

***TD 92/183 - Income tax: as a result of the New Zealand government's decision to impose a tax on the income of superannuation funds from 1 April 1990, what amount should be included as assessable income by an Australian resident in receipt of a pension paid out of these funds?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on 5 November 1992

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

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## Taxation Determination

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**Income tax: as a result of the New Zealand government's decision to impose a tax on the income of superannuation funds from 1 April 1990, what amount should be included as assessable income by an Australian resident in receipt of a pension paid out of these funds?**

1. An Australian resident who receives a New Zealand superannuation pension should include the total amount received as assessable income under subsection 25(1) of the *Income Tax Assessment Act 1936* (ITAA). This amount should be included regardless of whether the pension is paid before or after 1 April 1990.
2. Under Article 13 of Schedule 4 of the *Income Tax (International Agreements) Act 1953*, the pension is taxable in Australia. The fact that a New Zealand superannuation fund is liable to tax in New Zealand on its income does not affect the application of Article 13.
3. The amount of pension received is not grossed-up to take into account the tax paid by the New Zealand superannuation fund on its income. This is because subsection 6AC(1) of the ITAA does not apply, as an Australian resident who receives a New Zealand superannuation pension is not required to pay any foreign tax in relation to the pension. An Australian recipient of a pension paid by a New Zealand superannuation fund is not deemed by subsection 6AB(3) of the ITAA to have been personally liable for, and to have paid, the tax paid by the superannuation fund.
4. Furthermore, the Australian recipient is not entitled under section 160AF of the ITAA to a foreign tax credit for tax paid by the New Zealand superannuation fund.

**Commissioner of Taxation**

05/11/92