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**WEEKLY COMMENT: FRIDAY 17 JANUARY 2014**

1. The *Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Bill* ("the Bill") was reported from the Finance and Expenditure Committee on 28 November 2013. The reported version contains a number of changes from the rules as originally introduced on 20 May 2013. The start date for the new rules is unchanged and remains 1 April 2014. Week-before-last I looked at the types of withdrawals that are included in the new rules, and the exclusions that apply. Last week I looked at the circumstances in which the FIF rules will continue to apply and the 15% reduced rate amnesty for past non-compliance with the FIF rules.

2. This week I look at the assessable period, the exemption for amounts that exceed the assessable withdrawal amount, and the KiwiSaver withdrawal mechanism to fund tax liabilities and student loan repayment obligations resulting from foreign superannuation withdrawals.

3. The topics covered this week are:

   (a) The assessable period;

   (b) Rules for calculating the assessable period;

   (c) Exemption for amounts in excess of the assessable withdrawal amount;

   (d) KiwiSaver withdrawals to meet tax liability or student loan repayment obligation;

   (e) KiwiSaver withdrawal requirements;

   (f) Time limit for withdrawal mechanism;

   (g) Partial transfers into KiwiSaver funds to fund tax on transfers into non-KiwiSaver funds;

   (h) Notification of withdrawals and direct payments to Inland Revenue

**The assessable period**

4. The assessable period is the period during which the exemptions discussed in week-before-last's (3 January) *Weekly Comment* will not apply. It applies in determining the *part* of a foreign superannuation withdrawal that is not exempt from income tax (the *assessable withdrawal amount*). It:

   (a) Begins on the later of:

      (i) The date when the person becomes, for the first time after acquiring the interest in the scheme, a New Zealand resident who owns the interest in the scheme; or

(ii) The end of the person's exemption period; and

(b) Ends on the date when the person derives the foreign superannuation withdrawal (the distribution time); and

(c) Does not include any period when the person is a non-resident.

**Rules for calculating the assessable period**

5. For the purpose of calculating the assessable period for a person who acquires an interest in a foreign superannuation scheme the following rules, in proposed s. CF 3(18), apply:

(a) *General rule if none of the specific rules in paragraphs (b) to (d) apply*: The person is treated as having acquired the interest when the first contribution was made to the superannuation scheme by or for the person;

(b) *Specific rule covering rights transferred from another superannuation scheme*: If the person has converted rights in a former superannuation scheme to corresponding rights of the person in the current superannuation scheme, the person is treated as having acquired the interest when the person acquired the rights in the former scheme; or

(c) *Specific rule covering rights transferred from another person*: If the person has acquired rights in the superannuation scheme from another person, other than by a spousal transfer from a deceased estate or under a relationship agreement as described in paragraph (d) below, the person is treated as having acquired the interest when the person acquired the rights from the other person; or

(d) *Specific rule covering rights transferred from a spouse under a deceased estate or a relationship agreement*: If the person has acquired rights in the superannuation scheme from the person's deceased spouse or de facto partner (the *former owner*), or under a relationship agreement at the end of the relationship, the person is treated as having acquired the interest at the beginning of the assessable period of the former owner.

6. The following points are important:

(a) For a person who acquired the interest while non-resident, the assessable period will start when their exemption period ends;

(b) A person who acquired the interest while resident is not eligible for an exemption period: their assessable period will start when they acquire the interest;

(c) Where a person who loses residence and then becomes resident again, the assessable period will be calculated based on all periods of New Zealand residence;

(d) The assessable period will be determined for each specific foreign superannuation interest, based on the number of years of residence since the interest in *that* particular interest was acquired; it is possible that a person might have different assessable periods for different interests;

(e) If the assessable period began before 1 April 2014, these rules override all other provisions in the *Income Tax Act 2007* that may otherwise quantify and allocate income.

**Exemption for amounts in excess of the assessable withdrawal amount**

7. A foreign superannuation withdrawal derived by a resident is exempt income of the person under s. CW 28C, if the foreign superannuation withdrawal is derived in the person's *assessable period*, to the extent to which the foreign superannuation withdrawal exceeds:

(a) The assessable withdrawal amount calculated under the *formula method*, if the person qualifies to use this method, and chooses to use it; or

(b) The assessable withdrawal amount calculated under the default *schedule method*.

**KiwiSaver withdrawals to meet tax liability or student loan repayment obligation**

8. Where a foreign superannuation withdrawal has been converted into an interest in a KiwiSaver scheme, proposed new Schedule 1, cl.14C of the *KiwiSaver Act 2006* provides that the member may apply for a withdrawal from a KiwiSaver scheme to meet the member's payment obligations arising from the withdrawal and conversion of the foreign superannuation interest into the interest in a KiwiSaver scheme relating to:

   (a) The tax liability (other than interest or penalties) on the foreign superannuation withdrawal; or

   (b) Student loan repayments required because of the foreign superannuation withdrawal.

**KiwiSaver withdrawal requirements**

9. The application for the withdrawal must be made to:

   (a) The trustees (in the case of a restricted KiwiSaver scheme); or

   (b) The manager (in the case of any other KiwiSaver scheme).

10. The amount withdrawn cannot exceed the value at the time of the withdrawal of the member's accumulation less the amount of the Crown contribution, and:

    (a) For tax payment purposes may not exceed the lesser of:

        (i) The member's liability for tax on the foreign superannuation withdrawal; and

        (ii) The member's liability for terminal tax in the tax year to which the tax relates.

    (b) For student loan repayment purposes, may not exceed the member's repayment obligations resulting from the foreign superannuation withdrawal.

11. An application under cl. 14C(1) must:

    (a) Be made by the member within 24 months from the end of the month in which the liability of the member for tax or student loan repayments is assessed; and

    (b) Be in the form required by the trustees or manager (as the case may be); and

    (c) Must include a completed statutory declaration giving the relevant details of the foreign superannuation withdrawal, the reinvestment, and the resulting liability of the member for tax under the *Income Tax Act 2007*; and

    (d) Must include any documents and other information that may be required by the trustees or manager (as the case may be) in support of the statutory declaration.

12. The trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme) must:

    (a) Provide to the Commissioner of Inland Revenue, in a form satisfactory to the Commissioner, the details of any withdrawal made by a member under cl. 14C(1); and

(b) If payment to a person other than the member is possible, pay to the Commissioner the amount of the withdrawal.

**Time limit for withdrawal mechanism**

13. The time limit applying to when an application for a KiwiSaver withdrawal may be made has been amended so that the application must be made within two years of the 'foreign superannuation withdrawal' being included in the appropriate income tax return. For this reason, it has also been made clearer that the withdrawal mechanism is only available when the lump sum has been assessed as income. Therefore, the two-year limit starts from when the lump sum has been assessed as income.

**Partial transfers into KiwiSaver funds to fund tax on transfers to non-KiwiSaver funds**

14. A submission was made that a taxpayer who has transferred their foreign superannuation into a non-KiwiSaver New Zealand superannuation scheme, should be able to use the KiwiSaver withdrawal option by first transferring the amount of the tax liability from the non-KiwiSaver scheme into a KiwiSaver scheme then making the application for withdrawal.

15. Officials commented on page 31 of the Officials' Report that:

    (a) The withdrawal option is only available to taxpayers who have transferred into KiwiSaver schemes.

    (b) The reason behind creating a withdrawal option for KiwiSaver is due to the ease of making an amendment to the *KiwiSaver Act 2006*.

    (c) There is nothing preventing non-KiwiSaver schemes from providing such a withdrawal facility without government intervention.

    (d) Some – although not many – of these non-KiwiSaver schemes qualify as QROPS under the UK's 'qualified recognised overseas pension schemes' regime (for further information see 'Issue: Withdrawals from KiwiSaver could trigger UK QROPS rules'), which means that a number of UK migrants may transfer into these schemes but would not have access to the KiwiSaver withdrawal option to pay their tax liability.

    (e) However, a taxpayer who has transferred to a non-KiwiSaver superannuation scheme may know what their liability arising from the transfer is, and may then transfer this exact amount of the tax liability from a non-KiwiSaver scheme to a KiwiSaver scheme and use the withdrawal facility to withdraw that full amount and pay Inland Revenue.

**Notification of withdrawals and direct payments to Inland Revenue**

16. KiwiSaver providers will be required to notify Inland Revenue upon allowing a withdrawal from KiwiSaver to pay a person's tax liability and will also have to pay the amount directly to Inland Revenue if their systems allow them to do so.

**Detailed PDF attachment on the new rules**

17. The PDF attachment *Withdrawals From Foreign Superannuation Schemes* contains all of the details.

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