

TOP 6 THINGS YOU SHOULD KNOW ABOUT THE DIV 293 TAX



Wealth Adviser

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Before you get started

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Information in this handbook is no substitute for professional financial advice.

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Letter from the Wealth Adviser Library

Dear Reader

Welcome to the Wealth Adviser Library

This library was built specifically to facilitate the provision of sound financial information to everyday Australians.

Our mission is to build an accessible, comprehensively supported team of members who share our vision and commitment to providing tailored financial advice and a new foundation of financial understanding and security for everyone.

With a national network of likeminded experts, we have the potential to provide the financial building blocks for future generations.

Knowledge gives you a huge advantage

We believe that knowledge gives you a huge advantage in creating and effectively managing wealth; in planning to reach your goals; and in being prepared for whatever unexpected twists and turns life may present.

That's why our team of experts has created this series of digital handbooks and manuals that seek to inform you of not only the benefits but also the potential risks and pitfalls of various strategies and investments.

We trust you enjoy this publication and find it informative and professionally presented. Of course, your feedback is always welcome as we strive to continually offer content in a format that is relevant to you.

Take the next step

Wealth Adviser (a division of WT Financial Group Limited) supports more than 400 privately owned and operated advice practices around the country. We invite you to engage with one of our advisers to discuss what it was you were hoping to achieve when you obtained this handbook, and to establish if they can help you achieve your goals and objectives.

At the rear of this handbook you will find details on how to book an appointment.

Wealth Adviser Library

Introduction

If there is one constant in the world of taxation and superannuation it is change! A significant change over the past few years has to do with the rates at which those who are assessed as high income earners by the Australian Taxation Office (Tax Office) have to pay tax on superannuation contributions.

The new taxation regime is known as 'Division 293' Tax (the name refers to the legislation that was used to introduce it). This tax is imposed on the concessional superannuation contributions of those whose income plus superannuation contributions taxed at concessional rates exceed \$250,000. If you fall into this category in a given tax year you are liable to pay this tax for that tax year, essentially double your tax liability on superannuation contributions from the flat rate of 15% to 30%. In official Tax Office and government publications the extra 15% is often referred to as a surcharge.

The way in which this tax is calculated can be quite complex and the purpose of this guide is to shed some light on how liability for this tax is determined and how it is calculated. If you think that you fall into the demographic liable to pay this tax, we would strongly urge you to get competent and up-to-date financial advice to help clarify your position as far as this tax is concerned and also to assist you in devising strategies to minimise its impact on your bottom line.

Notes

The rates referred to in this eBook apply to the 2019/20 financial year as indicated

1. Who is liable to pay Div 293 Tax?

The short answer to the question as to who is supposed to pay this tax is that it applies to those who earn more than \$250,000 a year. It is, however, a bit more complex than this.

According to the Tax Office the following items are regarded as income for the purposes of calculating who is liable to pay Div 293 tax:

- Taxable income = assessable income minus allowable deductions. Note that deductions are used to reduce the level of income you pay tax on.
- Low-tax contributions – These are generally contributions that are taxed concessional at 15% within the superannuation fund such as:
 - Employer contributed amounts
 - Other family and friend contributions
 - Personal contributions that you have been allowed a deduction for
 - Defined benefit contributions

Note that low-tax contributions do not include excess concessional contributions. Hence, low-tax contributions are generally equal to total superannuation contributions less any excess concessional contributions.

- Total reportable fringe benefits
- Net financial investment loss
- Net rental property loss
- Net amount after family trust distribution tax paid
- LESS superannuation lump sum taxed elements (other than a death benefit) with a zero tax rate (in other words, lump sum superannuation benefits made up of the taxable component that are tax-free due to the low-rate cap)

It is important to note that specific

provisions apply if an individual's taxable income comes in under the \$250,000 threshold and ends up with a total that is over the threshold after concessional superannuation contributions have been included. In such a case the superannuation contributions surcharge will only apply to contributions in excess of the threshold.

Case Study –Level of income used to calculate Div 293 tax

If a person has income of \$240,000 but also has low-tax contributions of \$20,000, this takes total income to \$260,000. The superannuation contributions surcharge of 15%, on top of the standard contributions tax of 15%, would only apply to \$10,000 of the person's superannuation contributions.

If you belong to a defined benefit scheme your 'defined benefit contributions' will have to be included in the calculation as part of concessional superannuation contributions. 'Defined benefit contributions' are the 'notional taxed contributions' (your productivity contributions) and the 'notional employer contributions' paid by your employer in a financial year. Notional employer contributions will have to be calculated using the actuarial formulas governing the specific fund that the tax payer belongs to.

2. How is the Tax Calculated?

The following steps can be used to assess your position with regards to Div 293 tax:

Step 1- Determine your income:

This is similar to the calculation of income for Medicare levy surcharge purposes and is collected from your income tax return. Income includes:

- Taxable income (assessable income minus allowable deductions)
- Total reportable fringe benefits
- Net financial investment loss
- Net rental property loss
- Net amount after family trust distribution tax paid
- LESS superannuation lump sum taxed elements (other than a death benefit) with a zero tax rate (in other words, lump sum superannuation benefits made up of the taxable component that are tax-free due to the low-rate cap)

Step 2- Determine your low-tax contributions:

- Add together all concessionally taxed contributions made to your superannuation fund (this can be an accumulation fund and/or defined benefit fund)
- Disregard any excess concessional contributions that exceed the concessional contributions cap

Step 3 Add together your income and your low tax contributions.

(Step 1 + Step 2)

Step 4- If the combined figure is greater than

\$250,000, you will incur Div 293 tax on these taxable contributions'.

These are the lesser of:

- The low tax contributions; or
- The amount above \$250,000

Step 5- Tax of 15 % is applied to these taxable contributions.

3. What will the likely impact of the Div 293 tax be on your financial position?

The following table shows the tax payable for the specified superannuation contributions. This includes the Div 293 tax, assuming the tax payer is a higher income earner and liable for the full 15% Div 293 tax. The last column includes the standard 15% contributions tax payable on concessional contributions made to superannuation, plus the Div 293 tax.

To minimise the impact of this tax there are multiple ways to pay a Div 293 liability. These are discussed next.

	Superannuation contributions	Div 293 tax (15%)	Total Tax on Contributions Div 293 tax (15%) + Contributions tax
Maximum Superannuation Guarantee employer contribution required for 2019/20*	\$19,616	\$2,942	\$5,884
General concessional contributions cap for 2019/20	\$25,000	48,000	\$7,500

4. The implications of the Div 293 Tax for Low and Middle Income Earners

There can be circumstances where people who do not consider themselves as high income earners become liable to pay the tax in a given tax year during which their income is pushed above the \$250,000 threshold. Some examples include:

- A Taxed lump sum payment is received: Taxed superannuation lump sum payments are counted towards the income calculation for Div 293 purposes (thankfully payments with a zero tax rate are excluded). This can have a significant impact on those retiring before age 60.
- Significant investment related income: Those selling assets such as properties or shares could very well find themselves liable for the tax during the year in which they sell.
- Anyone experiencing a 'bumper year': Tax payers who receive unexpected income (e.g. through an exceptional year in a small business or a large royalty payment) pushing them above \$250,000 will be liable for the tax even though they may not ordinarily think of themselves as 'high income earners'.

These are but some of the scenarios in which this tax may come into play. Therefore, it should not be assumed that this is just a 'rich person's tax' and be ignored.

5. Types of Div 293 assessments

If Tax Office decides that you are liable to pay Div 293 tax you will receive a notice in the mail informing you of their assessment in this regard. There are two types of assessments:

1. A due and payable amount attributable to accumulation superannuation interests: A Div 293 tax assessment attributable to accumulation superannuation interests is required to be paid by the due date. This will usually be within 21 days after the Tax Office gives you a notice of assessment of Div 293 tax. If this is not paid within the 21-day period, you may be liable with an additional General Interest Charge (GIC).
2. A deferred payment amount attributable to defined benefit interests: Payment of Div 293 tax is deferred for these funds if no superannuation benefit has yet become payable. This reflects the fact that money generally cannot be released from a defined benefit account until a superannuation benefit is paid, usually upon retirement. If you have more than one defined benefit account, all

Div 293 tax attributed to those accounts will be deferred and the tax apportioned across the accounts. A separate debt account will be created for each defined benefit account owned by an individual that has Div 293 tax attributed to it.

If you disagree with the assessment made by the Tax Office, you are able to challenge it through launching a formal objection.

6. Paying your Div 293 Tax assessment

If you receive a due and payable assessment you have 21 days to pay. This can be done in three possible ways. You could:

1. pay the Div 293 tax out of your own funds
2. pay the Div 293 tax and then seek reimbursement from your superannuation fund (including an SMSF) via a release authority
3. pass on the notice of assessment to your superannuation fund and using a release authority, have your fund (including an SMSF) pay the tax on your behalf to the Tax Office.

Deciding how the tax will be paid will depend on individual circumstances. It should be noted, however, that taking the payment from your superannuation fund may have a negative impact on funds available to you in retirement.

If you do decide to make use of accumulated funds in your superannuation to pay the tax you will have to send a 'release authority' to your superannuation fund or SMSF in order for the money to be released. Payment can even be split between several different funds if you have holdings in more than one superannuation fund or SMSF. Funds released in this way can either be paid directly to the Tax Office or to the fund member to reimburse you for a payment already made.

As mentioned above, if the entire amount is not paid within 21 days a General Interest Charge (GIC) will be levied. Investors need to be aware that there are some awkward timing issues as far as this is concerned. The Tax Office cut-off time for payment is 21 days whereas superannuation funds generally have 30 days in which to process release authorities. The best way to avoid this, however, is to simply pay the assessment out of your own monies and claim a reimbursement from your superannuation fund or SMSF.

If you receive a deferred payment

assessment notice it will be your call whether you would like to pay the assessment right away or whether you would like to wait until retirement. If you do decide to pay immediately you can either opt to pay it from any accumulation superannuation fund that you have available (including an SMSF) or you can use your own funds.

Where the payment of a Div 293 tax debt has been deferred the Tax Office will apply end-of-year interest to this amount.

All of this seems rather complicated and convoluted so the following example may help.

Case Study – Tax Payer Belonging to an Accumulation Interest Superannuation Fund

Peter earns \$300,000 and has concessional contributions of \$25,000 in the 2015/16 financial year. Peter's income and low tax contributions are \$325,000 which exceeds the \$250,000 threshold.

Div 293 tax is calculated as the lesser of the low tax contributions or the amount in excess of \$250,000. As the amount in excess of \$250,000 (being \$25,000) is the same as his low tax contributions, Div 293 tax is payable on the \$25,000 (i.e. \$3,750).

As the amount is in respect of an accumulation superannuation interest, it is due and payable to the Tax Office within 21 days of the notice of assessment.

Conclusion

It should be clear from the above that the Div 293 tax can have a significant impact on the financial well-being of some investors and that it can be quite a complex area to navigate. We trust that this guide was useful in helping you to understand the implications of this tax a bit better and that it also set you thinking about some wider financial planning issues.

It would be impossible, however, to present a complete guide to all your financial planning needs in a document as brief as this. We urge you to continue your explorations by making use of some of the other resources and eBooks from the

Wealth Adviser stable.

Please do not hesitate to contact us if we can be of further assistance.

Take the next step

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We now invite you to take the next step and meet with an adviser to discuss what it was you were hoping to achieve when you downloaded this handbook and to establish if we can help you achieve your goals and objectives.

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We look forward to meeting you soon.



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Reader Notes



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