

DIVISION 293 TAX FAQ

2025-26 Financial Year

Note: This FAQ only relates to superannuation members who have defined contribution superannuation benefits. This FAQ does not apply to superannuation members who either have had notional contributions or have defined benefit interests.

In this FAQ a reference to a Release Authority is a Release Authority issued in relation to a Division 293 Tax Assessment.

This FAQ only applies to Release Authorities issued on or after 1 July 2018 pursuant to Division 131 of Schedule 1 of the *Taxation Administration Act 1953*.

Q1. What is Division 293 Tax?

Division 293 Tax is a tax on the concessional contributions (but not excess concessional contributions) of superannuation members who are very high-income earners. The tax is intended to reduce the superannuation tax concessions provided to very high-income earners. The tax has been in place since the 2012/13 financial year and so applies to concessional contributions made on or after 1 July 2012.

A very high-income earner is a superannuation member whose adjusted income exceeds \$250,000.

Division 293 Tax is separate from income tax (whether levied on the Superannuation Fund or on the member).

Division 293 is levied directly on the member and is usually paid by the member authorising the trustee of a superannuation fund to release money from the superannuation account directly to the ATO.

The concessional contributions which are subject to Division 293 tax are known as “taxable contributions”.

Q2. How is Division 293 Tax calculated?

The tax is at the rate of 15% and is imposed on the non-excess concessional contributions of superannuation members whose adjusted income for an income year exceeds \$250,000.

Adjusted income is the sum of

- taxable income
- reportable fringe benefits
- total net investment loss
- certain family trust distributions which are excluded from assessable income (because they have been subject to family trust distribution tax)
- concessional contributions within the personal concessional contributions cap of the member (but not excess concessional contributions)
- superannuation lump sum benefits (but excluding the amount of any low tax superannuation lump sums received (ie superannuation lump sums taxed at 0%)), and
- employment termination payments (ETPs) (but excluding those components of ETPs which are tax-free)

The reason for starting with taxable income and then adding back various items is to preclude superannuation members from falling below the \$250,000 threshold by substituting fringe benefits for salary or reducing income by negative gearing.

The reason for excluding excess concessional contributions is that these contributions are automatically included in the member's assessable income and are subject to tax at the member's marginal tax rate (with a 15% tax offset as excess concessional contributions are subject to tax at 15% at the superannuation fund level).

If the adjusted income is equal to or less than \$250,000 then there will be no taxable contributions and no Division 293 tax will be imposed.

If the adjusted income exceeds \$250,000 then some or all of the non-excess concessional contributions will be taxable contributions and liable for Division 293 Tax.

Example

If adjusted income (excluding non-excess concessional contributions) is \$245,000 and non-excess concessional contributions amount to \$30,000 then the taxable contributions for Division 293 purposes will be \$25,000 (ie adjusted income in excess of \$250,000 treating the concessional contributions as the top slice of adjusted income).

If adjusted income (excluding non-excess concessional contributions) had been \$250,000 and non-excess concessional contributions were \$15,000 then all non-excess concessional contributions would be taxable contributions for Division 293 purposes.

If adjusted income (excluding non-excess concessional contributions) had been \$210,000 and non-excess concessional contributions were \$30,000 then there would be no taxable contributions for Division 293 purposes as the \$250,000 threshold has not been reached.

Q3. What happens if my concessional contributions exceed \$30,000?

In respect of the current financial year, the normal concessional contributions cap is \$30,000. However, you may be entitled to a higher concessional contribution cap due to the carry forward of unused concessional contributions cap space from previous financial years.

If you are entitled a higher concessional contributions cap then all concessional contributions within your higher cap will be included in your adjusted income and Division 293 tax will be calculated upon your higher concessional contributions and not just \$30,000 (which is the standard concessional contribution cap for the current financial year).

Example

If your adjusted income (less concessional contributions) is \$240,000 and in respect of the current financial year your concessional contributions are \$55,000 (as your personal concessional contribution cap for the current year is \$30,000 plus the carryforward of unused concessional contribution cap space of \$25,000 from previous financial years) then your adjusted income will be \$295,000.

Consequently, your taxable contributions for Division 293 purposes will be \$45,000.

Your Division 293 tax will be \$6, 750 being 15% of \$45,000.

Q4 Who pays Division 293 Tax?

The tax is levied on the member.

This means that the member will be issued with a notice of assessment for Division 293 Tax and it is the member who is responsible for payment of the assessed tax.

Q5. What payment options are there for Division 293 Tax?

When a member receives a notice of assessment for Division 293 the member may:

- pay the assessed tax from non-superannuation resources; or
- arrange to have the tax paid from one or more of their superannuation interests; or
- pay some portion of the assessed tax from non-superannuation resources and the balance from one or more of their superannuation interests.

If the member wishes to have the tax paid from their superannuation interests they must request the ATO to issue a Release Authority to the superannuation trustees holding those interests.

Q6. What is a Release Authority?

A Release Authority is an authority issued by the ATO to a trustee of a superannuation fund which holds a superannuation interest of the relevant member which authorises the trustee to release from the member's superannuation interest money to the ATO to pay the Division 293 Tax which has been assessed in respect of the member.

Q7. How does a member request the issue of a Release Authority?

When the Division 293 Tax assessment notice is issued to the member, the ATO will also issue a request form for the member to request that the ATO issue a Release Authority.

The member must complete the request form and return it to the ATO within 60 days of the issue of the Division 293 Tax assessment.

To be valid the request must:

- specify the total amount to be released (this cannot exceed but could be less than the Division 293 Tax which has been assessed);
- identify one or more superannuation interest or interests from which the total amount is to be released;
- if two or more superannuation interests are identified – then specify the amount to be released from each interest must be specified;
- be in the approved form; and
- be given to the ATO within 60 days (or such longer period as the ATO allows) of the issue of the Division 293 Tax assessment.

Q8. Once the Release Authority has been requested, what then happens?

The ATO will issue a Release Authority for the superannuation fund which holds an identified superannuation interest or interests. The Release Authority for each fund will specify the amount to be released from the superannuation interest, or from each superannuation interest if more than one interest has been identified for that fund.

A Release Authority is valid for only 120 days from the date of the Authority: it is stale after 120 days and cannot be relied upon by a trustee.

Q9. Must the release authority be given to the trustee of the fund from which the taxable contributions arose?

The short answer is no. The Release Authority can be given to the trustee of any superannuation fund which holds a superannuation interest of the member.

The Release Authority can even be given to a trustee of a superannuation fund which has not received any concessional contributions in respect of the member – so long as the superannuation fund holds a superannuation interest of the member.

In choosing which superannuation interests are to be accessed under a Release Authority, the member may select interests which are preserved as against interests which are not preserved and may select interests which consist of only taxable component as against interests which consist of both taxable and tax-free components.

Q10. What does a trustee do when it receives a release authority?

The trustee must determine whether the Release Authority is still valid when received (ie the authority must be provided to the trustee within 120 days of the date of the authority).

If the Authority has been provided within time the trustee must pay the requested amount to the ATO within 10 business days of receiving the Authority. The amount paid will be debited against the account of the member in the superannuation fund as if it were a fund expense relating to the member.

The trustee must also advise the ATO, in the approved form, of the payment. This advice must be given to the ATO within 10 business days of receiving the Authority.

Q11. In what circumstances can the trustee decline to pay the requested amount?

The trustee can only decline to action a Release Authority if:

- the Release Authority is stale – ie it was submitted to the trustee more than 120 days after the issue date of the Authority; or
- the trustee no longer holds the identified superannuation interests of the member.

If the value of the superannuation interest of the member is less than the requested amount, the trustee is only required to pay to the ATO the value of the superannuation interest.

Q12. What if the trustee can only pay part of the requested amount?

The trustee can decline to pay the requested amount if the value of the identified superannuation interests is less than the requested amount.

In this case, the trustee must pay the value of the identified superannuation interest and advise the ATO of the existence, amount and reason for the underpayment.

The ATO must be advised, using the approved form, of the non-payment or underpayment within 10 business days of receiving the Authority.

Q13. If there has been an underpayment, what happens?

In this case the trustee must notify the ATO of the existence, amount and reason for the underpayment. The ATO will then advise the member of the underpayment and the member can request the ATO to issue another Release Authority in respect of another superannuation interest of the member (which further request must be made within 60 days of being advised of the underpayment).

Q14. What happens if the member makes no request within 60 days?

In this case the ATO may issue one or more Release Authorities to superannuation trustees holding superannuation interests for the member. In this case the member will have no involvement as to which superannuation interest is to be the subject of the Release Authority.

To the extent the ATO is unsuccessful in obtaining released money to satisfy the Division 293 Tax assessment, the ATO will seek to recover the unpaid amount directly from the member using the normal tax recovery methods.

Q15. What are the superannuation and taxation consequences of using a release authority?

A Release Authority permits the member to access their superannuation interest irrespective of the preservation status of that interest.

A payment pursuant to a release authority is treated as a non-assessable non-exempt amount and therefore is not assessable income of the member, is not taxed as a superannuation lump sum, and is not reported in the member's taxation return (s303-15 of the *Income Tax Assessment Act 1997*).

The payment has no tax components as the payment is not subject to the proportioning rule (s131-75 of Division 131 of Schedule 1 of the *Taxation Administration Act 1953*). The payment is treated as a debit to the superannuation interest rather than the payment of a benefit from the superannuation interest. This means that the payment will, in effect, reduce the taxable component of the superannuation interest.

In relation to the preservation components, the amount paid pursuant to the Release Authority must be offset against the various preservation components of the member's interest in the superannuation fund in the following order: first, against the unrestricted; secondly, against the restricted; and finally, against the preserved.