First Home Super Saver Scheme

The First Home Super Saver Scheme (FHSSS) was introduced by the government to deal with housing affordability and to help Australian's get into the property market and buy their first home in Australia. The scheme allows participants to effectively lift their savings and build a property deposit within superannuation by giving them a tax benefit. First home buyers can make use of some of their contributions, made from 1 July 2017, for a deposit on their first house under the scheme. There have been some changes made to the scheme since it was first introduced so it is important to understand the current rules of the scheme including eligibility, contribution requirements, withdrawal requirements and some of the other limitations, before considering if it's a suitable scheme to use.

How the scheme works

The scheme enables eligible participants who make voluntary contributions into super (up to a maximum of $15,000 per financial year) to withdraw up to a maximum of $30,000 plus deemed associated earnings. The amount can be used as part of a deposit for their first home.

Eligibility criteria

The rules apply to each individual so within a couple, both members may be eligible to use the scheme to save for their home deposit. Additionally, as eligibility is based on individual circumstances, one member can be eligible to use the FHSSS even if purchasing a property with another individual who is not eligible.

The eligibility criteria to be able to request a determination or release amounts under the FHSSS are as follows:

- Must be 18 years of age or over.
- Must not have ever owned real property in Australia including a freehold interest in real property (includes investment property, commercial property, vacant land etc) long-term lease of land or company title interest in land.
    - If members have previously owned a property, they may be eligible for the FHSSS if the Commissioner of Taxation determines that they have suffered financial hardship (discussed below).
- Have not previously requested the Commissioner to issue a FHSSS release authority.

<u>Note that where an SMSF holds real property as an investment, it will not prevent an individual trustee or director of a corporate trustee from being eligible for the FHSSS in their individual capacity.</u>

<u>Financial hardship</u>
As stated above, where property has previously been held, an individual may still be eligible for the scheme if the Commissioner of Taxation determines that financial hardship applies and has resulted in the loss of ownership of ALL property interests. The following reasons may lead to the loss of property:

- Experiencing bankruptcy
- Experiencing relationship breakdown (divorce or separation)
- Losing employment
- Experiencing Illness
- Being affected by a natural disaster
- Eligibility for early access to superannuation

To apply for financial hardship, it can be done using MyGov - ATO online services or completing the First Home Super Saver Scheme – Hardship application form. Evidence is required to substantiate the claim and demonstrate the necessary link between hardship and the loss of all real property. There can also not be any subsequent property acquisition since the loss of property interests. Guidance Note 2018/1 First home super saver scheme provides some practical examples of where hardship may be proved and result in eligibility for the scheme.

Contribution requirements

All eligible contributions counted towards the scheme must be voluntary contributions including the following:

- Salary sacrifice concessional (pre-tax – a tax deduction has been claimed)
- Personal concessional (pre-tax – a tax deduction has been claimed)
- Personal non-concessional (post-tax – a tax deduction has not been claimed)

Employers may arrange salary sacrifice contributions for employees (if it is something they offer to employees), and members can arrange the voluntary personal contributions to their super fund.

Contributions required to be made by an employer or contributions made on behalf of an employee are not eligible for inclusion. This includes the following which are NOT eligible:

- Superannuation Guarantee contributions
- Mandated contributions paid by an employer
- Spouse contributions made on behalf of a member
- Amounts received through contributions-splitting
- Government co-contributions
- Structured settlement contributions
- Amounts contributed though the Small Business CGT concessions
- Excess concessional or non-concessional contributions

The maximum amount that can be contributed to super under the FHSSS is $15,000 per individual, per financial year. $30,000 can be contributed under the scheme per individual, in total across all years.

Any super contributions made must be within the annual contribution caps which are $25,000 for concessional contributions and $100,000 for non-concessional contributions in the 2020/21 financial year. Concessional contributions will be taxed at 15% in the fund whereas non-concessional contributions will not be taxed in the fund.

Deemed associated earnings

The contributions that are eligible for withdrawal will attract a deemed amount of associated earnings. The deemed amount is set at the 90-day bank bill rate plus 3% (known as the Shortfall Interest Charge) which is higher than normal deposit rates from financial institutions for savings accounts and term deposits. Therefore, the earnings don't reflect the actual investment performance in the fund. These deemed earnings can be withdrawn in addition to the FHSSS contributions made. They are calculated from the first day of the month in which the contribution is made to the date of the FHSSS determination.

Type of contributions and order of withdrawals

Subject to the limit on how much can be withdrawn under the scheme, the following can be withdrawn:

- 85% of concessional (pre-tax) contributions (allows for 15% tax paid by fund)
- 100% of non-concessional (post-tax) contributions
- Associated earnings for these contributions

'Ordering rules' also apply the maximise the amount available under the scheme. The amounts released are automatically ordered as follows:

- First in first out rule – Contributions made earliest are counted towards the release before later contributions. The determination form requires the individual contributions to be listed, so contributions are counted towards the release in the order they are made.
- Simultaneous contributions rule – Where concessional and non-concessional contributions are made at the same time (perhaps through a payroll entry) then non-concessional contributions are deemed to have been made first.
- Where a deduction is claimed for contributions made in a year, any residual non-concessional amount is deemed to have been made before the concessional amounts.

Withdrawal requirements

Applications for a FHSSS determination and release must be made to the ATO when the individual is ready. The ATO will advise in their determination specifically how much, inclusive of deemed earnings, can be released to a member – this is known as the 'FHSS maximum release amount'.

The maximum amount that can be contributed to super for a home deposit, under the FHSSS is $30,000. As the rules apply to individuals, a couple collectively could save $60,000 under the scheme if both were eligible and made the necessary contributions.

Examples – The following examples are taken from Guidance Note 2018/1

Example 1.
Megan makes voluntary personal contributions of $3,000 per month (total $36,000) during the 2017/18 financial year and claims a deduction of $25,000. Therefore $11,000 are non-concessional contributions.

The ordering rules will deem that the non-concessional amounts were made first.
Thus, $11,000 non-concessional and $4,000 concessional will be counted towards the maximum release amount and any other contributions in the 2017/18 year will not be eligible as they exceed the $15,000 annual limit.

Example 2.
Henry salary sacrifices $1,000 on the 15th of each month from 15th January 2018. He makes personal contributions of $5,000 on 30th June 2018 and 30th June 2019 and then applies for a FHSS determination in November 2019.

The ordering rules will apply to the contributions as follows in working out the maximum release amount:

2018 Financial Year
Salary sacrifice concessional contributions total $6,000 (January to June)
Personal non-concessional contributions total $5,000 (June 2018)
Total contributions for the FHSSS are $11,000

2019 Financial Year
Salary sacrifice concessional contributions total $12,000 (July to June)
Personal non-concessional contributions total $5,000 (June 2019) but the annual limit for the FHSS is $15,000 so only $3,000 of this contribution is eligible
Total contributions for the FHSSS are $15,000 and a total of $26,000 has been made over the last 2 financial years

2020 Financial Year
Only $4,000 more can be contributed as part of the scheme so salary sacrifice concessional contributions up to November 2019 will be counted bringing contributions to the total $30,000 limit.

$22,000 concessional and $8,000 non-concessional are counted towards the maximum release amount and the calculations are as follows:

Eligible non-concessional $8,000
Eligible concessional 85% x $22,000 = $18,700
Associated earnings $1,800
Total = $28,500 is the maximum amount Henry can elect to release

Determination process

A determination must be applied for from the ATO using the MyGov - ATO Online Services. As stated above, the ATO will advise the maximum release amount under the scheme. A request for a determination can be made more than once if necessary.

The contract to purchase or construct the home can be signed from the date a valid request to release an amount under the FHSSS has been made or before making a valid request. However if the contract is signed before making a valid request for release a FHSSS determination is required before signing, and a valid release request must be made within 14 days of entering into the contract (or FHSS tax applies at 20%).

When ready to purchase the home, the application for the release of savings can be done and it can only be done once.

Release process

As part of the release process, the accuracy of the determination needs to be checked to ensure it does not get cancelled (otherwise the release request can be cancelled, funds returned, and an application cannot be made again). The release can then be applied for from the ATO using the MyGov - ATO Online Services. The full amount of the determination can be requested or a lesser amount, but it can only be done once.

The ATO then send a release authority to the super fund and the amount is released to the ATO. The ATO withhold the relevant amount of tax (and also deduct any outstanding Commonwealth debts where applicable) and then take 15 to 25 business days to release the balance of the money to the applicant.

The ATO provide a payment summary for inclusion in the personal tax return. Where a withdrawal is made under the scheme, members need to be aware that their personal tax situation will be impacted in the year the request is made. The assessable FHSSS amount and withholding tax must be included in the member's personal tax return in the year the request is made to release the savings which may not be the same year as receipt of the funds.

The assessable FHSSS amount (consisting of concessional contributions and deemed earnings on both concessional and non-concessional contributions) are subject to withholding tax at the member's expected marginal tax rate (plus Medicare levy), and a 30% tax offset is available on the assessable amount. Alternatively, where the expected marginal tax rate cannot be estimated then 17% withholding tax will apply. The non-concessional contributions are not subject to tax.

Example from Guidance Note 2018/1
Sue receives a FHSS determination in 2018/19 and requests a release of the maximum amount which is as follows:
Eligible non-concessional $5,000
Eligible concessional 85% x $10,000 = $8,500
Associated earnings $850
Total $14,350

The release authority goes to the super fund and they release the amount to the ATO. The ATO withhold tax and release the remainder to Sue on 3/7/2019. The payment summary is for the 2018/19 financial year as that is the year in which the release request was received.

Assessable income of $9,350 needs to be included in her personal tax return for 2018/19 (85% of the concessional amount plus associated earnings). There is also a 30% tax offset of $2,805 and a credit for the tax withheld by the ATO.

After the release of the FHSSS funds

Once the amount has been withdrawn from super a contract to purchase or construct a home within 12 months (extensions to 24 months may be available) must be signed. The applicant must intend to occupy the home and it must be occupied by them for at least 6 months from acquisition (or construction) within the first 12 months after it is practical to move in.

A residential premise must be acquired with the FHSSS funds withdrawn from super and the premises must be located in Australia. If it can't be occupied as a residence it is not allowable under the scheme. Houseboats and motor homes are not allowable premises for the purposes of the scheme.

Vacant land is allowable subject to conditions where the member is planning to build a home. The construction contract must meet the scheme conditions and must be entered into within 12 months (or an extended period if granted by the ATO) from the release request date. The land cannot be purchased before applying for the determination.

The ATO must be notified through MyGov when a contract to purchase a property or construct a home has been signed within 28 days of signing the contract, otherwise FHSS tax of 20% is payable.

What happens if the application doesn't want to proceed with the scheme and purchase/construct a home?

After the 12 months from the release date has expired (or extended period if granted by the ATO) and a contract is not signed to acquire or construct a home there are a few options on what can happen next:

- A further 12 months extension of time can be applied for and the ATO will notify the scheme participant.
- The 'assessable FHSS released amount' less any tax withheld can be recontributed as a non-concessional contribution into super (non-concessional contribution cap applies). The ATO must be notified through MyGov within 12 months of the release request or the FHSS tax may apply.
- The released amount can be retained and is subject to FHSS tax which is 20% of the 'assessable FHSS released amount' (not the total amount).

Important considerations reiterated

The key considerations if intending to utilise the scheme, can be summarised by the ATO as follows:

- Before signing a contract for the home or applying to release the FHSSS amount, an application must be made to the ATO and the FHSSS determination must be received.
- When completing the FHSSS determination form, each eligible contribution is listed and not the total.
- Superannuation guarantee contributions and spouse contributions cannot be release under the FHSSS.
- Where an error is made in the FHSSS determination form, another determination can be requested if the contract hasn't been signed or the release has not been requested.
- Where incorrect information is provided on the FHSSS determination and the release is based on incorrect information, the request may be cancelled and the money returned to the super fund.
- An application to use the FHSSS can only be made once and if the request is cancelled another application cannot be made.
- The request for release under FHSSS should be done around the time the applicant intends to apply for a home loan to ensure that everything is in order to proceed with acquisition.
- The home acquired or constructed using the scheme must be located in Australia.
- Where the FHSSS determination is received and the contract is signed, a valid release request must be made within 14 days of signing the contract.
- The contract can be signed after making a valid release request to the ATO. There is then 12 months from the valid release request to notify the ATO that a contract has been signed (or recontributed the amount to super).

As you can see there are quite a few conditions attached to the scheme and a process to follow to get it right. Overall, the tax incentive provided is not that substantial and it may take some time to accumulate the contributions in super to then make the withdrawal and get the timing right on finding an affordable home.

Proposed changes to the scheme

The above rules apply to the scheme at the time of writing. As part of the 2021/22 Federal Budget, the Government have proposed to change the scheme to increase the maximum releasable amount from $30,000 to $50,000 from 1 July 2022. There are also proposed changes to provide greater flexibility to correct errors made. These amendments are expected to come into effect from 1 July 2022 and are not law at this time.