

EXPOSURE DRAFT

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Inserts for

Treasury Laws Amendment (Reducing Pressure on Housing Affordability) Bill 2017: First home super saver scheme and contributing the proceeds of downsizing to superannuation

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule 1	Immediately after the commencement of Part 1 of Schedule 10 to the <i>Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016</i> .	1 July 2018
2. Schedule 2	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	

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1 **Schedule 1—First home super saver scheme**

2 **Part 1—Determinations and release authorities**

3 **Division 1—First home super saver determinations**

4 *Taxation Administration Act 1953*

5 **1 At the end of Part 3-20 in Schedule 1**

6 Add:

7 **Division 138—First home super saver scheme**

8 **Table of Subdivisions**

9 Guide to Division 138

10 138-A First home super saver determination

11 138-B FHSS maximum release amount

12 **Guide to Division 138**

13 **138-1 What this Division is about**

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

18 **Subdivision 138-A—First home super saver determination**

19 **Guide to Subdivision 138-A**

20 **138-3 What this Subdivision is about**

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

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1 Table of sections

2 Operative provisions

3 138-5 First home super saver determination

4 138-10 Review

5 Operative provisions

6 138-5 First home super saver determination

7 (1) A *first home super saver determination* is a written determination
8 stating:

9 (a) your *FHSS maximum release amount; and

10 (b) the amount of each of the following components that make
11 up your FHSS maximum release amount:

12 (i) your *concessional contributions;

13 (ii) your *non-concessional contributions;

14 (iii) your associated earnings.

15 (2) You may request the Commissioner, in the *approved form, to
16 make a *first home super saver determination if:

17 (a) you have never held an interest in a *CGT asset that is
18 *taxable Australian real property; and

19 (b) you are 18 years or older; and

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

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

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

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

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1 138-10 Review

2 If you are dissatisfied with a *first home super saver determination
3 made in relation to you, you may object against the determination
4 in the manner set out in Part IVC.

5 Subdivision 138-B—FHSS Maximum release amount

6 Guide to Subdivision 138-B

7 138-18 What this Subdivision is about

8 Your FHSS maximum release amount comprises your eligible
9 non-concessional contributions, 85% of your eligible concessional
10 contributions, and your associated earnings.

11 There are limits on the amount of contributions that may be
12 eligible for release.

13 Table of sections

14	Operative provisions	
15	138-20	FHSS maximum release amount
16	138-25	FHSS releasable contributions amount
17	138-30	Eligible contributions
18	138-35	Associated earnings

19 Operative provisions

20 138-20 FHSS maximum release amount

21 Your *FHSS maximum release amount* is the sum of:
22 (a) your *FHSS releasable contributions amount worked out
23 under section 138-25; and
24 (b) your associated earnings worked out under section 138-35.

25 138-25 FHSS releasable contributions amount

26 (1) Your *FHSS releasable contributions amount* is the sum of the
27 following amounts for each *financial year that starts on 1 July
28 2017 or a later 1 July:

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- 1 (a) your *FHSS eligible non-concessional contributions for the
2 financial year;
3 (b) 85% of your *FHSS eligible concessional contributions for
4 the financial year.

5 *Order of counting contributions*

- 6 (2) In determining which contributions are to be counted towards your
7 *FHSS releasable contributions amount:
8 (a) contributions are to be counted in the order in which they
9 were made (from earliest to latest); but
10 (b) if, for a particular *financial year, you made both *FHSS
11 eligible concessional contributions and *FHSS eligible
12 non-concessional contributions, the FHSS eligible
13 non-concessional contributions are taken to have been made
14 first.

15 Example: For paragraph (b), in the 2018-2019 financial year, you made
16 voluntary contributions of \$1,000 each fortnight, up to a total of
17 \$25,000. At the end of the financial year, you claim a deduction for
18 \$15,000 (leaving \$10,000 of the contributions as non-concessional
19 contributions).

20 If all of the non-concessional contributions are eligible to be released
21 under section 138-30, the first 10 contributions made for the financial
22 year are taken to have been the non-concessional contributions, and
23 the later contributions are taken to be the concessional contributions.

24 **138-30 Eligible contributions**

25 *Limits on amount of eligible contributions*

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

31 *Eligible contributions*

- 32 (2) A *concessional contribution, or *non-concessional contribution,
33 for a *financial year is not eligible to be released unless it:
34 (a) is made in respect of you in the financial year; and
35 (b) is:

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- 1 (i) an employer contribution that is not a mandated
2 employer contribution (within the meaning of Part 5 of
3 the *Superannuation Industry (Supervision)*
4 *Regulations 1994*); or
5 (ii) a member contribution (within the meaning of Part 5 of
6 the *Superannuation Industry (Supervision)*
7 *Regulations 1994*) that is made by you; and
8 (c) is not a contribution made in respect of a *defined benefit
9 interest; and
10 (d) is not a contribution to a *constitutionally protected fund.
- 11 (3) If:
12 (a) you have *excess concessional contributions for a *financial
13 year (***your excess amount***); and
14 (b) your excess amount is greater than your *concessional
15 contributions for the financial year that are not eligible to be
16 released under subsection (2) (***your non-eligible***
17 ***contributions***);
18 concessional contributions that are equal to the difference between
19 your excess amount and your non-eligible contributions are not
20 eligible to be released.
- 21 (4) If:
22 (a) you have *non-concessional contributions for the *financial
23 year that exceed your non-concessional contributions cap for
24 the financial year (***your excess amount***); and
25 (b) your excess amount is greater than your *non-concessional
26 contributions for the financial year that are not eligible to be
27 released under subsection (2) (***your non-eligible***
28 ***contributions***);
29 non-concessional contributions that are equal to the difference
30 between your excess amount and your non-eligible contributions
31 are not eligible to be released.
- 32 (5) For the purposes of this section, disregard paragraph 292-90(1)(b)
33 of the *Income Tax Assessment Act 1997*.
- 34 Note: Under paragraph 292-90(1)(b) of the *Income Tax Assessment Act*
35 *1997*, your non-concessional contributions for a financial year would
36 include the amount of your excess concessional contributions (if any)
37 for the financial year.

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138-35 Associated earnings

- (1) You are taken to have associated earnings equal to the sum of the amounts worked out under subsection (2) for each contribution counted in your *FHSS releasable contributions amount.
- (2) The amount for a contribution is equal to the sum (rounded down to the nearest dollar) of the amounts worked out under the following formula for each of the days during the period mentioned in subsection (3).

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

where:

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

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

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

- (3) The period starts:
- (a) if the contribution is made in the *financial year starting on 1 July 2017—on 1 July 2017; and
 - (b) if the contribution is made in the financial year starting on 1 July 2018, or a later financial year—on the first day of the month in which the contribution is made or taken to have been made (see subsection 138-25(2));
- and ends on the day the Commissioner makes the *first home super saver determination for which the associated earnings are being worked out.

Division 2—Release authorities

Taxation Administration Act 1953

2 Section 131-1 in Schedule 1

Omit:

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

2

substitute:

3

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

4

5

(c) a first home super saver determination.

6

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

7

Add:

8

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

9

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

10

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

11

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

12

Add:

4

a *first home super saver
determination

the *FHSS maximum release amount
stated in that determination

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1 **Part 2—Tax consequences of scheme**

2 *Income Tax Assessment Act 1997*

3 **6 Section 10-5 (table item headed “superannuation”)**

- 4 After:
excess concessional contributions 291-15(a)
- 5 insert:
first home super saver scheme 313-15

6 **7 Section 12-5 (table item headed “superannuation—
7 deductibility of contributions”)**

- 8 After:
contributions to non-complying funds sections 290-10 and
290-75
- 9 insert:
first home super saver scheme re-contribution section 290-168

10 **8 Section 13-1 (table item headed “superannuation”)**

- 11 After:
excess concessional contributions 291-15(b)
- 12 insert:
first home super saver scheme 313-20

13 **9 Subsection 290-150(2)**

14 Before “and 290-170”, insert “, 290-168”.

15 **10 Before 290-170**

16 Insert:

17 **290-168 Contribution must not be an FHSS re-contribution**

18 You cannot deduct the contribution if you notified the
19 Commissioner about the contribution under section 313-35 (about
20 contributing amounts to superannuation that were previously
21 released under the *first home super saver scheme).

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11 Section 303-15 (note)

Omit “section 304-20”, substitute “sections 304-20 and 313-15”.

12 At the end of Part 3-30

Add:

Division 313—First home super saver scheme

Table of Subdivisions

Guide to Division 313

313-A Preliminary

313-B Assessable income and tax offset

313-C Purchasing or constructing a residential premises

313-D Contributing amounts to superannuation

313-E First home super saver tax

313-F Review of decisions

Guide to Division 313

313-1 What this Division is about

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

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

Subdivision 313-A—Preliminary

Table of sections

Operative provisions

313-5 Object of this Division

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1 313-10 Application of this Division

2 **Operative provisions**

3 **313-5 Object of this Division**

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

8 **313-10 Application of this Division**

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

14 **Subdivision 313-B—Assessable income and tax offset**

15 **Guide to Subdivision 313-B**

16 **313-12 What this Subdivision is about**

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

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

23 **Table of sections**

24 Operative provisions	
25 313-15	Amount included in assessable income
26 313-20	Amount of the tax offset

EXPOSURE DRAFT

Operative provisions

313-15 Amount included in assessable income

- (1) Your assessable income, for the income year that corresponds to the *financial year for which you requested the release authority, includes an amount that is equal to the sum of the following amounts stated in the *first home super saver determination:
- (a) your *concessional contributions;
 - (b) your associated earnings.
- (2) However, if the sum of the *FHSS released amounts is less than the *FHSS maximum release amount stated in the determination, the amount included in your assessable income for the income year is:
- (a) the amount worked out under subsection (1); less
 - (b) the difference between the FHSS maximum release amount and the sum of the FHSS released amounts.

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

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

313-20 Amount of the tax offset

You are entitled, for the income year mentioned in section 313-15, to a *tax offset that is equal to 30% of your *assessable FHSS released amount.

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

Subdivision 313-C—Purchasing or constructing a residential premises

Guide to Subdivision 313-C

313-22 What this Subdivision is about

If you enter into a contract within a particular period to purchase or construct a residential premises, you must notify the Commissioner of that contract.

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Table of sections

Operative provisions

- 313-25 Purchasing or constructing a residential premises
- 313-30 Notifying Commissioner

Operative provisions

313-25 Purchasing or constructing a residential premises

(1) Section 313-30 applies to you if:

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

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

Note: If you request an extension of the period, you may object against a decision of the Commissioner under this section (see section 313-60).

313-30 Notifying Commissioner

(1) You must notify the Commissioner in the *approved form of the matters set out in paragraphs 313-25(1)(a) to (d).

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

Note: If you request an extension of the period, you may object against a decision of the Commissioner under this subsection (see section 313-60).

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

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1 Subdivision 313-D—Contributing amounts to superannuation

2 Guide to Subdivision 313-D

3 313-32 What this Subdivision is about

4 If you do not enter into a contract within a particular period to
5 purchase or construct a residential premises, you may make one or
6 more non-concessional contributions. If you do not notify the
7 Commissioner that you have made the contributions, you may be
8 liable for tax under Subdivision 313-E.

9 Table of sections

10 Operative provisions

11 313-35 Contributing amounts to superannuation

12 Operative provisions

13 313-35 Contributing amounts to superannuation

- 14 (1) This section applies to you if:
- 15 (a) you do not notify the Commissioner in accordance with
 - 16 section 313-30 (about purchasing or constructing a
 - 17 *residential premises); and
 - 18 (b) you make one or more *non-concessional contributions the
 - 19 sum of which is at least equal to:
 - 20 (i) your *assessable FHSS released amount; less
 - 21 (ii) the amount withheld by the Commissioner from your
 - 22 *FHSS released amounts under section 12-460 in
 - 23 Schedule 1 to the *Taxation Administration Act 1953*;
 - 24 and - 25 (c) you make the contributions within the period mentioned in
 - 26 paragraph 313-25(1)(a).

27 Note: Paragraph 313-25(1)(a) sets out the period in which you must have
28 entered into a contract to purchase or construct a residential premises.

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

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- 1 Note 1: If you notify the Commissioner, you cannot deduct the contribution
2 (see section 290-168).
- 3 Note 2: If you do not notify the Commissioner, you may be liable for tax (see
4 Subdivision 313-E).
- 5 (3) The notification must be made within the period mentioned in
6 paragraph 313-25(1)(a) or such longer period as the Commissioner
7 allows under this subsection.
- 8 Note: If you request an extension of the period, you may object against a
9 decision of the Commissioner under this subsection (see
10 section 313-60).
- 11 (4) Subsection (2) does not limit the information that the *approved
12 form may require the notification to contain.

13 Subdivision 313-E—First home super saver tax

14 Guide to Subdivision 313-E

15 313-37 What this Subdivision is about

16 You are liable for tax if you do not notify the Commissioner that
17 you have either:

- 18 (a) entered into a contract to purchase or construct a
19 residential premises; or
20 (b) made one or more non-concessional contributions.

21 Table of sections

22 Operative provisions

23	313-40	First home super saver tax
24	313-45	When tax is payable—original assessments
25	313-50	When tax is payable—amended assessments
26	313-55	General interest charge

27 Operative provisions

28 313-40 First home super saver tax

29 You are liable to pay *first home super saver tax if you do not
30 notify the Commissioner in accordance with either of
31 sections 313-30 and 313-35.

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

3 Note 2: Section 313-30 is about purchasing or constructing a residential
4 premises. Section 313-35 is about making one or more
5 non-concessional contributions.

6 **313-45 When tax is payable—original assessments**

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

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

12 **313-50 When tax is payable—amended assessments**

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

17 **313-55 General interest charge**

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

- 22 (a) begins on the day on which the amount was due to be paid;
23 and
24 (b) ends on the last day on which, at the end of the day, any of
25 the following remains unpaid:
26 (i) the assessed first home super saver tax;
27 (ii) general interest charge on any of the assessed first home
28 super saver tax.

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

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1 Subdivision 313-F—Review of decisions

2 Guide to Subdivision 313-F

3 313-57 What this Subdivision is about

4 You may object against particular decisions made under this
5 Division.

6 Table of sections

7 Operative provisions

8 313-60 Review rights for decisions made under this Division

9 Operative provisions

10 313-60 Review rights for decisions made under this Division

11 (1) If:

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

14 (i) subsection 313-25(2) (for entering into a contract to
15 purchase or construct a *residential premises); or

16 (ii) subsection 313-30(2) or 313-35(3) (for notifying the
17 Commissioner of matters); and

18 (b) you are dissatisfied with:

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

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

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

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

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Taxation Administration Act 1953

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

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

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

Add:

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

15 At the end of Division 12 in Schedule 1

Add:

Subdivision 12-J—FHSS released amounts

Table of sections

12-460 FHSS released amounts

12-460 FHSS released amounts

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

16 Subsection 15-10(2) in Schedule 1

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

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

Add:

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

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

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

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

Add:

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

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

2 Insert:

38BD first home super saver 313-45 and *Income Tax Assessment Act 1997*
tax 313-50

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Part 3—Other amendments

Division 1—Definitions

Income Tax Assessment Act 1997

21 Subsection 995-1(1)

Insert:

assessable FHSS released amount means the amount included in a person's assessable income under section 313-15 in respect of the person's *FHSS released amounts.

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

FHSS eligible concessional contribution for a *financial year means a *concessional contribution for the financial year that is eligible to be released under section 138-30 in Schedule 1 to the *Taxation Administration Act 1953*.

FHSS eligible non-concessional contribution for a *financial year means a *non-concessional contribution for the financial year that is eligible to be released under section 138-30 in Schedule 1 to the *Taxation Administration Act 1953*.

FHSS maximum release amount has the meaning given by section 138-20 in Schedule 1 to the *Taxation Administration Act 1953*.

FHSS releasable contributions amount has the meaning given by subsection 138-25(1) in Schedule 1 to the *Taxation Administration Act 1953*.

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

first home super saver determination has the meaning given by subsection 138-5(1) in Schedule 1 to the *Taxation Administration Act 1953*.

first home super saver scheme (or *FHSS*) means the scheme set out in:

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- 1 (a) Division 313; and
2 (b) Division 138 in Schedule 1 to the *Taxation Administration*
3 *Act 1953*;
4 and other provisions as they relate to those Divisions.

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

7 **Division 2—Income tests**

8 ***A New Tax System (Family Assistance) Act 1999***

9 **22 Paragraph 2(1)(a) of Schedule 3**

10 After “that year”, insert “, disregarding the individual’s assessable
11 FHSS released amount (within the meaning of the *Income Tax*
12 *Assessment Act 1997*) for that year”.

13 ***Child Support (Assessment) Act 1989***

14 **23 Paragraph 43(1)(a)**

15 After “child support period”, insert “, disregarding the parent’s
16 assessable FHSS released amount (within the meaning of the *Income*
17 *Tax Assessment Act 1997*) for that year of income”.

18 **24 Paragraph 60(2)(a)**

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

22 ***Higher Education Support Act 2003***

23 **25 Paragraph 154-5(1)(a)**

24 After “the income year”, insert “, disregarding the person’s assessable
25 FHSS released amount (within the meaning of the *Income Tax*
26 *Assessment Act 1997*) for the income year”.

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Income Tax Assessment Act 1936

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

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

Income Tax Assessment Act 1997

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

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

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

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

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

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

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

After “assessable income”, insert “, disregarding your spouse’s *assessable FHSS released amount for the income year”.

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

After “disregarding”, insert “the person’s *assessable FHSS released amount for the income year and”.

Social Security Act 1991

32 Paragraph 1061ZZFA(1)(a)

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

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1 **33 Paragraph 1067G-F10(a)**

2 After “that year”, insert “, disregarding each parent’s assessable FHSS
3 released amount (within the meaning of the *Income Tax Assessment Act*
4 *1997*) for that year”.

5 **34 Paragraph 1071-3(a)**

6 After “that year”, insert “, disregarding the person’s assessable FHSS
7 released amount (within the meaning of the *Income Tax Assessment Act*
8 *1997*) for that year”.

9 ***Student Assistance Act 1973***

10 **35 Paragraph 12ZL(1)(a)**

11 After “income year”, insert “, disregarding the person’s assessable
12 FHSS released amount (within the meaning of the *Income Tax*
13 *Assessment Act 1997*) for the income year”.

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

16 **36 Paragraph 8(1)(a)**

17 After “income year”, insert “, disregarding the person’s assessable
18 FHSS released amount (within the meaning of the *Income Tax*
19 *Assessment Act 1997*) for the income year”.

20 ***Veterans’ Entitlements Act 1986***

21 **37 Paragraph 118ZZA-3(a)**

22 After “that year”, insert “, disregarding the person’s assessable FHSS
23 released amount (within the meaning of the *Income Tax Assessment Act*
24 *1997*) for that year”.

EXPOSURE DRAFT

Schedule 2—Contributing the proceeds of downsizing to superannuation

Income Tax Assessment Act 1997

1 Subsection 290-150(2)

After “290-165”, insert “, 290-167”.

2 After section 290-165

Insert:

290-167 Contribution must not be a downsizer contribution

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

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

Insert:

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

4 After section 292-100

Insert:

292-102 Downsizer contributions

Criteria for a downsizer contribution

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

- (a) the contribution is made to a *complying superannuation plan in respect of you when you are aged 65 years or over; and
- (b) the contribution is an amount equal to all or part of the *capital proceeds received from the *disposal of an *ownership interest (the *old interest*) in a *dwelling; and
- (c) you or your *spouse held the old interest just before the disposal; and
- (d) any *capital gain or *capital loss from the disposal of the old interest:

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- 1 (i) for the case where you held it just before the disposal—
2 is wholly or partially disregarded under
3 Subdivision 118-B (or would have been if you had
4 *acquired it on or after 20 September 1985); or
5 (ii) otherwise—would have been wholly or partially
6 disregarded under Subdivision 118-B had you held the
7 old interest for a period before the disposal; and
8 (e) at all times during the 10 years ending just before the
9 disposal, the old interest was held by you, your spouse or
10 your former spouse; and
11 (f) the dwelling is located in *Australia, and is not a caravan,
12 houseboat or other mobile home; and
13 (g) the contribution is made within 90 days, or such longer
14 period as the Commissioner allows, after the time the change
15 of ownership occurs as a result of the disposal; and
16 (h) you choose, in accordance with subsection (7), to apply this
17 section to the contribution; and
18 (i) there is not already a contribution covered under this section,
19 and made to a complying superannuation plan in respect of
20 you, from an earlier choice you made in relation to the
21 disposal of:
22 (i) another ownership interest in the dwelling that was not a
23 related spousal interest to the old interest; or
24 (ii) an ownership interest in another dwelling.

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

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

31 *Cap on the amount of a downsizer contribution*

- 32 (2) However, the contribution is covered under this section only to the
33 extent that it does not exceed the lesser of:
34 (a) \$300,000, less any other contribution that is already covered
35 under this section and made to a *complying superannuation
36 plan in respect of you; and
37 (b) the sum of the *capital proceeds from the disposals of:
38 (i) the old interest; and
39 (ii) any *related spousal interest to the old interest;
-

EXPOSURE DRAFT

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

4 *Meaning of related spousal interest*

- 5 (3) A *related spousal interest*, to an *ownership interest in a *dwelling,
6 is another ownership interest in the dwelling if:
7 (a) both ownership interests are *disposed of under the same
8 contract; and
9 (b) just before the disposal, you *held one of the ownership
10 interests and your *spouse held the other.

11 *When interest held by trustee of deceased estate*

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

17 *Review of the period for making the contribution*

- 18 (5) If:
19 (a) you requested the Commissioner to allow a longer period
20 under paragraph (1)(g); and
21 (b) you are dissatisfied with:
22 (i) a decision under that paragraph allowing a longer
23 period; or
24 (ii) a decision the Commissioner makes not to allow a
25 longer period;
26 you may object against the decision in the manner set out in
27 Part IVC of the *Taxation Administration Act 1953*.
- 28 (6) To avoid doubt:
29 (a) subject to subsection 14ZVC(3) of the *Taxation*
30 *Administration Act 1953*, you may also object, on the ground
31 that you are dissatisfied with such a decision, relating to all
32 or part of your contributions for a *financial year:
33 (i) under section 175A of the *Income Tax Assessment Act*
34 *1936* against an assessment made in relation to you for
35 the corresponding income year; or

EXPOSURE DRAFT

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- 1 (ii) under section 97-35 in Schedule 1 to the *Taxation*
2 *Administration Act 1953* against an *excess
3 non-concessional contributions determination made in
4 relation to you for the financial year; and
5 (b) for the purposes of paragraph (e) of Schedule 1 to the
6 *Administrative Decisions (Judicial Review) Act 1977*, the
7 making of a decision under paragraph (1)(g) of this section is
8 a decision forming part of the process of making an
9 assessment of tax, and making a calculation of charge, under
10 this Act.

11 *Requirements for choices*

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

17 *Commissioner to notify providers if contributions are not* 18 *downsized contributions*

- 19 (8) The Commissioner must, in writing, notify a *superannuation
20 provider that all, or a specified part, of a contribution is not
21 covered under this section if:
22 (a) the Commissioner is aware that a choice referred to in
23 subsection (7) has been given to the superannuation provider
24 for the contribution; and
25 (b) the Commissioner is satisfied that the contribution, or that
26 part of the contribution, (as applicable) is not covered under
27 this section.

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

29 **5 Subsection 995-1(1)**

30 Insert:

31 *related spousal interest* has the meaning given by
32 subsection 292-102(3).

EXPOSURE DRAFT

1 *Taxation Administration Act 1953*

2 **6 Subsection 355-65(3) in Schedule 1 (at the end of the table)**

3 Add:

11 a *superannuation provider or is for the purpose of complying with
APRA subsection 292-102(8) of the *Income
Tax Assessment Act 1997*.

4 **7 Application of amendments**

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