



Superannuation Legislation Amendment (New Zealand Arrangement) Act 2012

No. 181, 2012

**An Act to amend the law relating to
superannuation, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 181, 2012

**An Act to amend the law relating to
superannuation, and for related purposes**

[Assented to 10 December 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Superannuation Legislation
Amendment (New Zealand Arrangement) Act 2012*.

Schedule 1 Portability of superannuation between Australia and New Zealand
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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	10 December 2012
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.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Portability of superannuation between Australia and New Zealand

Income Tax Assessment Act 1997

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

After:

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

insert:

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

2 At the end of Part 3-30

Add:

Division 312—Trans-Tasman portability of retirement savings

Table of Subdivisions

	Guide to Division 312
312-A	Preliminary
312-B	Amounts contributed to complying superannuation funds from KiwiSaver schemes
312-C	Superannuation benefits paid to KiwiSaver scheme providers

Guide to Division 312

312-1 What this Division is about

This Division deals with amounts transferred between KiwiSaver schemes and complying superannuation funds.
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Subdivision 312-A—Preliminary

Table of sections

312-5 Division implements Arrangement with New Zealand

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This Division, together with regulations made under the *Superannuation Industry (Supervision) Act 1993*, 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.

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

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

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 you made to the complying superannuation fund for the purpose of providing *superannuation benefits for yourself.

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, in accordance with the regulations mentioned in section 312-5, the trustee of the *complying superannuation fund 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 (3)(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).

Assessable income and capital gains

- (4) The contribution is not assessable income of yours and is not *exempt income of yours.
- (5) Section 118-305 (capital gain or capital loss disregarded) applies in relation to the amount transferred as if the *KiwiSaver scheme were a *superannuation fund.

Tax free and taxable components of superannuation interest

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

Note: So much of the value of an interest in the fund as consists of the amounts mentioned in paragraphs (6)(a) and (b) is included in the contributions segment and tax free component of the interest. So much of the value of that interest as consists of the rest of the contribution is not included in the contributions segment of the interest and is included in the taxable component of the interest. (The value of the interest may also consist of amounts other than the contribution.)

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

Table of sections

312-15 Superannuation benefits paid to KiwiSaver schemes

312-15 Superannuation benefits paid to KiwiSaver schemes

A *superannuation benefit paid to a *KiwiSaver scheme provider by the trustee of a *complying superannuation fund in respect of you is not assessable income of yours and is not *exempt income of yours.

3 Subsection 995-1(1)

Insert:

Australian-sourced amount has the meaning given by the regulations mentioned in section 312-5 (about trans-Tasman portability of retirement savings).

4 Subsection 995-1(1)

Insert:

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

5 Subsection 995-1(1)

Insert:

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

6 Subsection 995-1(1)

Insert:

New Zealand-sourced amount has the meaning given by the regulations mentioned in section 312-5 (about trans-Tasman portability of retirement savings).

7 Subsection 995-1(1)

Insert:

returning New Zealand-sourced amount has the meaning given by the regulations mentioned in section 312-5 (about trans-Tasman portability of retirement savings).

8 Subsection 995-1(1) (at the end of the definition of *tax free component*)

Add:

- ; and (d) the *taxfree component* of an *Australian-sourced amount has the meaning given by the regulations mentioned in section 312-5 (about trans-Tasman portability of retirement savings).

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

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

Insert:

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

Taxation Administration Act 1953

10 After section 390-10 in Schedule 1

Insert:

390-12 Statements about benefits paid to KiwiSaver schemes

- (1) This section applies if the trustee of a *complying superannuation fund pays a *superannuation benefit to a *KiwiSaver scheme provider.
- (2) The trustee must:
- (a) give to the *KiwiSaver scheme provider a statement under this section within 7 days after the day on which the benefit is paid; and
- (b) give to the individual in respect of whom the benefit is paid a statement in relation to the benefit within 30 days after the day on which the benefit is paid.

Schedule 1 Portability of superannuation between Australia and New Zealand
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Note: Section 286-75 provides an administrative penalty for breach of this subsection.

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

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

(4) The *approved form may require the statement to contain the following information:

- (a) information relating to contributions made to the *complying superannuation fund in respect of the individual during the period specified in a determination under subsection (5) in which the benefit is paid, to the extent those contributions are reflected in that benefit;
- (b) other information relating to the benefit, including the *tax free component and *taxable component (as applicable) of the benefit.

(5) The Commissioner may determine, by legislative instrument, the period mentioned in paragraph (4)(a).

(6) The period specified in the determination:

- (a) may be:
 - (i) all or part of an income year; or
 - (ii) all or part of a *financial year; or
 - (iii) any other period; and
- (b) may be different:
 - (i) for different kinds of trustee; and
 - (ii) in relation to any other matter.

(7) Subsection (6) does not limit the way in which the determination may specify the period.

(8) Subsection (4) does not limit the information that the *approved form may require the statement to contain.

11 Paragraph 390-15(1)(a) in Schedule 1

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

12 Application of amendments

The amendments made by this Schedule apply to:

- (a) amounts transferred from KiwiSaver schemes to complying superannuation funds; or
 - (b) superannuation benefits paid to KiwiSaver scheme providers by trustees of complying superannuation funds;
- on or after the commencement of this item.
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*[Minister's second reading speech made in—
House of Representatives on 11 October 2012
Senate on 30 October 2012]*

(181/12)
