

**Arrangement
between
the Government of New Zealand
and
the Government of Australia
on
Trans-Tasman Retirement Savings Portability**

Context

1. The Government of New Zealand and the Government of Australia (the Governments):
 - a. recognise the high degree of integration already achieved between the Australian and New Zealand labour, financial and goods and services markets since the commencement of the Australia New Zealand Closer Economic Relations Trade Agreement;
 - b. acknowledge that the ability to transfer retirement savings across the Tasman would further enhance the development of a seamless trans-Tasman labour market;
 - c. consider that the removal of further impediments to trans-Tasman labour movement will support ongoing work toward the goal of a Single Economic Market, to which the Governments are jointly committed;
 - d. note the findings of the Trans-Tasman Retirement Savings Working Group that investigated options for improving the portability of savings between the Australian and New Zealand retirement saving schemes; and
 - e. have reached the understandings outlined in this Arrangement.

Purpose

2. This Arrangement is to give effect to the Governments' shared intention to allow for the trans-Tasman portability of retirement savings.

Definitions

3. In this Arrangement:

“source country” means: the country in which an individual’s retirement savings were first held.

“host country” means: the country to which an individual’s retirement savings will be transferred.

“provider” means: an entity that offers a KiwiSaver account, an Australian complying superannuation fund or the Australian Commissioner of Taxation in their capacity under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

“self-managed superannuation fund” means: a self managed superannuation fund as defined in the Australian *Superannuation Industry (Supervision) Act 1993*.

“retirement savings” means:

- a. savings held in a KiwiSaver account;
- b. savings held by the Australian Commissioner of Taxation in their capacity under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; or
- c. savings held in an Australian complying superannuation fund, including individual, employer and government contributions.

Principles of Retirement Savings Portability

4. The trans-Tasman retirement savings portability scheme established by this Arrangement is based upon the following four principles:
 - a. enhanced trans-Tasman retirement savings portability should complement a seamless trans-Tasman labour market;
 - b. portability should allow retirement savings to be dealt with in a manner that generally meets standards for the treatment of retirement savings that are set by the host country;
 - c. portability should not lead to an unnecessary loss in the value of retirement savings; and
 - d. compliance and administration costs associated with the scheme should, where possible, be minimised.

Portability Working Arrangements

5. The Governments have mutually decided that retirement savings held in Australian complying superannuation funds or New Zealand KiwiSaver accounts may be transferred between Australia and New Zealand. Additionally, the Governments have mutually decided that amounts held by the Australian Commissioner of Taxation in their capacity under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* may be transferred to New Zealand. In order to implement this understanding, the Governments consent to the arrangements outlined below.
6. For the avoidance of doubt, under this Arrangement, Australian-sourced retirement savings from an Australian untaxed source, or an Australian defined benefit scheme, cannot be transferred to a New Zealand KiwiSaver account.
7. The arrangements to enhance portability will be voluntary for providers as to whether they will accept transferred retirement savings. The arrangements will also be voluntary for individuals to transfer their retirement savings between Australia and New Zealand.
8. The transfer of retirement savings may take place once an individual has provided their source country provider with all the relevant details of the chosen host country provider. The Government of the source country may also require an individual to provide additional information (such as proof of address in the host country) to the source country Government or provider, before the retirement savings can be transferred to the host country.
9. Retirement savings may only be transferred to a provider in the host country that complies with conditions placed on the treatment of those savings by the source country, as outlined in this Arrangement. The Governments will provide for source country specific rules outlined in this Arrangement to be applied in the host country.
10. The transferred retirement savings must be separately identifiable within the account established in the host country. This separate identification will allow

the source country specific rules specified in paragraph 13 to be applied to retirement savings that are transferred to the host country. That is, the transferring provider will inform the receiving provider of the total amount of retirement savings to be transferred, the amounts that were accumulated in Australia and amounts that were accumulated in New Zealand.

11. The Governments will exempt retirement savings transfers between the two countries from any entry or exit taxes and measures aimed at recouping Crown contributions to retirement savings. These include:
 - a. in the case of New Zealand:
 - i. an exemption from measures that seek to recover member tax credits from KiwiSaver savings; and
 - ii. an exemption at the point of entry for Australian-sourced retirement savings from being treated as dividends for taxation purposes.
 - b. in the case of Australia:
 - i. an exemption from the withholding tax levied on Australian-sourced retirement savings taken out of Australia by temporary residents.
12. New Zealand-sourced retirement savings will continue to be subject to the Australian non-concessional contribution cap arrangements at the initial point of entry. Australian-sourced retirement savings and any New Zealand-sourced retirement savings re-entering Australia will be exempted from the contribution caps upon re-entering the Australian superannuation system. The Australian Government will determine how Australian-sourced retirement savings repatriated to Australia are to be treated for taxation purposes.
13. Retirement savings transferred across the Tasman will be made subject to host country rules, with the following exceptions:

- a. Australian-sourced retirement savings held in a New Zealand KiwiSaver account may not be withdrawn to purchase a first home.
- b. Australian-sourced retirement savings held in a New Zealand KiwiSaver account may be accessed when an individual reaches age 60 and satisfies the definition of retirement at that age, as set out in the *Australian Superannuation Industry (Supervision) Regulations 1994*.
- c. Australian-sourced retirement savings held in a New Zealand KiwiSaver account may not be transferred to a third country.
- d. New Zealand-sourced retirement savings may only be transferred to, and held by, Australian complying superannuation funds that are regulated by the Australian Prudential Regulation Authority. However, these retirement savings may be subsequently transferred to, and held by, the Australian Commissioner of Taxation in accordance with the *Superannuation (Unclaimed Money and Lost Members) Act 1999*. Furthermore, these retirement savings may not be transferred to, or held in, Australian self-managed superannuation funds.
- e. New Zealand-sourced retirement savings held in an Australian complying superannuation fund will not be able to be accessed under the retirement or attaining preservation age conditions of release, as defined in the *Australian Superannuation Industry (Supervision) Regulations 1994*, until the age of retirement as defined in the *New Zealand Superannuation and Retirement Income Act 2001*.
- f. New Zealand-sourced retirement savings will not be able to be paid to a person under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* where a criterion for payment is that the person has reached the eligibility age (as defined in that Act) until the age of retirement as defined in the *New Zealand Superannuation and Retirement Income Act 2001* has also been reached by the person.

- g. New Zealand-sourced retirement savings held in an Australian complying superannuation fund may not be transferred to a third country.
14. For the avoidance of doubt, this Arrangement applies only to retirement savings that are transferred from the source country to the host country. Once transferred, any earnings on these savings will be subject to the rules of the host country. In addition, 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.

Consultation

15. The Governments will use their best endeavours to resolve amicably any issues arising under this Arrangement and, as necessary, will consult to that end.
16. The Governments will, at the written request of either, promptly enter into consultations with a view to seeking an early, equitable and mutually satisfactory solution, if the Government which requested the consultation considers that:
- a. an understanding under this Arrangement is being or may be frustrated; or
 - b. the achievement of any objective of this Arrangement is being or may be frustrated.

Amendment

17. The Governments may amend this Arrangement by mutual decision through an exchange of diplomatic notes. Any such amendments will come into effect on the date specified in those notes.
18. The Governments have mutually decided that they will consult each other in writing on all significant amendments to their respective domestic retirement savings schemes that may affect the implementation of this Arrangement and/or the practical workings of retirement savings portability between Australia and New Zealand.

Withdrawal, Termination

19. Either Government may withdraw from this Arrangement by giving written notice of that intent. In the event of a notice to withdraw, the Governments will work together to terminate this Arrangement as expeditiously as possible. Termination will take effect at the expiration of 12 months from the date of written notice or on the date specified by mutual arrangement through an exchange of diplomatic notes.

General Review

20. The Governments will 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 of the Arrangement.

Effective Date

21. This Arrangement will come into effect on the first day of the second month following the month in which the two Governments have exchanged notes informing each other that their respective constitutional or legislative matters necessary to give effect to this Arrangement have been fulfilled.

Signed in BRISBANE, in duplicate, this 16th day of JULY 2009.

For the Government of New Zealand:

For the Government of Australia:

SIGNED

SIGNED

Hon Bill English

The Hon Wayne Swan MP

Minister of Finance

Treasurer