APRIL 2026 – NEWS UPDATE

This month we step through the newly enacted Division 296 superannuation tax—what it means for those with large super balances, how it will operate in practice, and the planning opportunities now available.

We also bring a clear message for business owners and high-wealth individuals: long-standing assumptions are being tested, with the ATO and courts setting new benchmarks for compliance, valuation and planning.

We look at the SEPL decision and why it's a timely warning for family businesses relying on informal arrangements that blur the line between ownership and employment. The Full Federal Court's judgment in Kilgour offers fresh guidance on how the "market value" of assets is really determined in business sale transactions, with important implications for accessing the small business CGT concessions. We also unpack the ATO's escalating focus on work-vehicle FBT issues, where misunderstood exemptions and poor record-keeping are driving significant audit activity.

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What the New Div 296 Tax Means for Individuals with Large Super Balances

The Better Targeted Superannuation Concessions measure (known as the Division 296 tax) is now law and takes effect from 1 July

2026. For those with large super balances, it's important to understand what the new tax does, why it's been introduced, and the practical steps you and your financial adviser should consider.

The Purpose of the Tax

Division 296 is designed to make superannuation tax concessions fairer and more sustainable. Rather than changing the way super is taxed for everyone, the law targets a small group of people who hold large super balances, ensuring they pay more tax on the portion of investment earnings that relate to those large balances.

Who it Applies to — Thresholds and Rates

This new measure, starting 1 July 2026 (first year is 2026-27), applies to an individual with total superannuation balances (TSBs) in excess of the following thresholds:

- Large balance threshold: $3.0 million
- Very large threshold: $10.0 million.

Both thresholds will be indexed in future years.

This will mean that the overall tax imposed on superannuation fund earnings will be as follows:

Division 296 TSB	Div 296 tax rate on earnings relating to this band	Total effective tax on those earnings
Up to $3,000,000	0%	15% (standard fund tax)
$3,000,001 to $10,000,000	15%	30% (15% + 15%)
Above $10,000,000	25%	40% (15% + 25%)

Certain people will be excluded from having this new tax levied upon them, notwithstanding that their TSB may exceed the threshold. Excluded persons include child recipients of death benefit pensions and individuals who have made structured settlement superannuation contributions for a personal injury compensation payment.

Further, where a person dies, they will no longer have a TSB. However, other than the first year of operation (ie, 2026-27), there can still be a Division 296 tax assessment in respect of the financial year in which they die, where they had a TSB of more than $3 million at the start of the year. Given superannuation is not an estate asset, this scenario should be considered as part of a review of an individual's estate plan.

How the Tax Works

From an SMSF perspective, the fund will calculate its Division 296 earnings, which is based on its taxable income with adjustments for assessable contributions; net exempt income attributable to pensions; any non-arm's length income (which is already taxed at 45%) and income relating to investments in a pooled superannuation trust. There may also be adjustments for any capital gains made from the disposal of fund assets, if the fund has made the relevant small-fund CGT election.

The calculated Division 296 superannuation earnings is then attributed to fund members using an attribution percentage calculated by an actuary. This information will be used by the ATO to assess the member's Division 296 tax liability.

Division 296 tax is levied on the individual, not a superannuation fund. However, the tax can be paid either by the individual or they can elect for the amount to be deducted from their nominated superannuation interest.

Next Steps

If your total super balance is near—or already above—the thresholds, it is important that you contact your financial adviser to arrange tailored modelling and to discuss whether the small-fund CGT election is suitable. Early planning will help you manage cashflow, reporting and any actuarial requirements efficiently.

This will also be an opportunity to review the suitability and benefits of holding investment capital in a superannuation structure versus alternatives for amounts in excess of the large threshold.

A Wake-Up Call for Family Businesses on Fringe Benefits Tax

As Fringe Benefits Tax (FBT) lodgement season approaches, family businesses should carefully review the perks they provide to working directors and family members. A high-profile case involving luxury vehicles provided to three brothers who run a large business empire through a discretionary trust highlights the complexities — and potential risks — of informal arrangements. While the case initially appeared to expand FBT exposure, the latest decision handed down by the Full Federal Court offers reassurance that not all benefits provided to working owners will automatically trigger FBT.

What may seem like harmless "owner entitlements" or beneficiary perks can still attract scrutiny from the Australian Taxation Office (ATO). However, the courts have emphasised the importance of substance, documentation, and the capacity in which benefits are provided.

The Background

Three brothers operate a substantial business involving petrol stations, convenience stores, fast food, tobacco outlets, and gift shops. They serve as shareholders, directors, and key decision-makers (with powers as appointors under the trust deed), working long hours in executive-style roles without drawing formal cash salaries or wages. Profits and benefits flow through the family discretionary trust (SFT Trust), of which their corporate trustee (SEPL Pty Ltd) is the trustee. The brothers and family members are beneficiaries.

The business provided them with exclusive access to over 40 luxury and high-performance vehicles (including Bentleys and Ferraris) for both business and personal use. Costs associated with personal use were debited to the matriarch's beneficiary account and later cleared by trust distributions — a mechanism consistent with beneficiary entitlements rather than employment remuneration.

The ATO assessed FBT on the private use component of these car benefits, arguing they were fringe benefits provided to the brothers as "employees" in respect of their employment.

What the Court Decided

The Administrative Appeals Tribunal (AAT) initially ruled in favour of the taxpayer (*Re BQKD and Commissioner of Taxation* [2024] AATA 1796). It found that the brothers were not "employees" for FBT purposes and that, even on a hypothetical basis, the vehicle benefits were not provided "in respect of" any employment. The benefits were instead linked to their capacities as beneficiaries, proprietors, and controlling family members.

The Commissioner appealed to a single judge of the Federal Court, who in June 2025 (*Commissioner of Taxation v SEPL Pty Ltd as trustee of the SFT Trust* [2025] FCA 581) allowed the appeal. Justice O'Sullivan held that the brothers were employees under the broad FBT definitions (including via the hypothetical deeming rule in s 137 of the Fringe Benefits Tax Assessment Act 1986 (Cth) — FBTAA) and that the benefits were provided in respect of their employment.

The taxpayer then appealed to the Full Federal Court. On 27 March 2026, in *SEPL Pty Ltd as trustee of the SFT Trust v Commissioner of*

Taxation [2026] FCAFC 36 (Perry, O'Callaghan and Thawley JJ), the Full Court unanimously allowed the appeal. The Full Federal Court basically restored the AAT's decision.

Key findings:

- Employee status: It was open to the AAT to conclude the brothers were not "employees" for FBT purposes. The definitions of "employee" and "salary or wages" ultimately draw on common law concepts of employment. The AAT properly considered factors such as the absence of employment contracts, no wages or leave entitlements, the presence of employed managers for operational roles, and the brothers' control being referable to their proprietorial and governance roles rather than traditional employment.
- "In respect of" employment: Even assuming (hypothetically) that the brothers were employees, it was open to the AAT to find there was no sufficient material connection between the benefits and any employment relationship. Here, access to the vehicles was not a substitute for salary or wages. The AAT correctly weighed competing explanations and found the benefits arose primarily from family/trust relationships, not employment.

Why This Matters for Your Business

The case underscores the ATO's ongoing focus on dual-capacity individuals (e.g., directors who are also beneficiaries and active workers in trust structures). However, the Full Court's reasoning provides important boundaries:

- Informal perks for working family members in discretionary trusts are not automatically subject to FBT.
- Substance and documentation matter: How benefits are provided, funded, and recorded (e.g., via trust distributions vs. remuneration) can help in determining the outcome.
- Common law employment concepts remain relevant in interpreting FBT definitions.
- Blending roles does not inevitably trigger FBT if the dominant characterisation is beneficiary-based.

Family businesses should still exercise caution. The ATO may continue to scrutinise similar arrangements, particularly where benefits appear to represent a substitute for remuneration or lack clear documentation. Superannuation contributions or executive titles can sometimes support employee characterisation, though they were not decisive here.

Practical Steps to Protect Your Business

Don't wait for an audit—review your arrangements now:

- Document clearly: If a benefit is a trust distribution to a beneficiary, record it via trustee resolutions. If it's tied to work duties, treat it as a fringe benefit and calculate FBT accordingly. Or confirm why they fall outside the regime.
- Consider FBT properly: Apply statutory formulas or operating cost methods for cars. Employee contributions (e.g., reimbursing personal use) can reduce or eliminate liability.
- Consider exemptions/concessions: Minor benefits under $300, or salary packaging for EVs, might help.
- Audit overlaps: We also need to check for Division 7A loan issues or deemed dividends if benefits flow through private companies.
- Plan proactively: With ATO focus intensifying (as highlighted in recent compliance updates), model scenarios

to minimise tax without losing commercial perks.

Remember that if the ATO discovers some unreported FBT liabilities then the business can also be exposed to penalties and interest.

The SEPL case ultimately favours the taxpayer and reinforces that FBT does not capture every benefit provided to working owners in family trust structures. However, every arrangement turns on its specific facts and evidence.

If your business provides vehicles, phones, travel, or other perks to family members actively involved in operations — especially without formal salaries — now is a good time to review. Our team can help analyse your structures, run FBT calculations or risk assessments, and implement practical fixes to protect profits while maintaining flexibility.

The law in this area is fact-sensitive and continues to evolve. Professional advice tailored to your circumstances is essential.

Key Lessons from the Kilgour Case: Smarter Valuations in Business Sale Transactions

When selling a business—or even a slice of one—how you value the assets involved can have a major impact on the tax bill. A recent Full Federal Court decision, *Kilgour v Commissioner of Taxation* [2025] FCAFC 183, offers timely guidance on how "market value" is really determined for capital gains tax (CGT) purposes.

When preparing for transactions, restructures or potential exit events, the case is a useful reminder: valuations must reflect real commercial conditions, not just theoretical models.

What Happened?

In 2016, three family trusts sold 100% of the shares in Punters Paradise Pty Ltd, an online wagering business, to News Corp for approximately $31 million. The ownership split was:

- Pettett Trust – 60%
- Kilgour Family Trust – 20%
- Reuhl Family Trust – 20%

The sale was negotiated at arm's length, involved extensive due diligence, and included a working-capital adjustment after completion.

The minority beneficiaries (20% holders) sought to use the small business CGT concessions, which in this case required the seller's net assets to be below $6 million. To fall below the threshold, they argued their 20% minority interests should be heavily discounted in value—because a small holding is usually worth less on a standalone basis.

The ATO disagreed, saying each 20% parcel formed part of a coordinated 100% sale and should simply be valued as 20% of the final $31 million deal price.

The Court agreed with the ATO.

How the Court Approached Market Value

The Court applied the long-standing "willing buyer/willing seller" principles from *Spencer v Commonwealth*—but with a modern, commercial twist. Two practical messages emerge:

1. Real-world expectations matter more than rigid valuation dates

Although the tax rules in this area require looking at value "just before" signing the sale contract, the Court said you cannot ignore things that were reasonably predictable at that point. Here, the sale was essentially locked in through negotiations, so the final agreed price was the best evidence of market value.

Practical takeaway: If a purchaser is clearly willing to pay a premium—for control, synergies, strategic value or expansion opportunities—those factors will likely shape the valuation for tax purposes.

2. Actual deal terms beat theoretical discounts

The taxpayers tried to argue for a typical "minority discount". However, the Court said the real commercial context matters more:

- All shareholders intended to sell together.
- The buyer wanted all the shares, not bits and pieces.
- A coordinated, 100% sale typically lifts the value of each parcel.

Because of that, the hypothetical buyer would not insist on a discount. The minority interests effectively rode on the value of the full-stake sale.

Practical takeaway: When shareholders act collectively, the tax valuation of each interest can increase—sometimes significantly.

What This Means for Business Owners

- Don't undervalue your stake - If the buyer is pursuing synergies or control, your interest might be worth more than a textbook minority valuation suggests. Make sure your advisers consider the wider commercial picture.
- Evidence is everything - Keep thorough records such as negotiations, emails, valuations, buyer motivations. These can be powerful in supporting your tax position and accessing concessions.
- Plan CGT concession eligibility early - If you're relying on the small business concessions, test different deal scenarios before signing any contracts or other paperwork, including a heads of agreement. Sometimes restructuring ownership or staging a sale can make a material difference, but integrity and anti-avoidance rules in the tax system still need to be considered carefully.
- Align shareholder expectations - In family groups and private companies, minority owners often assume their shares will be valued as a standalone piece. Kilgour shows that courts will often look at the transaction as a whole—not each slice in isolation.

The Bottom Line

Kilgour reinforces that valuations for tax purposes work best when they reflect the real commercial world, not theoretical models. Before you sell, restructure or negotiate with a potential buyer, involve your accountant early. A well-supported valuation can mean the difference between accessing valuable CGT concessions—or missing out.

The ATO Targets FBT on Work Vehicles: Don't Let Assumptions Cost You

The ATO is turning up the heat on employers who provide work vehicles for private use. Sophisticated data-matching means assumptions and shortcuts can quickly lead to audits, penalties, interest charges—and even reputational damage. You can see the latest ATO FBT audit warning here: Misreporting FBT on personal use of work vehicles | Australian Taxation Office

If you provide vehicles to your team, whether to support fieldwork, boost morale, or offer a valuable perk, now is the time to ensure your FBT reporting is watertight. Here's what the ATO is focusing on—and how to protect your business.

Don't Assume Dual-Cab Utes Are Automatically Exempt

Dual-cab utes are popular in trades and construction, but despite popular opinion, they're not automatically FBT-free.

Whether an FBT exemption applies can depend on the vehicle's design and also how it is used across the FBT year.

Even if a ute is designed to carry a load of at least 1 tonne (ie, it is not classified as a car for FBT purposes) or it isn't designed mainly to carry passengers (there is a specific formula used for this purpose) FBT could still be triggered if there is some private use of the ute.

The ATO has identified many cases where employers wrongly claimed full FBT exemptions, leading to back taxes plus interest.

The best way to handle ATO enquiries around the FBT exemption for commercial vehicles is to ensure that appropriate evidence is already in place to support the application of that exemption. While the FBT rules don't specifically require formal logbooks when looking at this exemption, failing to keep records that are similar to a logbook can make it difficult to navigate ATO review or audit activities.

Accurately Apportion Private vs Business Use

If a full FBT exemption doesn't apply then FBT is typically calculated on private use of work vehicles. You need to determine what portion of running costs—fuel, maintenance, depreciation—relates to personal trips. Ignoring this step can seem harmless but can quickly escalate during an audit.

Thorough record-keeping and proper apportioning can sometimes reduce your FBT liability even if the vehicle is used mainly for business purposes.

Remember that if a FBT liability is triggered it is the employer's problem.

Lodging FBT Returns

Even if you think the FBT liability for the year might be small or immaterial, you might find that there is still an obligation to lodge an FBT return. The ATO's analytics flag non-lodgers automatically. Penalties can reach up to 200% of the tax owed, plus interest.

Tip: Mark your calendar—FBT returns are due May 21 each year. Timely filing keeps your business compliant and avoids cash flow shocks.

Keep Reliable Logbooks and Records

A valid logbook tracks odometer readings, trip purposes, and business-use percentages over a 12-week period (renewable every five years). While not every scenario involving a motor vehicle specifically requires a valid logbook, failing to keep logbooks can sometimes lead to significant FBT liabilities that could otherwise have been avoided.

Efficiency tip: Digital logbook apps simplify tracking, save time, and reduce errors. Good records can also support deductions.

Why it Matters Commercially

Non-compliance isn't just a numbers game. ATO audits divert time and energy from running your business, and ATO attention can affect your reputation with clients, partners, or lenders. Conversely, getting FBT right ensures you pay

only what's required, protects cash flow, and may even reveal tax efficiencies.

Next steps: Review your vehicle policies, update records, and ask us if you need help. We help businesses manage FBT with confidence—making compliance straightforward and stress-free.

Remember: assumptions can be costly, but a proactive approach protects your business, your people, and your peace of mind.

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