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The Treasury  
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Email: ENCCTax@treasury.gov.au

18 March 2015

**Subject:** Excess non-concessional contributions

Dear Sir/Madam

Thank you for the opportunity to comment on the draft Tax and Superannuation Laws Amendment (2015 Measures No. 1— release conditions for non-concessional contributions) Regulation 2015.

Our only concern with these regulations relates to Item 9 of Schedule 1. This item removes the “KiwiSaver” condition of release for most temporary and former temporary residents.

We recommend this Item be deleted from the draft due to the significant costs and red tape this will add for Australian superannuation funds.

### **Cost and red tape**

Item 9 will require Australian superannuation funds to change established procedures for KiwiSaver transfers. In particular, this will require a fund to obtain confirmation/evidence from ALL members wishing to transfer to KiwiSaver that they are not a temporary or former temporary resident (with exceptions for two specified temporary visas). This will add red tape and slow down the transfer process in many cases until appropriate confirmation/proof is obtained as well as increasing costs in the long term.

If Item 9 proceeds, it will also result in short term costs due to the changes which will be required to transfer forms and website material etc. as well as costs incurred in staff training and changes to administration systems. These costs could exceed \$25,000 for the Mercer Superannuation Trust alone. We expect similar costs will be incurred by other providers. Such a change runs counter to the Government’s red tape repeal policy.

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### **Very minimal risk of abuse**

We do not believe there is any significant risk of abuse of the current restricted conditions of release available to temporary residents by allowing transfers to KiwiSaver.

We note that New Zealand legislation:

- Places significant restrictions on who can establish a KiwiSaver account - in particular a person must be entitled to remain in New Zealand indefinitely
- Limits the use of Australian sourced amounts once transferred to KiwiSaver – such amounts cannot be transferred overseas or used for housing purposes

In other words, transfers to KiwiSaver will effectively be restricted to those entitled to reside in New Zealand permanently with their Australian super restricted to genuine retirement purposes.

### **Conclusion**

Item 9 will adversely impact the genuine retirement savings of a small number of people who have the right to live in New Zealand indefinitely. Further, bearing in mind the small number of members likely to be impacted by this change, we believe the costs which will be incurred by Australian superannuation funds (and therefore fund members) are not justified. We recommend Item 9 be removed from the proposed regulations.

Please contact the writer on 03 9623 5464 or John Ward on 03 9623 5552 if you require any further information on our views.

Yours sincerely



Dr D Knox  
Senior Partner