

Regulatory Impact Statement

EXECUTIVE SUMMARY

The creation of retirement savings portability between Australia and New Zealand is expected to improve labour market mobility between the two countries and assist individuals to consolidate their financial affairs in their country of residence.

The portability arrangements will apply to retirement savings held the New Zealand KiwiSaver scheme and the Australian complying superannuation scheme. As these schemes have similar preservation requirements, the rules of the host country will generally be applied to any transferred savings. However there are several areas where the source country policies will continue to apply to these savings.

The Governments of Australia and New Zealand will sign a non-binding Arrangement to record the intention of both governments to allow retirement savings portability. Once the Arrangement is signed, a number of legislative amendments are required in both Australia and New Zealand to give effect to portability.

ADEQUACY STATEMENT

The Treasury confirms that the principles of the Code of Good Regulatory Practice and the regulatory impact analysis requirements, including the consultation requirements, have been complied with. The Treasury considers this final Regulatory Impact Statement (RIS) to be adequate. This RIS was circulated with the Cabinet paper for departmental consultation.

STATUS QUO AND PROBLEM

The treatment of retirement savings during an individual's working life is an area where differences in domestic policy settings impact on the seamless nature of the trans-Tasman labour market. New Zealanders and Australians have an automatic right to move freely across the Tasman and are able to reside and work in either country. However personal retirement savings accumulated in Australia cannot be transferred to New Zealand and cannot easily be accessed before retirement.

The ability to transfer savings is one factor individuals may take into account when considering employment opportunities on either side of the Tasman. All else equal, the inability to take retirement savings across the Tasman may act as a barrier to an individual taking up employment in the other country.

The current inability of individuals to streamline and consolidate their personal retirement savings has led to some individuals paying multiple fees for the administration of their retirement savings accounts. This would apply to individuals who worked in Australia but have since relocated to New Zealand and established another retirement savings account. These costs undermine the effectiveness of policies aimed at improving retirement living standards.

The inability to consolidate accounts has also resulted in the proliferation of many small retirement savings accounts in Australia. The Australian Superannuation Minister has indicated that there is around A\$13 billion in 'lost' retirement savings accounts in Australia. Given the extent of labour movement between New Zealand and Australia, it

is reasonable to expect that a sizeable amount of these funds could belong to individuals now living in New Zealand. The proliferation of these inactive accounts contributes to higher administrative costs, which potentially impact on the returns provided by private sector pension fund providers.

The introduction of the New Zealand KiwiSaver scheme, a work based retirement savings scheme, in July 2007 has presented an opportunity to allow for retirement savings portability and assist trans-Tasman labour market mobility.

OBJECTIVES

The objective of retirement savings portability is to improve labour mobility between Australia and New Zealand by allowing individuals to transfer their retirement savings to their country of residence.

ALTERNATIVE OPTIONS

Status Quo. The status quo would maintain the current restrictions on retirement savings portability. Under the status quo, an individual may transfer their KiwiSaver savings to Australia on permanent emigration, however Australian complying superannuation funds may not be transferred to New Zealand. As a result the status quo is not preferred because it does not assist with improving labour mobility between New Zealand and Australia.

Retirement savings portability with no policy differentials applied: Under this option, retirement savings could be transferred between the KiwiSaver and Australian complying superannuation schemes without restriction. The savings would be entirely subject to the rules and policies of the host country.

This option is not preferred because it does not allow the Australian and New Zealand Governments to preserve the intent behind each country's retirement savings policies.

PREFERRED OPTION

Summary of preferred option

The preferred option is to allow for retirement savings portability between Australia and New Zealand, with some limitations regarding the access to transferred funds. The portability arrangements will apply to retirement savings held in the New Zealand KiwiSaver scheme and the Australian complying superannuation scheme.

There are several areas where the source country policies will continue to apply to transferred savings.¹ To allow retirement savings to remain subject to some source country rules, transferred savings must be separately identifiable within an individual's retirement savings account.

¹ These policy differences will be applied only to the savings initially transferred to either country. Any *earnings* on these savings in the host country will be subject to host country rules.

The proposals to enhance portability will be voluntary for both retirement savings providers and members and there will be no enforced transfer of superannuation savings on emigration to either country.

The following policy differences will be applied through the portability arrangements:

KiwiSaver funds transferred to Australia

KiwiSaver savings that are transferred to Australia will not be able to be accessed until the New Zealand age of eligibility for retirement (currently 65 years of age). The benefit of this condition is that it will avoid creating an incentive to move, or retire in Australia to access KiwiSaver funds at the lower Australian age of retirement, which is currently set at 55-60 years of age.² It also ensures that individuals are treated equitably in terms of accessing their KiwiSaver savings, regardless of whether they reside in New Zealand or Australia.

KiwiSaver savings may only be transferred to pension funds that are regulated by the Australian Prudential Regulation Authority (APRA). This would exclude the transfer of KiwiSaver funds into Australian self managed funds, which are not currently regulated by APRA. Such a provision is required to extend the current KiwiSaver prohibition on self managed funds in New Zealand.

Transferred KiwiSaver funds will be subject to all other Australian rules governing the Australian Superannuation Guarantee scheme. For example, Australia does not permit withdrawals for home purchases or transfers of savings to another country (other than New Zealand). As a result New Zealand sourced savings held in Australia will not be able to be taken to a third country unless they are first transferred back to New Zealand so that the member tax credits can be deducted.³

Australian savings transferred to New Zealand

Australian sourced savings may not be used to assist with the purchase of a first home in New Zealand.

Australian sourced savings held in New Zealand accounts will not be able to be transferred to any third country. This will preserve the current limitation on Australian residents taking their savings to other countries on permanent emigration.

Australian sourced savings may be accessed at the Australian age of retirement (between 55 and 60). This will ensure that an individual is not disadvantaged by moving to New Zealand from Australia.

All other New Zealand rules governing KiwiSaver will apply to retirement savings transferred to New Zealand, including hardship provisions.

² An Australian may currently access their retirement savings at 55, however this is being raised to 60 over a number of years.

³ Under the KiwiSaver Act 2007 member tax credits cannot be transferred out of New Zealand. This provision will continue to apply to transfers to countries other than Australia.

Taxation and other issues

KiwiSaver member tax credits will not be recouped by New Zealand when funds are taken to Australia. Australia has also agreed not to apply any exit taxes to retirement savings taken out of Australia by non-residents before the age of retirement.

To further protect the value of savings, both countries have also agreed to exempt any transfer of savings from being taxed as dividends. Under current taxation arrangements some Australian retirement savings may be taxed on entry into New Zealand as they could be treated as a unit trust investment.

Cash withdrawals of KiwiSaver funds on emigration to Australia will no longer be permitted as a result of the portability arrangements. This will strengthen the primary policy intention of KiwiSaver: *to encourage a long-term savings habit and asset accumulation by individuals who are not in a position to enjoy standards of living in retirement similar to those in pre-retirement*. The advent of portability with Australia also resolves the problem of identifying 'approved' retirement savings funds, as it will require that savings are transferred into Australian complying superannuation funds.

Impacts

As far as possible the portability arrangements will allow host country rules to be applied to transferred savings. The benefit of allowing host country rules to apply is that it reduces compliance costs for KiwiSaver providers who accept transferred funds as they are able to rely on their existing systems.

Consultation with industry has identified that the requirement for providers to separately identify transferred retirement savings is likely to require some system changes by providers. As a result providers who choose to accept these funds will face some additional costs. However, without the separate identification of transferred savings, portability could not be implemented as New Zealand and Australia could not apply the policy differences necessary to preserve the intent behind their respective retirement savings policies.

To minimise these costs, only the initial capital value of the transferred savings must be separately identified. Earnings on these funds will be subject to the host country rules. Further consultation will be undertaken with industry to ensure that compliance costs are minimised as far as possible, as the necessary legislative changes are progressed.

The exemption from entry and exit taxes will ensure that an individual's retirement savings are not eroded as a result of making the transfer. Given that Australian retirement savings cannot currently enter New Zealand, this exemption will be fiscally neutral.

The preferred option will require legislative amendments to require providers to apply the noted policy differences to savings transferred from Australia to New Zealand. These amendments are not expected to duplicate existing regulation, but if any duplications or redundancies are identified they will be removed as part of the development of the legislation.

IMPLEMENTATION AND REVIEW

The Governments of Australia and New Zealand will sign Arrangement on retirement savings portability. Once the Arrangement is signed, a number of legislative amendments are required in both Australia and New Zealand to give effect to portability. New Zealand officials will begin preparing the necessary amendments and seek Cabinet approval to include the necessary legislative changes in the November 2009 Tax Bill. Industry groups will have a further opportunity to provide input into the portability arrangements as the legislation is developed.

The Arrangement notes that the Governments have agreed to carry out a periodic general review of the operation of the Arrangement and its relevant legislation, to assess the effectiveness of the arrangements in fostering and enhancing workforce mobility between Australia and New Zealand, and whether any changes to the Arrangement or related legislation are required to improve the operation or coverage of the Arrangement.

CONSULTATION

The Treasury, the Ministry of Economic Development, the Inland Revenue Department and the Ministry of Foreign Affairs and Trade have been involved in developing the retirement savings portability arrangements. The Australian Treasury has also been involved to represent the Australian government in the development of the arrangements.

In developing the Arrangement, officials met with the Investment Savings and Insurance Association (ISI) and the Association of Superannuation Funds (ASFONZ) to confirm that the high level details of portability were workable and to discuss some of the details of how a transfer would be made.

These groups were given an outline of how the transfer process would work and the responsibilities of the individual, the trustees and government agencies involved. The representatives reacted positively to the proposal and were comfortable with the general process suggested. It was noted that a provider who chose to accept transferred funds would need to make some changes to their systems so that the funds could be separately identified and the policy differences applied. However the voluntary nature of the portability arrangements meant that they could choose not to do this if they did not want to accept the funds.

One group indicated a desire to extend the portability scheme to all retirement savings schemes, rather than just KiwiSaver funds. They also suggested that it would be desirable to allow KiwiSaver funds to be transferred to self managed superannuation funds in Australia.

Extending retirement savings portability, particularly to KiwiSaver complying funds, is something that could be considered in the future. However, at this stage, the only portal through which funds can be transferred is through the Australian complying superannuation scheme and the KiwiSaver scheme. Any extension of the portability arrangements would also require agreement from the Australian Government as they would want to be satisfied that the fund in question operated under similar rules to the Australian compulsory superannuation scheme. Allowing KiwiSaver funds to be transferred into self managed superannuation funds is not being considered at this

point because KiwiSaver funds are not able to enter these types of funds in New Zealand.

The industry representatives also raised a number of points that will need to be considered as part of the legislative process and once the Arrangement is signed. These include:

- what monitoring will be done to ensure providers are complying with the policy differences applied to Australian sourced savings in New Zealand;
- ensuring that any subsequent transfers of Australian sourced savings once in New Zealand are only made to KiwiSaver providers who offer the facility to accept these funds; and
- whether New Zealand financial advisors who advise individuals on transferring their retirement savings to Australia, need to comply with Australian legislation governing the conduct of financial advisers.