How will the First Home Super Saver Scheme work for SMSFs?

By **Christian Pakpahan** on 22/12/2017 in **Contributions**, **Investments**, **SMSF deeds**, **SMSF strategy** **0**

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For those who are interested in purchasing their first residential premises, the First Home Super Saver ('FHSS') Scheme may be an option worth exploring. The Treasury Laws Amendment (Reducing Pressure On Housing Affordability Measures No. 1) Bill 2017 (Cth) passed both houses on 7 December 2017, meaning the FHSS Scheme will soon become law. While we wait for the bill to receive royal assent, we should consider two questions:

1. How does the FHSS Scheme work?
2. What are some tips and traps for SMSFs and their members regarding this?

How does the FHSS Scheme work?

There are four broad steps that need to be taken if a member wants to take advantage of the FHSS Scheme.

Step 1: Eligibility

The first step the member needs to take is to confirm that they are eligible to participate in the FHSS Scheme. Broadly, the member must:

1.
    1. have never held any freehold interest in land in Australia (including any long-term leasehold interest of 50 plus years). This is either in their individual capacity or through a controlled foreign company title interest;
    2. be 18 years or older; and
    3. have not previously received any payment under the FHSS Scheme.

A member may still be eligible for the FHSS Scheme if they have previously owned property in Australia if they have suffered financial hardship subject to them satisfying further conditions.

This measure was provided to assist individuals who have suffered financial setbacks, like relationship breakdowns, to exit the rental market and start over again. Supplemental regulations will specify the relevant circumstances the ATO will consider to make such a determination.

A member should check whether their fund accepts FHSS contributions. The FHSS Scheme precludes defined benefit funds and constitutionally protected funds from participating which may result in many public sector employees having to find alternative funds for their FHSS contributions.

SMSFs members should ensure their SMSF deed authorises and provides the relevant mechanics to deal with the FHSS Scheme including releasing FHSS amounts to the ATO.

Step 2: Contributions

Once a member has determined that they are eligible to participate in the FHSS Scheme and their fund can accept FHSS contributions, the member can begin making eligible contributions to their super fund. Broadly, an eligible contribution is:

1.
    1. a concessional or non-concessional contribution that is not a mandated employer contribution. Thus, contributions that are made to cover an employer's minimum superannuation guarantee requirement are excluded from the FHSS Scheme;
    2. eligible insofar as it does not result in the member exceeding their concessional and non-concessional contributions caps; and
    3. eligible insofar as it does not exceed the $15,000 FHSS contribution limit in any financial year ('FY'), commencing from 1 July 2017.

The maximum amount of contributions that may be eligible to be released under the FHSS Scheme is $30,000. When an eligible contribution is made, the relevant super fund is required to allocate the contribution accordingly and inform the ATO. The member will, in due course, be able to check their FHSS contribution balance with the ATO from time to time.

Step 3: Determination and Release

Once the member has accumulated a certain amount in their FHSS allocations, they can request a FHSS Scheme determination from the ATO. The ATO will then provide the member with an estimate of the member's FHSS Scheme maximum release amount, which includes:

1.
    1. concessional and non-concessional FHSS contributions;
    2. associated earnings as calculated by the ATO — shortfall interest charge rate X [FHSS contributions + sum of earlier daily proxy amounts]; and
    3. less PAYG withholding tax

After considering the amount in the FHSS determination, the member can then request a release authority from the ATO. The ATO will then generate a release authority and provide confirmation to both the member and their respective superannuation fund. Once the super fund receives the release authority, it releases the relevant amount to the ATO. The ATO receives the amount from the fund and deducts the PAYG withholding tax. After any tax is deducted, the ATO makes the net payment to the member. The member must include the FHSS amount received in their income tax return for that FY. The member is entitled to a 30% non-refundable tax offset of the FHSS amount received that FY.

Thus, if a member is on a 45% tax rate, they will only pay 15% on released amounts plus applicable levies.

Step 4: Purchase, Recontribution and Tax

Within 12 months after the release of the FHSS released amount, the member can either:

1.
    1. purchase or construct a residential premises;
    2. recontribute the amount; or
    3. request another extension for up to 12 months.

If the member enters into a contract to purchase or construct residential premises, the member is required to notify the ATO within 28 days after the member enters into such a contract.

If the member decides to recontribute the FHSS released amount (eg, they do not purchase or construct within a 12 month period), they are required to inform the ATO shortly after the release of the FHSS released amount.

The recontributed amount will count towards the member's non-concessional caps for the FY the amount was recontributed and the member cannot claim a deduction in respect of these amounts.

A member can request that the ATO extend the period for entering into a contract by up to 12 months. Thus, the scheme generally provides a maximum period of up to 24 months from when the relevant amount is released to enter into a contract to purchase or construct a residential premises.

Alternatively, if the member retains an FHSS amount beyond the relevant 12 month, or if an extension is granted, beyond a 24 month period, they pay FHSS tax of 20% plus applicable levies on the FHSS released amount.

What are some tips and traps for SMSFs and their members?

Ideally the SMSF deed should provide express wording to enable the SMSF to receive FHSS eligible contributions and allow the SMSF, upon receipt of a release authority, to release these contributions directly to the ATO, rather than the member. Another thing that the SMSF trustee will need to do is regularly notify the ATO when a member makes an eligible contribution.

For SMSF members, it should be noted that for couples, both can participate in the FHSS Scheme to purchase their first family home. This means a couple can access up to $60,000 from their super to go towards purchasing their first home.

For individuals in higher tax brackets, there may be tax advantages in participating in the FHSS Scheme, even if they do not end up purchasing a home.

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