

# ***TR 2024/4 - First home super saver scheme***



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## Taxation Ruling

### First home super saver scheme

#### **❶ Relying on this Ruling**

This publication (with the exception of statements made about the first home super saver tax) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

To the extent that it is a public ruling for the purposes of the *Taxation Administration Act 1953*, if this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Statements about the first home super saver tax in this Ruling are not legally binding on the Commissioner. However, if you act in accordance with these statements in good faith, the Commissioner will endeavour to stand by these statements in applying the law.

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### What this Ruling is about

1. This Ruling provides guidance on the operation of the first home super saver (FHSS) scheme.
2. The FHSS scheme is designed to allow individuals who make eligible voluntary contributions into the superannuation system to withdraw those contributions (up to certain limits) and an amount of associated earnings for the purpose of purchasing their first home.
3. All legislative references in this Ruling are to Schedule 1 of the *Taxation Administration Act 1953*, unless otherwise indicated.

## Ruling

### Overview of the first home super saver scheme

4. Eligible individuals have been able to access the FHSS scheme from 1 July 2018. A withdrawal under the FHSS scheme is made by application to the ATO, and the amount withdrawn under the FHSS scheme will attract concessional tax treatment.
5. Transitional amendments to the FHSS scheme law which apply from 15 September 2024 to 14 September 2027 may also assist some individuals to access the FHSS scheme in circumstances where they previously made unsuccessful attempts to access the scheme before 15 September 2024.

### Eligibility for the first home super saver scheme

6. To be eligible for the FHSS scheme you must firstly request an FHSS determination. To be eligible to request an FHSS determination, you must:
  - never have held a relevant property interest in Australia<sup>1</sup> (unless specific financial hardship requirements are met)<sup>2</sup>
  - be 18 years or older<sup>3</sup>, and

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<sup>1</sup> Paragraph 138-10(2)(a).

<sup>2</sup> Subsections 138-10(2A) and (2B).

<sup>3</sup> Paragraph 138-10(2)(b).

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- have one of the following apply
  - you have not previously made a valid release request in relation to an FHSS determination made in relation to you
  - if you have previously made a valid release request in relation to an FHSS determination made in relation to you, for each previous request
    - o you withdrew the request, or
    - o we revoked the release authority issued in relation to the request
  - if you have previously made a valid release request in relation to an FHSS determination made in relation to you and that request was amended
    - o you withdrew the latest of the amended requests, or
    - o we revoked the release authority issued in relation to the latest of the amended requests.<sup>4</sup>

7. A relevant property interest in Australia includes:

- a legal interest in an estate in fee simple in real property<sup>5</sup>, which is obtained on registering that interest with the relevant land title office
- a legal interest in a lease of land (including a renewal or extension of such a lease) that is for at least 50 years, and
  - at the time of the grant, renewal or extension of the lease, it was reasonable to expect that it would continue for at least 50 years, and
  - the terms of the lease, renewal or extension as they apply to the lessee are substantially the same as those under which the lessor owned the land or held a lease of the land<sup>6</sup>
- a company title interest (within the meaning of Part X of the *Income Tax Assessment Act 1936*) in land<sup>7</sup>, which provides for the right to occupy land (or a building or part of a building erected on the land) arising by virtue of holding shares in a company that owns the land or building.

8. A relevant property interest in Australia includes property interests located in:

- Norfolk Island
- the Coral Sea Islands Territory
- the Territory of Ashmore and Cartier Islands
- the Territory of Christmas Island
- the Territory of Cocos (Keeling) Islands

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<sup>4</sup> Paragraph 138-10(2)(c) and subsection 138-10(2C).

<sup>5</sup> Subparagraph 138-10(2)(a)(i).

<sup>6</sup> Subparagraph 138-10(2)(a)(ii) and paragraph 104-115(1)(b) of the *Income Tax Assessment Act 1997* (ITAA 1997).

<sup>7</sup> Subparagraph 138-10(2)(a)(iii) and section 317 of the *Income Tax Assessment Act 1936*.

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- the Territory of Heard Island and the McDonald Islands.<sup>8</sup>

### **Financial hardship**

9. If you have held a relevant property interest in Australia, the only circumstance in which you may be eligible to request us to make an FHSS determination is where you have suffered a financial hardship.

10. Where you apply for an FHSS determination on financial hardship grounds, a hardship determination may be made where we are satisfied that you have:

- suffered a financial hardship that resulted in you ceasing to hold all of the property interests described in paragraph 7 of this Ruling that you held at the time of the hardship, and
- not held any property interests described in paragraph 7 of this Ruling since that time.<sup>9</sup>

11. If a hardship determination is made, you are taken to have satisfied the requirement to never have held a relevant property interest in Australia and will be eligible to request an FHSS determination from us provided the other requirements referred to in paragraph 6 of this Ruling are satisfied.<sup>10</sup>

### **Eligible contributions**

12. A contribution must be an 'eligible contribution' made on or after 1 July 2017 for it to be released under the FHSS scheme.<sup>11</sup>

13. An eligible contribution is a contribution<sup>12</sup> made in respect of you in a financial year and must be a concessional or non-concessional contribution that is either:

- an employer contribution that is not a mandated employer contribution (within the meaning of Part 5 of the *Superannuation Industry (Supervision) Regulations 1994*), or
- a member contribution that is made by you.<sup>13</sup>

14. Some contributions are specifically excluded from being eligible contributions, including:

- a contribution to the extent it is required to be made because of the law of the Commonwealth or of a State or Territory, or the rules of the relevant superannuation fund<sup>14</sup>
- contributions made in respect of defined benefit interests<sup>15</sup>, and

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<sup>8</sup> Section 960-505 of the ITAA 1997.

<sup>9</sup> Section 61A of the *Taxation Administration Regulations 2017*.

<sup>10</sup> Subsection 138-10(2A).

<sup>11</sup> Subsection 138-35(2).

<sup>12</sup> Our view on what a contribution is and when it is made is set out in Taxation Ruling TR 2010/1 *Income tax: superannuation contributions*.

<sup>13</sup> Subsection 138-35(2).

<sup>14</sup> Paragraph 138-35(2)(b).

<sup>15</sup> Paragraph 138-35(2)(c).

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- contributions made to constitutionally protected funds.<sup>16</sup>

15. 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.

16. Where you have exceeded either your concessional contributions cap or your non-concessional contributions cap, the amount of the excess contribution is not eligible to be released under the FHSS scheme.

17. Ordering rules apply to ensure that an excess concessional contribution for a financial year is first applied against an 'ineligible' concessional contribution with any remainder reducing the amount of an 'eligible' concessional contribution for that financial year. Similarly, an excess non-concessional contribution for a financial year is first applied against an 'ineligible' non-concessional contribution with any remainder reducing the amount of an 'eligible' non-concessional contribution for that financial year.<sup>17</sup>

18. For the purposes of the FHSS scheme, an excess concessional contribution is not treated as a non-concessional contribution.<sup>18</sup>

19. Examples of contributions that are not eligible contributions include:

- amounts that reduce an employer's potential liability for the superannuation guarantee charge
- amounts required to be made by an employer under an industrial agreement (such as an enterprise agreement or an award)
- member contributions made in respect of you by another person (such as a friend, spouse or other family member)
- government co-contributions
- amounts transferred from a KiwiSaver scheme that are Australian-sourced amounts or returning New Zealand-sourced amounts<sup>19</sup>
- applicable fund earnings from a foreign fund transfer that you elect to include in the receiving fund's assessable income
- contributions that relate to structured settlements or orders for personal injuries
- certain capital gains tax (CGT) related payments to the extent they do not exceed your CGT cap amount when made
- amounts received due to a contributions splitting arrangement
- amounts that are downsizer contributions

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<sup>16</sup> Paragraph 138-35(2)(d).

<sup>17</sup> Subsections 138-35(3) and (4).

<sup>18</sup> Subsection 138-35(5).

<sup>19</sup> The remainder of a KiwiSaver scheme amount transferred into an Australian superannuation fund, that is not an Australian-sourced amount or a returning New Zealand-sourced amount, will meet the conditions in paragraph 13 of this Ruling.

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- amounts that are COVID-19 early release of superannuation re-contributions.<sup>20</sup>

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**Example 1 – eligible contributions – mandated contributions within a range**

20. *Ngarre is a member of a superannuation fund which has rules requiring members to make non-concessional contributions within the range of 1% to 5% of their salary.*

21. *Ngarre chooses for these non-concessional contributions to total 3.5% of her salary.*

22. *When considering these contributions for the purposes of the FHSS scheme:*

- *the part of each contribution representing the minimum 1% of Ngarre's salary is not eligible to be released as it is a contribution required to be made because of the rules of Ngarre's superannuation fund*
  - *the remaining part of each contribution, representing the additional 2.5% of Ngarre's salary she chooses to contribute, is an eligible non-concessional contribution.*
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**First home super saver determinations**

23. An FHSS determination<sup>21</sup> sets out the maximum amount that can be released under the FHSS scheme to you (FHSS maximum release amount).<sup>22</sup>

24. You can request more than one FHSS determination, however you must meet the eligibility criteria described in paragraph 6 of this Ruling at the time of making each request.

**Maximum release amount**

25. Your FHSS maximum release amount comprises your FHSS releasable contributions amount together with associated earnings<sup>23</sup> calculated by reference to those contributions.

26. Your eligible contributions that are included when working out your FHSS releasable contributions amount are limited to:

- \$15,000 of total contributions made in a particular financial year starting on or after 1 July 2017
- \$50,000 of total contributions made from 1 July 2017.<sup>24</sup>

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<sup>20</sup> 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)(iib) of the ITAA 1997).

<sup>21</sup> Subsection 138-10(1).

<sup>22</sup> Section 138-25.

<sup>23</sup> Section 138-40.

<sup>24</sup> Paragraph 138-35(1)(a). For a request for an FHSS determination made before 1 July 2022, the maximum amount of contributions that may be eligible to be released is \$30,000 across all years.

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27. When your eligible contributions to be included are identified, your FHSS releasable contributions amount is worked out as the sum of:

- 100% of your non-concessional contributions, and
- 85% of your concessional contributions.<sup>25</sup>

28. The full amount of associated earnings calculated by reference to these contributions are not counted towards these limits.<sup>26</sup>

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### **Example 2 – FHSS maximum release amount**

29. *Alejandro makes monthly salary sacrifice contributions of \$1,000 from July 2020 until October 2024. He also makes one-off personal contributions (for which he claims a tax deduction) of \$1,500 in September 2020 and \$6,000 in July 2022. Alejandro applies for an FHSS determination in October 2024.*

30. *The eligible contributions that are included when working out Alejandro's FHSS releasable contributions amount are \$50,000, comprising:*

- *for the 2020–21 financial year: \$13,500 concessional contributions*
- *for the 2021–22 financial year: \$12,000 concessional contributions*
- *for the 2022–23 financial year: \$15,000 concessional contributions*
- *for the 2023–24 financial year: \$9,500 concessional contributions.*

31. *As Alejandro reaches the financial year limit of \$15,000 in the 2022–23 financial year, his remaining \$3,000 of concessional contributions made in that year are not included in his eligible contributions.*

32. *Alejandro also reaches the overall limit of \$50,000 across all years in the 2023–24 financial year. The further \$2,500 of concessional contributions he makes in that year, and any contributions he makes in later financial years, are not included when working out his eligible contributions.*

33. *After the contributions to be included are known, Alejandro's FHSS releasable contributions amount is calculated as \$42,500 (85% of the concessional contributions totalling \$50,000).*

34. *Associated earnings on these contributions is \$2,501.*

35. *Alejandro's FHSS maximum release amount is \$45,001 (being his FHSS releasable contributions amount of \$42,500 plus his associated earnings of \$2,501).*

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### **Ordering of contributions**

36. When you make eligible contributions to a superannuation provider, the order and type of the contributions can make a difference to the amount that can ultimately be released under the FHSS scheme.

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<sup>25</sup> Subsection 138-30(1).

<sup>26</sup> Section 138-35.

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37. Subsections 138-30(2) and (3) set out specific rules governing which eligible contributions will be included in your FHSS releasable contributions amount. The rules are based on when a contribution was made and whether it is a concessional or non-concessional contribution.

38. Your contributions are counted towards your release amount in the following order:

- Contributions in a financial year are counted in the order in which they are made to your superannuation fund (from earliest to latest).<sup>27</sup>
- If an eligible concessional contribution and an eligible non-concessional contribution are made in respect of you to your superannuation fund at the same time (for example, in the same payroll process), your non-concessional contributions are taken to be made first.<sup>28</sup>
- Where you personally make both eligible non-concessional and eligible concessional contributions in a year, for example, because you claim a deduction for only part of the contributions you make in that year, the resulting eligible non-concessional contributions are taken to be made before the eligible concessional contribution.<sup>29</sup>

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**Example 3 – ordering rule – contributions across multiple years**

39. *William makes regular \$1,000 contributions on the first day of each month during the 2020–21, 2021–22, 2022–23, 2023–24 and 2024–25 financial years. William does not claim a tax deduction in respect of any of the contributions. Accordingly, the contributions are non-concessional contributions.*

40. *In July 2025, William applies for an FHSS determination.*

41. *William 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.*

42. *The FHSS determination will count the contributions in the order in which they were made as follows:*

- *\$12,000 from the 2020–21 financial year (12 contributions from 1 July 2020 to 1 June 2021)*
- *\$12,000 from the 2021–22 financial year (12 contributions from 1 July 2021 to 1 June 2022)*
- *\$12,000 from the 2022–23 financial year (12 contributions from 1 July 2022 to 1 June 2023)*
- *\$12,000 from the 2023–24 financial year (12 contributions from 1 July 2023 to 1 June 2024), and*
- *\$2,000 from the 2024–25 financial year (2 contributions from 1 July 2024 to 1 August 2024).*

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<sup>27</sup> Subsection 138-30(2).

<sup>28</sup> Paragraph 138-30(3)(a).

<sup>29</sup> Paragraph 138-30(3)(b).

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43. William's FHSS determination will also include associated earnings in respect of each of these contributions determined under section 138-40.

**Example 4 – ordering rule – simultaneous contributions**

44. Olga works for a company that pays their employees on the first day of each month.

45. Olga has an effective salary sacrifice agreement with her employer. The employer also makes voluntary after-tax contributions on behalf of Olga as part of the same payroll process. Olga has an agreement with her employer to make the following voluntary contributions on her behalf during the 2023–24, 2024–25, 2025–26 and 2026–27 financial years:

- \$750 per month of concessional contributions under the salary sacrifice arrangement (totalling \$9,000 in each financial year), and
- \$550 per month of non-concessional after-tax superannuation contribution (totalling \$6,600 in each financial year).

46. In July 2027, Olga applies for an FHSS determination.

47. The FHSS releasable contributions amount includes 85% of the concessional contributions (under the salary sacrifice arrangement) and 100% of the non-concessional contributions.

48. Olga can have a maximum of \$50,000 of eligible contributions made across all years under the FHSS scheme based on her 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:

- In the 2023-24 financial year, the FHSS releasable contributions amount will be \$6,600 of non-concessional contributions and \$7,140 of concessional contributions (85% of \$8,400), calculated as follows
  - a total of \$15,000 of the voluntary contributions Olga made for the 2023–24 financial year. All of the contributions from July 2023 to May 2024 will be counted (\$6,050 of non-concessional contributions and \$8,250 concessional contributions), and
  - this leaves \$700 of the annual limit remaining, so the simultaneous contribution rule will apply for the June contributions. The non-concessional amount of \$550 will be included and \$150 of the concessional contribution will also be included.
- The same situation occurs for the 2024–25 and 2025–26 financial years with a capped total of \$15,000 voluntary contributions being eligible. The FHSS releasable contributions amount for each of these financial years will be \$6,600 of non-concessional contributions and \$7,140 of concessional contributions (85% of \$8,400).
- In the 2026-27 financial year, as \$45,000 ( $3 \times \$15,000$ ) has already been applied towards the \$50,000 FHSS maximum release amount, the remaining \$5,000 will comprise \$2,200 of non-concessional contributions and \$2,380 of concessional contributions ( $85\% \times \$2,800$ ), calculated as follows
  - all of the voluntary contributions she made from July 2026 to September 2026 will be counted (\$1,650 of non-concessional

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contributions and \$2,250 of concessional contributions will count towards the limit), and

- for October 2026 only, \$1,100 of further contributions can be released until she reaches her \$50,000 limit. We apply the simultaneous contribution rule again. For the contributions made in October the full non-concessional amount of \$550 will be included and \$550 of the concessional contributions for that month.

49. Olga's FHSS determination will include the total FHSS releasable contributions amount of \$45,800 plus associated earnings in respect of each of these contributions determined under section 138-40.

**Example 5 – ordering rule – deduction for personal superannuation contributions**

50. Bianca makes regular \$2,000 contributions to her superannuation fund on the first day of each month during the 2022–23, 2023–24, 2024–25 and 2025–26 financial years.

51. For the 2022–23 and 2025–26 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.

52. In September 2024, Bianca lodges a notice of intent to claim \$10,000 as a deduction with respect to her personal contributions made in the 2023–24 financial year. She claims the tax deduction in her tax return lodged in October 2024. This will mean that for the 2023–24 year she made \$10,000 of concessional contributions and \$14,000 of non-concessional contributions.

53. In August 2025, Bianca again lodges a notice of intent to claim \$10,000 as a deduction for the contributions she made in the 2024–25 financial year. She claims the tax deduction in her tax return lodged in October 2025. This will mean that for the 2024–25 year she made \$10,000 of concessional contributions and \$14,000 of non-concessional contributions.

54. In July 2027, Bianca applies for an FHSS determination.

55. Her FHSS releasable contributions includes 85% of the concessional contributions and 100% of the non-concessional contributions.

56. Bianca can have a maximum of \$50,000 of eligible contributions made across all years under the FHSS scheme based on her determination request date, restricted to \$15,000 per year.

57. The FHSS determination will show Bianca is eligible to receive:

- the maximum yearly limit of \$15,000 of her voluntary member contributions made for the 2022–23 financial year (non-concessional contributions)
- the maximum yearly limit of \$15,000 of her voluntary member contributions made for the 2023–24 and 2024–25 financial years, with the ordering rule applying and 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 2025–26 financial year (non-concessional contributions) as she has now reached the \$50,000 total contributions limit.

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58. *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.*

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#### **Amendment or revocation of a first home super saver determination**

59. After an FHSS determination is issued, we may decide to amend or revoke that determination.<sup>30</sup>

60. In the case of an amendment, at the time of the amendment you must satisfy the requirements described in paragraph 6 of this Ruling.<sup>31</sup>

61. A decision to amend or revoke an FHSS determination may be made in response to an application by you, or on our own initiative.<sup>32</sup>

62. An FHSS determination can only be amended or revoked at a time before we 'begin treating' any credit that you are entitled to in relation to amounts released from your superannuation interests under the FHSS scheme.<sup>33</sup>

63. Treating of a credit begins at the point once we have:

- identified that you are entitled to a credit
- identified that the credit relates to an amount released from your superannuation interests under the FHSS scheme, and
- determined and deducted any amount required to be withheld.<sup>34</sup>

For example, we will not have begun treating a credit in circumstances where a release authority was issued but had been revoked before receiving any funds from a superannuation provider.

64. Amending or revoking your FHSS determination causes any release request in relation to that determination and any release authority issued in relation to such request to cease to be valid or in force.<sup>35</sup> Additionally, any entitlement to a credit under section 131-65 relating to such a request ceases.<sup>36</sup>

#### **Requesting release of an amount under the first home super saver scheme**

65. When we have issued an FHSS determination, you can request we issue a release authority to your superannuation provider (or release authorities to multiple superannuation providers) for the release of an amount<sup>37</sup>, provided the total of all release authorities does not exceed the FHSS maximum release amount set out in the FHSS determination.<sup>38</sup>

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<sup>30</sup> Subsection 138-13(1).

<sup>31</sup> Paragraph 138-13(1)(a).

<sup>32</sup> Subsection 138-13(2).

<sup>33</sup> Subsection 138-13(1).

<sup>34</sup> Section 12-460.

<sup>35</sup> Paragraph 138-13(3)(a).

<sup>36</sup> Paragraph 138-13(3)(b).

<sup>37</sup> Paragraph 131-5(3)(c) requires a release request to be made within 60 days after the Commissioner issues the determination (or further period allowed by the Commissioner).

<sup>38</sup> Paragraph 131-10(1)(a) and table item 4 of subsection 131-10(1).

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66. After we issue a release authority, the amount released by your superannuation fund in response to that release authority will be paid to us.

67. We must withhold a pay as you go (PAYG) amount from the assessable FHSS released amount before releasing the balance amount to you.<sup>39</sup> This is to assist in meeting any increased tax liability that you face as a result of having the assessable FHSS released amount included in your assessable income for the financial year that you requested the release under the FHSS scheme.

68. The balance after withholding may also be offset against Commonwealth debts, such as those relating to taxation liabilities, Centrelink amounts and child support obligations.<sup>40</sup> Any remaining amount left over after offsetting will be paid into your nominated account.

### ***Withdrawing or amending a release request***

69. After making a release request, you may decide to withdraw or amend that request by notifying us in the approved form.<sup>41</sup>

70. You may only withdraw or amend your release request if we have not already issued a release authority in relation to that request.<sup>42</sup>

71. In the case of an amendment, at the time of the amendment you must satisfy the requirements described in paragraph 6 of this Ruling relating to age and never holding a relevant property interest.<sup>43</sup>

### ***Varying or revoking a release authority***

72. If we have already issued a release authority in relation to your request, we may decide to vary or revoke the release authority.<sup>44</sup>

73. A decision to vary or revoke a release authority may be made in response to an application by you, or on our own initiative.<sup>45</sup>

74. In the case of varying a release authority, at the time of the variation you must satisfy the requirements described in paragraph 6 of this Ruling relating to age and never holding a relevant property interest.<sup>46</sup>

75. A release authority in relation to an FHSS determination can only be varied or revoked at a time before we begin treating any credit that you are entitled to in relation to amounts released from your superannuation interests under the FHSS scheme.<sup>47</sup>

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<sup>39</sup> Section 12-460.

<sup>40</sup> When a superannuation fund pays an 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 *Taxation Administration Act 1953* 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.

<sup>41</sup> Subsection 131-12(1).

<sup>42</sup> Paragraph 131-12(1)(c).

<sup>43</sup> Paragraph 131-12(1)(b).

<sup>44</sup> Subsection 131-30(2).

<sup>45</sup> Subsection 131-30(3).

<sup>46</sup> Subsection 131-30(2).

<sup>47</sup> Subsection 131-30(2).

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76. Varying or revoking a release authority causes your entitlement to a credit under section 131-65, in relation to amounts paid by your superannuation provider to us in response to that release authority, to cease.<sup>48</sup> The revocation of a release authority does not prevent you making a later request under section 131-5 in relation to the same FHSS determination.<sup>49</sup>

***Returning first home super saver amounts to a superannuation fund***

77. Subject to conditions, we must repay released amounts where<sup>50</sup>:

- a superannuation provider has paid an amount to us in response to a release authority issued in relation to an FHSS determination, and
- your entitlement to a credit under section 131-65 relating to that amount has ceased, either because the release authority was varied or revoked or the FHSS determination was amended or revoked.

78. The amount must be repaid to the superannuation provider that paid the amount to us, provided we reasonably believe that:

- the provider still holds a superannuation interest for you, and
- if the released amount were repaid to the superannuation provider, they could
  - allocate the repayment to that interest, and
  - later pay an equal amount in response to a release authority issued in relation to a later FHSS determination.

79. The amount must be repaid within 30 business days after the day that we start holding the reasonable belief of the matters described in paragraph 78 of this Ruling.<sup>51</sup>

80. Where the amount cannot be repaid in the manner described in paragraph 78 of this Ruling then, subject to conditions, we must pay an amount equivalent to the released amount to another superannuation provider or you directly.

81. The payment of the equivalent amount is determined in an order and according to whether we reasonably believe:

- another release authority relating to an FHSS determination has been issued to another superannuation provider, that provider still holds a superannuation interest for you, and were the equivalent amount paid to that other provider they could allocate the equivalent amount to that superannuation interest and later pay an amount equal to the equivalent amount in response to a release authority relating to a later FHSS determination – then the payment is to the other superannuation provider
- another superannuation provider holds a superannuation interest for you, and you (or your legal personal representative) have notified us of this in the approved form – then the payment is to that other superannuation provider as notified

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<sup>48</sup> Subsection 131-30(4).

<sup>49</sup> Subsection 131-30(5).

<sup>50</sup> Subsection 131-80(1).

<sup>51</sup> Subsection 131-80(2).

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- you have satisfied a condition of release with a nil cashing restriction of benefits arising directly or indirectly from amounts contributed to superannuation funds and you (or your legal personal representative) have notified us of this in the approved form – then the payment is to you or your legal personal representative (as applicable).<sup>52</sup>

82. The equivalent amount must be paid within 30 business days after the day that we start holding the reasonable belief of the matter that first so applies as described in paragraph 81 of this Ruling.<sup>53</sup>

83. An amount repaid to a superannuation provider in these circumstances is a rollover superannuation benefit.<sup>54</sup>

### ***Income tax in relation to released amounts***

84. When an amount is paid by a superannuation fund to us pursuant to a release authority under the FHSS scheme, an amount is included in your assessable income (assessable FHSS released amount) for the income year corresponding to the financial year in which you request us to issue a release authority.<sup>55</sup> This is the case even if the amount is released from the superannuation provider in the following income year. However, you will not have an assessable FHSS released amount if you withdraw your request, or if your FHSS determination in relation to your request is amended or revoked.

85. Your assessable FHSS released amount includes an amount equal to the concessional contributions and the associated earnings set out in the FHSS determination.<sup>56</sup> However, this amount is reduced if you requested that a lesser amount be released under the release authority, or a lesser amount is released from your superannuation provider than you requested. In this situation, the amount is reduced by the difference between the FHSS maximum release amount and the sum of the FHSS released amounts.<sup>57</sup>

86. You are entitled to a non-refundable tax offset that is equal to 30% of the assessable FHSS released amount in the income year in which you request the release authority.<sup>58</sup>

### ***Obligations following a release request under the first home super saver scheme***

87. The FHSS scheme broadly requires the released amount to be used to purchase your first home. Therefore, the following conditions must be met under the scheme:

- An FHSS determination has been made in relation to you.<sup>59</sup>
- You make a valid release request<sup>60</sup> in relation to that determination.<sup>61</sup>

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<sup>52</sup> Subsections 131-80(3) and 131-80(4).

<sup>53</sup> Subsection 131-80(2) and 131-80(4).

<sup>54</sup> Subparagraph 306-10(c)(iv) of the ITAA 1997.

<sup>55</sup> Subsection 313-20(1) of the ITAA 1997.

<sup>56</sup> Subsection 313-20(1) of the ITAA 1997.

<sup>57</sup> Subsection 313-20(2) of the ITAA 1997.

<sup>58</sup> Section 313-25 of the ITAA 1997.

<sup>59</sup> Paragraph 313-35(1)(a) of the ITAA 1997.

<sup>60</sup> A 'valid request' is a request made under section 131-5.

<sup>61</sup> Paragraph 313-35(1)(b) of the ITAA 1997.

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Status: **legally binding**

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- If that valid release request was not your first such request, then one of the following applies for each previous request
  - the request was withdrawn
  - the release authority (whether or not previously varied) issued in relation to the request has been revoked
  - where the request has been amended, the latest amended request was withdrawn, or
  - the release authority (whether or not previously varied) issued in relation to the latest of one or more amended requests has been revoked.<sup>62</sup>
- You enter into a contract to purchase or construct a CGT asset that is a residential premises<sup>63</sup>, located in Australia, within the period
  - beginning
    - o where the FHSS determination on which the release request is based was made before 15 September 2024 – 14 days before the day you make the valid release request<sup>64</sup>
    - o where the FHSS determination on which the release request is based was made on or after 15 September 2024 – 90 days before the day you make the valid release request<sup>65</sup>, and
  - ending 12 months after the day you make the valid release request (or a further period allowed by us up to a maximum of 12 additional months).<sup>66</sup>
- The price for the purchase or construction of the premises is at least equal to the total amount to be released that is stated in the valid release request.<sup>67</sup>
- You have occupied the premises or intend to occupy the premises as soon as practicable.<sup>68</sup>
- You intend to occupy the premises for at least 6 months of the first 12 months after it is practicable to occupy the premises.<sup>69</sup> Determining when it is 'practicable' to occupy the premises will depend on the facts and circumstances of a particular case. However, it is necessary for your

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<sup>62</sup> Paragraph 313-35(1)(ba) of the ITAA 1997.

<sup>63</sup> The term 'residential premises' is defined under section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* as meaning land or a building that is occupied as a residence or for residential accommodation or is intended to be occupied, and is capable of being occupied, as a residence or for residential accommodation (regardless of the term of the occupation or intended occupation). See Goods and Services Tax Ruling GSTR 2012/5 *Goods and services tax: residential premises* for our views as to when premises qualify as residential premises.

<sup>64</sup> Subitems 28(3) and (4) of Schedule 4 to the *Treasury Laws Amendment (2023 Measures No. 3) Act 2023*.

<sup>65</sup> Subparagraph 313-35(1)(c)(i) of the ITAA 1997.

<sup>66</sup> Subparagraph 313-35(1)(c)(ii) and subsection 313-35(2) of the ITAA 1997.

<sup>67</sup> Paragraph 313-35(1)(d) of the ITAA 1997.

<sup>68</sup> Paragraph 313-35(1)(e) of the ITAA 1997.

<sup>69</sup> Paragraph 313-35(1)(f) of the ITAA 1997.

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Status: **legally binding**

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intention to occupy the premises for the requisite period of time to be genuine.<sup>70</sup> You notify us in the approved form of the matters outlined above

- where the FHSS determination on which the release request is based was made before 15 September 2024 – within 28 days (or further period allowed by us) after you enter into the contract to
- purchase or construct the residential premises, which could be prior to your settlement<sup>71</sup>
- where the FHSS determination on which the release request is based was made on or after 15 September 2024 – within 90 days (or further period allowed by us) after you enter into the contract to purchase or construct the residential premises, which could be prior to your settlement.<sup>72</sup>

88. We may extend the period for entering into a contract by up to 12 months.<sup>73</sup> Where we provide an extension, this means that you will have up to 24 months from the day after you make a valid release request to enter a contract to purchase a residential premises.

89. Where you do not notify us in the approved form of the matters specified in paragraph 87 of this Ruling you may be subject to FHSS tax.<sup>74</sup> However, this will not be the case where, during the described period for entering into a contract to purchase or construct a CGT asset that is residential premises in Australia, you have:

- made non-concessional contributions that total an amount at least equal to your assessable FHSS released amount less any PAYG amount withheld from the assessable FHSS released amount, and
- notified us in the approved form that you made the non-concessional contributions.<sup>75</sup>

### **First home super saver tax**

90. Where you do not notify us in the approved form that you have entered into a contract to purchase or construct residential premises located in Australia, or made the required non-concessional contributions within the stipulated time periods<sup>76</sup> described in paragraphs 87 and 89 of this Ruling, you will be subject to FHSS tax at a rate of 20% of the assessable FHSS released amount.<sup>77</sup>

91. Your assessed FHSS tax is due and payable at the end of 21 days after we give you notice of the assessment of the amount of the FHSS tax.<sup>78</sup>

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<sup>70</sup> Paragraphs 1.181 to 1.183 of the Explanatory Memorandum to the Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No. 1) Bill 2017.

<sup>71</sup> Subitem 28(2) of Schedule 4 to the *Treasury Laws Amendment (2023 Measures No. 3) Act 2023*.

<sup>72</sup> Subsection 313-40(2) of the ITAA 1997.

<sup>73</sup> Subsection 313-35(2) of the ITAA 1997.

<sup>74</sup> Sections 313-50 and 313-60 of the ITAA 1997.

<sup>75</sup> Sections 313-35 and 313-50 of the ITAA 1997.

<sup>76</sup> Sections 313-40 and 313-50 of the ITAA 1997.

<sup>77</sup> Sections 3 and 4 of the *First Home Super Saver Tax Act 2017*.

<sup>78</sup> Section 313-65 of the ITAA 1997.

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Status: **legally binding (except for statements about the first home super saver tax)**

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**Assisting unsuccessful previous attempts before 15 September 2024 to use the first home super saver scheme**

92. There are transitional rules to assist individuals who unsuccessfully attempted to use the FHSS scheme before purchasing their first home.<sup>79</sup>

93. These rules apply if:

- An FHSS determination was made in relation to you during the period starting on 1 July 2018 and ending on 14 September 2024.<sup>80</sup>
- After that determination was made, you begin holding a relevant property interest described in paragraph 6 of this Ruling.<sup>81</sup>
- During the 3-year period beginning on 15 September 2024, you
  - apply to amend the original determination
  - amend your release request relating to that determination, or
  - apply for us to vary a release authority issued in relation to that determination.<sup>82</sup>
- When you make that application or amendment, we have not begun treating (as described in paragraph 63 of this Ruling) any credit to which you have become entitled under section 131-65 in relation to any FHSS determination made in relation to you.<sup>83</sup>

94. For the purpose of the transitional rules, the fact that you now hold a relevant property interest does not prevent you from applying to amend the original determination, amending your release request, or applying for us to vary a release authority.<sup>84</sup>

95. However, where an original FHSS determination is amended pursuant to these transitional rules, the amended determination must:

- not state an FHSS maximum release amount that exceeds what that amount could have been when the determination was originally made
- reflect the limits described in paragraph 26 of this Ruling that applied when the original determination was made.<sup>85</sup>

96. Where you apply to amend the original determination, amend your release request, or apply for us to vary a release authority under the transitional rules, the obligations and FHSS tax described in paragraphs 87 to 89 of this Ruling do not apply.<sup>86</sup>

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**Example 6 – assisting unsuccessful previous attempts before 15 September 2024 to use the first home super saver scheme**

97. *Temujin receives an FHSS determination on 14 February 2020. The FHSS determination shows an FHSS maximum release amount of \$27,365.*

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<sup>79</sup> Item 30 of Schedule 4 to the *Treasury Laws Amendment (2023 Measures No. 3) Act 2023*.

<sup>80</sup> Paragraph 30(1)(a) of Schedule 4 to the *Treasury Laws Amendment (2023 Measures No. 3) Act 2023*.

<sup>81</sup> Paragraph 30(1)(b) of Schedule 4 to the *Treasury Laws Amendment (2023 Measures No. 3) Act 2023*.

<sup>82</sup> Paragraph 30(1)(c) of Schedule 4 to the *Treasury Laws Amendment (2023 Measures No. 3) Act 2023*.

<sup>83</sup> Paragraph 30(1)(d) of Schedule 4 to the *Treasury Laws Amendment (2023 Measures No. 3) Act 2023*.

<sup>84</sup> Subitem 30(2) of Schedule 4 to the *Treasury Laws Amendment (2023 Measures No. 3) Act 2023*.

<sup>85</sup> Subitem 30(3) of Schedule 4 to the *Treasury Laws Amendment (2023 Measures No. 3) Act 2023*.

<sup>86</sup> Subitem 30(4) of Schedule 4 to the *Treasury Laws Amendment (2023 Measures No. 3) Act 2023*.

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Status: **legally binding (except for statements about the first home super saver tax)**

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98. *Temujin immediately requests that we issue a release authority for the full amount to his superannuation fund and a release authority is issued.*

99. *However, Temujin's attempt to use the FHSS scheme in February 2020 is ultimately unsuccessful. We:*

- *identify, using information reported by Temujin's superannuation fund, that Temujin has incorrectly included \$10,000 of super guarantee contributions (which are not eligible to be released) in his request for an FHSS determination, and*
- *revoke the release authority before Temujin's superannuation fund releases any amount.*

100. *On 17 April 2021, Temujin acquires a relevant property interest under the FHSS scheme by purchasing a house in Adelaide and registering his interest in the property with the South Australian Land Title Office.*

101. *On 3 June 2025, we contact Temujin who confirms that he wishes to apply to amend his FHSS determination to remove the ineligible contributions. Temujin's FHSS determination is amended to only include his eligible contributions made up to 14 February 2020 plus the associated earnings in respect of those eligible contributions calculated to 14 February 2020. The amended FHSS determination shows an FHSS maximum release amount of \$16,419.*

102. *Temujin is eligible to access the FHSS scheme using the transitional rules because:*

- *He has an FHSS determination which was made between 1 July 2018 and 14 September 2024 – on 14 February 2020.*
- *After that FHSS determination is made, he acquires a relevant property interest in Australia – on 17 April 2021.*
- *He applies to amend his FHSS determination between 15 September 2024 and 14 September 2027 – on 3 June 2025.*
- *At the time of making the application to amend his FHSS determination on 3 June 2025, we have not begun treating any credit to which Temujin has become entitled under the FHSS scheme – as the original release authority is revoked before Temujin's superannuation fund released the amount.*

103. *Temujin makes a release request for \$16,419 based on his amended FHSS determination on 10 June 2025 and that amount is released from his superannuation fund.*

104. *At the end of the 2024-25 financial year, Temujin receives a payment summary showing the assessable FHSS released amount and the PAYG amount withheld. He must include these amounts in his 2024–25 tax return.*

105. *However, as he is accessing the FHSS scheme using the transitional rules, Temujin:*

- *is not required to sign a contract to purchase or construct a home, and is not required to re-contribute it*
  - *is not required to notify us of signing a contract to purchase or construct, or of re-contributing*
  - *will not be liable to pay FHSS tax.*
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# TR 2024/4

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Status: **legally binding (except for statements about the first home super saver tax)**

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## Date of effect

106. This Ruling applies from 15 September 2024.

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**Commissioner of Taxation**

16 September 2024

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Status: **not legally binding**


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## References

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LCR 2018/5

### *Related Rulings/Determinations:*

TR 2010/1; GSTR 2012/5

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Status: **not legally binding**

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61A

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ATO references

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