Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No. 1) Act 2017

No. 132, 2017

An Act to amend the law relating to taxation, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No. 1) Act 2017

No. 132, 2017

An Act to amend the law relating to taxation, and for related purposes

[*Assented to 13 December 2017*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No. 1) Act 2017*.

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2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	13 December 2017
2. Schedule 1	Immediately after the commencement of Part 1 of Schedule 10 to the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016*.	1 July 2018
3. Schedule 2	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 January 2018

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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4 Review of operation of amendments

(1) The Minister must cause an independent review of the operation of the amendments made by this Act.

(2) The review must:

(a) start as soon as practicable after 18 months after Royal Assent; and

(b) be completed within 6 months.

(3) The Minister must cause a written report about the review to be prepared.

(4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the report is given to the Minister.

(5) The report is not a legislative instrument.

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Schedule 1—First home super saver scheme

Part 1—Determinations and release authorities

Division 1—First home super saver determinations

Taxation Administration Act 1953

1 At the end of Part 3-20 in Schedule 1

Add:

Division 138—First home super saver scheme

Table of Subdivisions

Guide to Division 138
138-A First home super saver determination
138-B FHSS maximum release amount

Guide to Division 138

138-1 What this Division is about

> If you have had voluntary contributions into superannuation, you may be eligible to have those contributions and their associated earnings released for the purposes of purchasing or constructing your first home.

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Subdivision 138-A—First home super saver determination

Guide to Subdivision 138-A

138-5 What this Subdivision is about

> If you satisfy particular criteria, you may request that the Commissioner make a determination stating your FHSS maximum release amount and the components that make up that amount.

Table of sections

Operative provisions

138-10 First home super saver determination
138-15 Review

Operative provisions

138-10 First home super saver determination

(1) A ***first home super saver determination*** is a written determination stating:
  (a) your *FHSS maximum release amount; and
  (b) the amount of each of the following components that make up your FHSS maximum release amount:
    (i) your *concessional contributions;
    (ii) your *non-concessional contributions;
    (iii) your associated earnings.

(2) You may request the Commissioner, in the *approved form, to make a *first home super saver determination if:
  (a) you have never held:
    (i) a freehold interest in real property in Australia; or
    (ii) a lease of land in Australia (including a renewal or extension of such a lease) as described in paragraph 104-115(1)(b) of the *Income Tax Assessment Act 1997*; or

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(iii) a company title interest (within the meaning of Part X of the *Income Tax Assessment Act 1936*) in land in Australia; and

(b) you are 18 years or older; and

(c) you have not previously requested a release authority under Division 131 in relation to a first home super saver determination that has been made in relation to you.

(2A) If the Commissioner determines that you have suffered a financial hardship, you are taken to have satisfied paragraph (2)(a).

(2B) The regulations may specify the circumstances in which the Commissioner is to determine that a person has suffered a financial hardship for the purposes of subsection (2A).

(3) If you make a valid request under subsection (2), the Commissioner must make a *first home super saver determination in relation to you.

(4) The Commissioner may amend or revoke a *first home super saver determination at any time before a release authority relating to the determination is issued under Division 131.

(5) Notice of a determination given by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

138-15 Review

If you are dissatisfied with:

(a) a *first home super saver determination in relation to you; or

(b) a decision the Commissioner makes not to make a determination under subsection 138-10(2A);

you may object against the determination, or the decision, as the case requires, in the manner set out in Part IVC.

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Subdivision 138-B—FHSS maximum release amount

Guide to Subdivision 138-B

138-20 What this Subdivision is about

> Your FHSS maximum release amount comprises your eligible non-concessional contributions, 85% of your eligible concessional contributions, and your associated earnings.
>
> There are limits on the amount of contributions that may be eligible for release.

Table of sections

Operative provisions

138-25 FHSS maximum release amount
138-30 FHSS releasable contributions amount
138-35 Eligible contributions
138-40 Associated earnings

Operative provisions

138-25 FHSS maximum release amount

Your ***FHSS maximum release amount*** is the sum of:

(a) your *FHSS releasable contributions amount worked out under section 138-30; and

(b) your associated earnings worked out under section 138-40.

138-30 FHSS releasable contributions amount

(1) Your ***FHSS releasable contributions amount*** is the sum of the following amounts for each *financial year that starts on 1 July 2017 or a later 1 July:

(a) your *FHSS eligible non-concessional contributions for the financial year;

(b) 85% of your *FHSS eligible concessional contributions for the financial year.

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Order of counting contributions

(2) In determining which contributions are to be counted towards your *FHSS releasable contributions amount, contributions are to be counted in the order in which they were made (from earliest to latest).

(3) For subsection (2):
  (a) if an *FHSS eligible concessional contribution, and an *FHSS eligible non-concessional contribution, is made in respect of you at the same time, the FHSS eligible non-concessional contribution is taken to have been made first; and
  (b) if, for a particular *financial year, you personally made both *FHSS eligible concessional contributions and *FHSS eligible non-concessional contributions, the FHSS eligible non-concessional contributions are taken to have been made first.

Example: For paragraph (b), in the 2018-2019 financial year, you made voluntary contributions of $1,000 each fortnight, up to a total of $25,000. At the end of the financial year, you claim a deduction for $15,000 (leaving $10,000 of the contributions as non-concessional contributions).

If all of the non-concessional contributions are eligible to be released under section 138-35, the first 10 contributions made for the financial year are taken to have been the non-concessional contributions, and the later contributions are taken to be the concessional contributions.

138-35 Eligible contributions

Limits on amount of eligible contributions

(1) For the purposes of this Subdivision:
  (a) the maximum amount of contributions that may be eligible to be released is $30,000; and
  (b) the maximum amount of contributions made in a particular *financial year that may be eligible to be released is $15,000.

Eligible contributions

(2) A *concessional contribution, or *non-concessional contribution, for a *financial year is not eligible to be released unless it:

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(a) is made in respect of you in the financial year; and

(b) is:

(i) an employer contribution that is not a mandated employer contribution (within the meaning of Part 5 of the *Superannuation Industry (Supervision) Regulations 1994*); or

(ii) a member contribution (within the meaning of that Part) that is made by you;

other than a contribution to the extent it is required to be made because of a law of the Commonwealth or of a State or Territory, or the rules of the relevant *superannuation fund; and

(c) is not a contribution made in respect of a *defined benefit interest; and

(d) is not a contribution to a *constitutionally protected fund.

(3) If:

(a) you have *excess concessional contributions for a *financial year (***your excess amount***); and

(b) your excess amount is greater than your *concessional contributions for the financial year that are not eligible to be released under subsection (2) (***your non-eligible contributions***);

concessional contributions that are equal to the difference between your excess amount and your non-eligible contributions are not eligible to be released.

(4) If:

(a) you have *non-concessional contributions for the *financial year that exceed your non-concessional contributions cap for the financial year (***your excess amount***); and

(b) your excess amount is greater than your non-concessional contributions for the financial year that are not eligible to be released under subsection (2) (***your non-eligible contributions***);

non-concessional contributions that are equal to the difference between your excess amount and your non-eligible contributions are not eligible to be released.

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(5) For the purposes of this section, disregard paragraph 292-90(1)(b) of the *Income Tax Assessment Act 1997*.

Note: Under paragraph 292-90(1)(b) of the *Income Tax Assessment Act 1997*, your non-concessional contributions for a financial year would include the amount of your excess concessional contributions (if any) for the financial year.

138-40 Associated earnings

(1) You are taken to have associated earnings equal to the sum of the amounts worked out under subsection (2) for each contribution counted in your *FHSS releasable contributions amount.

(2) The amount for a contribution is equal to the sum (rounded down to the nearest dollar) of the amounts worked out under the following formula for each of the days during the period mentioned in subsection (3).

$$\text{Shortfall interest charge rate} \times \left(\begin{array}{c}\text{Amount of}\\ \text{contribution}\end{array} + \begin{array}{c}\text{Sum of earlier}\\ \text{daily proxy amounts}\end{array} \right)$$

where:

amount of contribution means the amount of the contribution that is counted in your *FHSS releasable contributions amount.

shortfall interest charge rate means the rate, worked out under subsection 280-105(2), for the day.

sum of earlier daily proxy amounts means the sum of the amounts worked out for the contribution under the formula for each of the earlier days (if any) during the period for the contribution.

(3) The period starts:

(a) if the contribution is made in the *financial year starting on 1 July 2017—on 1 July 2017; and

(b) if the contribution is made in the financial year starting on 1 July 2018, or a later financial year—on the first day of the month in which the contribution is made or taken to have been made (see subsection 138-30(2));

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and ends on the day the Commissioner makes the *first home super saver determination for which the associated earnings are being worked out.

Division 2—Release authorities

Taxation Administration Act 1953

2 Section 131-1 in Schedule 1

Omit:

(b)	a notice of assessment of an amount of Division 293 tax.

substitute:

(b)	a notice of assessment of an amount of Division 293 tax; or
(c)	a first home super saver determination.

3 At the end of subsection 131-5(1) in Schedule 1

Add:

; (d) a *first home super saver determination.

4 Paragraph 131-10(1)(a) in Schedule 1

Omit “item 1 or 3”, substitute “item 1, 3 or 4”.

5 Subsection 131-10(1) in Schedule 1 (at the end of the table)

Add:

4	a *first home super saver determination	the *FHSS maximum release amount stated in that determination

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Part 2—Tax consequences of scheme

Income Tax Assessment Act 1997

6 Section 10-5 (table item headed "superannuation")

After:

excess concessional contributions	291-15(a)

insert:

first home super saver scheme	313-20

7 Section 12-5 (table item headed "superannuation—deductibility of contributions")

After:

contributions to non-complying funds	sections 290-10 and 290-75

insert:

first home super saver scheme re-contribution	section 290-168

8 Section 13-1 (table item headed "superannuation")

After:

excess concessional contributions	291-15(b)

insert:

first home super saver scheme	313-25

9 Subsection 290-150(2)

Before "and 290-170", insert ", 290-168".

10 Before 290-170

Insert:

290-168 Contribution must not be a re-contribution under the first home super saver scheme

You cannot deduct the contribution if you notified the Commissioner about the contribution under section 313-50 (about

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contributing amounts to superannuation that were previously released under the *first home super saver scheme).

11 Section 303-15 (note)

Omit "section 304-20", substitute "sections 304-20 and 313-20".

12 At the end of Part 3-30

Add:

Division 313—First home super saver scheme

Table of Subdivisions

Guide to Division 313
313-A Preliminary
313-B Assessable income and tax offset
313-C Purchasing or constructing a residential premises
313-D Contributing amounts to superannuation
313-E First home super saver tax
313-F Review of decisions

Guide to Division 313

313-1 What this Division is about

If an amount is released from your superannuation interests under the first home super saver scheme, an amount may be included in your assessable income and you may become entitled to a tax offset.

You also have a limited period within which to enter into a contract to purchase or construct a residential premises or re-contribute an amount to your superannuation. If you do not notify the Commissioner that you have done one of those things, you become liable for tax.

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Subdivision 313-A—Preliminary

Table of sections

Operative provisions

313-5 Object of this Division
313-10 Application of this Division

Operative provisions

313-5 Object of this Division

The object of this Division is to provide an individual with concessional tax treatment for amounts released from superannuation for the purposes of purchasing or constructing the individual's first home.

313-10 Application of this Division

This Division applies to you if one or more amounts (the ***FHSS released amounts***) are paid in response to a release authority issued under Division 131 in Schedule 1 to the *Taxation Administration Act 1953* in relation to a *first home super saver determination made in relation to you.

Subdivision 313-B—Assessable income and tax offset

Guide to Subdivision 313-B

313-15 What this Subdivision is about

An amount is included in your assessable income, and you are entitled to a tax offset, if an amount is paid in response to a release authority issued in respect of you.

The amount included in your assessable income relates to the concessional contributions and total associated earnings that are stated in the relevant first home super saver determination.

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Table of sections

Operative provisions

313-20 Amount included in assessable income
313-25 Amount of the tax offset

Operative provisions

313-20 Amount included in assessable income

(1) Your assessable income, for the income year that corresponds to the *financial year for which you requested the release authority, includes an amount that is equal to the sum of the following amounts stated in the *first home super saver determination:
  (a) your *concessional contributions;
  (b) your associated earnings.

(2) However, if the sum of the *FHSS released amounts is less than the *FHSS maximum release amount stated in the determination, the amount included in your assessable income for the income year is:
  (a) the amount worked out under subsection (1); less
  (b) the difference between the FHSS maximum release amount and the sum of the FHSS released amounts.

(3) If the amount worked out under subsection (2) is negative, the amount included in your assessable income for the income year is nil.

Note 1: The release authorities are issued under Division 131 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: Any amounts paid in response to the release authorities are non-assessable non-exempt income (see section 303-15).

313-25 Amount of the tax offset

You are entitled, for the income year mentioned in section 313-20, to a *tax offset that is equal to 30% of your *assessable FHSS released amount for the income year.

Note: This offset cannot be refunded, transferred or carried forward (see item 20 of the table in subsection 63-10(1)).

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Subdivision 313-C—Purchasing or constructing a residential premises

Guide to Subdivision 313-C

313-30 What this Subdivision is about

> If an amount is released from your superannuation interests under the first home super saver scheme, and you enter into a contract within a particular period to purchase or construct a residential premises, you must notify the Commissioner of that contract.

Table of sections

Operative provisions

313-35 Purchasing or constructing a residential premises
313-40 Notifying Commissioner

Operative provisions

313-35 Purchasing or constructing a residential premises

(1) Section 313-40 applies to you if:
  (a) within 12 months after the release of the first *FHSS released amount or, if the period is extended under subsection (2), that longer period, you enter into a contract to purchase or construct a *CGT asset that is a *residential premises; and
  (b) the price for the purchase or construction of the premises is at least equal to the sum of the FHSS released amounts; and
  (c) you have occupied the premises, or intend to occupy the premises as soon as practicable; and
  (d) you intend to occupy the premises for at least 6 months of the first 12 months after it is practicable to occupy the premises.

(2) The Commissioner may extend the period for entering into a contract by up to 12 months.

Note: If you request an extension of the period, you may object against a decision of the Commissioner under this section (see section 313-85).

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313-40 Notifying Commissioner

(1) You must notify the Commissioner in the *approved form of the matters set out in paragraphs 313-35(1)(a) to (d).

(2) The notification must be made within 28 days, or such longer period as the Commissioner allows, after you enter into the contract to purchase or construct the *residential premises.

Note: If you request an extension of the period, you may object against a decision of the Commissioner under this subsection (see section 313-85).

(3) Subsection (1) does not limit the information that the *approved form may require the notification to contain.

Subdivision 313-D—Contributing amounts to superannuation

Guide to Subdivision 313-D

313-45 What this Subdivision is about

If an amount is released from your superannuation interests under the first home super saver scheme, and you do not enter into a contract within a particular period to purchase or construct a residential premises, you may make one or more non-concessional contributions. If you do not notify the Commissioner that you have made the contributions, you may be liable for tax under Subdivision 313-E.

Table of sections

Operative provisions

313-50 Contributing amounts to superannuation

Operative provisions

313-50 Contributing amounts to superannuation

(1) This section applies to you if:

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(a) you do not notify the Commissioner in accordance with section 313-40 (about purchasing or constructing a *residential premises); and

(b) you make one or more *non-concessional contributions the sum of which is at least equal to:

(i) your *assessable FHSS released amount for an income year; less

(ii) the amount withheld by the Commissioner from your *FHSS released amounts under section 12-460 in Schedule 1 to the *Taxation Administration Act 1953*; and

(c) you make the contributions within the period mentioned in paragraph 313-35(1)(a).

Note: Paragraph 313-35(1)(a) sets out the period in which you must have entered into a contract to purchase or construct a residential premises.

(2) You may notify the Commissioner in the *approved form that you have made the contributions mentioned in paragraph (1)(b).

Note 1: If you notify the Commissioner, you cannot deduct the contribution (see section 290-168).

Note 2: If you do not notify the Commissioner, you may be liable for tax (see Subdivision 313-E).

(3) The notification must be made within the period mentioned in paragraph 313-35(1)(a) or such longer period as the Commissioner allows under this subsection.

Note: If you request an extension of the period, you may object against a decision of the Commissioner under this subsection (see section 313-85).

(4) Subsection (2) does not limit the information that the *approved form may require the notification to contain.

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Subdivision 313-E—First home super saver tax

Guide to Subdivision 313-E

313-55 What this Subdivision is about

If an amount is released from your superannuation interests under the first home super saver scheme, you are liable for tax if you do not, within a particular period, do either of the following:

(a) enter into a contract to purchase or construct a residential premises, and notify the Commissioner of that contract;

(b) make one or more non-concessional contributions, and notify the Commissioner of the contributions.

Table of sections

Operative provisions

313-60 First home super saver tax
313-65 When tax is payable—original assessments
313-70 When tax is payable—amended assessments
313-75 General interest charge

Operative provisions

313-60 First home super saver tax

You are liable to pay *first home super saver tax if:

(a) neither of section 313-40 or 313-50 applies to you; or

(b) section 313-40 applies to you and you do not notify the Commissioner in accordance with that section; or

(c) section 313-50 applies to you and you do not notify the Commissioner in accordance with that section.

Note 1: The amount of the tax is set out in the *First Home Super Saver Tax Act 2017*.

Note 2: Section 313-40 is about purchasing or constructing a residential premises. Section 313-50 is about making one or more non-concessional contributions.

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313-65 When tax is payable—original assessments

Your *assessed first home super saver tax is due and payable at the end of 21 days after the Commissioner gives you notice of the assessment of the amount of the *first home super saver tax.

Note: For assessments of first home super saver tax, see Division 155 in Schedule 1 to the *Taxation Administration Act 1953*.

313-70 When tax is payable—amended assessments

If the Commissioner amends your assessment, any extra *assessed first home super saver tax resulting from the amendment is due and payable 21 days after the day the Commissioner gives you notice of the amended assessment.

313-75 General interest charge

If an amount of *assessed first home super saver tax that you are liable to pay remains unpaid after the time by which it is due to be paid, you are liable to pay the *general interest charge on the unpaid amount for each day in the period that:

(a) begins on the day on which the amount was due to be paid; and

(b) ends on the last day on which, at the end of the day, any of the following remains unpaid:

(i) the assessed first home super saver tax;

(ii) general interest charge on any of the assessed first home super saver tax.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

Subdivision 313-F—Review of decisions

Guide to Subdivision 313-F

313-80 What this Subdivision is about

You may object against particular decisions made under this Division.

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Table of sections

Operative provisions

313-85 Review rights for decisions made under this Division

Operative provisions

313-85 Review rights for decisions made under this Division

(1) If:

(a) you requested the Commissioner to allow a longer period under:

(i) subsection 313-35(2) (for entering into a contract to purchase or construct a *residential premises); or

(ii) subsection 313-40(2) or 313-50(3) (for notifying the Commissioner of matters); and

(b) you are dissatisfied with:

(i) a decision under that subsection allowing a longer period; or

(ii) a decision the Commissioner makes not to allow a longer period;

you may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

(2) To avoid doubt, for the purposes of paragraph (e) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977*, the making of a decision under a subsection mentioned in paragraph (1)(a) of this section is a decision forming part of the process of making an assessment of tax, and making a calculation of charge, under this Act.

Taxation Administration Act 1953

13 Subsection 10-5(1) in Schedule 1 (note)

Omit “and 22”, substitute “, 22 and 27”.

14 Subsection 10-5(1) in Schedule 1 (at the end of the table)

Add:

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27	A payment under the *first home super saver scheme	12-460

15 At the end of Division 12 in Schedule 1

Add:

Subdivision 12-J—FHSS released amounts

Table of sections

12-460 FHSS released amounts

12-460 FHSS released amounts

The Commissioner must withhold an amount from the *FHSS released amounts paid in respect of a person.

16 Subsection 15-10(2) in Schedule 1

Omit "or 12-G (except one covered by section 12-325)", substitute ", 12-G (except one covered by section 12-325) or 12-J".

17 At the end of subsection 155-5(2) in Schedule 1

Add:

; (k) an amount of *first home super saver tax for an income year.

18 Subsection 155-15(1) in Schedule 1 (note)

Omit "or excess transfer balance tax", substitute ", excess transfer balance tax or first home super saver tax".

19 At the end of subsection 155-30(3) in Schedule 1

Add:

; (c) the *first home super saver tax payable by you for an income year.

20 Subsection 250-10(2) in Schedule 1 (after table item 38BC)

Insert:

38BD	first home super saver tax	313-65 and 313-70	*Income Tax Assessment Act 1997*

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Part 3—Other amendments

Division 1—Definitions

Income Tax Assessment Act 1997

21 Subsection 995-1(1)

Insert:

assessable FHSS released amount, for an income year, means the amount included in a person's assessable income for the income year under section 313-20 in respect of the person's *FHSS released amounts.

assessed first home super saver tax means *first home super saver tax, as assessed under Schedule 1 to the *Taxation Administration Act 1953*.

FHSS eligible concessional contribution for a *financial year means a *concessional contribution for the financial year that is eligible to be released under section 138-35 in Schedule 1 to the *Taxation Administration Act 1953*.

FHSS eligible non-concessional contribution for a *financial year means a *non-concessional contribution for the financial year that is eligible to be released under section 138-35 in Schedule 1 to the *Taxation Administration Act 1953*.

FHSS maximum release amount has the meaning given by section 138-25 in Schedule 1 to the *Taxation Administration Act 1953*.

FHSS releasable contributions amount has the meaning given by subsection 138-30(1) in Schedule 1 to the *Taxation Administration Act 1953*.

FHSS released amounts has the meaning given by section 313-10.

first home super saver determination has the meaning given by subsection 138-10(1) in Schedule 1 to the *Taxation Administration Act 1953*.

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first home super saver scheme means the scheme set out in:

(a) Division 313; and

(b) Division 138 in Schedule 1 to the *Taxation Administration Act 1953*;

and other provisions as they relate to those Divisions.

first home super saver tax means the tax imposed by the *First Home Super Saver Tax Act 2017*.

Division 2—Income tests

A New Tax System (Family Assistance) Act 1999

22 Paragraph 2(1)(a) of Schedule 3

After "that year", insert ", disregarding the individual's assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) for that year".

Child Support (Assessment) Act 1989

23 Paragraph 43(1)(a)

After "child support period", insert ", disregarding the parent's assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) for that year of income".

24 Paragraph 60(2)(a)

After "the year", insert ", disregarding any assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) that may be included in the parent's assessable income for the year".

Higher Education Support Act 2003

25 Paragraph 154-5(1)(a)

After "the income year", insert ", disregarding the person's assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) for the income year".

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Income Tax Assessment Act 1936

26 Subsection 6(1) (paragraph (a) of the definition of *rebate income*)

After "year of income", insert ", disregarding the individual's assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) for the year of income".

Income Tax Assessment Act 1997

27 Paragraph 35-10(2E)(a)

After "that year", insert ", disregarding your *assessable FHSS released amount for that year".

28 Subparagraph 61-580(1)(d)(i)

After "the current year", insert ", disregarding your *assessable FHSS released amount for the current year".

29 Subparagraph 83A-35(2)(b)(i)

After "this section", insert ", but not including your *assessable FHSS released amount for the income year".

30 Subparagraph 290-230(2)(c)(i)

After "assessable income", insert ", disregarding your spouse's *assessable FHSS released amount for the income year".

31 Subsection 995-1(1) (paragraph (a) of the definition of *income for surcharge purposes*)

After "disregarding", insert "the person's *assessable FHSS released amount for the income year and".

Social Security Act 1991

32 Paragraph 1061ZZFA(1)(a)

After "income year", insert ", disregarding the person's assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) for the income year".

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33 Paragraph 1067G-F10(a)

After "that year", insert ", disregarding each parent's assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) for that year".

34 Paragraph 1071-3(a)

After "that year", insert ", disregarding the person's assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) for that year".

Student Assistance Act 1973

35 Paragraph 12ZL(1)(a)

After "income year", insert ", disregarding the person's assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) for the income year".

Superannuation (Government Co-contribution for Low Income Earners) Act 2003

36 Paragraph 8(1)(a)

After "income year", insert ", disregarding the person's assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) for the income year".

Veterans' Entitlements Act 1986

37 Paragraph 118ZZA-3(a)

After "that year", insert ", disregarding the person's assessable FHSS released amount (within the meaning of the *Income Tax Assessment Act 1997*) for that year".

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Schedule 2—Contributing the proceeds of downsizing to superannuation

Income Tax Assessment Act 1997

1 Subsection 290-150(2)

After "290-165", insert ", 290-167".

2 After section 290-165

Insert:

290-167 Contribution must not be a downsizer contribution

You cannot deduct the contribution if it is a contribution that is covered under section 292-102 (about downsizer contributions).

3 After subparagraph 292-90(2)(c)(iii)

Insert:

(iiia) a contribution covered under section 292-102 (downsizer contributions);

4 After section 292-100

Insert:

292-102 Downsizer contributions

Criteria for a downsizer contribution

(1) A contribution is covered under this section if:

(a) the contribution is made to a *complying superannuation plan in respect of you when you are aged 65 years or over; and

(b) the contribution is an amount equal to all or part of the *capital proceeds received from the *disposal of an *ownership interest (the ***old interest***) in a *dwelling; and

(c) you or your *spouse held the old interest just before the disposal; and

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(d) any *capital gain or *capital loss from the disposal of the old interest:

(i) for the case where you held it just before the disposal—is wholly or partially disregarded under Subdivision 118-B (or would have been if you had *acquired it on or after 20 September 1985); or

(ii) otherwise—would have been wholly or partially disregarded under Subdivision 118-B had you held the old interest for a period before the disposal; and

(e) the condition in subsection (2) is met for the disposal; and

(f) the dwelling is located in *Australia, and is not a caravan, houseboat or other mobile home; and

(g) the contribution is made within 90 days, or such longer period as the Commissioner allows, after the time the change of ownership occurs as a result of the disposal; and

(h) you choose, in accordance with subsection (8), to apply this section to the contribution; and

(i) there is not already a contribution covered under this section, and made to a complying superannuation plan in respect of you, from an earlier choice you made in relation to the disposal of:

(i) another ownership interest in the dwelling that was not a related spousal interest to the old interest; or

(ii) an ownership interest in another dwelling.

Note 1: Subparagraph (i)(i) does not prevent another contribution, made for you from the capital proceeds from the disposal of the same interest, from also being a contribution covered under this section.

Note 2: That subparagraph also does not prevent another contribution, made for you from the capital proceeds from the disposal of a related spousal interest, from being a contribution covered under this section.

10-year ownership condition

(2) The condition in this subsection is met for the *disposal of the old interest if either or both of the following paragraphs applies:

(a) at all times during the 10 years ending just before the disposal:

(i) the old interest was held by you, your *spouse or your former spouse; or

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(ii) an *ownership interest in the land on which the *dwelling is situated was held by you, your spouse or your former spouse;

(b) if subsection 118-147(1):

(i) applies because the old interest was a substitute property interest (within the meaning of that subsection) for an old dwelling referred to in paragraph 118-147(1)(a); or

(ii) would have applied as described in subparagraph (i) if paragraph 118-147(1)(a) were modified to refer to a dwelling (the ***old dwelling***) that was your main residence;

you, your spouse or your former spouse *acquired an ownership interest in that old dwelling at least 10 years before the disposal.

Note: Section 118-147 deals with a dwelling replacing an earlier dwelling that was compulsorily acquired or destroyed etc.

Cap on the amount of a downsizer contribution

(3) Despite subsection (1), the contribution is covered under this section only to the extent that it does not exceed the lesser of:

(a) $300,000, less any other contribution that is already covered under this section and made to a *complying superannuation plan in respect of you; and

(b) the sum of the *capital proceeds from the disposals of:

(i) the old interest; and

(ii) any *related spousal interest to the old interest;

less the sum of all other contributions that are already covered under this section and made to complying superannuation plans in respect of you or your *spouse.

*Meaning of **related spousal interest***

(4) A ***related spousal interest***, to an *ownership interest in a *dwelling, is another ownership interest in the dwelling if:

(a) both ownership interests are *disposed of under the same contract; and

(b) just before the disposal, you *held one of the ownership interests and your *spouse held the other.

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When interest held by trustee of deceased estate

(5) For the purposes of determining whether an individual held an interest at a particular time, if the interest was held at the particular time by the trustee of the deceased estate of an individual who was your *spouse when the individual died, the interest is taken to be held at the particular time by that individual.

Review of the period for making the contribution

(6) If:
  (a) you requested the Commissioner to allow a longer period under paragraph (1)(g); and
  (b) you are dissatisfied with:
    (i) a decision under that paragraph allowing a longer period; or
    (ii) a decision the Commissioner makes not to allow a longer period;

you may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

(7) To avoid doubt:
  (a) subject to subsection 14ZVC(3) of the *Taxation Administration Act 1953*, you may also object, on the ground that you are dissatisfied with such a decision, relating to all or part of your contributions for a *financial year:
    (i) under section 175A of the *Income Tax Assessment Act 1936* against an assessment made in relation to you for the corresponding income year; or
    (ii) under section 97-35 in Schedule 1 to the *Taxation Administration Act 1953* against an *excess non-concessional contributions determination made in relation to you for the financial year; and
  (b) for the purposes of paragraph (e) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977*, the making of a decision under paragraph (1)(g) of this section is a decision forming part of the process of making an assessment of tax, and making a calculation of charge, under this Act.

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Requirements for choices

(8) To make a choice for the purposes of paragraph (1)(h), you must:
  (a) make the choice in the *approved form; and
  (b) give it to the *superannuation provider in relation to the *complying superannuation plan at or before the time when the contribution is made.

Commissioner to notify providers if contributions are not downsizer contributions

(9) The Commissioner must, in writing, notify a *superannuation provider that all, or a specified part, of a contribution is not covered under this section if:
  (a) the Commissioner is aware that a choice referred to in subsection (8) has been given to the superannuation provider for the contribution; and
  (b) the Commissioner is satisfied that the contribution, or that part of the contribution, (as applicable) is not covered under this section.

The Commissioner may give a copy of the notification to *APRA.

5 Subsection 995-1(1)

Insert:

related spousal interest has the meaning given by subsection 292-102(4).

Taxation Administration Act 1953

6 Subsection 355-65(3) in Schedule 1 (at the end of the table)

Add:

11	a *superannuation provider or APRA	is for the purpose of complying with subsection 292-102(9) of the *Income Tax Assessment Act 1997*.

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7 Application of amendments

The amendments made by this Schedule apply in relation to a disposal of an ownership interest in a dwelling if the contract for the disposal is entered into on or after 1 July 2018.

[*Minister's second reading speech made in—*
House of Representatives on 7 September 2017
Senate on 18 October 2017]

(185/17)

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