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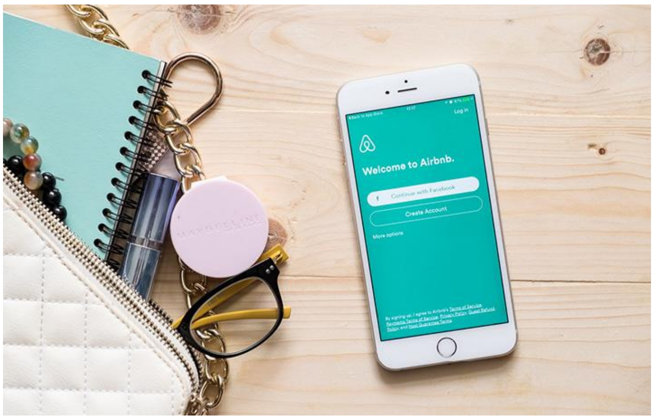
Tax consequences of sharing your home



Homeowners can share their homes in a range of ways – you might have an agreement to rent out a room, offer short stays through a platform like Airbnb, accept money from a friend who sometimes needs a bed, or receive board payments from family members. Some of these situations will affect your assessable income and what expenses you can claim at tax time.

Whether you rent out your whole home or just a room or granny flat, when it comes to lodging your tax return, you'll need to declare the rent you receive as income. Rent and associated amounts (such as bond money or booking cancellation fees) are assessable income no matter the arrangement length, from a single-night booking to an ongoing rental agreement.

You can claim immediate deductions for some expenses related to rental income, while other deductions need to be claimed over time. It's important to note that rental expenses can only be claimed when your home is rented out or genuinely available for rent. If you only rent out part of your home, only expenses related to that part are deductible.

Where family members or friends who stay in your home pay board and lodging to cover their food and accommodation, this is generally considered a "domestic arrangement" rather than a rental one, so the payments don't need to be declared as assessable income. Because of this, you also can't claim tax deductions for expenses related to having the friend or family member staying in your home.

Take care, though: if you have an arrangement with friends or family where you intend to make a profit, or that's otherwise generally consistent with an ordinary commercial tenancy agreement, simply calling the payments "board and lodging" isn't enough to avoid the tax implications of receiving rental income. It's best to seek professional advice if you're not sure how the ATO might view your particular situation.

Unlocking value: subdividing your family home's land

Many retirees find themselves cash-poor but asset-rich. For those living on larger properties, subdividing and selling unused land can be a potential retirement strategy to generate funds for income-producing assets. While this approach may suit some circumstances, it's crucial to understand the capital gains tax (CGT) implications and downsizer contribution limitations.

When you subdivide a block of land, each new block receives a separate title and is treated as a distinct asset for tax purposes. Selling a subdivided block triggers CGT.

Typically, selling a main residence is entirely exempt from CGT if it hasn't been used for income-producing purposes, but this exemption may not apply to subdivided blocks.

The CGT main residence exemption requires that the capital gain relates to your "dwelling", which includes your home and up to two hectares of adjacent land used primarily for private or domestic purposes. This two-hectare limit includes the land beneath your home. Consequently, if you subdivide and sell a block of vacant land on a new title, it's no longer considered part of your dwelling and doesn't qualify for the CGT main residence exemption.

Eligibility to contribute any sale proceeds to superannuation as a "downsizer contribution" requires the contribution to be equal to part or all of sale proceeds from the sale of a dwelling.

Before proceeding with any subdivision plans, it's crucial to seek expert advice to ensure you're making informed decisions that align with your retirement goals and comply with current tax regulations.

Employee overpayments: what to do

Once the end of financial year workload abates and payroll staff have time to have a closer look at what occurred in the previous income year, it's not unusual for unintended overpayments to employees to come to light. If this happens for your business, it's important to follow ATO guidance and consider all parties' rights and obligations when deciding what to do next.

Critically, the first step is to confirm whether the business will seek to recover the overpayment. This should be decided by business management in consultation with human resources, not by payroll staff. If no recovery will be sought, then the original payment processing remains as is. Keep a clear record of the decision not to recover the overpaid amount.

If the business will seek recovery, you need to consider whether the overpayment relates to a previous income year, the current income year or both. Remember to communicate clearly with the employee about any adjustments made to their Single Touch Payroll (STP) record as part of recovering overpayments.

For an income year that's been finalised, the business will need to seek repayment of the gross overpaid amount directly from the employee. The STP record must be amended to reduce the gross by the amount of the overpayment. No tax adjustment should be made.

When the employee later lodges their tax return, the overpayment will no longer be taxable because it's no longer shown in STP, so they should get back any tax previously withheld on it.

Where an overpayment affects a current income year, the process is to reduce the gross and the tax in STP by the original overpayment. The business then only needs to recover the net amount from the employee.

If the business paid superannuation on the original overpayment, the overpaid super can be used to offset future obligations for the same employee for up to 12 months.

Payday super: policy design released

As part of the 2023–2024 Federal Budget, the government proposed a "payday super" reform. A newly released government fact sheet sets out some key elements of the policy.

From 1 July 2026, instead of the current requirement to pay quarterly, superannuation guarantee (SG) contributions will need to be made on "payday". This is the date an employer makes an ordinary time earnings (OTE) payment to an employee. When OTE is paid, there'll be a new seven-calendar-day "due date" for the payment to arrive into an employee's superannuation fund. Some limited exceptions will apply for small or irregular payments outside the usual pay cycle, and contributions for newly commencing employees.

The SG charge framework will be updated for the payday super environment, including larger penalties for employers who repeatedly do the wrong thing.

Contributions will automatically count towards the earliest possibly payday not yet assessed for SG charge, and which still has an outstanding shortfall so employers no longer need to make an election or choose the period for which each late contribution should count.

Other changes include the following:

- The deadline for super funds to allocate or return contributions will reduce from 20 business days to three days.
- Employer reporting in Single Touch Payroll (STP) will include employees' OTE and total super liability, ensuring correct identification of the SG.
- The ATO's Small Business Superannuation Clearing House will be retired on 1 July 2026. The ATO will support small businesses in

transitioning to suitable payroll software solutions.

- Revised choice of fund rules will apply to make it easier for employees to nominate their super fund when starting a new job.
- Advertising of super products during onboarding will be limited to MySuper products passing the most recent performance test, to protect employees from poor outcomes.

"Super saver" scheme now more flexible for first home buyers

In welcome news for first home buyers, the government has made changes to the operation of the First Home Super Saver Scheme (FHSSS) to improve its flexibility for users.

The FHSSS allows you to withdraw certain voluntary superannuation contributions from your fund (plus associated earnings) to assist with purchasing or constructing your first home. There are detailed rules governing the amounts you can withdraw, but essentially the scheme enables you to withdraw up to $50,000 of eligible voluntary contributions (plus an earnings amount). Eligible voluntary contributions are those made since 1 July 2017, up to $15,000 per year and capped at $50,000. Saving for a home via the FHSSS can have tax benefits, either as part of a salary-sacrifice arrangement or by using personal deductible contributions.

When you want to access these savings to put towards your first home, you must follow a certain process. This firstly involves requesting a determination from the ATO, which will advise you of your maximum FHSSS release amount. You can then request a release of the funds, receive the funds, and then notify the ATO when you've signed a contract to purchase or construct your home – which must generally occur within 12 months of requesting a release of funds. You can request a release of the funds either before you sign the contract or within a 14-day timeframe after signing the contract.

Changes taking effect from 15 September 2024 will improve this process. They include:

- expanding the timeframe for requesting a release;
- expanding eligibility for requesting a determination; and
- allowing more flexibility to amend applications.

The changes also provide an opportunity for prior applicants who were unsuccessful to reapply, even if they now own their home. If you applied to access the FHSSS between 1 July 2018 and 14 September 2024 and were unsuccessful, the ATO will assess your eligibility and, if you're eligible, contact you to confirm whether you want to request a release.

Accessing super from age 60 to 65

From 1 July 2024, the rules for accessing superannuation became somewhat simplified: the preservation age when you can begin to access your benefits is now effectively age 60. However, until you reach age 65, there are still potential restrictions on how you can access your super. You'll need to "retire" before you can make lump sum withdrawals from your super account or move it into the favourable "retirement phase" when investment earnings within the fund become tax-free. If you're aged between 60 and 65 and wish to access some of your super, it's a good time to re-examine the rules.

For anyone born after 30 June 1964, preservation age is age 60. If you are between 60 and 65 years old but haven't yet retired, you can commence a transition to retirement income stream (TRIS). This allows you to receive a regular income of between 4% and 10% of your pension account balance each year. If you want to access more of your super, or withdraw it as a lump sum, you'll need to satisfy a further condition of release. This includes reaching age 65, or "retirement".

Meeting these conditions is also relevant for tax purposes. TRIS payments to a person aged 60 or over are generally tax-free – regardless of whether they are retired or not – but the TRIS itself does not move into the "retirement phase" until a further condition such as retirement (or reaching age 65) is met.

To satisfy the retirement condition, an arrangement under which you were gainfully employed must have come to an end. If you'd already reached age 60 when that position ended, there are no further requirements, and your future work intentions aren't relevant.

If you hadn't yet reached aged 60 when the position ended, the trustee of your fund must be reasonably satisfied that you intend never to again become gainfully employed, either on a full-time or a part-time basis. "Part-time" means working for at least 10 hours per week, so you could intend to work for less than 10 hours per week and still meet the "retirement" condition.

Any withdrawal strategy should be carefully planned to ensure you understand the implications of accessing your super. There are many factors to consider, such as the ongoing requirement to withdraw minimum pension amounts each year if you start a pension, implications for your transfer balance account, and interactions with the Age Pension.