



EXPOSURE DRAFT (09/05/2013)

**Superannuation Industry (Supervision)
Amendment Regulation 2013 (No. C)**

Select Legislative Instrument No. ,2013

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1 Name of regulation

This regulation is the *Superannuation Industry (Supervision) Amendment Regulation 2013* (No.).

2 Commencement

This regulation commences on the day the Arrangement between the Government of Australia and the Government of New Zealand on Trans-Tasman Retirement Savings Portability, signed at Brisbane on 16 July 2009, comes into force for Australia.

3 Authority

This regulation is made under the *Superannuation Industry (Supervision) Act 1993*.

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments of the Superannuation Industry (Supervision) Regulations 1994

1 After Part 12

Insert:

Part 12A—Trans-Tasman retirement savings portability

Division 1—General

12A.01 Purpose of Part 12A

This Part sets out matters to implement the Arrangement between the Government of Australia and the Government of New Zealand on Trans-Tasman Retirement Savings Portability, signed at Brisbane on 16 July 2009.

Note 1: The Arrangement does not cover all complying superannuation funds. A number of types of superannuation funds and schemes (for example, self managed superannuation funds and defined benefit funds or schemes) are excluded: see regulation 12A.03.

Note 2: Amounts covered by the Arrangement are:

- (a) payments received by complying superannuation funds from KiwiSaver schemes on or after the day the Arrangement comes into force for Australia; and
- (b) superannuation benefits paid to KiwiSaver scheme providers by complying superannuation funds on or after the day the Arrangement comes into force for Australia; and
- (c) amounts paid between participating Australian funds if the member's benefits include any New Zealand-sourced amount, and
- (d) superannuation benefits paid to an individual from an interest that includes any New Zealand-sourced amount.

See regulation 12A.03.

Note 3: The matters in this Part are also relevant to Division 312 of Part 3-30 of the *Income Tax Assessment Act 1997*, which provides for the

taxation treatment of retirement savings to which the Arrangement relates.

12A.02 Definitions for Part 12A

In this Part:

Arrangement means the Arrangement between the Government of Australia and the Government of New Zealand on Trans-Tasman Retirement Savings Portability, signed at Brisbane on 16 July 2009.

Australian-sourced amount means an amount that:

- (a) was originally accrued in a complying superannuation fund; and
- (b) is subsequently received by a KiwiSaver scheme; and
- (c) is identified by the receiving KiwiSaver scheme as an amount described in paragraph (a).

Note: As part of trans-Tasman retirement savings portability, an Australian-sourced amount may eventually be received by the same complying superannuation fund in which it originally accrued or another complying superannuation fund. It will still be an Australian-sourced amount at that time.

KiwiSaver scheme has the meaning given by subsection 995-1(1) of the 1997 Tax Act.

KiwiSaver scheme provider has the meaning given by subsection 995-1 (1) of the 1997 Tax Act.

New Zealand-sourced amount means an amount that:

- (a) was originally accrued in a KiwiSaver scheme; and
- (b) is subsequently received by a complying superannuation fund; and
- (c) is identified by the complying superannuation fund as an amount described in paragraph (a).

returning New Zealand-sourced amount means a New Zealand-sourced amount that has been received by the same, or another, complying super fund for the second or subsequent time.

Note 1: As part of trans-Tasman retirement savings portability, a New Zealand-sourced amount may eventually be received by the same KiwiSaver scheme in which it originally accrued or another KiwiSaver scheme. It will still be a New Zealand-sourced amount at that time.

Note 2: If retirement savings move between Australia and New Zealand on more than one occasion, it is likely that:

- (a) a part of the savings will be a New Zealand-sourced amount because that part was originally accrued in a KiwiSaver scheme; and
- (b) a part of the savings will be an Australian-sourced amount because that part was originally accrued in a complying superannuation fund.

tax free component of an Australian-sourced amount means an amount that:

- (a) is part of an Australian-sourced amount; and
- (b) was included in the tax free component of the member's former superannuation interest in Australia before the Australian-sourced amount was paid to a KiwiSaver scheme.

Note 2: The Act defines other expressions used in this Part.

12A.03 Payments to which this Part applies

- (1) This Part applies in relation to:
 - (a) a payment made between a complying superannuation fund and a KiwiSaver scheme; and
 - (b) a payment made between complying superannuation funds that includes a New Zealand-sourced amount; and
 - (c) a payment between complying funds if:
 - (i) the member has an interest in the complying fund that comprises a New Zealand-sourced amount; but
 - (ii) the payment does not include a New Zealand-sourced amount.
- (2) However, this Part does not apply in relation to the following:
 - (a) a defined benefit interest in a defined benefit fund;
 - (b) an unfunded public sector superannuation scheme;
 - (c) a self managed superannuation fund.

- (3) Also, this Part does not apply in relation to a payment made by a complying superannuation fund to the extent that the payment:
- (a) contains an element untaxed in the fund (within the meaning given by subsection 995-1(1) of the 1997 Tax Act); or
 - (b) is paid as a pension.

Division 2—New Zealand-sourced amounts

12A.04 Application of Division 2

This Division applies in relation to:

- (a) a New Zealand-sourced amount received by a complying superannuation fund from a KiwiSaver scheme; and
- (b) the treatment of a New Zealand-sourced amount in a complying superannuation fund.

12A.05 Treatment of New Zealand-sourced amounts

For the purposes of implementing the Arrangement:

- (a) Part 1 of these Regulations applies in relation to a New Zealand-sourced amount or a returning New Zealand-sourced amount received by a complying superannuation fund from a KiwiSaver scheme; and
- (b) the application of Part 1 is modified to the extent necessary to ensure that the Part describes concepts, processes and other matters sufficiently to implement the Arrangement.

12A.06 Benefits protection standards

- (1) For the purposes of implementing the Arrangement, Part 5 of these Regulations, as affected by subregulations (2) to (5), applies in relation to:
- (a) a New Zealand-sourced amount received by a complying superannuation fund; and
 - (b) the treatment of a New Zealand-sourced amount in a complying superannuation fund.

Note: In order to implement the Arrangement, it is appropriate to treat a New Zealand-sourced amount as an amount that is subject to Australia's benefit protection standards, apart from any differences required by the Arrangement.

Reduction of amount of interest

- (2) The application of Part 5 is modified to the extent necessary to ensure that, if the trustee of a complying superannuation fund is required to reduce a member's benefits in the complying superannuation fund by a particular amount, the trustee must:
- (a) deduct the amount from the member's benefits that are not New Zealand-sourced amounts; and
 - (b) if the full amount cannot be deducted under paragraph (a)—deduct the remainder from the member's New Zealand-sourced amounts to the extent possible.

Note: In accordance with the Arrangement, the intention is that any decrements to retirement savings balances would first be applied to host country retirement savings before being applied to retirement savings transferred from the source country.

Separate identification of New Zealand-sourced amount

- (3) The application of Part 5 is modified to the extent necessary to ensure that the trustee of a complying superannuation fund is, at all times, required to administer a member's interest in the complying superannuation fund in a way that allows any New Zealand-sourced amount in the fund to be identified separately.

Minimum benefit

- (4) The application of Part 5 is modified to the extent necessary to ensure that a New Zealand-sourced amount in a complying superannuation fund is treated as a minimum benefit in the same way as other amounts in the fund would be treated as minimum benefits.

12A.07 Payment standards

- (1) For the purposes of implementing the Arrangement, Part 6 of these Regulations, as affected by subregulations (2) to (8):
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- (a) applies in relation to a New Zealand-sourced amount that is rolled over or transferred between complying superannuation funds; and
 - (b) applies in relation to an amount to be paid from a complying superannuation fund to a KiwiSaver scheme to the extent necessary to allow the amount to be paid.

Note: In order to implement the Arrangement, it is appropriate to treat a New Zealand-sourced amount as an amount that is subject to Australia's payment standards, apart from any differences required by the Arrangement.

No payments to self managed superannuation funds

- (2) The application of Part 6 in relation to a New Zealand-sourced amount that is rolled over or transferred between complying superannuation funds is modified to the extent necessary to prohibit the rollover or transfer of a New Zealand-sourced amount from a complying superannuation fund to a self managed superannuation fund.

No obligation to receive amount

- (3) The application of Part 6 in relation to a New Zealand-sourced amount that is rolled over or transferred between complying superannuation funds is modified to the extent necessary to ensure that it does not require the trustee of a complying superannuation fund, in any circumstances, to receive the amount.

Note: In accordance with the Arrangement, arrangements to enhance trans-Tasman portability will be voluntary for providers as to whether they will accept transferred retirement savings.

Separate identification of New Zealand-sourced amount

- (4) The application of Part 6 in relation to a New Zealand-sourced amount that is rolled over or transferred between complying superannuation funds is modified to the extent necessary to ensure that the trustee of a complying superannuation fund is, at all times, required to administer a member's interest in the complying superannuation fund in a way that allows any New Zealand-sourced amount in the fund to be identified separately.

Condition of release

- (5) The application of Part 6 in relation to an amount to be paid from a complying superannuation fund to a KiwiSaver scheme is modified to the extent necessary to ensure that the amount is paid on the basis that:
- (a) a condition of release of the amount is taken to exist; and
 - (b) the condition has a nil cashing restriction; and
 - (c) the condition is taken to have been satisfied.

Note: See regulation 12A.12.

Division 6.7 (spouse contributions-splitting amounts)

- (6) Division 6.7 does not apply to a New Zealand-sourced amount.

Reduction of amount of benefits

- (7) The application of Part 6 is modified to the extent necessary to ensure that, if the trustee of a complying superannuation fund is required to reduce a member's benefits in the complying superannuation fund by a particular amount, the trustee must:
- (a) deduct the amount from the member's benefits that are not New Zealand-sourced amounts; and
 - (b) if the full amount cannot be deducted under paragraph (a)—deduct the remainder from the member's benefits that are New Zealand-sourced amounts to the extent possible.

Note: In accordance with the Arrangement, the intention is that any decrements to retirement savings balances would first be applied to host country retirement savings before being applied to retirement savings transferred from the source country.

Preserved benefits

- (8) The application of Part 6 is modified to the extent necessary to ensure that a New Zealand-sourced amount in a complying superannuation fund is treated as preserved benefits in the same way as other amounts in the fund would be treated as preserved benefits.

12A.08 Contribution and benefit accrual standards

- (1) For the purposes of implementing the Arrangement, Part 7 of these Regulations, as affected by subregulations (2) and (3), applies in relation to an amount received by a complying superannuation fund from a KiwiSaver scheme.

Note: In order to implement the Arrangement, it is appropriate to treat a New Zealand-sourced amount as an amount that is subject to Australia's contribution and benefit accrual standards, apart from any differences required by the Arrangement.

Additional information

- (2) The application of Part 7 is modified to the extent necessary to ensure that, if a request is made to a complying superannuation fund to receive an amount from a KiwiSaver scheme:
- (a) the trustee of the complying superannuation fund may request the following information (in addition to other information that the trustee may require under Part 7):
 - (i) details of any New Zealand sourced amount or Australian-sourced amount that forms part of the amount to be received;
 - (ii) the amount of any tax free component of an Australian-sourced amount;
 - (iii) any amounts that were restricted non-preserved benefits or unrestricted non-preserved benefits;
 - (iv) any other information the trustee reasonably requires; and
 - (b) the KiwiSaver scheme or the member may give the trustee of the complying superannuation fund any details requested under paragraph (a); and
 - (c) any information requested under paragraph (a), or provided by the KiwiSaver scheme provider or the member under paragraph (b), is given to the trustee of the complying superannuation fund before the trustee decides whether to receive the amount from the KiwiSaver scheme.

Separate identification of New Zealand-sourced amount

- (3) The application of Part 7 is modified to the extent necessary to ensure that the trustee of a complying superannuation fund is, at all times, required to administer a member's interest in the complying superannuation fund in a way that allows any New Zealand-sourced amount in the fund to be identified separately.

No obligation to receive amount

- (4) The application of Part 7 is modified to the extent necessary to ensure that it does not require the trustee of a complying superannuation fund, in any circumstances, to receive an amount.

Note: In accordance with the Arrangement, arrangements to enhance trans-Tasman portability will be voluntary for providers as to whether they will accept transferred retirement savings.

Member contribution

- (5) The application of Part 7 is modified to the extent necessary to ensure that an amount received by a complying superannuation fund from a KiwiSaver scheme is treated as a contribution and a member contribution.

Non-concessional contributions cap

- (6) The application of Part 7 is modified to the extent necessary to ensure that if a New Zealand-sourced amount (other than a returning New Zealand-sourced amount) that would be received by a complying superannuation fund from a KiwiSaver scheme exceeds the non-concessional contributions cap, the trustee of the fund must ensure that none of the amount is received.

Fund-capped contributions

- (7) The application of Part 7 is modified to the extent necessary to ensure that:
- (a) a returning New Zealand-sourced amount that is received by a complying superannuation fund is not treated as a fund-capped contribution; and

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- (b) an Australian-sourced amount that forms part of an amount received by a complying superannuation fund from a KiwiSaver scheme is not treated as a fund-capped contribution.

Division 3—Payment of amount to KiwiSaver scheme

12A.09 Application of Division 3

This Division applies in relation to an amount to be paid to a KiwiSaver scheme by a complying superannuation fund.

12A.10 Payment

- (1) The application of these Regulations in relation to the payment is modified to the extent necessary to ensure that they do not prevent the payment from being made in the manner described in this regulation.

Note: In accordance with the Arrangement, arrangements to enhance trans-Tasman portability will be voluntary for individuals as to whether they transfer their retirement savings between Australia and New Zealand.

Payment of whole of withdrawal benefit

- (2) The application of these Regulations is modified to the extent necessary to ensure that they:
- (a) permit the trustee of a complying superannuation fund to pay the whole of a member's withdrawal benefit to a KiwiSaver scheme; and
 - (b) prohibit the trustee, in any circumstances, from paying only a part of a member's withdrawal benefit to a KiwiSaver scheme.

Information before payment can be made

- (3) The application of these Regulations is modified to the extent necessary to ensure that they prevent the trustee of a complying superannuation fund, in any circumstances, from paying an amount

to a KiwiSaver scheme until the trustee is satisfied about the following matters:

- (a) the member has emigrated permanently to New Zealand;
 - (b) the member has given the trustee:
 - (i) a statutory declaration stating that the member has emigrated permanently to New Zealand; and
 - (ii) proof of residence at an address in New Zealand following the member's emigration to New Zealand;
 - (c) the member has requested and consented to the payment of the whole of the member's withdrawal benefit;
 - (d) the whole of the withdrawal benefit is able to be transferred and the amount is able to be paid within 30 days;
 - (e) the member has opened a KiwiSaver scheme account;
 - (f) the trustee has been given details of the KiwiSaver scheme and the account number to which the amount is to be paid;
 - (g) the KiwiSaver scheme provider will accept the amount.
- (4) For subregulation (3), the application of these Regulations is modified to the extent necessary to ensure that the trustee may require that a document or other evidence or information is verified by oath or statutory declaration.

Payment within 30 days

- (5) The application of these Regulations is modified to the extent necessary to ensure that the trustee must pay the amount no later than 30 days after the trustee receives the information required by these Regulations to be given in relation to the payment.

Division 4—Conditions of release of benefits

12A.11 Application of Division 4

This Division applies in relation to a New Zealand-sourced amount in a complying superannuation fund.

12A.12 Conditions of release

- (1) For the purposes of implementing the Arrangement, Schedule 1 to these Regulations, as affected by this regulation, applies in relation to a New Zealand-sourced amount in a complying superannuation fund in the same way it would apply to any other amount in the fund.

Note: In order to implement the Arrangement, it is appropriate that a NZ-sourced amount in a complying superannuation fund is subject to Australia's conditions of release, apart from any differences required by the Arrangement.

- (2) The application of Schedule 1 is modified to the extent necessary to ensure that:
- (a) the New Zealand-sourced amount is not subject to the conditions of release in items 101 and 110 of the Schedule; and
 - (b) item 106 of the Schedule applies to the New Zealand-sourced amount as if the reference in the item to a person's age were the age specified in section 7(1) of the *New Zealand Superannuation and Retirement Income Act 2001* of New Zealand.