

EXPOSURE-DRAFT

1 Inserts for
2 **Superannuation Legislation Amendment**
3 **(New Zealand Arrangement) Bill 2012:**
4 **Portability of superannuation between**
5 **Australia and New Zealand**

6 **EXPOSURE DRAFT**

7 **Commencement information**

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
2. Schedule 1	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. The Minister must announce by notice in the <i>Gazette</i> the day the Arrangement comes into force for Australia.	

3.

8 **Schedule 1—Portability of superannuation**
9 **between Australia and New Zealand**

10 *Income Tax Assessment Act 1997*

11 **1 Section 11-55 (table item headed “superannuation”)**

12 After:

13 foreign superannuation funds, lump sum benefits 305-60
14 305-65
15 305-70

insert:

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KiwiSaver schemes, contributions to complying superannuation funds from	312-10
KiwiSaver schemes, superannuation benefits paid from complying superannuation funds to	312-15

1 **2 At the end of Part 3-30**

2 Add:

3 **Division 312—Trans-Tasman portability of retirement**
4 **savings**

5 **Table of Subdivisions**

6 Guide to Division 312

7 312-A Preliminary

8 312-B Amounts contributed to complying superannuation funds

9 from KiwiSaver schemes

10 312-C Superannuation benefits paid to KiwiSaver scheme providers

11 **Guide to Division 312**

12 **312-1 What this Division is about**

13 This Division deals with amounts paid from or to KiwiSaver
14 schemes.

15 **Subdivision 312-A—Preliminary**

16 **Table of sections**

17 312-5 Division implements Arrangement with New Zealand

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19 This Division, together with regulations made under the
20 *Superannuation Industry (Supervision) Act 1993*, implement the
21 Arrangement between the Government of Australia and the
22 Government of New Zealand on Trans-Tasman Retirement
23 Savings Portability, signed at Brisbane on 16 July 2009.

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Subdivision 312-B—Amounts contributed to complying superannuation funds from KiwiSaver schemes

Table of sections

312-10 Amounts contributed to complying superannuation funds from KiwiSaver schemes

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Treat amount as a contribution

- (1) An amount transferred from a *KiwiSaver scheme to a *complying superannuation fund in relation to you is treated as being a contribution made by you to the complying superannuation fund in respect of you.

Note 1: The contribution will not be included in the assessable income of the trustee of the complying superannuation fund: see Division 295.

Note 2: The contribution is not included in your concessional contributions: see section 292-25. Some of the contribution may be included in your non-concessional contributions: see subsection (3) of this section.

- (2) Division 290 (Contributions to superannuation funds), section 295-200 (Transfers from foreign superannuation funds) and Subdivision 305-B (Superannuation benefits from foreign superannuation funds) do not apply to the contribution.

Australian-sourced amount and returning New Zealand-sourced amount not non-concessional

- (3) For the purposes of Subdivision 292-C (Excess non-concessional contributions tax), disregard so much of the contribution as you or the *KiwiSaver scheme provider informs the trustee of the *complying superannuation fund, in accordance with the regulations mentioned in section 312-5, is:
- (a) an Australian-sourced amount; or
 - (b) a returning New Zealand-sourced amount.

Note: The effect of subsection (3) is that the amounts mentioned in paragraphs (a) and (b) are not included in your non-concessional contributions. The rest of the contribution is included in your non-concessional contributions: see subsection 292-90(2).

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Assessable income and capital gains

- 1
- 2 (4) The contribution is not assessable income of yours and is not
3 *exempt income of yours.
- 4 (5) Section 118-305 (capital gain or capital loss disregarded) applies in
5 relation to the contribution in the same way as that section applies
6 in relation to a *roll-over superannuation benefit paid from a
7 *superannuation fund.

8 *Tax free and taxable components of superannuation interest*

- 9 (6) Section 307-220 (Contributions segment) only applies to so much
10 (if any) of the contribution as you or the *KiwiSaver scheme
11 provider inform the trustee of the *complying superannuation fund,
12 in accordance with the regulations mentioned in section 312-5, is:
- 13 (a) a New Zealand-sourced amount; or
14 (b) a tax free Australian-sourced amount.

15 Note: So much of the value of an interest in the fund as consists of the
16 amounts mentioned in paragraphs (a) and (b) is included in the
17 contributions segment and tax free component of the interest. So much
18 of the value of that interest as consists of the rest of the contribution is
19 not included in the contributions segment of the interest and is
20 included in the taxable component of the interest.

21 **Subdivision 312-C—Superannuation benefits paid to KiwiSaver**
22 **scheme providers**

23 **Table of sections**

24 312-15 Superannuation benefits paid to KiwiSaver schemes

25 **312-15 Superannuation benefits paid to KiwiSaver schemes**

- 26 (1) A *superannuation benefit paid to a *KiwiSaver scheme provider
27 by the trustee of a *complying superannuation fund in respect of
28 you is not assessable income of yours and is not *exempt income of
29 yours.
- 30 (2) For the purposes of section 118-305 (capital gain or capital loss
31 disregarded), treat the benefit as being paid to a *superannuation
32 fund.

33 **3 Subsection 995-1(1)**

34 Insert:

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1 *KiwiSaver scheme* has the meaning given by the KiwiSaver Act
2 2006 of New Zealand.

3 **4 Subsection 995-1(1)**

4 Insert:

5 *KiwiSaver scheme provider* means a provider (within the meaning
6 of the KiwiSaver Act 2006 of New Zealand).

7 ***Superannuation (Government Co-contribution for Low*** 8 ***Income Earners) Act 2003***

9 **5 After subparagraph 7(1)(c)(ii)**

10 Insert:

11 (ia) an amount transferred from a KiwiSaver scheme to a
12 complying superannuation fund as mentioned in
13 section 312-10 of the *Income Tax Assessment Act 1997*;

14 ***Taxation Administration Act 1953***

15 **6 After section 390-10 in Schedule 1**

16 Insert:

17 **390-12 Statements about benefits paid to KiwiSaver schemes**

18 (1) This section applies if the trustee of a *complying superannuation
19 fund pays a *superannuation benefit to a *KiwiSaver scheme
20 provider in respect of you, in accordance with the regulations
21 mentioned in section 312-5 of the *Income Tax Assessment Act*
22 *1997*.

23 (2) The trustee must:

- 24 (a) give to the *KiwiSaver scheme provider a statement under
25 this section within 7 days after the day of the payment; and
26 (b) give to you a statement under this section within 30 days
27 after the day of the payment.

28 Note: Section 286-75 provides an administrative penalty for breach of this
29 subsection.

30 (3) A statement under subsection (2) must be in the *approved form.

31 Note: Section 388-55 allows the Commissioner to defer the time for giving
32 an approved form.

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- 1 (4) The *approved form may require the statement to contain the
2 following information:
- 3 (a) information relating to contributions made to the *complying
4 superannuation fund in respect of you during the period,
5 specified in a determination under subsection (5), in which
6 the benefit is paid, to the extent those contributions are
7 reflected in that payment;
- 8 (b) other information relating to the benefit, including the *tax
9 free component and *taxable component (as applicable) of
10 the benefit.
- 11 (5) The Commissioner may determine, by legislative instrument, the
12 period mentioned in paragraph (4)(a).
- 13 (6) The period specified in the determination:
- 14 (a) may be:
- 15 (i) all or part of an income year; or
16 (ii) all or part of a *financial year; or
17 (iii) any other period; and
- 18 (b) may be different:
- 19 (i) for different kinds of trustee; and
20 (ii) in relation to any other matter.
- 21 (7) Subsection (6) does not limit the way in which the determination
22 may specify the period.
- 23 (8) Subsection (4) does not limit the information that the *approved
24 form may require the statement to contain.

25 **7 Paragraph 390-15(1)(a) in Schedule 1**

26 Omit “or 390-10”, substitute “, 390-10 or 390-12”.

27 **8 Application of amendments**

28 The amendments made by this Schedule apply to:

- 29 (a) amounts transferred from KiwiSaver schemes to complying
30 superannuation funds; or
- 31 (b) superannuation benefits paid to KiwiSaver scheme providers
32 by trustees of complying superannuation funds;
- 33 on or after the commencement of this item.