

LCR 2018/5A2 - Addendum - First home super saver scheme

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Addendum

Law Companion Ruling

First home super saver scheme

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Law Companion Ruling LCR 2018/5 to:

- reflect amendments to the law made by the *Treasury Laws Amendment (Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest) Act 2022*
- clarify that an individual may acquire equitable proprietary rights in real property even before settlement or completion of a contract (which may affect eligibility for the scheme), and
- make minor readability improvements.

LCR 2018/5 is amended as follows:

1. Preamble

Omit the second paragraph.

2. Table of contents

After the entry 'What this Ruling is about', insert:

'Date of effect 2A'

3. Paragraph 2

(a) Omit '(TAA 1953)'; substitute '(TAA)'.

(b) After paragraph 2, insert new heading and paragraphs 2A, 2B and 2C:

Date of effect

2A. This Ruling applies from 1 July 2018.

2B. Changes made to this Ruling by addenda that issued since its original publication have been incorporated into this version of the Ruling. Refer to each addendum for details of how that addendum amended the Ruling, including the date of effect of the amendments.

2C. Where an addendum applies both before and after its date of issue, both the pre-addendum wording of the Ruling and the revised wording in the addendum apply for the overlapping periods of time. In these circumstances, entities can choose to rely on either version when applying the Ruling during that period of time.

4. Paragraph 7

- (a) Omit the wording of the paragraph; substitute:

There is no definition of 'freehold interest' in the FHSS scheme provisions. In another instance in the tax law^{5A}, 'freehold interest' is defined to be limited to a legal interest in real property. In the absence of any evidence of an intent to limit the meaning of the term in the FHSS scheme provisions, the Commissioner's view is that a 'freehold interest' includes any type of interest in the relevant real property. This means that 'freehold interest' includes both legal and equitable interests in the relevant real property.

- (b) After 'In another instance in tax law', insert new footnote 5A:

^{5A} Section 4 of the *Register of Foreign Ownership of Water or Agricultural Land Act 2015*.

5. Paragraph 8

- (a) Omit the wording of the paragraph; substitute:

This interpretive approach is, in the Commissioner's view, consistent with the broader policy framework evidenced by the specific inclusion of situations where a person has acquired a lease of land within the FHSS scheme as a stipulated property interest.^{5B} Entering into a contract to acquire real property, including vacant land, may mean that the individual acquires an equitable interest in the real property even before settlement of the contract.

- (b) At the end of the first sentence, insert new footnote 5B:

^{5B} Subparagraph 138-10(2)(a)(ii).

6. Paragraph 9

Omit the paragraph.

7. Paragraph 10

- (a) After 'in Australia,', insert 'the only circumstance in which'.
- (b) Omit 'determination that'; substitute 'FHSS determination is where'.
- (c) In the last sentence, omit 'A determination'; substitute 'A hardship determination'.

8. Paragraph 14

Omit the paragraph.

9. Paragraph 15

- (a) In the first sentence, omit 'as they do not meet the conditions in paragraph 13 of this Ruling'.
- (b) Omit the last 2 dot points; substitute:
- certain CGT-related payments to the extent they do not exceed your CGT cap amount when made

- amounts paid due to a contributions splitting arrangement, and
- amounts that are COVID-19 early release of superannuation re-contributions.^{13B}

(c) After the last dot point, insert new footnote 13B:

^{13B} COVID-19 early release of superannuation re-contributions are not concessional contributions (because section 290-169 of the ITAA 1997 prevents a deduction being claimed) and are not non-concessional contributions (because they are excluded by subparagraph 292-90(2)(c)(iiib) of the ITAA 1997.

(d) After the paragraph, insert new paragraph 15A:

15A. Where the rules of the relevant superannuation fund require a member to make either a concessional or non-concessional contribution within a particular range (for example, 1% to 5% of the member's salary), only the proportion of the concessional or non-concessional contribution that equals the 'minimum' contribution amount is excluded from being an eligible contribution. For example, where a member is required under the rules of the superannuation fund to make a contribution between 1% to 5% of the member's salary, and the member contributes 5%, an amount equal to 1% of the salary is excluded from being an eligible contribution and the remaining amount of the contribution (4%) is an eligible contribution under the FHSS scheme.

10. Paragraph 21

(a) Omit the first sentence (excluding footnote 22); substitute:

You can withdraw a maximum amount of \$15,000 of eligible contributions made in a particular financial year, to a total of \$30,000 of contributions across all years where a determination is requested on or before 30 June 2022 or \$50,000 where a determination is requested on 1 July 2022 or later.

(b) Omit the wording of footnote 22; substitute:

Section 1 of Schedule 2 of the *Treasury Laws Amendment (Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest) Act 2022*.

11. Paragraph 25

(a) Omit the wording of the paragraph; substitute:

The amount released by the superannuation fund will be paid to the ATO. The Commissioner will withhold a pay as you go (PAYG) amount from the assessable FHSS released amount before releasing the balance amount to you. This is to assist in meeting any increased tax burden that you face as a result of having the assessable FHSS released amount included in your assessable income for the financial year you requested the release under the FHSS scheme. The balance after withholding may also be offset against Commonwealth debts, such as those relating to taxation liabilities, Centrelink amounts and child support obligations.^{27A} Any remaining amount left over after offsetting will be paid into your nominated account.

(b) After the second last sentence, insert new footnote 27A:

^{27A} When a super fund pays a FHSS amount under a release authority to the Commissioner, you are entitled to a credit equal to that amount under section 131-65.

Division 3 of Part IIB of the TAA requires the Commissioner to apply credits against any existing tax debt before refunding, except in limited circumstances. Other Commonwealth agencies may also require us under the laws they administer to pay an amount to them to pay non-tax debts.

12. Paragraph 26

- (a) In the first dot point, omit the word 'such'; substitute 'release'.
- (b) In the second dot point, after 'by the ATO', insert 'up to a maximum of 12 extra months'.
- (c) Omit the wording of footnote 29A; substitute 'Subsection 313-35(2) of the ITAA 1997'.
- (d) In the last dot point, after 'residential premises', insert ', which could be prior to your settlement'.

13. Paragraph 27

At the end of the paragraph, insert:

Where the Commissioner provides an extension, this means that you will have up to 24 months from the day after you make a valid request for release to enter a contract to purchase a residential premises.

14. Paragraph 28

- (a) After the word 'unless', omit 'you'.
- (b) Omit the wording of the first dot point (excluding footnote 32A); substitute:
you make non-concessional contributions within the period beginning 14 days before the day you make the valid request for release, ending 12 months after the day you make the valid request for release (or further period allowed by the ATO up to a maximum of 12 extra months)
- (c) In footnote 32A, omit 'Sections 313-35and'; substitute 'Sections 313-35 and'.
- (d) At the start of the third dot point, insert 'you'.

15. Paragraph 37

Omit the first sentence; substitute:

However, William could only release a maximum of \$30,000 of his contributions under the FHSS scheme as his FHSS determination was requested before 1 July 2022.

16. Paragraph 40

- (a) Omit the second sentence (excluding the dot points); substitute:

He has an agreement with his employer to make the following voluntary contributions on his behalf during the 2018–19, 2019–20, 2020–21 and 2021–22 financial years:

- (b) In the first dot point, omit '\$550'; substitute '\$750'.

17. Paragraph 41

Omit the first instance of '\$6,600'; substitute '\$9,000'.

18. Paragraph 42

Omit '2020'; substitute '2022'.

19. Paragraph 44

Omit the wording of the paragraph; substitute:

Nicholas can have a maximum of \$50,000 of eligible contributions made across all years under the FHSS scheme based on his determination request date, restricted to \$15,000 per year. The FHSS determination will count the contributions in the order in which they were made, as follows:

- *A total of \$15,000 of the voluntary contributions he made for the 2018–19 financial year. All of the contributions for July 2018 to May 2019 will be counted (\$6,050 of non-concessional contributions and \$8,250 concessional contributions) but this only leaves \$700 of the annual limit remaining so the simultaneous contribution rule will apply for the June contributions. The full non-concessional amount of \$550 will be included and \$150 of the concessional contribution will also be included. Therefore, the total FHSS releasable contributions amount for the 2018–19 financial year will be \$6,600 of non-concessional contributions and \$7,140 of concessional contributions (85% of \$8,400).*
- *The same situation occurs for the 2019–20 and 2020–21 financial years with a capped total of \$15,000 voluntary contributions being eligible. The releasable contributions will be \$6,600 of non-concessional contributions and \$7,140 of concessional contributions (85% of \$8,400).*
- *All of the voluntary contributions he made for July 2021 to September 2021 will be counted (\$1,650 of non-concessional contributions and \$2,250 of concessional contributions will count towards the limit). However, for October only \$1,100 of further contributions can be released until he reaches his \$50,000 limit. We apply the simultaneous contribution rule again. For the contributions made in October the full non-concessional amount of \$550 of non-concessional contributions will be included and \$550 of the concessional contributions for that month. Therefore, for the 2021–22 financial year the releasable contributions amount will be \$2,200 of non-concessional contributions and \$2,380 of concessional contributions (85% × \$2,800).*

20. Paragraph 45

Omit 'also include'; substitute 'include the total FHSS releasable contributions amount of \$45,800 plus'.

21. Paragraph 46

Omit the wording of the paragraph; substitute:

Bianca makes regular \$2,000 contributions to her super fund on the first day of each month during the 2017–18, 2018–19, 2019–20 and 2020–21 financial years.

22. Paragraph 47

Omit the wording of the paragraph; substitute:

For the 2017–18 and 2020–21 financial years, Bianca does not lodge a notice of intent to claim a deduction with her fund in relation to the superannuation contributions, and does not claim a tax deduction. This means all of the \$24,000 contributions in each of those years are non-concessional contributions.

23. Paragraph 48

After the paragraph, insert new paragraph 48A:

48A. In August 2020, Bianca again lodges a notice of intent to claim \$10,000 as a deduction for the contributions she made in the 2019–20 financial year. She claims the tax deduction in her tax return lodged in October 2020. This will mean that for the 2019–20 year she made \$10,000 of concessional contributions and \$14,000 of non-concessional contributions.

24. Paragraph 49

Omit the wording of the paragraph; substitute:

In July 2022, Bianca applies for a FHSS determination. As the determination was requested after 1 July 2022, the maximum total limit of \$50,000 applies.

25. Paragraph 51

(a) Omit '\$30,000'; substitute '\$50,000'.

(b) Omit the second dot point; substitute:

- *the maximum yearly limit of \$15,000 of her voluntary member contributions made for the 2018–19 and 2019–20 financial years. The ordering rule for personal deductions will apply for each of these years resulting in the full \$14,000 of non-concessional contributions and \$850 of the concessional contributions (85% of \$1,000) being eligible to be released for each of those years.*
- *\$5,000 of her voluntary member contributions made for the 2020–21 financial year (non-concessional contributions) as she has now reached the \$50,000 total contributions limit.*

26. Paragraph 52

Omit the wording of the paragraph; substitute:

Bianca's FHSS determination will therefore include a total FHSS releasable contributions amount of \$49,700 plus the associated earnings in respect of each of these contributions determined under section 138 40.

With the exception of the insertion of new paragraph 2A by this Addendum which applies from 1 July 2018, this Addendum otherwise applies from 1 July 2022.

Commissioner of Taxation
12 April 2023

ATO references

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