



# Early access to super

Your super is for retirement, but you may be able to access it earlier on compassionate and other hardship grounds.

## When you can access your super early



The limited circumstances in which you can access your superannuation before retirement.

## Access on compassionate grounds



Find out about accessing super early on compassionate grounds, what you need to do, how to apply.

## Access due to a terminal medical condition



How to access your super early if you have a terminal medical condition.

## First home super saver scheme



How you can use some of your eligible voluntary super contributions to help buy your first home.

## Tax on super benefits



Work out the tax that applies to withdrawals or payments from

## **Military invalidity pensions – Douglas decision**



Work out if your military invalidity pension is affected by the Douglas decision and what it means for your tax.

## **Illegal early access to super**



Make sure you know when it's legal to access your super, there are consequences if you access it illegally.

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# **When you can access your super early**

The limited circumstances in which you can access your superannuation before retirement.

2 August 2023

## **Overview**

You can access your super early in very limited circumstances, including to pay certain expenses on compassionate grounds, as well as terminal illness, incapacity and severe financial hardship.

For information on how to save money for your first home inside your super fund, see [First home super saver scheme](#).

## **Access on compassionate grounds**

You may be allowed to withdraw your super early on compassionate grounds to pay for:

- medical treatment for you or your dependant

- medical transport for you or your dependant
- modifications to your home or vehicle to accommodate you or your dependant's special needs arising from a severe disability
- palliative care for you or your dependant
- death, funeral or burial expenses of your dependant
- preventing foreclosure or forced sale of your home

For release on compassionate grounds, you need to meet all eligibility conditions and provide the relevant documents to support your application. Applications that don't include these documents may be delayed or not approved.

Applications can be made via ATO Online, or on our paper form where you don't have access to our online services.

The super you withdraw on compassionate grounds is paid and taxed as a normal super lump sum.

## Access due to a terminal medical condition

You may be able to access your super if you have a terminal medical condition and **all** these conditions are met:

- Two registered medical practitioners have certified, jointly or separately, that you suffer from an illness or injury that is likely to result in death within 24 months of the date of signing the certificate.
- At least one of the registered medical practitioners is a specialist practising in an area related to your illness or injury.
- The 24-month certification period has not ended.

Contact your super fund to request access to your super due to a terminal medical condition. Your fund must pay your super as a lump sum. For the payment to be tax-free you must have a terminal medical condition either:

- at the time of the payment
- within 90 days of receiving the payment.

If you have a terminal medical condition and you have super held by us you can claim it through your super fund or directly from us.

For more information see [Access due to a terminal medical condition](#).

## **Access due to severe financial hardship**

You may be able to withdraw some of your super if you are experiencing severe financial hardship. Access on grounds of severe financial hardship is not administered by the ATO. You need to contact your super provider to request access due to severe financial hardship.

There are no special tax rates for a super withdrawal because of severe financial hardship. Withdrawals are paid and taxed as a normal super lump sum. If you're under 60 years old, this is generally taxed at between 17% and 22%. If you're over 60 years old, you won't be taxed unless the lump sum includes an untaxed element.

### **Eligibility**

Eligibility for access due to severe financial hardship depends on your age in relation to your **preservation age**. For example, if your preservation age is 55 and you're under 55 years and 39 weeks old, you need to satisfy the conditions under 1 below.

#### **1. Under preservation age plus 39 weeks**

If you're under your preservation age plus 39 weeks, you need to meet both these conditions:

- You have received eligible government income support payments for a continuous period of 26 weeks.
- You are not able to meet reasonable and immediate family living expenses.

The minimum amount that can be withdrawn is \$1,000 and the maximum is \$10,000. If your super balance is less than \$1,000 you can withdraw up to your remaining balance after tax.

You can only make one withdrawal in any 12-month period.

#### **2. Reached preservation age plus 39 weeks**

If you've reached your preservation age plus 39 weeks, you need to meet both these conditions:

- You have received eligible government income support payments for a cumulative period of 39 weeks after you reached your

preservation age.


- You were not **gainfully employed** at the time of applying.

There are no restrictions on how much you can withdraw if you meet the age and the other 2 conditions.

## **How to apply for access due to financial hardship**

You need to apply to your super fund directly for release of super on financial hardship grounds. The ATO does not process severe financial hardship requests.

If your super provider requests evidence, you can ask Services Australia to provide a letter confirming you have received eligible government income support payments for the relevant period.

For more information on how to apply for early access to your super because of financial hardship, see [If you need to apply because of financial hardship](#)  at Services Australia.

## **Access due to temporary incapacity**

You may be able to access your super if you are temporarily unable to work, or need to work fewer hours, because of a physical or mental medical condition.

This condition of release is generally used to access insurance benefits linked to your super account.

You'll receive the super in regular payments (an income stream) over the time you are unable to work. There are no special tax rates for a super withdrawal due to temporary incapacity. Withdrawals are paid and taxed as a super income stream.

Contact your super provider to request access to your super due to temporary incapacity and to ask about insurance attached to your super.

## **Access due to permanent incapacity**

You may be able to access your super if you are permanently incapacitated. This type of super withdrawal is sometimes called a 'disability super benefit'.

Your fund must be satisfied that you have a permanent physical or mental medical condition that is likely to stop you from ever working again in a job you were qualified to do by education, training or experience.

You may still be eligible to withdraw your super where you meet the above criteria, but are undertaking other work, such as light duties in a different position or casual work in a different field.

You can receive the super as either a lump sum or as regular payments (income stream).

To receive concessional tax treatment, a super withdrawal due to permanent incapacity must be certified by at least 2 medical practitioners.

Contact your super fund to request access to your super because of permanent incapacity.

To work out how your super payment will be taxed you need to know how much of the money in your super account is a:

- tax-free component
- taxable component the super provider has paid tax on (taxed element)
- taxable component the super provider has **not** paid tax on (untaxed element).

If you're under your **preservation age and** receive a disability benefit as an income stream, you'll get the **super income stream tax offset** that reduces the tax rate on the taxed element of your taxable component by 15%.

If you've reached your preservation age **or** if you get a lump sum, your disability benefit will be taxed at the rates described in **Tax on super benefits**.

## **Super balance less than \$200**

You may be able to access your super if:

- your employment is terminated and the balance of your super account is less than \$200

- you have found a 'lost super' account with a balance less than \$200.

Contact your provider to request access. Check the eligibility criteria for withdrawing super from **ATO-held accounts**.

No tax is payable when accessing super accounts with a balance less than \$200.

## **Illegal early release and scams**

### **Illegal early release**

Some promoters claim to offer early access to your super by transferring it into a self-managed super fund. These schemes are illegal, and heavy penalties apply if you get involved. For more information, see [Illegal early release of super](#).

### **Be aware of scams and schemes**

Be alert to scams or schemes where people:

- impersonate the ATO, or a trusted organisation like your super fund, to steal your money or personal identifying information
- contact you and charge for services that are free, like gaining early access to your superannuation.

If you receive a phone call, text message or email offering to help you release your super early, **do not**:

- provide your personal information
- click on any links.

You can **contact us** to confirm if an interaction is genuine.

## **Stolen or misused identity**

If you're concerned that someone has accessed your super without your permission, you should check your:

- myGov and ATO Online account and make sure your contact details are still correct

- superannuation account to make sure that your account details are also correct, and that there have been no unauthorised transactions.

If you receive a text message or email stating that your myGov details have been changed, or that you have applied for early release of super when you have not, do not click on any links, and consider whether your identity has been compromised.

If you think that someone has stolen or misused your identity, contact both:

- your super fund immediately if you identify unauthorised transactions or updates to your account
- our Client Identity Support Centre on **1800 467 033** (between 8.00 am and 6.00 pm, Monday–Friday) to help you establish your tax identity.

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## Access due to a terminal medical condition

How to access your super early if you have a terminal medical condition.

2 August 2023

### What is a terminal medical condition

A terminal medical condition exists if **all** these conditions are met:

- Two registered medical practitioners have certified, jointly or separately, that the person suffers from an illness or an injury that is likely to result in the death of the person within 24 months of the date of the certification.
- At least one of the registered medical practitioners is a specialist practising in an area related to the illness or injury suffered by the person.

- The 24 month certification period from the date of the certifications (see point 1 above) has not ended.

These rules **do not** apply to Departing Australia superannuation payments (DASP).

Note that you can apply for **early release on compassionate grounds** (under different rules) to pay for certain medical expenses including medical treatment, medical transport and palliative care.

## Accessing your super

You can ask your super fund to release your super benefits if you have a terminal medical condition. There are no set limits on the amount you can withdraw from your super. However, payments are subject to the rules of your fund.

If you satisfy this condition of release, any benefits that have accrued up to that point become **unrestricted non-preserved benefits**. Any additional benefits you accrue during the 24 month certification period also become unrestricted non-preserved benefits. These can be accessed as a tax-free lump sum payment if you withdraw it within 24 months of certification.

Any balances remaining after the certification period ends can be accessed at any time but may not be tax-free.

Any benefits that accrue after the certification period are not covered by the original terminal medical condition of release. You should speak to your super fund about what new certification may be required.

When you receive a tax-free super lump sum payment:

- your provider doesn't have to give you a payment summary
- you don't need to include the amount on your tax return

If you're thinking about rolling over your super to another fund or have already made a rollover request, make sure you complete the rollover before applying to access your super due to a terminal medical condition. If you don't do this, there may be adverse tax consequences. For more information see **Transferring or consolidating your super**.

Note that you can apply for **early release on compassionate grounds** (under different rules) to pay for certain medical treatments, medical

transport and palliative care expenses.

## How tax applies

A payment from your provider will be made as a tax-free super lump sum payment as long as your super is in a complying super plan or annuity scheme.

For the payment to be tax-free you must have a terminal medical condition either:

- at the time of the payment
- within 90 days of receiving the payment.


A complying super plan is either a:

- complying super fund
- public sector super scheme that is either
  - a regulated super fund
  - an exempt public sector super scheme
- complying approved deposit fund
- retirement savings account.

## Access to ATO-held super

If you're suffering from a terminal medical condition and you have super held by us you can either:

- ask your provider to claim this on your behalf
- claim it directly from us yourself.

To apply online, sign in to your [myGov account](#)  linked to ATO online services. From the ATO online services home page, select:

- **Super**
- then **Manage**
- then **Withdraw ATO-held super.**

Alternatively you can download the paper form **Application for payment of ATO-held superannuation money**.

## How tax applies

Any amount claimed directly from us during a period of certification is treated as a tax-free lump sum.

## Proof of your condition

We'll only ask for you to prove your terminal medical condition once during a period of certification. If you have previously informed us of a terminal medical condition and would like to claim your super credit balance in a lump sum direct payment, you will not be asked to reprove your condition. As long as proof was provided within the certification period.

Once the certification period on your terminal medical condition has expired, if more super has accrued in your account you can claim this directly from us. You must provide new proof of a terminal medical condition that will start another 24 month certification period.

## Refund of tax paid on super

If you received a lump sum super payment before you knew you had a terminal medical condition, you may be eligible for a refund of the tax you paid on the lump sum.

You need to give your super fund the required medical certification stating that you had a terminal medical condition either:

- at the time of the payment
- within 90 days of receiving the payment.

If you're requesting the refund before the end of the financial year in which the payment was made, you should request the refund from your super fund. If it's in the following financial year you should request the refund from us.

In your request provide:

- a copy of your medical certification (certified by 2 medical practitioners)
- the payment summary from your fund
- your bank account details (if you want us to pay your refund directly into your account).

If your fund refuses to refund the tax paid you can apply to us. You'll need to provide evidence your fund has refused to refund the tax.

Send your application to us by:

- fax to **1300 669 756**
- mail to

**Australian Taxation Office**  
**PO BOX 3100**  
**PENRITH NSW 2740**

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## First home super saver scheme

How you can use some of your eligible voluntary super contributions to help buy your first home.

1 September 2023

### About the FHSS scheme

The first home super saver (FHSS) scheme allows you to save money for your first home in your super fund.

The scheme allows you to make voluntary contributions (both before-tax concessional and after-tax non-concessional) into your super fund to save for your first home. If you meet the [eligibility requirements](#), you can have these voluntary contributions released, up to a limit, (along with associated earnings) to help you purchase your first home.

You can apply to have a maximum of \$15,000 of your voluntary contributions from any one financial year included in your eligible contributions to be released under the FHSS scheme, up to a total of \$50,000 contributions across all years. (If you requested a release before 1 July 2022, when the total limit across all years was \$30,000, you cannot make any further requests to take you up to the current \$50,000 limit.)

You will also receive associated earnings, which is a deemed amount of earnings calculated based on the **shortfall interest charge (SIC)** rate – this is not the actual earnings on those contributions in your fund.

Contributions released under the FHSS scheme can be used to buy a new or existing home in Australia.

## **Important things to know**

There are a number of important things you need to know if you plan to use the FHSS scheme:

- [Contributions and determinations](#)
- [Release requests](#)
- [Other things to know](#)

## **Contributions and determinations**

- Superannuation guarantee contributions made by your employer, and spouse contributions cannot be released under the FHSS scheme.
- You must apply for and receive a FHSS determination from us before signing a contract for your first home or applying for release of your FHSS amounts.
- Make sure you correctly enter each of your eligible contributions for all years into the FHSS determination form. Do not total the contributions.
- If there is an error in your FHSS determination you can correct this by requesting another determination, provided you haven't signed a contract or requested a release.
- If there is incorrect information in your FHSS determination and you later request a release based on that incorrect information, your request may be delayed. Your release may also be cancelled and this may affect your eligibility for the scheme.
- Limits apply to the eligible contributions that count towards your maximum releasable amount.
- You can apply to have a maximum of \$15,000 of your voluntary contributions from any one financial year included in your eligible contributions to be released under the FHSS scheme, up to a total of \$50,000 contributions across all years. You will also receive a

deemed amount of associated earnings that relate to those contributions – this is not the actual investment earnings on those contributions.

## Release requests

- You can only request a release under the FHSS scheme once.
- After you make your release request, it may take between 15 and 20 business days for you to receive your money. You should consider this timing when you start your home buying activities.
- You must make your release request within 14 days of signing a property contract. However, you must have a FHSS determination before you sign any property contract.

## Other things to know

- The home you purchase or construct must be located in Australia.
- You can sign your contract to purchase your property after you make a valid release request.
- If you have an outstanding debt with the ATO or another Commonwealth agency, your FHSS release amount may be offset against this debt. Payment of your FHSS amount could be delayed or reduced (including to nil) or both if you have an outstanding Commonwealth debt.
- You have 12 months from the date you make a valid release request to notify us if you have signed a contract to purchase or construct your home, or recontribute the required amount to your super fund.

## Eligibility and conditions

To use this scheme, you must satisfy all of the following conditions:

- You're 18 years old or older when requesting a FHSS determination or a release of money under the FHSS scheme. However, you can make [eligible contributions](#) before you are 18 years of age.
- You're a first home buyer, having never owned property in Australia – this includes an investment property, vacant land, commercial property, a lease of land in Australia, or a company title interest in land in Australia (unless we determine you have suffered a [financial hardship](#)).

- You intend to occupy the property you buy as soon as practicable and for at least 6 months within the first 12 months you own it after it's practical to move in.
- You have not previously made a FHSS release request.

You don't need to be an Australian citizen or Australian resident for tax purposes to use the FHSS scheme.

Eligibility is assessed on an individual basis. This means that couples, siblings or friends can each access their own eligible FHSS contributions to purchase the same property. If any of you have previously owned a home, it will not stop anyone else who is eligible from applying.

## Financial hardship provision

You may still be eligible, even if you have previously owned property in Australia, if we determine you have suffered a financial hardship that resulted in a loss of ownership of all property interests.


The events that could result in the loss of property interests include:

- bankruptcy
- divorce, separation from a de-facto partner, or a relationship breakdown
- loss of employment
- illness
- being affected by a natural disaster.

This hardship process is only for those who wish to use the FHSS scheme. See **When you can access your super early** for information on how to apply for early access if you're experiencing severe financial hardship unrelated to saving for your first home.

## How to apply under the FHSS financial hardship provision

If you want to be considered under the FHSS financial hardship provision you can apply by either:

- logging into ATO online services through [myGov](#) 
  - select **Super**, then **Manage**, then **First home saver**

- answer the first 3 questions in the FHSS determination, click the link to submit a hardship application form
- completing a First home super saver scheme – hardship application form.

You should apply to us for a hardship determination before you start saving, so you know if the [hardship provision](#) applies to you.

You must provide evidence with your application that demonstrates the link between the loss of your property and your hardship event.

If we accept you have suffered a financial hardship, you must also meet the following conditions **at the time** you lodge your FHSS determination form:

- you have not acquired a subsequent interest in real property in Australia since you lost the property as a result of financial hardship
- you are 18 years old or older
- you have not previously made a FHSS release request under the FHSS scheme.

## How you can save in super

You can start saving under the FHSS scheme by:

- entering into a **salary sacrifice** arrangement with your employer to make voluntary concessional contributions (note that not all employers offer salary sacrifice arrangements to their employees)
- making voluntary personal **super contributions**, which will be concessional if you claim an income tax deduction for them.

You can contribute into any super funds except for defined benefit interest or constitutionally protected funds, contributions to which are not eligible for release under the FHSS scheme.

Before you start saving you should:

- check that your nominated super fund(s) will release the money
- ask your fund about any fees, charges and insurance implications that may apply
- check that your super fund has your current contact details – ensuring your name and address in the super fund's records exactly

match the details we have for you in our records

- be aware that if you receive FHSS amounts it will affect your tax for the year in which you make the request to release – you will receive a payment summary and you will need to include both the assessable and tax-withheld amounts in your tax return.

There is no need for you to notify your employer, super fund or the ATO before making contributions for FHSS purposes. Contributions you make for FHSS purposes are not accounted for separately in your super account(s), and you're not required to use them for the FHSS scheme. If you end up not accessing them under the FHSS scheme, they remain part of your super interest.

If you want to be considered under the financial hardship provision, you should ask us to [determine if the financial hardship provision applies](#) to you before you start saving.

## Eligible contributions

You can make the following types of contributions under the FHSS scheme:

- voluntary concessional contributions – including salary sacrifice amounts or contributions you have claimed or intend to claim a tax deduction for (usually taxed at 15% in your fund)
- voluntary non-concessional contributions – including personal after-tax contributions (where you haven't claimed a tax deduction).

Only contributions made from 1 July 2017 are eligible for release under the FHSS scheme.

You can contribute up to your existing super **contribution caps**. Releases under the FHSS scheme don't affect the calculation of your concessional or non-concessional contributions for contributions cap purposes. Your contributions still count towards your contribution caps for the year they were originally made.

You can apply for release of up to \$15,000 of your voluntary contributions from any one financial year, up to a total of \$50,000 contributions across all years. You must include eligible contributions for all years in the same determination application.

Certain KiwiSaver and other transfer amounts from foreign super funds are eligible contributions for calculating your FHSS maximum release

amounts. For more information, see **GN 2018/1** *First home super saver scheme*.

An eligible KiwiSaver amount must be included in your FHSS determination request as a personal voluntary (after tax) contribution, with the date it was credited to your Australian super fund account. You cannot split this contribution over different financial years.

You can check your eligible contributions with your super fund(s) at any time to see how much you have saved. This will help you keep track of the maximum FHSS amounts you can have released.

## **How your contributions are ordered**

When you make voluntary contributions into super, the order and type of the contributions can make a difference to the amount released under the FHSS scheme.

To calculate your FHSS maximum release amount, we apply ordering rules when you apply for a FHSS determination. You don't have to do the calculations yourself.

Your contributions are counted towards your release amounts as follows:

- A first-in first-out rule applies – this means that contributions you make in an earlier financial year are counted before contributions in a later financial year. Contributions you make within a financial year are counted in the order you make them.
- A simultaneous contributions rule applies – this means that if you make an eligible concessional contribution and an eligible non-concessional contribution at the same time (for example, in the same payroll process), your non-concessional contributions are taken to be made first.

If you make your contributions within a financial year and you claim a deduction for some or all of the contributions, your eligible non-concessional contributions (if any) are taken to be made before any eligible concessional contribution.

## **Ineligible contributions**

The following contributions are not eligible and must not be included in your FHSS determination:

- super guarantee (SG) contributions made by your employer

- mandated employer or member contributions made for you under an award or 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 you elect to include in the receiving fund's assessable income
- contributions to defined benefit interest or constitutionally protected funds, or contributions that are mandatory under a state or territory law or the rules of a fund
- excess concessional or non-concessional contributions, which are not eligible even if they otherwise would have been
- COVID-19 early release of superannuation re-contributions.

If there are any of these amounts in your request for a FHSS determination, your request may be delayed or cancelled.

## Applying to release your FHSS savings

When you're ready to receive your FHSS amounts, you need to apply to us for a [FHSS determination](#) and then a [release](#). This is a 2-step process.

You **must** have a FHSS determination before you sign a contract that results in you obtaining an interest in a property, including a contract to purchase vacant land.

Except in limited circumstances, once you sign a contract to purchase any property you're no longer eligible to request a FHSS determination. For more information see *GN 2018/1 First home super saver scheme*.

## When you can sign your contract

You can sign your contract to purchase or construct your home before or after you make a valid request to release your FHSS amounts but you must sign a contract within 12 months.

If you sign your contract to purchase or construct your home **before** the date on which you make a valid request to release FHSS amounts, you'll need to:

- have a FHSS determination before you sign
- make a valid release request within 14 days of entering the contract.

If you have signed your contract more than 14 days before you request the release of your FHSS amounts, you'll be subject to [FHSS tax](#).

For information on what is a valid contract under the FHSS scheme and how long you have to sign it, see [Signing a contract for a home and notifying us](#).

## Maximum release amount


The FHSS maximum release amount is the sum of your eligible contributions, taking into account the yearly and total limits, and associated earnings. This amount includes:

- 100% of your eligible personal voluntary super contributions you have not claimed a tax deduction for (non-concessional contributions)
- 85% of your eligible salary sacrifice contributions (concessional contributions)
- 85% of eligible personal voluntary super contributions you've claimed a tax deduction for (concessional contributions)
- an amount of deemed earnings associated with the above contributions.

The FHSS maximum release amount takes into account the \$15,000 limit from any one year and the \$50,000 total limit to the total contributions across all years, before adding the associated earnings.

## Step 1 - Requesting a determination

To withdraw your voluntary super contributions under the FHSS scheme, you need to request a FHSS determination from us:

- sign in to [myGov](#) 
  - select **Australian Taxation Office**
  - select **Super**, then **Manage**, then **First home saver**.

If you don't have a myGov account, [create one and link it to the ATO](#).

When you apply for a FHSS determination, we'll tell you your [maximum FHSS release amount](#).

You must:

- only include eligible contributions in your request for a FHSS determination
- use the date the contribution was received by your super fund.

Most contributions will be pre-filled in the online FHSS determination request from information reported to us by your super fund, but you need to check the details are correct before submitting it.

If you're adding details of contributions that have not been pre-filled, use your super fund statement or transaction list to confirm the dates, amounts and type of each contribution. In determining the year in which a contribution has been made, the date on which the contribution was received by your super fund is relevant, not the date you or your employer paid it.

You must not use your payslips to complete your request for a FHSS determination as this does not provide the date your contributions were credited to your super account.

We will check that the contributions in your request for a FHSS determination match contribution details reported to us by your super fund. You may be required to provide evidence of your contributions before we release your FHSS amounts.

You'll also need to include the year and amount of any super tax deductions you have or intend to claim in your tax returns.

Your FHSS request may be delayed or cancelled if you provide incorrect information, and you may not be able to apply under the FHSS scheme in the future.

You can request a determination on more than one occasion but can only request a release once.

Note that once you sign a contract resulting in you obtaining an interest in property, including vacant land, you are not eligible to request a FHSS determination.

## Step 2 - Requesting the release of your super savings


Once you have a FHSS determination you can then request a release of your amount when you're ready to purchase your home. Be aware that you:

- can only apply for a release once
- 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.

Before you request a release of your savings, you should:

- check that you've made all of the voluntary FHSS contributions you want to make
- ensure that the information you have provided in your request for a FHSS determination is correct – otherwise your release may be delayed or cancelled, and you may not be able to apply for a release under the FHSS scheme in the future
- resolve any issues with your FHSS determination before you request a release
- agree with the amounts shown in your FHSS determination – for example, if you did not include all of your eligible contributions you can request a new determination, but only if you have not signed a contract to purchase property
- **object** to the FHSS determination if you believe it is incorrect due to our error.

You can request a release of the FHSS maximum release amount stated in your FHSS determination or choose a lower amount. To apply:

- sign in to [myGov](#) 
- select **Australian Taxation Office**
- select **Super**, then **Manage**, then **First home saver**.

Once you have requested a release you can't request another one, even if you have requested an amount less than your FHSS maximum release amount.

## Receiving your FHSS amount

After you have made a valid release request, we'll issue a release authority to your super fund(s) requesting they send your FHSS release amounts to us.

Before we send a released amount to you, we will:

- withhold the appropriate amount of tax
- offset the remaining amount against any outstanding debts with the ATO or another Commonwealth Government agency.

In most cases, it will take between 15 and 20 business days for your fund to release your money and for us to pay it to you.

A payment summary will be sent to you at the end of the financial year. It will show your **assessable FHSS released amount**, which is comprised of:

- concessional contributions
- associated earnings on both concessional and non-concessional contributions.

You need to include the amount stated in your payment summary, in your tax return for the financial year you request the release. Your payment summary will also show details of any [tax withheld](#), which also needs to be included in your tax return. The tax payable on this assessable amount will receive a 30% tax offset.

## Withholding tax

When we receive your released amounts, we will withhold tax based on either:

- your expected marginal tax rate, including Medicare levy, less a 30% tax offset
- 17% if we're unable to estimate your expected marginal rate.

The tax withheld is calculated on your assessable FHSS released amounts and will help you meet your end of year tax liabilities.

When you lodge your tax return, we will know your actual marginal tax rate for the year in which you requested the release and will recalculate your tax liability on the released amount. We will take into account the tax that has already been withheld from your assessable FHSS released amount, together with the 30% tax offset.

Your payment summary will show the amount of tax withheld.

## **Completing your tax return**

You must include the assessable FHSS released amount shown on your payment summary as assessable income in your tax return for the year you request the release. You will also need to include the tax withheld amount so you pay the correct amount of tax.

For example, if you request a release of FHSS amounts on 30 June 2023, include the amount in your 2022–23 tax return – even though you won't receive the released amount until July 2023.

We will only issue your payment summary once all your FHSS amounts have been paid to you. This could be several weeks after the end of the financial year.

## **Family tax benefit and child support**

Your assessable FHSS released amount is **not** included in your assessable income for calculating family assistance and child support payments. These amounts were included in prior years, so this will prevent double counting.

## **Study and training support loans**

If you make salary sacrifice contributions into super, they will be a reportable employer super contribution in that income year. As such, these contributions continue to be included in your repayment income for study and training support loans.

You will need to review your pay as you go (PAYG) withholding arrangements with your employer, so the tax they withhold from your salary and wages during the year is enough to cover the amount you're liable to pay.

When you withdraw contributions under the FHSS scheme they are not part of your repayment income in the year you request the withdrawal.

Study and training support loans include:

- Higher Education Loan Program (HELP)
- Student Start-up Loan (SSL) and ABSTUDY SSL schemes
- Trade Support Loans (TSL) program
- Student Financial Supplement Scheme (SFSS).

## State government concessions

The FHSS scheme is separate to other concessions offered by state governments.

If you want to access state government concessions as a first home buyer, you will need to check with the relevant state government authority to confirm you meet the eligibility criteria for each concession.

## Signing a contract for a home and notifying us

You have up to 12 months (or other period we allow) from the date you requested the release of FHSS amounts to sign a contract to purchase or construct a home. (You can sign a contract [before you request release of FHSS amounts](#) subject to certain restrictions.)

The contract you enter into has to be for a residential property in Australia. It cannot be for:

- any premises not capable of being occupied as a residence
- a houseboat
- a motor home
- vacant land – but the contract can be for construction of a home on vacant land, provided you have not purchased the vacant land before applying for a FHSS determination. The contract to construct the home must be entered into within 12 months (or other period allowed) from the date you requested a release.

Your name must be on the title of the property you buy.

You must genuinely intend to occupy the property as a home, and demonstrate this by:

- occupying or intending to occupy the property as soon as practicable after purchase
- occupying or intending to occupy the property for at least 6 of the first 12 months from when it is practicable to occupy it.

If you don't sign a contract to purchase or construct a home within 12 months of the date you requested a release, we may grant you an extension of time to do so for a further 12 months. There is no need to apply for this extension – we will generally grant it unless we have reason to believe that doing so would be inappropriate. We will notify you if an extension is granted.

At the end of the 12 month extension, if you have still not signed a contract to purchase or construct a home, you can choose to either:

- recontribute an amount into your super fund(s). This amount must be a non-concessional contribution and be at least equal to your [assessable FHSS released amount](#), less any tax withheld. This amount is stated in your payment summary, and may be less than the total amounts released to you.
- keep the released amount and be subject to FHSS tax, a flat tax equal to 20% of your assessable FHSS released amount.


## Notify us

If you sign a contract to purchase or construct your home, you must notify us within 28 days of signing the contract.

If you recontribute the assessable FHSS amount (less tax withheld) into your super fund, you must notify us within 12 months of the date you request the release of your FHSS money.

If you don't notify us that you have done one of the above or you choose to keep the FHSS amount, you may be subject to FHSS tax.

You can notify us by:

- logging into ATO online services through [myGov](#) 
- select the **Super**, then **Manage**, then select **First home saver**.

## Technical information

For technical information on the FHSS scheme, see [GN 2018/1 First home super saver scheme](#).

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## Tax on super benefits

Work out the tax that applies to withdrawals or payments from super.

2 August 2023

### How super is taxed

Super may be taxed at 3 points in its life cycle:

- on contributions
- on the investment earnings in the fund, which in the
  - accumulation phase are taxed at 15%
  - retirement phase are tax-free – subject to a lifetime limit on the amount you can transfer into retirement phase (your transfer balance cap)
- on withdrawal, as explained in this page.

### How tax applies to your super withdrawals

To withdraw money from super you need to have satisfied a **condition of release**. Except where indicated, the tax treatment explained here assumes you have satisfied a condition of release.

To work out how your super withdrawal will be taxed you need to know:

- whether the money in your super account is tax-free or taxable – your super benefits generally include both
- your **preservation age** and your age when you get the payment

- whether you get the payment as a lump sum or income stream (and the type of income stream)
- whether you're receiving a death benefit income stream
- whether you exceed the following caps
  - defined benefit income cap
  - [low rate cap](#)
  - [untaxed plan cap](#) amount.

These factors determine whether you:

- pay tax on the withdrawal
- get tax offsets that reduce the amount of tax you pay.

To find the tax rates for your super payment, choose the scenario that applies to you at the time you expect to withdraw the super:

- [if your age is less than your preservation age](#)
- [if you're between your preservation age and 60 years old](#)
- [if you're 60 years or older or receiving a capped defined benefit income stream](#)
- [if you're receiving a capped defined benefit income stream that is a death benefit.](#)

## Tax-free and taxable super

To understand how your super payment is taxed, you need to know whether the money in your super account when withdrawn is either:

- tax-free – the 'tax-free component' of your super
- taxable – the 'taxable component' of your super, consisting of either or both:
  - a taxed element
  - an untaxed element, depending on whether the benefit is paid from a taxed or untaxed source. A super benefit containing an untaxed element is most commonly in a public sector fund.

Your super fund can tell you how much of the money in your super account is tax-free or taxable.

## Why some super is tax-free and some taxable

Whether the money in your super account is tax-free or taxable when you withdraw it generally depends on the type of contributions made and whether tax was paid on it:

- Tax-free withdrawals are generally from your **non-concessional (after-tax) contributions**, including personal contributions you made from your after-tax income, unless you were allowed a tax deduction for them.
- Taxable withdrawals are generally from your **concessional (before-tax) contributions** – those made from income before you paid tax on it, including:
  - the super contributions your employer must make for you
  - money you salary sacrifice into super
  - super contributions you were allowed to claim a tax deduction for.

The amount of tax you pay when you withdraw taxable super depends on your age and whether your fund paid tax on it:

- contributions and related investment earnings on which your fund **has paid tax** (at the rate of 15%) forms the 'taxed element' of your taxable super
- any amount included in your taxable super that your fund has not paid tax on forms the 'untaxed element' of your taxable super.

Generally, your super benefit will include both a tax-free and a taxable component. When you make a withdrawal, your fund calculates the components of the withdrawal based on the proportion of components that make up the total value of your super account.

The amount of each component is calculated at the following times:

- each lump sum payment – just before it is paid
- income stream – when the income stream starts
- income stream commuted to a lump sum – the components are calculated when the income stream started. (However, if the income

stream is a deferred super income stream, the components are calculated just before the commutation occurred)

- an income stream commuted back into your super – before a new benefit is paid.

For more information, see **Calculating components of a super benefit**.

You can't choose to withdraw only from the tax-free component of your super account unless the total amount of your account is tax-free.

## **You're under your preservation age**

This section applies to you if both:

- you're currently under your **preservation age**
- you were not in receipt of a **death benefit (reversionary) capped defined benefit income stream** where the deceased was 60 years old or older at the time of death.

To work out how your super payment will be taxed you need to know how much of the money in your super account is a:

- tax-free component
- taxable component the super fund paid tax on (taxed element)
- taxable component the super fund has not paid tax on (untaxed element).

## **Tax on withdrawals of tax-free component**

You don't pay tax on the [tax-free component](#) of your super where you:

- withdraw it as a lump sum
- receive an account-based income stream.

Tax may be payable on the tax-free component of your super income stream where:

- you're in receipt of a death benefit capped defined benefit income stream where the deceased was 60 years old or older at the time of death
- you exceed your **defined benefit income cap**.

The exception is where you have illegally accessed your super before you met a condition of release. In these circumstances, the entire amount of your super benefit is taxable regardless of whether it has a tax-free component.

## Tax on withdrawals of taxable component

The [taxable component](#) of your payment is taxed as shown in this table.

### Tax rates on taxable component withdrawals

Type of super	Type of withdrawal	Effective tax rate (including Medicare levy)
<b>Taxable component – taxed element</b>	Income stream	Your marginal tax rate – however, if you receive the income stream as a disability super benefit, you are entitled to a tax offset of 15% on the taxed element
<b>Taxable component – taxed element</b>	Lump sum	Your marginal tax rate or 22%, whichever is lower
<b>Taxable component – untaxed element</b>	Income stream	Your marginal tax rate
<b>Taxable component – untaxed element</b>	Lump sum	Your marginal tax rate or 32%, whichever is lower – unless the sum of the untaxed elements of all super lump sum benefits received under the super plan exceeds the <a href="#">untaxed plan cap</a> . Amounts above the cap will be taxed at the top marginal rate. The untaxed plan cap applies

		separately to each super provider you receive super lump sums from.
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Other tax rates may apply in some special circumstances.

## Filling out your tax return

When you withdraw money from super, your super fund will send you a payment summary showing:

- how much of the super you received is taxable and how much is tax-free
- how much tax they withheld from the payment to pay on your behalf
- any tax offset applicable to the taxed element you receive.

When you fill out your tax return you must include the taxable component of your super payment as assessable income.

Only claim tax offsets for super income streams in the offset section of your tax return – tax offsets for super lump sums are calculated by us.

### Example: lump sum

Suzi is 50 years old and applies to withdraw some super on compassionate grounds.

Suzi receives a lump sum super benefit of \$11,000. Her fund tells her this consists of a \$1,000 tax-free component and \$10,000 taxable component. The entire taxable super was taxed in the fund.

When Suzi completes her tax return, she includes the \$10,000 taxable component as income. This results in her paying the following effective tax rates.

### Effective tax rates paid by Suzi

Type of super	Effective tax rate (including Medicare levy)
Tax-free component:	No tax

\$1,000	
Taxable component – taxed element: \$10,000	Her marginal tax rate or 22%, whichever is lower

Example: multiple lump sum payments in a year

Frankie is 45 years old, and a military veteran who receives several invalidity super lump sums each year. He is not eligible to have his super lump sums treated as disability super benefits and has not exceeded the untaxed plan cap.

The total of the multiple lump sums he received during the year is \$70,000. At the end of the year his fund gives him a single payment summary showing that \$5,000 was the tax free component, \$45,000 was the taxable component – taxed element and \$20,000 was the taxable component – untaxed element.

This results in him paying the following effective tax rates:

### Effective tax rates paid by Frankie

Type of super	Effective tax rate (including Medicare levy)
Tax-free component: \$5,000	No tax
Taxable component – taxed element: \$45,000	His marginal tax rate or 22%, whichever is lower
Taxable component - untaxed element: \$20,000	His marginal tax rate or 32%, whichever is lower as he is under the untaxed plan cap.

Example: income stream

George is 53 years old and receives a non-commutable life pension of \$18,000 from his super fund. The payments of George's life pension are super income stream benefits.

His fund tells him the entire amount is a taxable component that was taxed in the fund.

When George completes his tax return, he includes the \$18,000 taxable component as income. He is not eligible to claim the disability super benefit tax offset, so he pays the following effective rate of tax.

#### Effective tax rate paid by George

Type of super	Effective tax rate (including Medicare levy)
Taxable component – taxed element: \$18,000	His marginal tax rate

## You're between your preservation age and 60 years old

To work out how your super payment will be taxed, you need to know how much of the money paid to you was attributable to the following components:

- tax-free component
- taxable component the super provider has paid tax on (taxed element)
- taxable component the super provider has not paid tax on (untaxed element).

### Tax on withdrawals of tax-free component

You don't pay tax on the [tax-free component](#) of your super where you:

- withdraw it as a lump sum
- receive an account-based income stream
- receive a capped defined benefit income stream (that was not a death benefit income stream where the deceased was 60 years old or older at the time of death) and you were between your preservation age and less than 60 years old.

The exception is where you have illegally accessed your super before you met a condition of release. In these circumstances, the entire amount of your super benefit is taxable regardless of whether it has a tax-free component.

## Tax on withdrawals of taxable component

The [taxable component](#) of your payment is taxed as shown in this table.

### Tax rates on taxable component withdrawals

Type of super	Type of withdrawal	Effective tax rate (including Medicare levy), up to the low rate cap	Effective tax rate (including Medicare levy), above the low rate cap
<b>Taxable component – taxed element</b>	Income stream	Your marginal tax rate less 15% tax offset	Your marginal tax rate less 15% tax offset
<b>Taxable component – taxed element</b>	Lump sum	0%	Your marginal tax rate or 17%, whichever is lower
<b>Taxable component</b>	Income stream	Your marginal tax rate	Your marginal tax rate

– untaxed element			
<b>Taxable component – untaxed element</b>	Lump sum	Your marginal tax rate or 17%, whichever is lower	Your marginal tax rate or 32%, whichever is lower – unless the sum of the untaxed elements of all super lump sum benefits received under the super plan exceeds the <a href="#">untaxed plan cap</a> . Amounts above the cap will be taxed at the top marginal rate. The untaxed plan cap applies separately to each super provider you receive super lump sums from

## Filling out your tax return

Your fund will send you a payment summary showing:

- how much of the super you received is taxable and how much is tax-free
- how much tax they withheld from the payment to pay on your behalf
- any tax offset applicable to the taxed element you receive.

If you receive a super death benefit capped defined benefit income stream, you will need to use the **Defined benefit income cap tool** to work out what you need to include in your income tax return.

You must include the taxable component of your super payment as assessable income on your tax return.

In the offset section of your tax return, claim only tax offsets for super income streams. Tax offsets for super lump sums are calculated by us.

If you're between your preservation age and 60 years old and receive a lump sum super benefit that includes a taxable component, it is assessable income you must include in your tax return. This is the case even if the amount you receive is below the [low rate cap amount](#) and no tax has been withheld by your fund.

#### Example: lump sum

Tony is 58 years old and is retired. He receives his first lump sum super payment of \$350,000 on 25 July 2021. His fund tells him this amount consists of a \$100,000 tax-free component and a \$250,000 taxable component. All the taxable component was taxed in the fund.

Tony includes the \$250,000 taxable component as income on his 2021–22 tax return. This results in him paying the following effective rates of tax:

#### Effective tax rates paid by Tony

Type of super	Effective tax rate (including Medicare levy)
Tax-free component: \$100,000	No tax
Taxable component – taxed element (up to the low rate cap): \$225,000	0%
Taxable component – taxed element (over the low rate cap): \$25,000	17%

#### Example: multiple lump sum payments in a year

Peta is 59 and a military veteran who receives several invalidity super lump sums each year.

She is not eligible to have her super lump sums treated as disability super benefits. She has exceeded both the low rate cap and untaxed plan cap from past year super lump sum payments. The total of these super lump sums during the 2020–21 year is \$105,000.

At the end of the year, her fund gives her a single super lump sum payment summary showing that \$20,000 was the tax-free component, \$40,000 was the taxable component – taxed element and \$45,000 was the taxable component – untaxed element.

This results in her paying the following effective tax rates:

#### Effective tax rates paid by Peta

Type of super	Effective tax rate (including Medicare levy)
Tax-free component: \$20,000	No tax
Taxable component – taxed element: \$40,000	Her marginal tax rate or 17%, whichever is lower
Taxable component – untaxed element: \$45,000	The top marginal tax rate

#### Example: transition to retirement income stream

Jenny is 58 years old and has begun a transition to retirement income stream. In addition to her income from employment (\$40,000 a year), she gets a transition to retirement income stream from her super as an annual payment.

On 29 August 2021, she receives \$28,000. Her fund tells her it is all a taxable component that was taxed in the fund. It also tells her she is able to claim a 15% tax offset.

Jenny includes the \$28,000 as income on her tax return. She claims a tax offset that results in her paying the following effective rate of tax on the income stream:

#### **Effective tax rate paid by Jenny**

<b>Type of super</b>	<b>Effective tax rate (including Medicare levy)</b>
Taxable component – taxed element: \$28,000	Her marginal tax rate less 15% tax offset

### **Low rate cap amount**

The low rate cap amount applies if you reach your preservation age but are under 60 years old.

The low rate cap is a limit on the amount of taxable components (taxed and untaxed element) that can be taxed at a concessional (lower) rate of tax.

It's a lifetime cap, which is reduced by any taxable component you receive from any payer after you reach your preservation age (it cannot be reduced below zero).

Once you reach the low rate cap, any further money you withdraw as a lump sum is taxed at a different rate.

The low rate cap is \$230,000 in 2022–23. For previous years, see **Low rate cap amount**.

If you're between your preservation age and 60 years old and receive a lump sum super benefit that includes a taxable component, you must

include it in your tax return. This is the case even if the amount you receive is below the low rate cap amount and zero tax has been withheld by the super fund.

**Example: low rate cap**

In 2018–19, Talise was 58 and received super lump sum payments with taxable components totalling \$150,000.

In 2019–20 the low rate cap was \$210,000. For Talise, this is reduced by the taxable components she had previously received (\$150,000) to \$60,000. Talise also receives super lump sum payments with taxable components totalling \$90,000. Of this, \$30,000 will be in excess of the low rate cap and will be taxed at:

- the lower of her marginal tax rate or 17% on any taxed element
- the lower of her marginal tax rate or 32% on any untaxed element.

## **You're 60 years old or older, or receiving a death benefit (reversionary) capped defined benefit income stream**

This section applies if you're:

- 60 years old or older and have a capped defined benefit income stream
- less than 60 years old and receiving a death benefit (reversionary) capped defined benefit income stream where the deceased was 60 years old or older at the time of death
- 60 years old or older and receiving a super income stream that is not a capped defined benefit income stream and you have an untaxed element
- 60 years old or older and receiving a super lump sum and you have an untaxed element.

Where you are receiving an account-based pension, you don't pay tax on the [taxed element or tax-free component](#) after you turn 60 years old.

To work out how your super payment is taxed you need to know:

- your defined benefit income cap (if applicable)
- whether the income stream is a death benefit (reversionary) income stream
- the amount of the
  - tax-free component
  - taxable component that the super fund has paid tax on (taxed element)
  - taxable component that the super fund has not paid tax on (untaxed element).

## Tax on withdrawals of tax-free component

You don't pay tax on the tax-free component of your super where you withdraw it as a lump sum.

You may be required to include the tax-free component in your assessable income where you're receiving a capped defined benefit income stream and both of the following apply:

- you're receiving a death benefit income stream where the deceased was aged 60 years or older at the time of death
- the combined total of your tax-free component and taxed element (taxed source) is in excess of your defined benefit income cap.

The exception is where you have illegally accessed your super before you met a condition of release. In these circumstances, the entire amount of your super benefit is taxable regardless of whether it has a tax-free component.

## Tax on withdrawals of taxable component (including an account-based income stream)

Type of withdrawal	Type of component	Effective tax rate (including Medicare levy)
Income stream	Taxable component – taxed element	No tax

<b>Income stream</b>	Tax-free component	No tax
<b>Lump sum</b>	Taxable component – taxed element	No tax
<b>Income stream</b>	Taxable component – untaxed element	Your marginal tax rate
<b>Lump sum</b>	Taxable component – untaxed element	Your marginal tax rate or 17%, whichever is lower – unless the sum of the untaxed element of all super lump sum benefits received under the super plan exceeds the untaxed plan cap. Amounts above the cap are taxed at the top marginal rate. The untaxed plan cap applies separately to each super fund you receive super lump sums from

### Tax on withdrawals of a capped defined benefit income stream

<b>Type of withdrawal</b>	<b>Type of super</b>	<b>Effective tax rate (including Medicare levy)</b>
<b>Income stream</b>	Tax-free component and or taxable component – taxed element is above the defined benefit income cap	50% of the amount above the cap is assessed at your marginal tax rates. This is known as 'assessable amount from your capped defined benefit income stream'
<b>Income stream</b>	Tax-free component and or taxable component – taxed	No tax

	element is below the defined benefit income cap	
<b>Income stream</b>	Taxable component – untaxed element	Your marginal tax rate

## Filling out your tax return

Your fund will send you a payment summary showing:

- how much of the super you received is taxable and how much is tax-free
- how much tax they withheld from the payment to pay on your behalf
- the tax offset amount, which should be blank as you will need to determine how much offset you're entitled to
- whether you're receiving a capped defined benefit income stream where the deceased was older than 60 years old at the time of death.

If you're receiving a super lump sum payment, you don't include in your tax return the tax-free component or the taxed element of the taxable component of your super lump sum payment.

Tax offsets for super lump sums are calculated by us.

### Example: lump sum

Mei is 60 years old and receives a lump sum of \$380,000 from her super on 25 September 2021.

The payment consists of a \$45,000 tax-free component and a \$335,000 taxable component. The taxable component includes \$130,000 that was taxed in the fund and \$205,000 that the fund has not paid tax on.

Mei includes the \$205,000 as income on her tax return and pays the following effective rates of tax:

### Effective tax rates paid by Mei

Type of super	Effective tax rate (including Medicare levy)
Tax-free component: \$45,000	No tax
Taxable component – taxed element: \$130,000	No tax
Taxable component – untaxed element: \$205,000	Her marginal tax rate or 17%, whichever is lower (the untaxed element of the lump sum is less than the untaxed plan cap for 2021–22 of \$1.615 million)

Example: multiple lump sum payments in a year

Howard is 72, and a military veteran who receives several invalidity super lump sums each year. He is not eligible to have his super lump sums treated as disability super benefits. He has exceeded the untaxed plan cap. The total of these super lump sums during the year is \$105,000.

At the end of the year, his fund gives him a single super lump sum payment summary showing that \$20,000 was the tax-free component, \$40,000 was the taxable component – taxed element and \$45,000 was the taxable component – untaxed element.

This results in him paying the following effective tax rates:

### Effective tax rates paid by Howard

Type of super	Effective tax rate (including Medicare levy)
---------------	--

Tax-free component: \$20,000	No tax
Taxable component – taxed element: \$40,000	No tax
Taxable component – untaxed element: \$45,000	The top marginal tax rate

If you're receiving a capped defined benefit income stream, you must include in your tax return the:

- untaxed element of the taxable component of your super payment as assessable income
- assessable amount from your **capped defined benefit income stream** – you may need to use the **Defined benefit income cap tool**.

Find out more on how to fill in your tax return at **7 Australian annuities and super income streams**.

In the offset section of your tax return, claim only tax offsets for super income streams. Find out more about how to work out your tax offset at **T2 Australian super income stream**.

#### Example: capped defined benefit income stream

John is 62 years old and received a capped defined benefit income stream of \$117,000 in 2020–21.

The payment was for the full year and made up of a \$67,000 tax-free component and a \$50,000 taxable component – taxed element.

John includes the following in his tax return:

Type of super:

- Tax-free component + taxed element = \$117,000
- Defined benefit income cap \$100,000
- $\$117,000 - 100,000 = 17,000$

- Assessable amount from a capped defined benefit income stream is  $\$17,000 \div 2$  (50% of the amount over the cap)
- John includes \$8,500 at 7M on his tax return.

John pays tax on the \$8,500 (50% of the amount above the cap) at his marginal tax rate.

## Untaxed plan cap amount

The untaxed plan cap amount is the maximum amount of the untaxed elements taxed at concessional rates. Amounts above the untaxed plan cap are taxed at the top marginal rate.

The untaxed plan cap is a per plan limit that applies separately to each super fund you receive a super lump sum from. It is reduced by the total amount of each untaxed element in the fund that you have received from that fund.

The untaxed plan cap is \$1.650 million in 2022-23. For prior years, see **Untaxed plan cap amount**. The top marginal rate is 47% (including Medicare levy).

### Example: untaxed plan cap

Anh started receiving lump sums from her super in 2018-19, when the untaxed plan cap was \$1.480 million and Anh received \$80,000 in untaxed element payments from this fund.

In 2019-20 the untaxed plan cap for the super lump sums she receives from this fund is \$1.515 million. For Anh, this is reduced by the untaxed element payments she had previously received (\$80,000) to \$1.435 million. Anh also received another \$85,000 in untaxed element super lump sum payments from this fund.

In 2020-21 the untaxed plan cap is \$1.565 million, but this is reduced by the total of untaxed payments she had previously received (\$165,000) to \$1.4 million. Anh also received another \$90,000 in untaxed element super lump sum payments from this fund, which will further reduce her untaxed plan cap amount for any untaxed element payments she receives from this fund in the 2021-22 year.

## Tax on super death benefits

The tax on a super death benefit depends on whether:

- you were a dependant of the deceased
- it's paid as a lump sum or a super income stream benefit
- the income stream is an account-based income stream or a capped defined benefit income stream
- the super is taxable or tax-free, and whether the super fund has already paid tax on the taxable component
- your age and the age of the deceased person when they died.

If you are a dependant of the deceased, you don't need to pay tax on the taxable component of a death benefit if you receive it as a lump sum. If you receive the benefit as an income stream, different rates of tax may apply depending on the factors mentioned above.

If you're **not** a dependant of the deceased, you can only receive the benefit as a lump sum.

The taxable component of the payment will be entitled to a tax offset that ensures the rate of income tax is as follows:

- taxed element – maximum of 15% plus Medicare levy
- untaxed element – maximum of 30% plus Medicare levy.

## Tax on military invalidity benefits

Due to the court decision in *Commissioner of Taxation v Douglas* [2020] FCAFC 220, the tax and superannuation treatment of some invalidity benefit payments has changed (see *Military invalidity pensions – Douglas decision*).

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## Military invalidity pensions – Douglas decision

Work out if your military invalidity pension is affected by the Douglas decision and what it means for your tax.

10 July 2023

#### **Advising you of your options**

We're writing to veterans affected by the *Douglas* decision who will receive a new tax offset or are yet to request a review of their prior year tax returns to advise on their options. See [We're contacting some veterans](#).

## **The *Douglas* decision**

The Federal Court decision in *Commissioner of Taxation v Douglas* [2020] FCAFC 220 (the *Douglas* decision) found that, from 1 July 2007, certain invalidity pension payments for veterans and their beneficiaries are superannuation lump sums, and not superannuation income stream benefits.

The vast majority of veterans will be in a better tax position due to the *Douglas* decision – paying less tax. Tax will increase for a small number of veterans.

As a result of the *Douglas* decision:

- a new [veterans' superannuation \(invalidity pension\) tax offset](#) (VSTO) has been introduced to ensure veterans and their beneficiaries don't pay more tax because of the *Douglas* decision
- a [simplified review process](#) is available to amend prior year tax assessments for veterans – whether you pay less tax following the *Douglas* decision or are entitled to a VSTO amount.

## **Who is affected by the *Douglas* decision?**

You are affected by the *Douglas* decision if you're a veteran or their beneficiary and your invalidity pension payment:

- started on or after 20 September 2007, and
- is paid by the Commonwealth Superannuation Corporation (CSC) under either

- the Defence Force Retirement and Death Benefits (DFRDB) scheme
- the Military Superannuation and Benefits scheme (MSBS).

You will enter your military invalidity pension payment amount at **question 8 Australian superannuation lump sum payments** in your tax return.

**Note:** if you stopped receiving payments for a period of time, you may have a new [start date](#) for your invalidity pension.

Find out [how the decision affects you](#).

If your invalidity pension does not meet the above 2 conditions, you're not affected by the *Douglas* decision and your payments were correctly taxed as superannuation income stream benefits (recorded at question 7 Australian annuities and superannuation income streams in your tax return).

## When your invalidity pension started

You're only affected by the *Douglas* decision if your invalidity pension start date was on or after 20 September 2007. Your pension start date will be shown on documents provided to you by the CSC.

The start date will generally align with when you were classified as having either a Class A or B incapacity.

Example: invalidity pension started before 20 September 2007

Sandra was discharged on 2 July 2007. On 24 July 2007, she was determined by CSC as having a Class B incapacity and started receiving invalidity pension payments. The classification has remained the same since.

As Sandra's invalidity pension started before 20 September 2007, she is not affected, and her invalidity pension payments were correctly taxed as superannuation income stream benefits.

If your date of discharge was on or after 20 September 2007, any invalidity pension will always start on or after 20 September 2007.

There may have been a gap between your discharge date and your invalidity pension start date. Whether you're affected will depend on **when your invalidity pension started**, not your discharge date.

Example: invalidity pension started on or after 20 September 2007

Bryce was discharged on 15 September 2007. On 19 November 2007, he started receiving invalidity pension payments in accordance with being determined by CSC as having a Class A incapacity – the classification has remained the same since.

Even though Bryce was discharged before 20 September 2007, his invalidity pension started after 20 September 2007. As such, he is affected by the *Douglas* decision and his invalidity pension payments are taxed as superannuation lump sums.

## Reclassification of your invalidity pension

Reclassification of your invalidity pension can determine if you are affected by the *Douglas* decision.

If you were reclassified on or after 20 September 2007 from:

- a retirement pension to an invalidity pension, you are affected by the *Douglas* decision because your invalidity pension start date is after 20 September 2007
- one DFRBD invalidity pension class that started before 20 September 2007 to another invalidity pension class, you are not affected by the *Douglas* decision because your invalidity pension start date doesn't change
- one MSBS invalidity pension class that started before 20 September 2007 to another invalidity pension class, and your payment stops and restarts
  - if it's backdated to the date the payments stopped, it's not affected by the *Douglas* decision because your invalidity pension start date doesn't change
  - if it's not backdated, you are affected by the *Douglas* decision because your new invalidity pension start date is after 20 September 2007.

Example: reclassification with a new start date

Shane received an invalidity pension from the MSBS that started in August 2005.

In July 2008, Shane's invalidity pension status is subsequently reviewed and ceased. CSC reviews Shane's circumstances in October 2010 and determines that he is eligible for a new invalidity pension.

As Shane started a new pension after 20 September 2007, the *Douglas* decision applies to Shane's invalidity pension payments from October 2010.

A classification (or reclassification) with a retrospective effective date does not change the date that the invalidity pension started.

Example: classification to Class A with backdated effect

Roger was discharged on administrative grounds on 2 October 2005. On 14 October 2005, he started receiving retirement benefits and was not considered eligible for an invalidity pension.

On 19 May 2010, CSC determined that Roger should have been discharged on medical grounds and classified as having a Class A incapacity. The effective start date for the invalidity pension is 14 October 2005.

While the effective start date is 14 October 2005, CSC started paying the invalidity pension (including a lump sum payment in arrears) on 14 June 2010.

Roger is affected by the *Douglas* decision as the invalidity pension started for tax and superannuation purposes after 20 September 2007. His invalidity pension payments are taxed as superannuation lump sums from 14 June 2010 onwards only.

## How the decision affects you

How the *Douglas* decision affects your tax position depends on a range of factors, including your age and whether you receive a

disability superannuation benefit (DSB) or have service days before 1 July 1983.

The vast majority of veterans and their beneficiaries will [pay less tax](#). A small number of veterans and their beneficiaries would [pay more tax](#) without the new tax offset.

## When you will pay less tax

You are most likely to pay less tax because of the *Douglas* decision if you are a:

- veteran under 60 years old – as your invalidity pension is taxed more concessional as a super lump sum
- veteran 60 years old or older who either
  - receives a [disability superannuation benefit](#) (DSB), or
  - has service days before 1 July 1983.

If you receive a DSB or have service days before 1 July 1983, this increases your tax-free component. When you combine this with the changes due to the *Douglas* decision, you will generally pay less tax overall.

If you are paying less tax because of the *Douglas* decision, you may want to amend prior year tax assessments (back to the 2010–11 income year) using our [simplified review process](#). You may be entitled to a refund.

Example: does not pay more tax because of the *Douglas* decision

Dev receives an invalidity pension from the MSBS that started in January 2008. Dev is under 60 years old and is not eligible for DSB tax status and has no pre-July 1983 service days.

The *Douglas* decision means Dev's invalidity pension is treated as a superannuation lump sum for income tax purposes but there is no change to the amount included in his taxable income.

As a result, his taxable income will not change. Because Dev is under 60 years old, his invalidity pension is taxed more concessional as a super lump sum.

Dev is paying less tax because of the *Douglas* decision. He signs up to participate in the simplified review process to amend his 2010–11 to 2019–20 tax returns. He will also need to lodge an objection to amend his 2007–08, 2008–09 and 2009–10 returns.

#### Example: disability super benefit tax status

Graham is 65 years old and receives an invalidity pension from the DFRDB scheme, which started on 13 March 2010. Graham is also eligible for DSB tax status.

The *Douglas* decision applies to his invalidity pension, which is now taxed as a super lump sum – which also increases his tax-free component.

Graham not only receives more favourable tax treatment because his pension is being treated as a lump sum but also a decrease in his taxable income because of the tax concessions due to his DSB status.

Graham may wish to participate in the simplified review process to amend his prior year returns.

## When you would pay more tax

You are likely to pay more tax because of the *Douglas* decision if you are 60 years old or older and one or both of the following apply:

- you don't have service days before 1 July 1983
- your invalidity pension is not classed as a DSB.

The **veterans' superannuation (invalidity pension) tax offset (VSTO)** will offset any additional tax you would have paid because of the *Douglas* decision.

#### Example: Additional tax offset by the VSTO

Lottie receives a modest invalidity pension from the DFRDB scheme that started on 15 January 2015 but is not eligible for

DSB tax status.

Lottie is over 60 years old and was previously eligible for a 10% superannuation tax offset on the untaxed component of the benefit because it was a superannuation income stream for income tax purposes. However, because of the *Douglas* decision, Lottie's invalidity pension is now considered to be a superannuation lump sum for income tax purposes.

So, Lottie's invalidity pension is no longer eligible for the 10% superannuation income stream tax offset. But she is now eligible for a superannuation lump sum tax offset. The superannuation lump sum tax offset is capped at 15% but varies depending on how much income a person receives. In Lottie's case, the superannuation lump sum tax offset she is entitled to is less than the 10% superannuation tax offset she would have been eligible for but for the *Douglas* decision.

This means she would pay more tax following the *Douglas* decision.

Lottie is eligible for the VSTO, ensuring she is in exactly the same income tax position as she would have been before the *Douglas* decision.

## We're contacting some veterans

We are progressively writing to some veterans who are affected by the *Douglas* decision.

We are writing to veterans who are entitled to a veterans' superannuation (invalidity pension) tax offset ([VSTO](#)) amount that will change the outcome of their tax assessment. These letters outline what we are doing to apply the VSTO to your tax returns, including for prior year assessments and future tax returns.

In February, we commenced inviting some veterans to participate in the [simplified review process](#). Personalised letters advise how to apply for a review of your tax assessments that include invalidity benefits for the 2010–11 to 2019–20 income years.

We're committed to finalising reviews as quickly as possible – see [Process and timeframes](#).

## Veterans' superannuation (invalidity pension) tax offset

The veterans' superannuation (invalidity pension) tax offset (VSTO) is a non-refundable tax offset that ensures veterans and their beneficiaries do not pay more tax because of the *Douglas* decision. It applies from the 2007–08 income year.

All veterans affected by the *Douglas* decision are eligible for the VSTO. However only a small number of veterans will be entitled to a VSTO amount because the *Douglas* decision has resulted in them paying **more** tax.

You don't need to apply for the VSTO. We will work out if you are entitled to a VSTO amount after you lodge your tax return. Your notice of assessment will include any VSTO amount you are entitled to and how it was applied.

We are writing to veterans who are entitled to an amount of the VSTO. See [We're contacting some veterans](#).

### VSTO for prior year tax returns

If you want to be assessed for a VSTO entitlement for any tax returns you lodged for the 2010–11 to 2019–20 income years, you need to participate in the [simplified review process](#). As part of this process, we will work out if you're entitled to a VSTO.

If you have already participated in the simplified review process, we will work out if you are entitled to a VSTO for any years we have already reviewed.

### How we work out the tax offset

After you lodge your tax return each year, we will work out your entitlement to any VSTO amount. We are unable to advise you what this amount will be before you lodge your tax return.

We work it out as follows:

Your income tax liability if your invalidity pension is treated as a super income stream

**minus (–)**

Your income tax liability if your invalidity pension is treated as a super lump sum

### **equals (=)**

Your VSTO amount (if greater than zero).

In most cases, the offset calculation will be part of the normal tax return processing timeframes. However, it may take longer to work out your VSTO (extending the processing time), if you have any of the following complex circumstances:

- special professional averaging
- foreign residency
- employment termination payments or 'lump sum A' payments
- primary production averaging
- lump sum payment in arrears.

## **How the VSTO is applied**

If you're entitled to a VSTO amount, we will use it to reduce any tax you need to pay. If your tax is reduced to zero, we will use any remaining VSTO amount to reduce any Medicare levy, or Medicare levy surcharge you may need to pay.

Any VSTO amount remaining can't be refunded to you, transferred, or carried forward into future income years.

Any offset amount you are entitled to will be shown on your [notice of assessment](#).

### **Example: How the VSTO amount is applied**

Andrew is 62 years old and receiving an invalidity pension from the MSBS that commenced in March 2019. His invalidity payments are affected by the *Douglas* decision.

When processing Andrew's 2022 tax return, we work out:

- Andrew's tax payable would be \$950 before applying the VSTO

- Andrew is exempt from paying the Medicare levy and Medicare levy surcharge
- Andrew would pay more tax due to the *Douglas* decision and is entitled to a VSTO amount of \$900.

We use Andrew's VSTO amount to reduce his tax payable to \$50.

The CSC withheld \$2,200 in tax from Andrew's invalidity payments. As his tax payable is now \$50 and he has no other outstanding debts, we will refund \$2,150 to Andrew.

## Your notice of assessment

Information about your VSTO entitlement if any, and how it was applied, will be included with your notice of assessment.

## Your tax returns

If you're affected by the *Douglas* decision, when you lodge your tax return:

- your military invalidity pension payment will be treated as a superannuation lump sum payment
- we will work out any VSTO amount you are entitled to and use it to reduce your tax and Medicare liabilities
- details of any VSTO entitlement will be included with your notice of assessment.

You need to include your military invalidity pension payment amounts in your tax return at **question 8 Australian superannuation lump sum payments**. These amounts will be shown in your CSC payment summary. If you lodge using myTax, we will normally pre-fill this amount in your tax return. If it's not pre-filled, you will need to manually include it.

If you reached your preservation age or turned 60 years old during the income year, you will get 2 payment summaries from CSC:

- one showing 1 July as the date of payment for all payments made to you before you reached preservation age or turned 60 years old

- a second showing your most recent birthday as the date of payment or 30 June for all payments made to you after you reached preservation age or turned 60 years old, reflecting the way this income is taxed when this happens.

## 2020–21 and 2021–22 tax returns

If you included your military invalidity pension payment amounts in your 2020–21 and 2021–22 tax returns at **question 8 Australian superannuation lump sum payments**, we will determine if you are entitled to a VSTO amount.

We will amend your tax return if your entitlement to a VSTO amount is greater than \$0 and will change the outcome of your tax assessment. You will receive an amended notice of assessment which will include the amount of VSTO and how it was applied. In most cases this will be sent to your myGov Inbox.

We're committed to amending your tax returns as quickly as possible, but each person's circumstances are different and some amendments can take some time to complete. See [process and timeframes](#).

## Simplified review process for 2010–11 to 2019–20

Our simplified review process will amend your tax assessments in line with the *Douglas* decision.

If you participate, we will amend your tax assessments for the 2010–11 to 2019–20 income years.

To be eligible for the review process, you must:

- be affected by the *Douglas* decision
- have lodged all overdue tax returns – check and lodge any outstanding returns.

Before participating in our review process, it's important you understand:


- the [potential outcomes of a review](#)
- the [process and timeframes](#).

To participate in our simplified review process, complete the form **Request for objection – for recipients of certain invalidity benefits** (NAT 75383). This authorises us to review and amend your tax assessments for the relevant income years to reflect the correct taxation position. See [we're contacting some veterans](#).

## Potential outcomes of a review

It's important to consider the likely outcomes before deciding whether to participate. You may wish to seek professional financial advice to understand how a change in your taxable income affects your circumstances, including your superannuation and other payments and obligations.

The outcome of your review will depend on your personal circumstances, and may result in any of the following:

- a credit assessment – but your refund may be reduced by any debt you owe to us or another Australian Government agency (see **Using refunds or credits to pay debt**)
- a debit assessment, that is you will be liable to pay more tax – in which case we'll contact you to discuss your options including a payment arrangement with favourable terms
- no change to your tax outcome overall
- a change to your taxable income with financial impacts on other payments and obligations, such as
  - family tax benefits
  - child care subsidy
  - parental leave payment
  - child support (see, Services Australia website for information on [Act of Grace payments \(PDF 165KB\)](#) )
  - other government support payments that take into account your taxable income.

## Process and timeframes

We're committed to finalising reviews as quickly as possible, but each person's circumstances are different. If you do participate in this

process, it could take time to determine any refund owing to you, but we will keep you informed along the way.


Complex cases can take longer due to circumstances such as:

- receiving [disability superannuation benefits](#)
- if you have lump sum payment in arrears
- multiple super schemes
- being party to a family law split
- bankruptcy
- multiple income years to amend.

We will work out any VSTO you may be entitled to when we review your assessments. If you are entitled to a VSTO amount, your amended notice of assessment will advise how much you're entitled to and how it was applied.

Once the review process is complete, we'll send you an amended **notice of assessment**. In most cases this will be sent to your myGov inbox.

## **Disability superannuation benefits**

If you believe you qualify to have your military invalidity pension taxed as a DSB, you can [apply to CSC](#)  for a determination.

If CSC reclassifies your benefit as a DSB, they will inform the ATO so we can ensure you're taxed correctly. We use DSB data, provided to us monthly from CSC, to amend your tax returns. This process can take up to 3 months.

## **Review of 2007–08 to 2009–10 tax returns**

The streamlined review process does not apply to the 2007–08 to 2009–10 income years. You can request a review of your income tax assessments for these years through the normal **objection** process.

As part of your objection request, you'll need to:

- include a written request for an extension of time as these tax periods are outside the **period of review**
- provide the necessary evidence that supports any amendments to your assessments for these years. You should be able to obtain this

information from CSC.

## **PAYG withholding**

Your fortnightly invalidity pension payments are subject to the **pay as you go (PAYG) withholding** system. The amount withheld depends on, among other things, whether your payments are either:

- super income stream benefits
- super lump sum payments.

If your invalidity pension payments are affected by the *Douglas* decision and are therefore super lump sum payments, you don't need to do anything. CSC has determined which rates apply to you and is withholding the updated amounts from your fortnightly payment. Your withholding amounts will take into account the tax-free threshold and Medicare levy exemption if you have claimed them.

The withholding rates are set out in the **Tax table for super lump sums** but with a modification that may reduce the amount if you have claimed the tax-free threshold from CSC.

If you're not affected by the *Douglas* decision, the **Tax table for super income streams** continues to apply.

Different PAYG withholding tax tables apply depending on your personal circumstances. Individuals with the same invalidity pension payment per fortnight may have different amounts of PAYG withheld and, therefore, different take home amounts.

## **Adjust your PAYG withholding**

Depending on your personal financial circumstances, you may want to consider:

- whether you **claim the tax-free threshold** for your invalidity pension payments from CSC
- **varying your PAYG withholding**
- claiming an exemption from the **Medicare levy**.

## **Reversionary beneficiaries**

You're affected by the *Douglas* decision if both of these apply:

- you're a reversionary beneficiary of a deceased veteran
- at the time they died, the deceased veteran was receiving an invalidity pension that
  - was paid under the DFRDB scheme or MSBS
  - started on or after 20 September 2007.

## **If you're affected by the Douglas decision**

If you are a death benefit dependant under tax law, your reversionary pension is non-assessable and non-exempt income.

This means:

- you don't need to pay tax on your reversionary pension
- you're entitled to a refund of amounts CSC withheld from these pension payments dating back to the 2007–08 income year.

## **Your 2021–22 and 2022–23 tax returns**

We'll refund any amounts CSC has withheld from your reversionary pension payments during the 2021–22 and 2022–23 income years, after you lodge your tax return. This will be in the original tax assessment, or we will issue an amended assessment.

The payment summary CSC sent you includes the amounts withheld from your reversionary pension. You should prepare your return as usual based on the payment summary. We'll also pre-fill your tax return based on the payment summary.

At the same time, we'll amend any other relevant returns within your **period of review**. For most taxpayers with simple affairs, the amendment period of review is 2 years from the day we issue you with an assessment.

## **Amending returns outside your period of review**

You will need to lodge an objection to amend any tax returns outside your period of review that included your reversionary pension payments – back to the 2007–08 income year.

Before lodging an objection, you need to understand how it may affect you:

- If you have an existing debt with us or another Australian Government agency, any credits will be offset against that debt before any remaining amounts are refunded to you.
- An objection will result in changes to your assessable income on your notice of assessment, which may have financial impacts on other payments and obligations, including
  - family tax benefits
  - child care subsidy
  - child support payments to or from an ex-spouse
  - paid parental leave payments
  - other government support payments that take into account your taxable income.

Seek professional financial advice if you're unsure how an objection to earlier assessments may impact you.

To lodge an objection, see **How to object to a decision** and get a copy of **Objection form – for taxpayer**.

On the objection form clearly state the following:

*I am a reversionary beneficiary of a veteran who was receiving an invalidity pension provided under the MSBS or DFRDB scheme affected by the Full Federal Court decision in Commissioner of Taxation v Douglas [2020] FCAFC 220.*

We've worked closely with CSC and in most cases you will not need to provide any additional information. If we do need additional information, we'll contact you.

## Superannuation changes

We used the information from CSC to identify people who are affected by the *Douglas* decision and took action to:

- ensure that payments which are now super lump sum payments are not counted towards your **transfer balance cap**
- adjust your **total super balance** as required.

When we adjusted your total super balance, we also checked if this has any impact on whether you had previously exceeded your contributions caps and made corrections where required. We also checked whether the adjustment to your total super balance affected your entitlement to co-contributions or the low income super tax offset.

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## Illegal early access to super

Make sure you know when it's legal to access your super, there are consequences if you access it illegally.

8 February 2023

Make sure you know when it's legal to access your super – there are consequences if you access it illegally.

## When can you legally access your super

Generally, you can only access your super when you:

- reach preservation age and retire
- turn 65 even if you're still working.

To access your super legally, you must satisfy a condition of release.

There are very limited circumstances where you can legally access your super early. Eligibility requirements often relate to specific expenses.

It is illegal to access your super for any reason other than when it is allowed by the superannuation law.


Remember, there are only a few reasons to access your super and [accessing it early may be illegal \(PDF, 157 KB\)](#) [🔗](#).

## Illegal early access schemes

Illegal early access schemes encourage you to withdraw your super before you're legally entitled to.

Beware of people promoting early access schemes. They might tell you they can help you set up a self-managed super fund (SMSF) to withdraw your super and use it to pay for personal expenses such as:

- credit card debt
- buy a house or car
- go on a holiday.

If you are approached by someone who tells you to set up an SMSF, check they're a licensed financial adviser. You can do this on the Australian Securities & Investments Commission (ASIC) website [Moneysmart](#) .

## Warning signs

Promoters of illegal early access schemes usually:

- tell you to transfer or rollover your super to an SMSF so you can access it
- target vulnerable people, including those who are under financial pressure or unaware of super laws
- claim that you can access your super and put the money towards anything you want
- charge high fees and commissions
- request your identity documents.

## How to protect yourself from illegal access schemes

If someone offers you advice that you can withdraw your super early (other than by legal means):

- Stop any involvement with the scheme, organisation or the person who approached you.
- Do not sign any documents.
- Do not provide them with any of your personal details.
- Phone us on **13 10 20** and advise us of your situation.

Find out how we are stopping schemes to illegally access super.

## **Consequences of illegally accessing super**

Illegally accessing your super will cost you a lot more than the super you withdraw. You may face significant financial consequences and lose your retirement savings.

Any amount you illegally access will be included as income in your tax return, even if you return it to the fund. This means you may pay:

- additional income tax
- tax shortfall penalties
- interest.

If you've illegally accessed your super you can't return it back into your fund. Any attempt to do so will be considered a new contribution.

If you provided fraudulent documents to the ATO or your super fund, you will also be liable for penalties for false and misleading statements.

If a promoter helped you access your super illegally, you can't claim a personal deduction for fees or commissions they take from your super.

If you participate in a scheme, you may become a victim of identity theft. This is when someone uses your personal details to commit fraud or other crimes. If someone steals and misuses your identity, they could steal your super for themselves.

If you illegally access your super or have been involved in a scheme promoting illegal early access to your super, contact us immediately. When we consider penalties, we will take your voluntary disclosure and circumstances into account.

## **Consequences for SMSF trustees**

If you are an SMSF trustee and you illegally release benefits to a member who has not met a condition of release, you may be liable for administrative penalties.

You may also be disqualified as an SMSF trustee. If disqualified:

- you cannot operate as a trustee of an SMSF
- your name will be published in both the Commonwealth Government Notices Gazette and our trustee disqualification

register.

This means your disqualification will be on public record. This can have an adverse impact on you professionally, personally or financially.

## **Promoters of illegal schemes**

The ATO and The Australian Securities & Investments Commission (ASIC) may prosecute promoters of schemes designed to illegally access super. These activities may involve breaches of the following legislation:

- *Superannuation Industry (Supervision) Act 1993*
- *Corporations Act 2001*
- *Australian Securities and Investments Commission Act 2001.*

Breaches may include:

- misleading or deceptive conduct
- giving financial product advice without an Australian financial services licence.

The ATO may impose civil and criminal penalties, including significant fines and terms of imprisonment.

## **Case study – consequences for a promoter of an illegal access scheme**

A Federal Court imposed a \$220,000 penalty and a 7-year ban for the promoter of an illegal early access scheme involving SMSFs.

The ATO, as regulator of the SMSF sector, commenced legal action against the New South Wales woman in 2018 after a tip-off about the suspect establishment of several SMSFs.

She had set up or intended to set up 35 SMSFs on behalf of 68 individuals between 2016 and 2018. She then helped individuals not yet legally entitled to access their super, transfer their balances to their SMSF so they could illegally withdraw it. This sometimes occurred on the same day.

Participants in the scheme reportedly used the money to fund personal expenses including home renovations and stamp duty.

After seeking an initial injunction that placed restrictions on the scheme's facilitator, the ATO filed an application in the Federal Court

seeking:

- declaratory relief
- a final injunction
- payment of a civil penalty.

This case demonstrates that there are serious consequences for promoters of illegal early access schemes. Super is money set aside to provide for retirement and withdrawing your super without meeting a condition of release can result in long-term financial damage. This can leave people with little or no super for their retirement as well as a significant tax bill on the amount withdrawn.

*Authorised by the Australian Government, Canberra.*

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## **Our commitment to you**

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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