Bill does, however, provide a concession in that Division 296 tax amounts will be due 84 days after the notice of assessment is given to the individual (being a longer time period than is ordinarily allowable for tax debts).[16] Further, outstanding Division 296 tax liabilities past this due date will accrue the general interest charge ("**GIC**") at a reduced rate of the applicable base rate (currently 4.34%) plus 3%, as opposed to the base rate plus 7% as is ordinarily applicable to other tax liabilities.[17]

- While the above "concessional" GIC rate does suggest some acknowledgment on the part of Treasury that taxing unrealised gains may give rise to considerable liquidity issues for funds, in the author's view the position remains problematic because there appears to be no legislative basis upon which a taxpayer could prevent the Commissioner from immediately seeking to recover the unpaid Division 296 tax amount following the due date for payment, even where the debt is accruing at the concessional GIC rate. In other words, there is no "deferral" scheme for Division 296 tax (outside of a specific scheme included in the Bill in relation to defined benefit interests).

- Importantly, under the existing law, the payment of the GIC is deductible, as is interest incurred on borrowings taken to pay a GIC amount. Interest on borrowings undertaken to pay the tax itself should not, however, be deductible.

- In the event the expected Division 296 tax liability, taking account of other issues with superannuation such as compliance requirements and death benefits tax, is such that the SMSF holding structure is no longer viable, thought might be given to restructuring superannuation assets so they commence to be held outside of the fund. This will necessarily require a range of issues to be addressed, such as:

  - The fund's possible CGT liability on the *in specie* distribution of any relevant assets to the members, noting the timing issues associated with maximising the ECPI concession in the fund for the purpose of managing the CGT liability.

  - Transfer duty if the assets being transferred from the fund are dutiable property. In some jurisdictions (namely Victoria, Queensland, South Australia and Western Australia), duty exemptions may be readily accessible for this purpose.

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[16] Proposed section 296-205.

[17] Proposed amendments to section 8AAD(1) of the *Taxation Administration Act 1953* (Cth): see clause 50 of Schedule 1 of the Bill.

- The requirement for the member to have satisfied a condition of release to enable the cashing of benefits.
- Possible tax on the benefit payment in the hands of the member if they have not yet attained the age of 60.

- If there is a cashing of some benefits from the fund, consideration might be given to whether there are other members with considerably lower TSBs that are eligible to make non-concessional contributions to the fund with a view to "evening up" the respective account balances. This could be particularly useful in the context of members with adult children with TSBs below the $1.9 transfer balance cap threshold. The opportunity to have funds with up to six members may also be useful in this respect.
- In the situation where a member dies part-way through an income year, the member is not subject to superannuation earnings tax in that income year. If, however, a member dies on 30 June, a Division 296 tax liability will still arise under the Bill in relation to that member for the income year.[18]
- A question arises as to whether current or deferred tax liabilities can be taken into account in determining a member's TSB.
- The Bill has clarified a number of issues that were unclear under the initial Treasury announcement and subsequent consultation paper. For example:
  - Contributions to be deducted in the superannuation earnings tax formula include concessional contributions, non-concessional contributions, CGT cap contributions and downsizer contributions.
  - Amounts applied for a member to commence a death benefits income stream following another member's death do not accrue to the adjusted TSB of the reversionary beneficiary when calculating the Division 296 tax in the year of death.[19] However, any income derived on the capital of the death benefits income stream will form part of the member's adjusted TSB for that year. Further, the higher value of the member's TSB in the *next* income year will have an impact on the proportion of earnings referrable to an account balance over $3 million under step 2 of the above calculation methodology. These issues will need to be taken into account in making the usual decisions arising post a member's death as to whether the surviving spouse should internally commute any existing retirement phase income stream in order to take the death benefits pension or externally commute benefits from the fund.
  - LRBA amounts, that is, liabilities arising from LRBAs, are disregarded from forming part of an individual's adjusted TSB for the purposes of calculating superannuation earnings tax.[20]

[18] Proposed section 296-30.
[19] Instead, this amount is treated as being included in the "contributions total" and hence deducted as part of the adjusted TSB calculation: proposed section 296-55(1)(d).
[20] Proposed section 296-505.

- Withdrawals from the fund to pay the Division 296 tax (or Division 293 tax) count as withdrawals for the earnings tax calculations and hence need to be added back into a person's adjusted TSB when calculating their taxable superannuation earnings for an income year.[21] This emphasises the point that the concept of an adjusted TSB for Division 296 tax purposes does not necessarily equate to a member's TSB for wider superannuation tax purposes.

It is likely that some of the above issues, in particular the taxing of unrealised gains and the non-indexation of the $3 million threshold, will be subject to comment in the report of the Senate Economic Legislation Committee when released.

Of interest in this regard is a proposed amendment to the Bill put forward by Kylea Tink MP (Independent Member for North Sydney) that proposes indexation of the $3 million large superannuation balance threshold.[22] The crossbench has also called on the Government to replace the method for measuring earnings with "a simplified measurement that reduces uncertainty and the severity of including unrealised capital gains, such as using a deemed rate of return (adjusted for unrealised gains) as a proxy for earnings."[23]

It remains to be seen whether these issues are taken up in the Bill as ultimately passed by Parliament.

[21] Proposed section 296-50(1)(e).
[22] *Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023* (Cth), *Proposed Amendment (Crossbench)*.
[23] Amendment to Motion for Second Reading to be moved by Ms Tink MP.

8. The Path Ahead

Historically, the involvement of SMSFs in achieving tax effective investment, retirement planning and exit strategies has often provided for some powerful outcomes. Time will tell if SMSFs continue to offer such advantages, with much dependent on whether the Division 296 tax is ultimately implemented and the precise form it takes.

To this end, it is expected that the Albanese Labor Government will be taking the proposed Division 296 tax to the next Federal election as one of its principal policies.

It will therefore be critical for members of SMSFs and their advisers to carefully monitor the developments in this area and consider the need to properly structure asset holdings and investments to optimise outcomes, noting that there is a real prospect that these proposed measures will become law.