SPR GN 2018/1
First home super saver scheme

This document is no longer current. Please refer to the most current version.

This Guidance Note is about the new First home super saver scheme which allows you to save for your first home inside your superannuation fund.

We are committed to providing you with accurate, consistent and clear advice and guidance to help you understand your rights and entitlements, and your obligations. If you follow our advice or guidance and it turns out to be incorrect, or you make a mistake because it was misleading, we will take this into account.

Our commitment to you

This guidance note contains general information and examples. It may omit details that could be significant in your personal circumstances.

This information is for people who are considering options for saving to purchase their first home

The First home super saver (FHSS) scheme allows you to save for your first home inside your superannuation fund. This helps first homebuyers save faster with the concessional tax treatment within super.

From 1 July 2017, you can make voluntary concessional and non-concessional contributions into your super fund to save for your first home.

From 1 July 2018, you can request a FHSS determination from us and apply to release your voluntary contributions, along with associated earnings, to help you purchase your first home.

You can have a maximum of $15,000 of eligible contributions from any one financial year counted towards what can be released under the FHSS scheme, up to a total of $30,000 across all years.

You must meet the eligibility requirements to apply for the release of these amounts.

Eligibility

You are eligible to use the FHSS scheme if you:

- have never held
  - a freehold interest in real property in Australia
  - a long-term lease of land in Australia
  - a company title interest in land in Australia,

  unless we determine you have suffered a financial hardship,
- are 18 years or over, and
- have not previously requested a release of an amount from super under the FHSS scheme.

There is no requirement for you to be an Australian citizen, Australian resident or an Australian resident for taxation purposes. If you hold an Australian permanent resident visa, you may still use the FHSS scheme if you meet the eligibility requirements.

However, if you are not an Australian resident for tax purposes you will pay any income tax on the assessable income from the FHSS scheme at the non-resident tax rate.

You should also check whether there are any other limitations to you purchasing residential property, new or established, in Australia.

Never held interest in real property

You must not have previously owned property in Australia (unless we determine that you have suffered a financial hardship). This includes any kind of real property, including investment or commercial property and vacant land. It also includes certain long-term leases of land in Australia, such as Crown leases in the ACT, or a company title interest in land in Australia.

This also includes property that you inherit. However, if you are the beneficiary of a deceased estate you do not ‘own’ property until the executor actually transfers the property to you. As such, if you are the beneficiary of a deceased estate but property has not yet been transferred to you, you can still be eligible to request a FHSS determination to purchase a different property.

If a deceased estate contains property that is sold, and you receive capital proceeds as a beneficiary, you will not have held an interest in real property.

Being a trustee or beneficiary of a trust

If you are the trustee of a trust, including a unit trust or a self-managed superannuation fund (SMSF), you are taken to have a legal entity as the trustee that is separate from your individual capacity.

If you are a trustee of a trust, including a unit trust or a SMSF that holds real property, this will not prevent you from being eligible for the FHSS scheme. This includes if you are the director of a corporate trustee.

If you are the beneficiary of a trust, your eligibility will depend on the particular rights you have as a beneficiary.

Being a member of a super fund that holds real property will not prevent you from being eligible for the FHSS scheme.

Financial hardship

You may still be eligible for the FHSS scheme even if you have previously held an interest in real property in Australia, if we determine that you have suffered a financial hardship that resulted in a loss of ownership of all real property. You can apply to us under the financial hardship provisions from 1 July 2018.

Some examples of the types of events that we consider in determining financial hardship that has resulted in a loss of property interests include:

- losing employment
- being affected by a natural disaster
- experiencing bankruptcy
- experiencing illness
- experiencing divorce, separation from a de-facto partner, or other relationship breakdown, and
- being eligible for early access to superannuation.

We must be satisfied that the event led to you losing all real property interests you held at the time the hardship occurred. Your application for the financial hardship determination must be supported by evidence that demonstrates this link. You also must not have acquired a new property since you lost the earlier property interest.

If we decide not to make a determination that you suffered a financial hardship and you are dissatisfied with the decision you can lodge an objection with us.

Eligible contributions

The following kinds of contributions are eligible for release under the FHSS scheme:

- Voluntary concessional contributions including salary sacrifice amounts or contributions for which a tax deduction has been claimed. These are taxed at 15% in the fund.
- Voluntary non-concessional contributions including personal after tax contributions where a tax deduction has not been claimed.

If you transfer an amount into an Australian super fund from a KiwiSaver scheme, the amount will be an eligible contribution (except for certain amounts listed below). Also, transfers from other foreign funds into an Australian super fund are eligible (except for the amounts listed below).

The following contributions are not eligible:

- super guarantee (SG) contributions made by your employer
- mandated employer or member contributions made for you under an award, industrial agreement
- member contributions made for you by your spouse, parent or other friends or family
- amounts you receive under a contributions-splitting arrangement
- government co-contributions
- contributions under a structured settlement or personal injury order
- amounts contributed to super as part of the small business CGT concessions
- amounts transferred from a KiwiSaver scheme that are Australian-sourced amounts or returning New Zealand-sourced amounts
- applicable fund earnings from a foreign fund transfer that you elect to include in the receiving fund's assessable income.

Contributions to a defined benefit interest or constitutionally protected fund, or contributions that are required to be made under a law of a State or Territory, or the rules of a fund are also excluded from being eligible.

Excess concessional or non-concessional contributions are not eligible even if they otherwise would have been.

Your eligible contributions are not put aside separately in your fund or in a new account, they are not a new type of contribution and they are reported to us under existing reporting requirements. You do not need to notify your fund at the time you are making contributions that you plan to release them under the FHSS scheme.

However, before contributing amounts you hope to release under the FHSS scheme you should check with your fund:

- that they will release contributions you make
- if there are any fees/charges that may apply, and
- if there is any loss of insurance coverage that may be attached to your account after amounts are released.

Voluntary contributions made under an award

Some funds may not be able to distinguish and report which contributions under an award are mandated and which are voluntary contributions. This means that contributions reported to us could be incorrectly omitted from or included in your eligible contributions.

If you have previously made or currently make additional voluntary contributions under an award, you will need to make sure that all of your eligible voluntary contributions have been correctly included in your FHSS determination. If your fund cannot determine which contributions are mandatory and voluntary, you should be able to confirm these amounts from either your payslips or employer payroll area.

If there are any missing or incorrect eligible contributions, you can edit your own contribution details into your FHSS determination request.

Applying for a FHSS determination

From 1 July 2018 you can apply for a FHSS determination from us. This is the first step in the process of releasing eligible funds and it sets out the maximum amount that you can have released under the FHSS scheme, known as the **FHSS maximum release amount**.

There is a limit of $15,000 of eligible contributions per financial year that are counted towards this amount, and a total limit of $30,000 of eligible contributions across all years.

Taking into account these limits, the FHSS maximum release amount is calculated as the sum of:

- the eligible non-concessional contributions
- 85% of the eligible concessional contributions, and
- associated earnings for these contributions.

The associated earnings are a notional amount of earnings calculated at the *shortfall interest charge* rate, for the following period:

- for contributions made in 2017–18, from 1 July 2017 to the date of the determination, and
- for contributions made in later financial years, from the 1st day of the month the contribution is made to the date of the determination.

You have 60 days after a determination is issued to apply for a release if you are ready to purchase your home. You can request more than one FHSS determination, however, once you have requested a release under the scheme you will not be able to seek further FHSS determinations.

The ordering rules for contributions

When you apply for a FHSS determination, we will apply ordering rules to determine which eligible contributions are counted when calculating your FHSS maximum release amount.

Your eligible contributions will be counted in the order in which they were made. If eligible non-concessional and eligible concessional contributions are received at the same time the non-concessional contributions will be counted first.

If you claim a deduction for some or all of your personal contributions in a financial year, the personal contributions for which a deduction is claimed will be concessional contributions and any remainder will be non-concessional. In this case, the resulting eligible non-concessional contributions, if any, are taken to be made before any eligible concessional contributions.

These ordering rules are designed to:

- broadly maximise the amount available to you for release, and
- remove the need for you to make specific elections about which contributions should be eligible, or about how particular contributions must be characterised.

Releasing amounts under the FHSS scheme

Once you have received a FHSS determination, you can apply to us to have an amount released from your super fund (or funds) up to the FHSS maximum release amount.

You can only request a release once, so it is important to check that the details in the determination are correct and that you do not want to make further contributions to count towards your FHSS maximum release amount.

You must confirm as part of your release application that you will not claim further tax deductions on the non-concessional contributions included in the determination.

You should also carefully consider whether releasing amounts under the FHSS scheme is appropriate for your circumstances. The released amount will have tax withheld from it, and it could be reduced further if you have debts to the ATO or other Commonwealth agencies, including the Child Support Agency or Department of Human Services.

Once you request a release, we will issue a release authority to your super fund (or funds), and the fund will send the requested amount to us. We will withhold tax from these amounts, offset any outstanding ATO or other Commonwealth debts and then provide the remainder to you.

Released amounts will **not** be offset to reduce the balance of a study assistance loan such as HECS-HELP or FEE-HELP, as repayments for these loans are only compulsory when you lodge a tax return.

There is no requirement that the contributions and earnings that are identified in a FHSS determination be released from the same super interest (or super fund) that the contributions were made to.

If your fund receives a release authority, and your interest in that fund is less than the amount on the release authority, they only need to pay the maximum available amount from your interest in the fund (that is, the balance of your account). We will send a further release authority to another fund to request the unreleased amount if you have another account available.

Taxation of released amounts

When you have amounts released under the FHSS scheme, an amount will be included in your assessable income in the financial year you request release. This **assessable FHSS released amount** is the sum of:

- the concessional contributions, and
- the associated earnings

included in your FHSS determination.

You are entitled to a tax offset of 30% of this assessable amount.

If you release less than your FHSS maximum release amount, your assessable FHSS released amount is reduced by the difference between the FHSS maximum release amount and the amount actually released.

We will withhold tax from your assessable FHSS released amount, based on an estimate of your tax liability using ATO-held information including your previous income tax returns.

The withholding tax rate will be calculated as:

- your estimated marginal tax rate, plus Medicare levy, less the 30% tax offset, or
- 17% if we are unable to estimate your expected marginal rate.

You will receive a FHSS payment summary that shows your assessable FHSS released amount and the amount of tax withheld.

Your assessable FHSS released amount is not counted for various income tests, including for determining, amongst others:

- eligibility for Government payments such as family assistance
- eligibility for certain tax offsets
- liability for the Medicare levy surcharge
- thresholds for repayment of HELP debts, and
- child support payments.

Requirement to purchase a house and FHSS tax

You have up to 12 months from the time the first amount is released from the ATO under the FHSS scheme to sign a contract to purchase or construct a home.

This home has to be residential premises, and cannot be:

- any premise not capable of being occupied as a residence
- a houseboat
- a motor home
- vacant land (but see *Purchasing vacant land* below).

You must genuinely intend to occupy the home as soon as practicable, and intend to occupy it for at least 6 of the first 12 months that it is practicable for you to occupy it.

Also the price of the purchase or construction must be at least equal to the released amount.

You must notify us of these intentions in the approved form within 28 days of entering into the contract to purchase or construct the residential premises.

Purchasing vacant land

If you have, or intend to purchase, a vacant block of land to build a home on, you cannot have purchased the vacant land before the commencement of the FHSS scheme, or before requesting a FHSS determination. If you did, you would not be eligible as you would already hold an interest in real property in Australia.

If you do purchase vacant land after requesting a FHSS determination you will need to enter into the contract to construct the premises within 12 months of the release of funds; the purchase of vacant land alone within the 12 months is not enough to satisfy the requirements under the FHSS scheme.

If you do not enter a contract to purchase or construct a property

If you do not enter into a contract to purchase or construct a home within 12 months of the first release, you can do any of the following:

- apply for an extension up to a maximum of a further 12 months
- recontribute an amount into your super fund, or
- pay FHSS tax. This tax is calculated at 20% of the released amounts that were counted towards your assessable income.

If you choose to recontribute, the amount you recontribute must be made within the 12-month period or an extended time period if you have been granted one. The recontribution must be at least equal to the assessable FHSS released amount, less any tax that was withheld. These contributions have to be non-concessional contributions and will count towards your non-concessional contributions cap. You are not able to claim a deduction for these recontributed amounts.

You also have to notify us in the approved form of the recontributed amounts to ensure that you do not have to pay FHSS tax.

Example – eligibility to request a FHSS determination

Andrew:

- currently owns a residential property in Melbourne
- decides to sell his property and buy another home with his partner Laura

Laura:

- has never held an interest in real property in Australia
- decides to buy a home with Andrew

Andrew is not eligible for the FHSS scheme as he has already held an interest in real property in Australia. He cannot make a valid request for a FHSS determination.

However, eligibility for the FHSS scheme is determined on an individual basis, so Andrew having owned property will not stop Laura from being eligible to request a FHSS determination.

Laura will be eligible to request a FHSS determination, provided she is over 18 and has not previously requested the release of an amount under the FHSS scheme.

Examples – financial hardship

Stu:

- receives an early release of super on compassionate grounds as the bank is going to foreclose on his home
- the early release of super benefits deferred the foreclosure
- later, the bank foreclosed on the home anyway
- has not acquired another real property interest since that event
- is over 18 and has not requested release under the FHSS scheme previously

We make a determination that Stu is eligible under the financial hardship provisions.

Stu is able to demonstrate that he experienced financial hardship that led to the loss of his home and he has not acquired another real property interest since that event.

Gai:

- over a number of years has purchased and sold multiple properties
- becomes bankrupt and loses all her real property interests
- has not acquired another real property interest since that event
- is over 18 and has not requested release under the FHSS scheme previously

We make a determination that Gai is eligible for the hardship provisions. The bankruptcy event led to the loss of all her real property interests. She is considered to be 'starting again'.

There is no requirement for the financial hardship to be linked to the loss of a first home, as long as it has resulted in the loss of all of her current real property interests.

Leanne:

- owns both a residential property and a commercial property
- suffers financial hardship that results in her losing the residential property, however she continues to hold the commercial premises
- is over 18 and has not requested release under the FHSS scheme previously

We make a determination that Leanne is not eligible for the hardship provisions, as her financial hardship has not resulted in the loss of all of her real property interests.

Example – eligible contributions

John:

- is required to contribute a minimum of 2% of after-tax salary under his award to his accumulation interest
- elects to contribute a total of 5% of his after-tax salary
- his employer is required under the award to match his after-tax contributions by making additional contributions above the super guarantee rate

The amount equal to 2% of after-tax salary that John is required to contribute does not form part of eligible contributions, as his award requires it. However, the extra contributions beyond that required minimum amount, equal to 3% of after-tax salary, are considered 'voluntary' member contributions and form part of eligible contributions for the FHSS scheme.

If John's fund cannot distinguish between these contributions, John will need to check with his employer to obtain and validate details of the voluntary components of his contributions. He can then provide this additional information at the time he applies to us to ensure his FHSS determination includes the eligible contributions.

The extra contributions made above the super guarantee rate by John's employer are not eligible contributions, as they are also required by the award.

Examples – ordering rules for eligible contributions

Megan:

- made voluntary personal contributions of $3,000 per month to her SMSF during 2017–18
- no other contributions were made for her in 2017–18
- claimed a $25,000 deduction for some of her contributions
- is within her contributions caps for the financial year

Megan has $25,000 eligible concessional contributions and $11,000 eligible non-concessional contributions in 2017–18.

The ordering rules ensure that the earlier contributions that she made are taken to be the non-concessional contributions.

The following table illustrates which of Megan's eligible contributions will be counted when determining her FHSS maximum release amount.

Month	***07/17***	***08/17***	***09/17***	***10/17***	***11/17***
Non-concessional contributions	*$3,000*	*$3,000*	*$3,000*	*$2,000*	*-*
Concessional contributions	*-*	*-*	*-*	*$1,000*	*$3,000*

Megan will have $11,000 of eligible non-concessional contributions and $4,000 of eligible concessional contributions counted when determining her FHSS maximum release amount. Her remaining eligible contributions for the year are not counted as they are over the $15,000 annual limit.

If she requested a FHSS determination now her FHSS maximum release amount will be $14,400 and an amount of associated earnings. The $14,000 comprises $11,000 eligible non-concessional contributions and $3,400 eligible concessional contributions (85% of $4,000).

Henry:

- salary sacrifices $1,000 in contributions on the 15th of each month from January 2018
- makes personal contributions on 30 June 2018 and 30 June 2019 of $5,000 each to the same fund
- applies for a FHSS determination in early November 2019

Henry's total eligible contributions for 2017–18, 2018–19 and 2019–20 are as follows:

Financial year	*2017–18*	*2018–19*	*2019–20*
Non-concessional contributions	*$5,000*	*$5,000*	*-*
Concessional contributions	*$6,000*	*$12,000*	*$12,000*

Henry's eligible contributions are counted in the order they are received. The following table illustrates which of Henry's eligible contributions will be counted when determining his FHSS maximum release amount:

Financial year	*2017–18*	*2018–19*	*2019–20*
Non-concessional contributions	*$5,000*	*$3,000*	*-*
Concessional contributions	*$6,000*	*$12,000*	*$4,000*

The remaining $2,000 of Henry's eligible non-concessional contribution in 2018–19 is not counted because the $15,000 annual limit has been reached. Only $4,000 of his eligible concessional contributions are counted in 2019–20 because he has reached the $30,000 limit across all years.

Examples – FHSS maximum release amount

Henry (continued):

- receives a FHSS determination in November 2019
- $8,000 eligible non-concessional contributions count towards the FHSS maximum release amount
- $22,000 eligible concessional contributions count towards the FHSS maximum release amount

Henry's FHSS maximum release amount is calculated as the sum of:

- *$8,000 (his eligible non-concessional contributions),*
- *$18,700 (85% of his eligible concessional contributions), and*
- *$1,800 (his associated earnings)*

taking into account the yearly and total limits.

Henry's FHSS maximum release amount is $28,500. He can request release of this amount or a lesser amount under the FHSS scheme.

Carolyn:

- receives a FHSS determination on 3 December 2018
- eligible concessional contributions of $15,000 in 2017–18 count towards the FHSS maximum release amount
- eligible concessional contributions of $15,000 in 2018–19 (monthly $3,000 salary sacrifice contributions from July 2018 to November 2018) count towards the FHSS maximum release amount

Carolyn's FHSS maximum release amount is calculated as the sum of 85% of her eligible concessional contributions ($25,500), and her associated earnings.

For the amount of each of the contributions that is included in the FHSS maximum release amount that were made in 2017–18, Carolyn's associated earnings are calculated based on the period from 1 July 2017 to the date of the determination, using the shortfall interest charge rate for each day in the period:

Period from	*Contribution amount*	*Associated earnings (approx.)*
1 July 2017	*$12,750*	*$903*

For the amount of each of the contributions that is included in the FHSS maximum release amount that were made in 2018–19, the associated earnings are calculated separately for contributions made in each month, for the period from the 1st of the month to the date of the determination, using the shortfall interest charge rate for each day in the period:

Period from	*Contribution amount*	*Associated earnings (approx.)*
1 July 2018	*$2,550*	*$54*
1 August 2018	*$2,550*	*$43*
1 September 2018	*$2,550*	*$32*
1 October 2018	*$2,550*	*$22*
1 November 2018	*$2,550*	*$11*

Carolyn's FHSS maximum release amount is $26,565, including associated earnings of $1,065. The ATO calculates these associated earnings.

Examples – taxation of amounts released under the FHSS scheme

Sue: • receives a FHSS determination in 2018–19 • $10,000 eligible concessional contributions count towards the FHSS maximum release amount • $5,000 eligible non-concessional contributions count towards the FHSS maximum release amount • has no outstanding Commonwealth debts	*Sue's FHSS maximum release amount is $14,350, comprising:* • *$5,000 (the eligible non-concessional contributions)* • *$8,500 (85% of the eligible concessional contributions)* • *$850 (associated earnings).* *Sue requests a release of the maximum amount in June 2019. A release authority is issued to her fund and they release the full amount to the ATO. We withhold tax and release the remainder to Sue on 3 July 2019. Sue is issued with a payment summary for 2018–19 as that was the financial year she requested the release.* *Sue needs to include $9,350 in her assessable income for 2018–19, being the part of the released amount that represents the assessable FHSS released amount (85% of the eligible concessional contributions and the associated earnings).* *Sue will also receive a tax offset of $2,805, being 30% of the assessable FHSS released amount and a credit for the tax withheld in her 2018–19 income tax return.*
Alex: • receives a FHSS determination in 2019–20 • $8,000 eligible concessional contributions count towards the FHSS maximum release amount • $20,000 eligible non-concessional contributions count towards the FHSS maximum release amount • had a marginal tax rate of 37% in 2018–19 • has no outstanding Commonwealth debts	*Alex's FHSS maximum release amount is $28,500, comprising:* • *$20,000 (the eligible non-concessional contributions)* • *$6,800 (85% of the eligible concessional contributions)* • *$1,700 (associated earnings).* *We use Alex's previous tax return to estimate his marginal tax rate for 2019–20. His taxable income from the last year plus his assessable FHSS released amount provides an estimated income, which suggests that he will remain in the same marginal tax bracket of 37% for 2019–20.* *Alex's estimated withholding rate is determined to be 9%, being:* • *the estimated marginal tax rate of 37%, plus* • *the 2.0% Medicare levy, less* • *the 30% tax offset.* *Alex requests a release of the maximum amount in 2019–20 and accepts the ATO's estimated withholding rate. A release authority is issued to his fund and his fund releases the full amount to the ATO.* *We withhold $765 (9% of $8,500) from the released amount, and release the remaining $27,735 to Alex.* *Alex will need to include $8,500 in his assessable income in his 2019–20 income tax return. He will also receive a tax offset of $2,550, being 30% of the assessable FHSS released amount and a credit for the tax withheld of $765.*

Examples – requirements after release and FHSS tax

Julie: • enters into a contract to purchase her first residential property on 1 August 2019 • requests a FHSS determination on 15 August 2019 • the contract is conditional and becomes unconditional just before settlement for the property purchase, which is 1 December 2019	*Julie is eligible to request a FHSS determination because at that point in time she has never held freehold interest in property. Even though she has entered into the purchase contract, the contract was still conditional, and she did not hold a freehold interest in that property, at the relevant point in time.* *However, if Julie releases amounts under the FHSS scheme her purchase contract will not satisfy the requirement to enter into a contract after release, since it was entered into before the amounts were released.* *Unless Julie is purchasing an additional property that she intends to live in, she will need to recontribute amounts to super or pay FHSS tax if she goes ahead with requesting release under the scheme.*

George:

- requests the release of $26,100 under the FHSS scheme
- $20,100 of this released amount is the assessable FHSS released amount
- The ATO withholds $1,809 and releases $24,291
- decides not to purchase a home

Since George will not be entering into a contract to purchase or construct a home, he needs to recontribute amounts to super or pay FHSS tax.

If George chooses to recontribute, he will need to contribute non-concessional contributions to his super fund equal to $18,291, being the assessable FHSS released amount less the tax withheld. He would need to contribute this amount during the 12 months from when the first amount was released and notify the Commissioner within the same timeframe.

If George does not recontribute, he will receive an assessment for FHSS tax of $4,020 ($20,100 x 20%).

More information:

For more information, see:

- Law Companion Ruling LCR 2018/5 *First home super saver scheme*
- *First Home Super Saver Scheme* on ato.gov.au
- *Claiming deductions for personal super contributions* on ato.gov.au

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References:

- TAA 1953
- TAA 1953 Sch 1 Subdiv 131-A
- TAA 1953 Sch 1 Div 138
- ITAA 1997
- ITAA 1997 Div 313
- First Home Super Saver Tax Act 2017

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