

# Workplace Savings NZ

Te māngai penapena ā-mahi



30 January 2012

Beverley Davies  
Pensions Policy  
Her Majesty's Revenue & Customs  
ENGLAND

Emailed to: pensions.policy@hmrc.gsi.gov.uk

## **Submission on The Overseas Pension Schemes (Miscellaneous Amendments) Regulations 2012**

We wish to submit the attached in response to The Overseas Pension Schemes (Miscellaneous Amendments) Regulations 2012.

Workplace Savings NZ is a national, not-for-profit, apolitical membership organisation whose mission is to advance the sustainable, effective, and efficient delivery of workplace savings outcomes for all involved. Workplace Savings NZ is focused on those issues that affect the entire workplace retirement savings industry. As a peak industry body, its membership includes corporate, public sector and industry superannuation funds, KiwiSaver schemes, individuals and service providers to workplace savings arrangements. These members have over 90% of the approximately 2.5 million New Zealanders with workplace superannuation or KiwiSaver membership.

The Investment Savings and Insurance Association ("ISI") is the industry body representing companies that issue or manage life, insurance, superannuation or managed funds in New Zealand. ISI members are responsible for approximately \$66 billion funds under management.

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We would be pleased to discuss our comments or answer any questions you may have in relation to our submission.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Bruce Kerr', with a large loop at the start.

Bruce Kerr  
Executive Director  
Workplace Savings NZ

A handwritten signature in blue ink, appearing to read 'Peter Neilson', written in a cursive style.

Peter Neilson  
Chief Executive  
Investment Savings & Insurance Assn of NZ

**Workplace Savings NZ  
and the  
Investment Savings and Insurance Association of NZ**

**Submission to**

**Her Majesty's Revenue and Customs**

**on**

**The Overseas Pension Schemes (Miscellaneous  
Amendments) Regulations 2012**

**January 2012**

# Joint submission from Workplace Savings NZ and the Investment Savings and Insurance Association of NZ

## Introduction

- Workplace Savings NZ and the Investment Savings and Insurance Association of NZ (ISI) welcome the opportunity to make a submission on The Overseas Pension Schemes (Miscellaneous Amendments) Regulations 2012 (the *2012 Regulations*).
- We have restricted our comments to those provisions in the 2012 Regulations which impact on registered superannuation schemes of the type offered by some of our members in New Zealand.

## Background

1. The 2012 Regulations are scheduled to come into force on and from 6 April 2012.
2. Her Majesty's Revenue and Customs (*HMRC*) has stated that the measures in the 2012 Regulations will ensure that the Qualifying Recognised Overseas Pension Scheme (*QROPS*) regime continues to be used for its intended purpose of allowing individuals who intend to leave the UK permanently to take their pensions savings to their new country of residence free of UK tax.
3. Measures that will affect QROPS globally include:
  - 3.1 the proposal to increase the five year non-resident reporting requirement to 10 years from the date of transfer;
  - 3.2 the requirement for a QROPS to be recognised for tax purposes in its country of establishment; and
  - 3.3 the requirement for individuals to acknowledge the tax implications of moving their pension out of the UK prior to transfer.
4. The requirement to apply (broadly) at least 70% of the funds transferred from a UK pension scheme to providing the member with an income for life at or after the normal minimum pension age (currently 55 years of age in the UK) is a proposal which specifically affects New Zealand non-KiwiSaver schemes with QROPS status.

## Submission

### **There should be a transition period**

5. The Explanatory Notes to the 2012 Regulations explain that Regulations 4 to 6 of the 2012 Regulations amend the conditions applicable to certain schemes in New Zealand,

*"so that 70% of the funds transferred ... have to be used to provide an income in retirement."*
6. Unless a New Zealand-based scheme is mentioned in new Schedule 2, it must comply with requirements relating to the scheme rules in Regulation 3(4) of the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and

Recognised Overseas Pension Schemes) Regulations 2006 in order to become a recognised overseas pension scheme.

7. The effect of these changes is that all non-KiwiSaver schemes which have QROPS status in New Zealand will have to designate at least 70% of the funds transferred from the UK for the purpose of providing an income for life, and payment of such an income to a member cannot commence until the member reaches age 55.
8. Additionally, new Regulation 3B, inserted by Regulation 9 of the 2012 Regulations, provides that when a scheme ceases to be a QROPS it must provide information about the relevant funds that it holds as at the date it ceases to meet the conditions required for QROPS status.
9. In New Zealand, section 9 of the Superannuation Schemes Act 1989 requires that any amendment to a scheme's trust deed with the effect of postponing or adversely affecting benefits attributable to, or which may in due course flow from, membership of the scheme up to the date of that amendment can only be made with the consent of all affected scheme members.
10. Compliance with the requirements in Regulation 3(4) of the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 would require every QROPS provider to amend their scheme trust deed, with consents being required from all QROPS members holding UK tax-relieved funds in the relevant scheme.
11. We submit that New Zealand scheme providers are not being given sufficient time to draft amendments to their scheme trust deeds and to obtain the required consents.
12. This will inevitably lead to all non-KiwiSaver schemes in New Zealand with QROPS status being non-compliant. As a result, no New Zealand QROPS scheme will be able to accept further UK tax-relieved monies into the scheme for a period of time. Existing members will also be subjected to the new rules.
13. We find it unduly harsh to propose that members of those schemes will have their entitlements removed simply because there is insufficient time for the New Zealand schemes to implement trust deed changes, due to the member consent requirement under New Zealand law for such trust deed amendments.
14. The retrospective nature of the amendments effected by the 2012 Regulations (applying as they do to withdrawals of UK tax-relieved funds that have historically been transferred to the scheme) is likely to result in problems for members and potential non-compliance with New Zealand law for providers.
15. New Zealand Securities law requires that scheme offering documents not be misleading and deceptive. Membership interests in the relevant schemes were not sold to members on the basis of a portion of retirement benefits needing to be paid as an income for life. All such schemes were sold to members on the basis of retirement benefits being payable as a lump sum on and from the applicable retirement age.
16. Accordingly, members will have transferred their UK tax-relieved funds to the scheme on this basis. Changing the rules now and applying them to such funds as have already been transferred on the historic terms of such schemes will invite complaints from members and potential arguments that the offering documents were misleading and deceptive.
17. We consider this outcome untenable. We believe that the short lead-in time of the amendments with no provision for a transition period, coupled with the retrospective nature of the changes, is simply abhorrent.

18. We submit that HMRC give serious consideration to alternative options, including grand-parenting the QROPS status of those New Zealand non-KiwiSaver schemes that are already on the HMRC list of QROPS schemes, subject to those schemes implementing rule changes to become compliant with the new regulations and providing satisfactory evidence to HMRC that changes have been made by 6 April 2013. If such schemes are not compliant by 6 April 2013, then those schemes ought to appropriately cease to be QROPS and would then need to comply with all of the relevant QROPS cessation reporting requirements.

### **Meaning of "income for life" and issues peculiar to New Zealand**

19. The proposed regulations require schemes established in New Zealand to apply at least 70% of the funds transferred from a UK pension scheme to providing the member with an income for life at or after retirement age.
20. Neither the 2012 Regulations, nor the explanatory notes, define the intended scope of the phrase "income for life".
21. If income for life is intended to mean the provision of a lifetime annuity, either by the scheme or a commercial provider of such product, then this presents two significant issues for New Zealand-based QROPS providers:
  - 21.1 first, without exception, New Zealand non-KiwiSaver schemes which have QROPS status and are listed on the HMRC list of QROPS are defined contribution schemes and as such are incapable of accepting transfer of longevity risk under New Zealand law; and
  - 21.2 there is currently only one commercial provider in the New Zealand market of annuity products. These annuity products are largely "fixed-term" and not "whole-of-life".
22. We submit that given the lack of availability of appropriate annuity products, HMRC should extend the scope of the phrase "income for life" to permit NZ schemes to provide a regular income calculated on the basis of:
  - 22.1 the UK GAD Drawdown Pension Tables, suitably amended for the New Zealand member; or
  - 22.2 the Australian "Allocated Pension" scale, suitably amended for a New Zealand superannuation context.
23. Alternatively, HMRC could allow scheme retirement benefits to be paid in instalments over a 15 year period from the specified retirement date.

### **Inclusion of registered superannuation schemes which have been granted Complying Superannuation Fund status**

24. In New Zealand, section 34 of the Superannuation Schemes Act 1989 enables the Financial Markets Authority (the regulator of superannuation schemes in New Zealand) to approve a registered superannuation scheme as a Complying Superannuation Fund.
25. A superannuation scheme granted "complying superannuation fund" status has a "locked-in" membership section akin to KiwiSaver schemes, in which contributions and accumulated savings are locked in until the member reaches the eligibility age for state-funded New Zealand Superannuation (currently age 65), and otherwise contains the same restrictive early withdrawal provisions as KiwiSaver.

There are currently 28 such registered superannuation schemes in New Zealand (the Financial Markets Authority's register of schemes with complying superannuation fund status is published at [www.fma.govt.nz/media/463388/complying\\_superannuation\\_funds\\_register.pdf](http://www.fma.govt.nz/media/463388/complying_superannuation_funds_register.pdf)).

26. We submit that superannuation schemes established in New Zealand, that have been granted complying superannuation fund status by the Financial Markets Authority, should be entitled to be included in the draft Schedule 2 as inserted by the 2012 Regulations and be exempted from the requirement to apply 70% of a member's UK tax relieved scheme funds towards providing an income for life, subject to the scheme confirming to HMRC that any UK pension monies transferred to that scheme have been transferred to the locked-in section of the scheme.

**Workplace Savings NZ and the  
Investment Savings and Insurance Association of NZ  
January 2012**