FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

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Mr Paul McBride
General Manager
Benefits and Regulations Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

By Email: superamendments@treasury.gov.au

02 October 2012

Dear Mr McBride

RE: Exposure Draft - Portability of Superannuation between Australia and New Zealand

The Financial Planning Association of Australia (FPA)[1] welcomes the opportunity to provide feedback to Treasury on the exposure draft legislation and explanatory memorandum (the 'EM') to enact the Trans-Tasman retirement policy agreement between Australia and New Zealand.

The FPA supports the initiative and underlying principles of the Trans-Tasman agreement and welcomes the proposal to allow respective citizens to transfer their superannuation benefits as they migrate between Australia and New Zealand.

The FPA also acknowledges the importance of this policy in the overall objective in a single economic market between Australia and New Zealand.

In developing the following positions and recommendations, the FPA consulted with our practitioner members, who provide financial planning advice directly to those individuals that will be eligible for this initiative.

The FPA would welcome the opportunity to discuss this further. If you have any questions, please contact me on 02 9220 4505 or dante.degori@fpa.asn.au.

Yours sincerely

Dante De Gori
General Manager Policy and Standards

1 The Financial Planning Association of Australia (FPA) is the peak professional body for financial planning in Australia. The 8,000 individual professional members of the FPA have an enforceable Code of Professional Practice, including the Client First principle. 5,700 of our members have achieved CFP certification, which is the global standard of excellence in financial planning. FPA practitioner members manage the financial affairs of more than 5 million Australians whose investments are valued at $630 billion.

Trans-Tasman Exposure Draft

Introduction and Key points

It is the FPA's understanding that the portability of superannuation scheme is intended to enhance labour mobility between the two countries and to build upon their economic relationship. This supports the goal of consolidating the two into a single economic marketplace.

In the press release[2] issued by the Hon Bill Shorten MP he is quoted as saying that:

> *"This will make it easier for people to move freely between the two countries, help consolidate their retirement savings in their country of residence and avoid paying fees and charges on accounts in the two countries."*

The Minister's comments further reinforce the principles[3] as outlined in the trans-Tasman retirement savings portability arrangement:

1. Enhanced-trans-Tasman retirement savings portability should compliment a seamless trans-Tasman labour market;
2. Portability should allow retirement savings to be dealt with in a manner that generally meets standards for the treatment of retirement savings that are by the host country;
3. Portability should not lead to an unnecessary loss in the value of retirement savings; and
4. Compliance and administration costs associated with the scheme should, where possible be minimised.

However, notwithstanding the intention the FPA questions whether principles 3 and 4 above are in doubt due to some of the rules and conditions placed on the arrangement such the following 'exceptions'[4]:

- 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 a set out in the Australian Superannuation Industry (Supervision) Regulations 1994.
- 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. Furthermore, these retirement savings may not be transferred to, or held in, Australian self-managed superannuation funds.
- New Zealand-sourced retirement savings held in an Australian complying superannuation fund will not 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 (currently 65) as defined in the New Zealand Superannuation and Retirement Income Act 2001.

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[2] *Press Release 18 September 2012: Bill Shorten, Minister Financial Services and Superannuation*
[3] *Arrangement between the government of Australia and the Government of New Zealand on Trans-Tasman retirement savings portability, paragraph 4, p 3.*
[4] *Arrangement between the government of Australia and the Government of New Zealand on Trans-Tasman retirement savings portability, paragraph 13, p 4.*

The reason why we raise this is in the issue of cost; especially surrounding compliance and administration costs that need to be considered.

In particular we feel that these conditions along with some of the administration requirements will actually cause new costs and in some respect counter the savings intended by the measure.

Finally the exclusion of SMSFs from being eligible to receive a transfer from a New Zealand source retirement benefit is both unexplained and completely illogical.

Unnecessary duplication and costs

There will be obligations on the Australian superannuation fund that will create complexity and cost on the trustee that will defeat the policy intention of this measure. In particular the requirement that transferred retirement savings must be separately identifiable within the account established in the host country.

This will include the need to separately identify the amount transferred from the New Zealand sourced retirement benefit. This will add an additional layer of IT and software changes, training and system reporting obligations to the member (statements) and the ATO.

The superannuation fund will need to, in addition to keeping up with Australian superannuation law changes, keep up to date with the rules and obligations of the New Zealand Superannuation and Retirement Income Act as a result of accepting a New Zealand sourced retirement benefits.

The FPA also raises a concern that there has been no alignment, consultation or even a mention with the very-soon-to-be finalised rollover standard and electronic data commerce standards that will need to cater for these New Zealand sourced retirement benefit amounts. In addition the Member Contribution Statements (MCS) reporting will also need to be modified and changed to cater for the New Zealand sourced retirement benefits, which have also not been identified in this consultation process.

The FPA are calling for the above to be addressed and processes to be streamlined to better encourage more Australian superannuation funds to provide access to this benefit. Without this, many superannuation funds may choose not to accept New Zealand sourced retirement benefit transfers.

FPA recommendation

Once a New Zealand sourced retirement benefits has been transferred and accepted by the complying Australian superannuation fund that the benefit is not to be kept separately from other components of the members account.

This will result in the New Zealand sourced retirement benefit being reported as a non-concessional contribution to the member and in the MCS reporting to the ATO, requiring no (or very little) amendment to this reporting process, reducing the potential for duplication, complexity and unnecessary costs.

What about Self Manager Superannuation Funds?

The FPA is concerned with the explicit exclusion of Self Managed Super Funds (SMSFs) from being eligible to receive a transfer from a New Zealand sourced retirement benefit and in particular that this exclusion applies indefinitely.

While SMSFs are not prudentially regulated, they are still subject to the same superannuation laws as APRA regulated funds, albeit under compliance driven approach by the ATO. The difference in supervision only reflects that SMSF members are in a position to protect their own interests, unlike members of APRA regulated funds. To specifically exclude SMSFs from this measure without explanation is disappointing and sends a negative message internationally, to the Australian public and to the superannuation industry, with respect to the Government's confidence in the sector.

The exclusion of the ability of a SMSF to hold funds transferred from New Zealand sourced retirement benefit is disappointing, especially for those members who have legitimately and appropriately set up a SMSF in Australia. The FPA questions why this is the case and requests Treasury to disclose the justification for such a decision. Further the FPA seeks explanation for how this decision is in the best interest of the public and the individual member who is transferring their benefits to Australia, even in the circumstances where the initial transfer has been made to an APRA regulated superannuation fund.

The FPA submits that the SMSF exclusion contradicts the policy intent of this measure, especially that of consolidation and reduced costs. The measure will require an individual SMSF member to purposely set up an APRA regulated fund, one that is participating in this measure, and then will be forced to keep this account open while running their SMSF. The individual will be required to duplicate costs in fees that are unnecessary and in no way of benefit to the individual, but rather only being beneficial to the APRA regulated superannuation fund.

Should the concern for the exclusion of SMSFs be about inappropriate access to the superannuation benefits, then we urge Treasury and the government to re-examine the statistics showing this is a declining issue. There have been significant changes with the ATO in regulating the SMSF sector. The ATO[5] continues to crack down on illegal early release schemes. There have been several recent cases where the severe penalties prescribed in the Superannuation Industry (Supervision) Act 1993 have been applied to those involved in illegal early release schemes. With further regulatory reforms being implemented, the ATO will continue to uphold the integrity of the super system by pursuing offenders.

Not only are there significant tax implications for those concerned, large penalties - fines of up to $220,000 and jail terms of up to five years - could be imposed if an individual is looking to set up an SMSF and knowingly access the superannuation benefits illegally.

[5] *http://www.ato.gov.au/superfunds/content.aspx?menuid=0&doc=/content/00321805.htm&page=7&H7 Super Update June 2012 – accessed 1 October 2012.*

To facilitate the trans-Tasman portability to SMSFs, the FPA suggests that KiwiSaver providers have access to the ATO SMSF member verification system. This would require changes to who can register for an AUSkey on the Australian Business Register.

Even if the exclusion applies for the original transfer from New Zealand to Australia, at the very least the FPA requests that government considers that consolidation with a legitimate complying SMSF should be allowed once relevant requirements have been met with the APRA regulated superannuation fund.

The FPA also notes that such a restriction does not apply on transfers made from the United Kingdom under the Qualifying Recognised Overseas Pension Schemes (QROPS) arrangements. There is nothing in the QROPS requirements that prevents an Australian SMSF from becoming QROPS compliant. In deed the current list of QROPS compliant funds[6] has a number of SMSFs listed on it. Therefore the FPA questions how it can be justified that the rules and conditions pertaining to transfer arrangements between Australian and New Zealand sourced retirement benefits should be differentiated.

FPA recommendation
That New Zealand sourced retirement benefits are eligible to be transferred to a complying SMSF provided the SMSF member/trustee are able to complete and present the same information otherwise needed if the transfer was proceeding to an APRA fund.

Should this not be permitted on original transfers into Australia, then the FPA recommends that once the New Zealand sourced retirement benefits have been transferred to an APRA regulated fund, that these monies become eligible for future consolidation into a complying SMSF.

Conditions of release

It is proposed that amounts transferred from New Zealand to Australia will not be accessible until age 65. As a result, New Zealand-sourced retirement benefits will not be able to be accessed under the Transition to Retirement (TtR), or retirement conditions of release. It is also unclear how other conditions of release would interact with this measure, such as compassionate grounds, severe financial hardship, permanent incapacity, temporary incapacity or terminal medical condition of release.

It is also unclear how superannuation payment splits would operate on benefits preserved under KiwiSaver transfers for a non-Kiwi spouse.

Australian-sourced retirement benefits that are held in a KiwiSaver account will be subject to the Australian preservation rules. As a result, amounts transferred from an Australian superannuation fund into a KiwiSaver account cannot be accessed to purchase a home – something, which is otherwise generally allowed under a KiwiSaver account.

[6] *http://www.hmrc.gov.uk/pensionschemes/qrops.pdf accessed 1 October 2012*

The FPA would like clarification if any of the above areas will be addressed/amendment in the subsequent release of regulations.

Anti-avoidance

The FPA supports the portability arrangements that exclude Australian-sourced retirement savings from an Australian untaxed source, or an Australian defined benefit scheme. The FPA would like clarification whether this is to be captured by additional legislation or through subsequent regulations.

The FPA would also like clarification on how the Government intends to treat Australian-sourced retirement savings repatriated to Australia for taxation purposes. If these amounts were also to be treated as tax-free component, there would be an ability to wash down the taxable components of a fund by transferring the amounts from Australian, to New Zealand, and back to Australia.

The FPA would also like clarification on whether earnings incurred in New Zealand in respect of Australian-sourced funds in KiwiSaver accounts would be treated when repatriated to Australia for taxation purposes.

Other issues for consideration and clarification

- Whether New Zealand has equivalent protections of retirement benefits with respect to Complaint Tribunals, bankruptcy and statutory compensation funded by consolidated revenue.
- In respect to bankruptcy it is the FPA's understanding that unlike Australia, New Zealand does not have a specific exclusion of superannuation from bankruptcy. Thus presents a clear risk for Australians transferring their benefit to New Zealand without any warning that they are taking their money out of a protected environment into an exposed one.