

2012

EXPOSURE DRAFT

SUPERANNUATION LEGISLATION AMENDMENT (NEW ZEALAND
ARRANGEMENT) BILL 2012: PORTABILITY OF SUPERANNUATION
BETWEEN AUSTRALIA AND NEW ZEALAND

EXPLANATORY MATERIAL

(Circulated by the authority of the
Minister for Financial Services and Superannuation, the Hon Bill Shorten MP)

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Glossary

The following abbreviations and acronyms are used throughout this exposure draft.

<i>Abbreviation</i>	<i>Definition</i>
Arrangement	Arrangement between the Government of Australia and the Government of New Zealand on trans-Tasman retirement saving portability
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
S(GCLIE) Act	<i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i>
SIS Regulations	<i>Superannuation Industry (Supervision) Regulations 1994</i>
TAA 1953	<i>Taxation Administration Act 1953</i>

Chapter 1

Portability of superannuation between Australia and New Zealand

Outline of chapter

1.1 The Schedule to the exposure draft amends the *Income Tax Assessment Act 1997* (ITAA 1997) and other acts to allow individuals to move their retirement savings between Australia and New Zealand.

Context of amendments

1.2 Australians and New Zealanders may move freely across the Tasman Sea and can live and work in either country. New Zealanders living in Australia are able to contribute to Australian superannuation funds.

1.3 The current superannuation laws do not allow Australians and New Zealand citizens living in Australia, who permanently leave Australia, to either access their superannuation benefits on their departure (prior to reaching preservation age) or to move their benefits to a superannuation fund in another country.

1.4 On 16 July 2009, the Australian Treasurer and the New Zealand Minister of Finance signed an Arrangement between the Government of Australia and the Government of New Zealand on trans-Tasman retirement saving portability (the Arrangement). The Arrangement establishes a scheme to enable Australians and New Zealanders to transfer their retirement savings when they move between Australia and New Zealand, while preserving the integrity of the retirement savings systems of both countries.

1.5 The Arrangement is intended to enhance the development of a seamless trans-Tasman labour market and supports progress toward the goal of a Single Economic Market, to which the two Governments are jointly committed.

1.6 The Arrangement enables individuals who hold an interest in an Australian superannuation fund to transfer their superannuation benefits to a New Zealand KiwiSaver scheme when they move to New Zealand.

1.7 Similarly, individuals in New Zealand who hold retirement savings in a KiwiSaver account will be able to transfer those savings to an Australian superannuation fund when they move to Australia.

1.8 The Arrangement also assists Australians and New Zealanders to consolidate their retirement savings in their country of residence, and avoid paying unnecessary fees and charges on multiple accounts held in the two countries.

Details of the Arrangement

1.9 Key features of the Arrangement include:

- individuals may transfer their retirement savings between an Australian complying superannuation fund and a New Zealand KiwiSaver scheme;
- the transfer of retirement savings is voluntary for members, and voluntary for funds to accept the transferred savings;
- retirement savings are to be transferred with minimal compliance and administration costs;
- the transferred savings are generally subject to the rules of the host country, with limited and specified exceptions (see paragraphs 1.10 - 1.12 below);
- the transferred savings must be separately identifiable within the account established in the host country; and
- New Zealand-sourced retirement savings transferred to Australia are subject to the non-concessional cap arrangements on their initial entry into the Australian superannuation system.

1.10 As noted above, transferred retirement savings are subject to source country rules in certain circumstances.

1.11 Australian-sourced retirement savings held in KiwiSaver schemes:

- may not be withdrawn to purchase a first home;
- may be accessed when the individual reaches age 60 and satisfies the Australian definition of retirement at that age; and
- may not be transferred to a third country.

1.12 New Zealand-sourced retirement savings held in Australian superannuation funds:

- may only be transferred to and held in complying superannuation funds that are regulated by the Australian Prudential Regulation Authority;
- may not be transferred to or held in self managed superannuation funds;

- may not be transferred to a third country; and
- may be accessed when the member reaches the age of retirement as defined in the *New Zealand Superannuation and Retirement Income Act 2001* (currently 65).

1.13 The Arrangement specifies that New Zealand-sourced retirement savings held in Australian superannuation funds may not be accessed under the conditions of release for retirement or attaining preservation age as defined in the *Superannuation Industry (Supervision) Regulations 1994* (SIS Regulations), that is conditions of release 101 and 110 respectively of Schedule 1 to the SIS Regulations.

Summary of new law

1.14 The Schedule to the exposure draft amends the ITAA 1997 to implement the taxation treatment that applies to retirement savings transferred between Australia and New Zealand under the Arrangement.

1.15 Amounts transferred from a KiwiSaver scheme to an Australian superannuation fund are treated as contributions made by the member for the member's benefit.

1.16 The contributions are not taxed on their entry into the Australian superannuation system.

1.17 The contributions are non-concessional contributions and are subject to the non-concessional cap arrangements on their initial entry into the Australian superannuation system. Australian-sourced or returning New-Zealand sourced amounts of the contributions may be excluded from the cap in certain circumstances.

1.18 New Zealand-sourced retirement savings are included in the contributions segment of a superannuation interest and therefore form part of the tax free component of the interest. Australian-sourced amounts of the contribution may be included in the contributions segment in certain circumstances.

1.19 Amounts transferred from an Australian superannuation fund to a KiwiSaver scheme are not taxed on their exit from the Australian superannuation system.

1.20 The Schedule also permits the SIS Regulations to set out the superannuation treatment of retirement savings transferred under the Arrangement. For example, the SIS Regulations may prescribe that contributions received from a KiwiSaver scheme and amounts transferred to a KiwiSaver scheme are subject to the contribution and payment standards in the SIS Regulations. The SIS Regulations may also prescribe the circumstances in which the transferred savings are subject to source country rules (see paragraphs 1.10 - 1.12 above).

1.21 This Schedule to the exposure draft also amends the TAA 1953 and the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (S(GCLIE) Act).

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Members of Australian superannuation funds may transfer their retirement savings to a New Zealand KiwiSaver scheme.	There are no provisions to Australian and New Zealand citizens and permanent residents who leave Australia permanently to transfer their superannuation to a foreign superannuation fund.
Members of New Zealand KiwiSaver schemes may transfer their retirement savings to an Australian superannuation fund.	Retirement savings from foreign superannuation funds may be transferred into the Australian superannuation system.
Amounts contributed from KiwiSaver schemes: are personal contributions of the individual; are non-concessional contributions and subject to the non-concessional contributions cap arrangements; are not taxed; are included in the contributions segment of the superannuation interest.	Retirement savings transferred from foreign superannuation funds: are personal contributions of the individual; are non-concessional contributions and subject to the non-concessional contributions cap arrangements; may be taxable in certain circumstances.
Benefits transferred to a New Zealand KiwiSaver scheme are not taxed.	
When benefits are transferred to a New Zealand KiwiSaver scheme, the transferring trustee of the Australian fund must provide a statement in respect of the benefits to the KiwiSaver scheme provider and to the member.	

Detailed explanation of new law

Introduction of trans-Tasman portability of retirement savings

1.22 New Division 312 inserts provisions about amounts paid from or to KiwiSaver schemes. [*Schedule 1, item 2, section 312-1*]

1.23 Subdivision 312-A provides that the Division implements the Arrangement between the Governments of Australia and New Zealand to permit the transfer of retirement savings between the two countries.

1.24 This Schedule sets out the tax provisions that apply to these amounts. The SIS Regulations may prescribe the superannuation treatment of these amounts. [*Schedule 1, item 2, section 312-5*]

Definitions

1.25 A number of new definitions are inserted into the ITAA 1997.

1.26 A KiwiSaver scheme has the meaning given by the *KiwiSaver Act 2006* of New Zealand. [*Schedule 1, item 3, subsection 995-1(1)*]

1.27 KiwiSaver schemes were established in New Zealand in 2007 to help scheme members save for their retirement.

1.28 A KiwiSaver scheme provider has the meaning given by the *KiwiSaver Act 2006* of New Zealand. [*Schedule 1, item 4, subsection 995-1(1)*]

Contributions to Australian superannuation funds from KiwiSaver schemes

1.29 Subdivision 312-B sets out the provisions relating to amounts paid to Australian superannuation funds from KiwiSaver schemes.

Contribution to complying superannuation fund

1.30 An amount transferred from a KiwiSaver scheme to an Australian complying superannuation fund is treated as a personal contribution. [*Schedule 1, item 10, subsection 312-10(1)*]

1.31 Consequently, the contribution:

- is not included in the assessable income of the receiving Australian superannuation fund [*Schedule 1, item 2, note 1 to subsection 312-10(1)*];
- is treated as a non-concessional contribution [*Schedule 1, item 2, note 2 to subsection 312-10(1)*]; and
- is included in the contributions segment of the member's superannuation interest.

1.32 Section 295-200 and Subdivision 305-B of the ITAA 1997 do not apply to the contribution. [*Schedule 1, item 2, subsection-312-10(2)*].

1.33 Subsection 312-10(2) clarifies that the contribution is not subject to the tax arrangements that may, in certain circumstances, apply to amounts transferred from foreign superannuation funds.

1.34 The effect of subsections 312-10(1) and (2) is that the contribution is not included in the assessable income of the receiving Australian superannuation fund.

1.35 Division 290 of the ITAA 1997 (contributions to superannuation funds) does not apply to the contribution, consistent with treatment of roll-over superannuation benefits between Australian funds. [*Schedule 1, item 2, subsection-312-10(2)*]

1.36 Consequently, the contribution is not deductible as a personal contribution under Subdivision 290-C of the ITAA 1997 and is not eligible for a spouse contribution offset under Subdivision 290-D.

Amounts excluded from non-concessional contributions

1.37 The contribution is treated as a non-concessional contribution on initial entry into the Australian superannuation system. As such, it is subject to the non-concessional contributions cap arrangements of Subdivision 292-C of the ITAA 1997. Contributions that exceed the non-concessional contributions cap (worked out under section 292-85 of the ITAA 1997) are liable to the excess non-concessional contributions tax.

1.38 However, Australian-sourced and returning New Zealand-sourced amounts of the contribution may be excluded from the cap arrangements, as these amounts may have already been counted towards the cap in the year in which they were first contributed to an Australian superannuation fund.

1.39 In order for these amounts to be excluded from the cap arrangements, the receiving Australian fund trustee must be advised of any Australian-sourced or returning New Zealand-sourced amounts of the contribution. The SIS Regulations may prescribe that the KiwiSaver scheme provider or the member may give this information to the receiving fund's trustee. [*Schedule 1, item 2, subsection 312-10(3)*]

1.40 The note to the subsection clarifies that the returning amounts of the contribution are excluded from non-concessional contributions, and the balance of the contribution is included in non-concessional contributions. [*Schedule 1, item 2, note to subsection 312-10(3)*]

1.41 For the purposes of this Explanatory Memorandum, an Australian-sourced amount is an amount that was originally contributed to an Australian superannuation fund prior to its transfer to a KiwiSaver scheme.

1.42 Similarly, a returning New Zealand-sourced amount is an amount that was originally contributed to a KiwiSaver scheme prior to its initial transfer to an Australian superannuation fund.

1.43 Information about amounts previously contributed to an Australian superannuation fund was originally provided to the KiwiSaver scheme provider and to the member on the statement about benefits paid to KiwiSaver schemes (see paragraphs 1.59 – 1.63 below). This information assists the KiwiSaver scheme provider or the member to

provide evidence of the returning amounts' status to the receiving fund's trustee, so that the amounts are not subject to the caps again.

Assessable income and capital gains

1.44 The contribution is non-assessable non-exempt income of the member. *[Schedule 1, item 2, section 312-10(4)]*

1.45 This tax treatment is consistent with the treatment of roll-over superannuation benefits between Australian superannuation funds (section 306-5 of the ITAA 1997).

1.46 The contribution is not subject to capital gains tax on entry into the Australian superannuation system. *[Schedule 1, item 2, section 312-10(5)]*

1.47 This tax treatment is consistent with the treatment of contributions to a superannuation fund.

Components of a superannuation interest

1.48 The contribution is included in the contributions segment of the member's superannuation interest in the fund. As such, it forms part of the tax free component of the member's interest. The effect of this provision is that the contribution will be taken into account in working out the components of any benefits subsequently paid from the member's interest.

1.49 However, an Australian-sourced amount of the contribution may be excluded from the contributions segment.

1.50 In order for this amount to be included in the contributions segment, the receiving Australian fund trustee must be advised of any tax free Australian-sourced amount of the contribution. The SIS Regulations may prescribe that the KiwiSaver scheme provider or the member may give this information to the receiving fund's trustee. *[Schedule 1, item 2, subsection 312-10(6)]*

1.51 The note to the subsection clarifies that the New Zealand-sourced amount and any tax free Australian-sourced amount of the contribution are included in the contributions segment and form part of the tax free component of the member's interest. The balance of the contribution is excluded from the contributions segment and is included in the taxable component. *[Schedule 1, item 2, note to subsection 312-10(6)]*

1.52 Information about the tax free and taxable components of the member's former interest in an Australian superannuation fund was originally provided to the KiwiSaver scheme provider and to the member on the statement about benefits paid to KiwiSaver schemes (see paragraphs 1.59 – 1.63 below). This information assists the KiwiSaver scheme provider or the member to provide evidence of any tax free components to the receiving fund's trustee so the components maintain their tax free status in the member's current interest.

Superannuation co-contribution for low income earners

1.53 The contribution is not an eligible personal superannuation contribution for the purposes of receiving the Government co-contribution for low income earners [*Schedule 1, item 5, subparagraph 7(1)(c)(iii) of the S(GCLIE) Act*]. This provision is consistent with the treatment of lump sums paid from foreign superannuation funds.

Example 1.1

Stanley currently resides in New Zealand and has accumulated NZ\$200,000 in his KiwiSaver scheme account. Stanley decides to move to Australia indefinitely and streamline his financial affairs by transferring his KiwiSaver scheme savings to an Australian superannuation fund. Under the Arrangement, he is able to transfer savings from his KiwiSaver scheme account into his Australian complying superannuation fund.

Stanley's KiwiSaver contributions into his Australian fund are subject to the current Australian annual non-concessional contribution cap of AU\$150,000. However, the Australian rules allow Stanley to bring forward the next two years' worth of contributions, allowing a maximum transfer of AU\$450,000. This allows Stanley to transfer all his KiwiSaver scheme savings into Australia's superannuation system.

Upon their transfer to his Australian superannuation fund, Stanley's KiwiSaver scheme savings are tagged within his account as being New-Zealand-sourced. They form part of the tax free component of his interest in his Australian superannuation fund.

Stanley's New Zealand-sourced savings in the Australian superannuation fund savings are now subject to Australian taxation rates and are, for the most part, subject to Australian superannuation rules, although several New Zealand specific rules do apply.

A key difference is that Stanley is not able to access his New Zealand-sourced savings until he reaches the KiwiSaver age of retirement of 65 years. This is later than the preservation age (between 55 and 60) and retirement age (60) in Australia. Stanley is also unable to use his New Zealand-sourced savings to purchase a first home while the savings are held in an Australian superannuation fund, or to transfer his New Zealand-sourced savings to a self managed superannuation fund or to a third country.

If Stanley decides to move back to New Zealand in the future, he is able to transfer all his accumulated savings back to a New Zealand KiwiSaver scheme account. The trustee of his transferring Australian fund would provide the receiving KiwiSaver scheme provider, and Stanley, with a statement about the transferred benefits, including information about whether his contributions to the Australian fund were non-concessional or were included in the tax free component. Upon the transfer to the KiwiSaver scheme, Stanley's Australian superannuation would be tagged within his account as being Australian-sourced.

Stanley remains in Australia, reaches his Australian preservation age of 60 years and decides to retire. He can only access his Australian-sourced savings upon his retirement, as his New Zealand-sourced savings remain locked in until the higher KiwiSaver age of retirement of 65 years.

Superannuation benefits paid to KiwiSaver schemes from Australian superannuation funds

1.54 Subdivision 312-C sets out the provisions relating to superannuation benefits paid to KiwiSaver schemes from Australian superannuation funds.

1.55 A superannuation benefit paid to a KiwiSaver scheme provider by the trustee of an Australian complying superannuation fund in respect of a member is non-assessable non-exempt income of the member. *[Schedule 1, item 2, subsection 312-15(1)]*

1.56 This tax treatment is consistent with the treatment of roll-over superannuation benefits between Australian superannuation funds (section 306-5 of the ITAA 1997).

1.57 The payment is not subject to capital gains tax on exit from the Australian superannuation system. *[Schedule 1, item 2, subsection 312-15(2)]*

1.58 This tax treatment is consistent with the treatment of benefits payable out of a superannuation fund.

Example 1.2

Silpa is an Australian citizen currently living in New Zealand. During her working life in Australia she accumulated AU\$20,000 in her Australian complying superannuation fund. Silpa has no intention of returning to Australia and would like to streamline her financial affairs by consolidating her Australian retirement savings into her KiwiSaver scheme account in New Zealand.

Under the Arrangement, Silpa is able to transfer savings from her Australian superannuation fund to her KiwiSaver scheme. The trustee of her transferring Australian fund provides the receiving KiwiSaver scheme provider, and Silpa, with a statement about the transferred benefits, including information about whether her contributions to the Australian fund were non-concessional or were included in the tax free component.

Upon their transfer to the KiwiSaver scheme, the savings are tagged within Silpa's account as being Australian-sourced.

Silpa's Australian-sourced savings are now subject to New Zealand taxation rates, and are for the most part subject to New Zealand superannuation rules, although several Australian specific rules do apply.

A key difference is that Silpa may access her Australian-sourced savings on retirement at or after age 60. This is earlier than the

KiwiSaver age of retirement of 65 years. Silpa is unable to use her Australian-sourced savings to purchase a first home while the savings are held in a KiwiSaver scheme, or to transfer her Australian-sourced savings to a third country.

If Silpa decides to move back to Australia in the future, she is able to transfer all her accumulated savings back to an Australian complying superannuation fund. As her Australian-sourced savings were previously part of the Australian superannuation system, they would not be subject to the non-concessional contribution caps on transfer back to Australia. However, her accumulated New Zealand-sourced savings would be subject to the contributions cap.

In addition, Silpa's New-Zealand sourced savings transferred to Australia would be included in the contributions segment of her Australian superannuation interest, as well as any tax free component of her returning Australian-sourced savings.

Silpa could provide the receiving Australian trustee with the statement from her previous Australian superannuation fund to confirm that her Australian-sourced savings were previously counted towards the contributions cap, or that part of the savings was included in the tax free component of her former interest.

Silpa remains in New Zealand, reaches 60 years of age and decides to retire. She can only access her Australian-sourced savings upon her retirement, as her New Zealand-sourced savings remain locked in until the higher KiwiSaver age of retirement of 65 years.

Statements about benefits paid to KiwiSaver schemes

1.59 Schedule # amends the TAA 1953 to insert a provision requiring the trustee of an Australian superannuation fund to provide a statement to a KiwiSaver scheme provider and to the member in respect of the member's benefits paid to the KiwiSaver scheme. *[Schedule 1, item 6, section 390-12 of the TAA 1953]*

1.60 The statement is consistent with the roll-over superannuation benefit statement that a transferring superannuation provider is required to give the receiving provider and the member when benefits are rolled over between Australian superannuation funds.

1.61 The transferring trustee must give the statement to the receiving KiwiSaver scheme provider within seven days after the payment of the benefit, and give the statement to the member within 30 days after the payment of the benefit. The statement must be in the approved form. *[Schedule 1, item 6, subsections 390-12(2) and (3) of the TAA 1953]*

1.62 The approved form may require the statement to contain information about contributions made to the fund in respect of the member, information about the tax free and taxable components of the benefit, and other information relating to the benefit. *[Schedule 1, item 6, subsections 390-12(4) and (8) of the TAA 1953]*

1.63 The statement provides information to the KiwiSaver provider and to the member about the transferred benefits. This information assists the KiwiSaver scheme provider or the member to provide evidence to a trustee of an Australian fund that will ensure the benefits are treated correctly should they be transferred back to Australia.

Application and transitional provisions

1.64 The amendments made by this Schedule apply to amounts transferred between complying superannuation funds and KiwiSaver schemes on or after the Arrangement takes effect. [*Schedule 1, item 8*]

1.65 The Arrangement takes effect two months after the two Governments have exchanged notes informing the other that the respective constitutional or legislative matters necessary to give effect to the Arrangement have been fulfilled.

1.66 The amendments made by this Schedule apply only to amounts transferred under the Arrangement. They do not apply to amounts transferred before this Arrangement commences, or to amounts transferred under circumstances that fall outside of this Arrangement, or to amounts transferred between schemes or funds other than KiwiSaver schemes and complying superannuation funds.

Consequential amendments

1.67 Contributions to Australian superannuation funds from KiwiSaver schemes, and superannuation benefits paid to KiwiSaver schemes from Australian funds, are included in the list of non-assessable non-exempt income provisions in section 11-55 of the ITAA 1997. [*Schedule 1, item 1, section 11-55*]

1.68 Section 390-12 is included in the provision about providing information in a statement to an individual or the trustee of the individual's estate. [*Schedule 1, item 7, paragraph 390-15(1)(a) of the TAA 1953*]

