

# First Home Super Saver scheme – Before legislative amendments

A complainant contacted the IGTO raising concerns that the ATO had unreasonably withheld amounts released by her superannuation fund under the First Home Super Saver scheme (FHSS scheme). She explained that she had applied to access the FHSS scheme to buy her first home and obtained a FHSS Determination from the ATO which specified the maximum amount she could withdraw. After obtaining the FHSS Determination, the complainant was able to secure the mortgage finance needed to purchase her first home and requested the ATO to authorise her superannuation fund to release the monies. After the ATO issued this authority to the complainant's superannuation fund, she entered into a contract to purchase her home.

The superfund released the monies to the ATO but before releasing the monies to the complainant, the ATO identified errors in the complainant's application that, if corrected, would reduce the amount that she was eligible to release. However, these errors were identified too late for the ATO to correct the application or Determination. As a result, the ATO decided to cancel the Determination and the release authority on the basis that the errors had invalidated the Determination. The ATO then returned the monies back to the fund. The law prevents the complainant from amending or applying for release again under the FHSS scheme. The complainant sold her furniture to raise funds to cover the amount she expected from the FHSS release and incurred costs in extending the settlement date for her contract.

The complainant raised a complaint with the ATO, explaining that her error was due to a genuine misunderstanding, that the ATO website and online application form was unclear and she had also sought assistance from a number of ATO officers before lodging her application. However, no ATO officer had correctly addressed her misunderstanding, for example, during a call with the ATO call centre to seek assistance with lodging her application, she was assured that if she made a mistake on the application forms, she would be able to correct it later. The ATO reconsidered her circumstances, however, it did not change the earlier decisions.

The IGTO conducted an investigation by reviewing the ATO's records, call recordings and systems documentation. The IGTO found that the complainant had taken steps to understand what was needed and to obtain ATO assistance. However, she had made errors on her application form that were likely due to a genuine (but erroneous) belief which was not dispelled by ATO assistance, anxiety with a pending deadline, and frustration with the difficulties she encountered with the online application form. The IGTO also found that the ATO had failed to consider relevant information when forming impressions of the complainant's errors and had cancelled the FHSS Determination without lawful authority which was likely due to a genuine (but erroneous) ATO belief that the errors had invalidated the Determination. The IGTO also communicated to the ATO its views on particular tax administration laws that impacted on this case.

The IGTO recommended that the ATO:

- take remedial action to address the shortcomings in this matter, including by providing an equitable remedy and appropriate apology, as well as considering compensation for the loss caused; and
- improve the ATO's administration of the FHSS scheme, including measures to rectify the unfairness that arises from the ATO conducting FHSS compliance activities after it is too late

- to remedy errors, and providing clear public guidance regarding FHSS applications and associated risks; and
- improve governance of ATO officer adherence to the Taxpayers' Charter and their assistance in IGTO complainant investigations, as well as the ATO's communication of rights of review in FHSS decisions and quality assurance of those decisions.

As the Government has announced an intention to make technical amendments to the FHSS legislation with retrospective effect to assist individuals and the ATO rectify errors made on FHSS applications, the IGTO also recommended the ATO to take steps to address the risk of individuals suffering adverse consequences due to making errors on applications prior to the enactment of the legislation.

Following consideration of a lengthy IGTO report which detailed the evidence, the ATO ultimately agreed to release the FHSS amounts to the complainant with an apology and advised that it had made improvements to its administration of the FHSS scheme. The ATO also agreed to review all FHSS cases in which it had made adverse decisions (after the proposed amendments to the FHSS legislation have been enacted) and offer all those individuals the opportunity to amend their FHSS applications without disproportionate adverse consequence.