

General Manager
Benefits and Regulations Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

28 September 2012

Subject: Portability of superannuation between Australia and New Zealand

Dear Sir/Madam

Thank you for the opportunity to comment on the exposure draft of the proposed legislation.

We are supportive of Governmental efforts to minimise barriers between Australia and New Zealand, although we are concerned about the complex nature of the proposed approach to trans-Tasman portability of superannuation. The complexities will require all regulated Australian superannuation funds to incur significant implementation and ongoing costs which would typically be passed onto all members via higher fees. In addition, the requirements will lead to confusion for members, advisers and RSE licensees.

We recommend:

1. The taxation treatment be simplified by considering transfers from KiwiSaver as rollovers rather than as contributions (Appendix 1, Part 1)
2. The preservation treatment be simplified by applying standard Australian conditions of release to amounts transferred from KiwiSaver and allowing rollovers to be made to SMSFs and Exempt Public Sector Superannuation Schemes (Appendix 1, Part 2)
3. The draft EM be clarified in relation to whether Australian funds are required to accept KiwiSaver transfers (Appendix 1, Part 3)
4. The requirements to be imposed on Australian funds in relation to transferring benefits to a KiwiSaver scheme should be clarified (Appendix 1, Part 4)

We also highlight the Australian superannuation industry is currently facing significant challenges to incorporate many other changes to systems, processes, fund rules, benefit design and communication material due to various Government initiatives. Legislation for many of these initiatives is still not finalised.

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The trans-Tasman portability provisions as set out in the Exposure Draft will add further pressure on superannuation funds. As a consequence, unless the above simplifications are introduced, we recommend:

5. The trans-Tasman portability provisions be deferred until at least 1 July 2014 to enable funds to concentrate on the much more important changes required under Stronger Super

More detail on our recommendations is set out in Appendix 1. We understand the Government might be concerned with avoidance issues if our Recommendation 1 above is adopted. The Appendix sets out a method of controlling such avoidance.

We also understand Recommendation 2 may require a renegotiation of the agreement with New Zealand. Despite the difficulties this may involve, it would be preferable to the cost and complexities which will result from the proposed approach in the Exposure Draft.

Please contact John Ward on 03 9623 5552 if you have any queries in relation to our submission and the above recommendations.

Yours sincerely



John Ward
Manager, Research and Information

APPENDIX 1: PART 1: TAX AND RELATED ISSUES

The Exposure Draft treats amounts transferred from a KiwiSaver account as being a contribution rather than a rollover. This has a number of adverse consequences including:

- Limitations on the size of KiwiSaver account balances which can be transferred to an Australian fund
- The treatment of contributions made over a lifetime in New Zealand as being made in one year for Australian excess contribution tax purposes
- The need to include special rules to ignore amounts previously transferred to KiwiSaver from Australia (including amounts relating to contributions to an Australian fund as well as former New Zealand sourced amounts)
- Requirements for Australian funds to make systems changes, maintain additional data in respect of amounts transferred and implement special procedures

These problems would be removed if amounts transferred from KiwiSaver were considered to be rollovers rather than contributions.

Acceptance of contributions

Funds are not able to accept a personal contribution in excess of \$450,000 (\$150,000 if over age 65). Whilst we do not expect it to be an issue in the short term as KiwiSaver account balances are not expected to be large, this could be a major barrier to trans-Tasman transfers in future as well as adding further confusion.

It would be a concern if New Zealanders with large KiwiSaver account balances were unable to utilise the proposed provisions because their account balance exceeded \$450,000. (We note the New Zealand legislation does not allow partial transfers.)

Of course, the transfer of a higher amount could potentially result in an excess non-concessional contributions tax liability. This too would be inappropriate.

In any event, it would be necessary to modify SIS regulation 7.04(3) to clarify whether the contribution can be accepted if it is less than the contribution cap if former Australian and former New Zealand sourced components are excluded.

Lifetime contributions considered to be made in one year

Where a New Zealand citizen or permanent resident migrates to Australia late in life, their KiwiSaver account will have been built up over many years. Nevertheless, the Exposure Draft considers the whole benefit consisting of many years of contributions and investment earnings to be a personal contribution made in the year of transfer.

The ban on accepting amounts in excess of \$450,000 would be a remaining barrier to trans-Tasman transfers.

Complexity due to exceptions

We acknowledge the Exposure Draft attempts to minimise the above problem by excluding amounts which have previously been transferred from an Australian fund (including amounts previously transferred to an Australian fund from KiwiSaver).

Nevertheless, this adds additional complexity, the need for systems changes and additional record keeping (by both Australian and New Zealand funds) and confusion.

Data requirements

Administration systems will need to be amended to incorporate further benefit components for tax purposes including:

- Any amount transferred from KiwiSaver
- Any Australian-sourced component included in the transfer amount
- Any returning New Zealand-sourced component included in the transfer amount

Reporting requirements

Presumably Australian regulated super funds will need to modify systems and processes to report the various components referred to above to the ATO for excess non-concessional contribution tax purposes as part of Member Information Statements.

Rollover requirements

When being rolled over from one Australian fund to another, it would appear the scheme rolling over the benefit will need to provide additional information to the rollover scheme. Presumably existing rollover forms and standard processes will need to be amended. The receiving fund (if it has not already made the necessary systems and procedural changes to enable it to accept KiwiSaver transfers) may need to make those changes upon accepting the rollover.

Recommendation

Transfers from KiwiSaver should be considered to be a rollover rather than a contribution.

We consider such changes could be made without renegotiating the Memorandum of Understanding with New Zealand.

Possible avoidance concerns

In our view, any opportunities to use the trans-Tasman portability arrangements to avoid the Australian contribution caps are extremely limited.

We note under New Zealand legislation:

- Membership of KiwiSaver schemes is only available to persons who are:
 - a) living, or normally living, in NZ; and who are
 - b) NZ citizens or entitled to live in NZ indefinitely
- Transfers of KiwiSaver monies to Australia are allowed only after the member has departed from New Zealand **and** has certified they have permanently emigrated to Australia **and** has had a residential address in Australia since leaving New Zealand.

In other words, transfers from KiwiSaver schemes will be restricted to genuine cases of migration from New Zealand to Australia.

Imposition of a rule requiring permanent emigration from Australia to New Zealand before an Australian benefit could be transferred to a KiwiSaver scheme would further limit, if not remove, opportunities for abuse.

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If the Government is still concerned the treatment as a rollover will create opportunities for Australians to maximise their superannuation contributions by contributing to both an Australian fund and KiwiSaver, such concerns could be significantly reduced by including some anti-avoidance provisions. These could include:

1. Requiring Australian funds to report details of any KiwiSaver transfer to the ATO
2. Amending the definition of non-concessional contributions where an amount has been transferred from KiwiSaver. The revised definitions would include contributions made to the KiwiSaver account in, say, the year of the transfer and the previous four years. The transferring member (or the KiwiSaver scheme) would be required to provide such details

Such treatment would appear to be consistent with the terms of the agreement. It could be simplified considerably by only applying it to cases where the amount transferred is large, eg more than say, \$150,000.

APPENDIX 1: PART 2: PRESERVATION ISSUES

Australian preservation requirements are already complex. One set of conditions of release applies to Australian and New Zealand citizens and permanent residents. A different set of conditions applies to temporary residents.

The current proposals introduce a third set of conditions of release which will apply to only a part of a member's benefit where it includes a transfer from a New Zealand KiwiSaver account after the proposed legislation is introduced. (We assume this different treatment will not apply to amounts which have already been transferred to an Australian fund from a KiwiSaver account under current law.)

The complexities include:

Limitations on rollover

Trustees of Australian regulated funds will need to implement new procedures to ensure any New Zealand sourced component of a member's benefit is not rolled over to a SMSF or an EPSSS. It would appear this applies irrespective of whether the member has reached age 65 or not.

Conversion to a pension

Trustees of Australian regulated funds will need to implement new procedures to ensure any New Zealand sourced component is not converted to a pension before age 65.

For members retiring before age 65, the proposed requirements will result in a further discouragement to taking all benefits in pension form. It would appear members will be required to either:

- take two pensions - one for their Australian sourced benefit and the other from their New Zealand sourced benefit (once they reach age 65); or
- commute their Australian sourced pension and commence a new pension from age 65 together with their New Zealand component.

This will be inefficient, costly and confusing to members and their advisers.

Potential conflict with Departing Australia Superannuation Payment (DASP) rules

Whilst it is expected to be rare, it is possible a KiwiSaver amount could be transferred to an Australian fund for a temporary resident (other than a New Zealand citizen). The Regulations will need to clearly specify which conditions of release apply to such members and whether any New Zealand sourced component can be paid under the DASP rules. If the New Zealand sourced component cannot be paid under the DASP rules, this will add even greater complexity.

Rollover requirements

Presumably funds will be required or at least expected to provide rollover funds with further information including any New Zealand sourced component of a member's benefit. The receiving fund, if it has not already made the necessary systems and procedural changes to enable it to accept KiwiSaver transfers, will need to make those changes upon accepting the rollover.

Periodic statements

Annual periodic statements will need to be redesigned to reflect the different preservation requirements of the Australian and New Zealand sourced components of a member's benefit.

Communication material

Trustees of Australian regulated funds will need to amend communication material and web-sites by adding a further layer of complexity in relation to preservation rules.

Web-site information about members' account balances

Many funds enable members to access details of their account balance via a web portal. Such details are accessed by members in order to obtain financial planning advice. These portals will need to be amended to reflect any components which relate to a New Zealand sourced component as this will impact on any considerations relating to cashing a benefit, rolling over a benefit, taking a pension etc.

Recommendation

Amounts transferred from KiwiSaver should be subject to the same conditions of release as Australian sourced benefits.

This may mean the Memorandum of Understanding with New Zealand should be renegotiated.

APPENDIX 1: PART 3: VOLUNTARY TAKE-UP

Transfer of benefits to Australia

We note paragraph 1.9 of the draft EM indicates funds do not have to accept KiwiSaver transfers. This is consistent with the Memorandum of Understanding with New Zealand.

However this would appear to conflict with Section 29TC(1)(f) of the Superannuation Legislation Amendment (MySuper Core Provisions) Bill which requires RSE licensees to accept contributions of all types for MySuper members:

“the only limitations imposed on the source or kind of contributions made by or on behalf of persons who hold a beneficial interest of that class in the fund are those permitted under subsection (3); and”

Recommendation

This inconsistency needs to be addressed, presumably by prescribing an exemption to the 29TC(1)(f) MySuper requirement.

It would be logical for any prescribed exemption to be wide enough to exempt other transfers from overseas (e.g. Australian funds which are not QROPS under UK legislation should not be expected to accept transfers from UK schemes).

However, even if funds can refuse to accept transfers from KiwiSaver, it appears they will not be able to avoid many of the significant costs which will arise unless they can also refuse to accept rollovers from other Australian funds which include a KiwiSaver transfer amount. Unless the preservation rules are changed, it appears all Australian regulated funds will be required to incur costs to cope with the preservation aspects of these proposals.

It appears that as soon as an Australian fund receives a rollover from another Australian fund which includes a New Zealand-sourced component, it must incorporate all of the required changes. Thus it will be very difficult for any regulated fund to avoid the cost and complexity involved with the trans-Tasman portability requirements.

APPENDIX 1: PART 4: TRANSFER OF BENEFITS TO NEW ZEALAND

We understand the New Zealand legislation has specific requirements for the transfer of KiwiSaver benefits to Australia.

However, neither the draft Bill nor the EM refer to the following issues:

- whether it will be mandatory for an Australian fund to transfer a benefit to KiwiSaver on request; or
- whether transfers will be restricted in any way. For example, exemptions may need to be included for:
 - defined benefit components where the member is still employed by the sponsoring employer
 - pensions (other than allocated, account based and market linked pensions)
 - benefits including an untaxed element
- whether any conditions on such requests will apply such as the conditions applicable for KiwiSaver transfers to Australia in the New Zealand legislation:
 - the member has permanently emigrated from Australia to New Zealand
 - the member has left Australia
 - the member has had New Zealand address at some point since leaving Australia
- whether partial transfers will be allowed (New Zealand legislation does not allow partial transfers to Australia)

Recommendation

The requirements to be imposed on Australian funds in relation to transferring benefits to a KiwiSaver scheme should be clarified

APPENDIX 2: WHO IS MERCER?

Mercer is a leading global consulting leader in talent, health, retirement and investments. Mercer helps clients around the world advance the health, wealth and performance of their most vital asset – their people.

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