

28 September 2012

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

Email: superamendments@treasury.gov.au

Dear Sir/Madam,

Portability of superannuation between Australia and New Zealand

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$450 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST supports this exposure draft. We agree wholeheartedly with the sentiment expressed at item 4a of the *Arrangement between the Government of Australia and the Government of New Zealand on Trans-Tasman Retirement Savings Portability* ("the Agreement") where it states that:

...enhanced trans-Tasman retirement savings portability should complement a seamless trans-Tasman labour market.

AIST does, however, have some recommendations for improving this measure. This submission outlines our suggestions for improvement.

Non-concessional contributions

We note that in the Agreement at item 12, "New Zealand-sourced retirement savings will continue to be subject to the Australian non-concessional contribution cap arrangements at the original point of entry." However, paragraph 1.17 of the explanatory memorandum ("the EM") states that these contributions will be "subject to the non-concessional cap arrangements upon their initial entry into the Australian superannuation system".

It is AIST's opinion that the legislation referred to at paragraphs 1.30 and 1.31 are therefore in error (i.e. not consistent with the Agreement), as they treat the contribution as a non-concessional contribution when the monies are received in Australia, not at their initial point of entry, which is where it is received by a New Zealand KiwiSaver provider. We also believe that

consideration of this money as a non-concessional contribution once it reaches Australia is inconsistent with the notion of Australia and New Zealand as a seamless common market.

This problem can be demonstrated to have a variety of unforeseen consequences, most notably to do with breaches of the non-concessional contributions cap. We note that example 1.1 in the EM deals with an amount less than the brought forward cap. In addition, we note that Stanley in the example, has no age specified, but is assumed to be under 60. If we assumed Stanley to be over 65, he would certainly breach his non-concessional contribution cap, assuming that a super fund accepts this transfer. We believe that the following example illustrates the pitfalls of this error:

Example 1

Alice is a 55 year old Australian national who is returning to Australia after a decade of work in New Zealand. Alice has built up a large balance in her KiwiSaver account and has calculated that, after she factors in withdrawal costs and uses the present exchange rate, her balance will come to a fraction under AUD\$500,000.

Alice's balance has been built up gradually, over that period of time that she spent working in New Zealand.

Alice never moved superannuation monies from Australia to New Zealand. Alice wishes to bring her KiwiSaver balance back to Australia to transfer into her superannuation fund account. The transfer is processed, however, she receives a notice from the tax office explaining that she has breached her brought-forward non-concessional contributions cap, and therefore will be subject to tax on the difference at the highest marginal tax rate.

In Alice's case, if her contributions had been treated as non-concessional contributions in New Zealand where and when they initially entered the superannuation system, Alice would not necessarily have breached her Australian non-concessional contributions cap in that year.

AIST recommends that contributions be treated as non-concessional contributions where and when they enter the superannuation system. This would require KiwiSaver providers to maintain a total of contributions received during a financial year, and communicating this to the receiving Australian superannuation fund at the time that the transfer is effected.

This is already similar to a process followed by Australian superannuation funds, where they monitor contributions received during a financial year. If a transfer request is made to the fund, this information is provided to the receiving fund with the rollover benefits statement (RBS).

In Alice's case, therefore, only the contributions received from July of the financial year in which the transfer is processed would be counted as non-concessional contributions, as any other contributions would have been made in prior tax years.

AIST understands that the reason for the treatment specified in the EM is to prevent misuse and would support alternative methods for preventing misuse.

Rollover benefits statements (RBS)

We support paragraph 1.60 of the EM, which confirms that a statement consistent with existing RBSs will contain the information referred to at paragraph 1.59.

The RBS is an array of data that is used to accompany monies moving between superannuation funds. This array contains the tax and personal information that must accompany the monies to ensure that the transfer is processed correctly.

It is AIST's conviction that portability from Australian superannuation funds to New Zealand KiwiSaver providers and vice versa will work best if the same form is utilised. Using a different form than the RBS will create inconsistencies, bottlenecks and cause delays. Using the same form creates efficiencies, both of process and ultimately of scale that will assist to drive further efficiency gains in the superannuation industry.

Further, as discussed above, the RBS is the logical medium for conveying data of when and how much was contributed to KiwiSaver accounts for the purposes of the non-concessional contributions cap.

AIST seeks the equivalent use of this data array in the movement of funds from New Zealand to Australian superannuation funds. Further discussion on this point may be found below.

Administration issues

It is AIST's interpretation of this measure that funds will need to amend their databases to ensure that monies moving between the two countries are appropriately taxed.

We support the statement made at paragraph 1.31 of the EM, confirming that monies moving to Australia will form part of the contributions segment and therefore, be classified as forming part of the tax-free component, unless they are Australian-sourced income returning to Australia. The example 1.2 in the EM appears to indicate that Australian-sourced income returning to Australia is automatically considered to be taxable, unless the member can demonstrate to the fund that any of the Australian-sourced income formed part of the tax-free component upon exit from Australia.

This example explicitly states that members who have transferred money from Australia to New Zealand and back again will need to supply additional documentation in order to have some of their Australian-sourced income classified as tax-free. This is clumsy and we believe that this would be solved by utilising the RBS in all instances involving transfers.

In addition, we note that rules regarding withdrawals will necessarily require changes. Presently, withdrawals, rollovers and transfers must take monies *pro-rata* from the taxable and tax-free components. New rules will need to be implemented to ensure that the systems of funds which choose to allow these transfers are able to process them. Withdrawals, for example, will need to set a hierarchy depending on how old a member is, or whether they are considered old enough to touch this. For example, a member of a superannuation fund aged under 65 with either New Zealand sourced or returning New Zealand sourced income in their tax-free component, but no Australian sourced income in their tax-free component, will only be able to withdraw from their taxable component, or not at all.

AIST also points out that, even though funds may choose not to accept transfers from KiwiSaver accounts, they will not have the same flexibility when accepting transfers from other APRA-regulated superannuation funds. Funds that choose not to accept transfers from KiwiSaver providers may still need to build this additional tax information into their systems, even though they are not accepting these transfers directly themselves.

We believe that the expenditure required for these changes would be roughly the same (not including inflation) as that required to implement the new tax components required at the time of the Better Super changes in June 2007.

AIST supports the rest of this ED.

If you have any further questions regarding this submission, please contact Richard Webb, Policy & Regulatory Analyst on 03 8677 3800 or rwebb@aist.asn.au.

Yours sincerely,

A handwritten signature in cursive script that reads 'Fiona Reynolds'.

Fiona Reynolds
Chief Executive Officer