DavidCo Limited
CHARTERED ACCOUNTANTS

Level 2, Shortland Chambers
70 Shortland Street, Auckland
PO Box 2380, Shortland Street
Auckland 1140
T +64 9 921 6885
F +64 9 921 6889
M +64 21 639 710
E arun.david@davidco.co.nz
W www.davidco.co.nz

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

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WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION I: DEFINITIONS

(1) What is a **foreign superannuation withdrawal**	A **foreign superannuation withdrawal** means a benefit for a person from a foreign superannuation scheme to which **section CF 3** applies. [**s. YA 1** definition as proposed in **cl. 103(11)** of the Reported Superannuation Tax Bill]
(2) What does **interest in a foreign superannuation scheme** mean?	For the purposes of **s. CF 3**, an **interest of a person in a foreign superannuation scheme** consists of rights of the person to benefit as a member or beneficiary from distributions by the superannuation scheme. [**s. CF 3(17)** as proposed in cl. 8 of the Reported Foreign Superannuation Tax Bill]
(3) What is a **foreign superannuation scheme**?	A **foreign superannuation scheme** means a **superannuation scheme** constituted outside New Zealand [**s. YA 1**]
(4) What is a **superannuation scheme**?	A **superannuation scheme**: (a) Means: (i) A trust or unit trust established by its trust deed mainly for the purposes of providing retirement benefits to beneficiaries who are natural persons or paying benefits to superannuation funds; or (ii) *[Repealed]* (iii) A company that is not a unit trust, is not resident in New Zealand, and is established mainly for the purpose of providing retirement benefits to members or relatives of members who are natural persons; or (iv) An arrangement constituted under an Act of the Parliament of New Zealand, other than the *New Zealand Superannuation and Retirement Income Act 2001* mainly for the purpose of providing retirement benefits to natural persons; or (v) An arrangement constituted under the legislation of a country, territory, state, or local authority outside New Zealand mainly for the purpose of providing retirement benefits to natural persons other than retirement benefits resembling New Zealand superannuation - see **page 6** below; and (b) For a superannuation scheme that is a trust, means the trustees of the scheme. [**s. YA 1** definition as proposed to be amended with the underlined words by **cl. 103(51B)** of the Reported Foreign Superannuation Tax Bill]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION I: DEFINITIONS (continued)

(5) Superannuation scheme exclusion for retirement benefits resembling New Zealand superannuation	Officials are of the view that the definition of a foreign "superannuation scheme" in the current law should be clarified to ensure that it does not include overseas social security schemes. This will preserve the existing tax treatment of payments from such schemes. This should be made retrospective to 2004. Officials noted that it has been generally accepted that overseas social security schemes that make payments similar to New Zealand Superannuation are not subject to the FIF rules. Rather, when pensions or lump sums are paid from such overseas social security schemes, they will be subject to tax under the ordinary tax rules. In general, this means that pensions from overseas social security schemes are subject to full tax. The taxation of lump sums depends on the character of the lump sum, but they are generally not taxed. Officials considered that continuing this current tax treatment is appropriate in the context of the proposed changes. The proposed new rules will apply to interests in a foreign "superannuation scheme". They are not intended to apply to overseas social security schemes that make payments similar to New Zealand Superannuation. The definition of a "superannuation scheme", when originally enacted in 1989, excluded the historical equivalent of New Zealand Superannuation. Inland Revenue's view is that the definition of a "superannuation scheme" also excluded overseas social security schemes that make payments similar to New Zealand Superannuation. In 2004, as part of the rewrite of the Income Tax Act, the definition of "superannuation scheme" was restructured. It appears that, as a result of these drafting changes, it is not clear that the definition excludes overseas social security schemes that are similar to New Zealand Superannuation. This is not the intended policy outcome. Officials consider that the definition of a "foreign superannuation scheme" should be clarified to ensure that it does not cover overseas social security schemes, consistent with the original intention under the 1976 and 1994 Income Tax Acts. This will preserve the existing tax treatment of payments from such schemes. This should be made retrospective to the enactment of the rewritten Income Tax Act in 2004. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **pages 10-11**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION I: DEFINITIONS (continued)

(6) What schemes are included in the definition of a "foreign superannuation scheme"	**(6) What schemes are included in the definition of a "foreign superannuation scheme"** Officials have responded to a submission that it should be clarified which schemes are included in the definition of a "foreign superannuation scheme". The submitter notes that the proposed legislation does not make it clear what superannuation funds would be taxed under the proposed new rules. The submitter suggests that it should include a number of common United States superannuation products and retirement savings schemes. Officials note that the definition of foreign superannuation scheme is an existing definition in the current law. It is reasonably broad, and would likely include the schemes the submitter has mentioned. However, more specific clarification would be more appropriate in a guidance document rather than in the legislation. Officials have, therefore, undertaken to provide more specific clarification in a guidance document rather than in legislation. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **page 10**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION I: DEFINITIONS (continued)

(7) What benefit does **section CF 3** apply to?	1. Section CF 3 applies when a New Zealand resident derives a benefit (a **foreign superannuation withdrawal**) that: (a) Is not a pension or annuity (refer to **page 9** below); and (b) Arises from an interest other than a **FIF superannuation interest** (see **page 46** below), in a **foreign superannuation scheme** (see **pages 5-7** above), that the person acquires (i) When the person is a non-resident (see **pages 10-11** below); or (ii) In a transaction referred to in **s. CF 3(18)(b)** – i.e. rights converted from a former superannuation scheme – see page **21** below; or (iii) In a transaction referred to in **s. CF 3(18)(d)** – i.e. rights transferred upon death or under a relationship agreement – see page **23** below; and 2. Section CF 3 provides that a foreign superannuation withdrawal is income if the benefit is in the form of: (a) An amount derived by the person as a member or beneficiary of the scheme; or (b) An interest of the person in the scheme, withdrawn for reinvestment as an interest of the person in a superannuation scheme in New Zealand; or (c) An interest of the person in the scheme, outside Australia, withdrawn for reinvestment as an interest of the person in a superannuation scheme in Australia; or (d) An interest of the person in the scheme (anywhere) withdrawn, for reinvestment as an interest of another person in a superannuation scheme. 3. However, Section CF 3 provides for <u>rollover relief</u> for withdrawals and reinvestments upon death or relationship cessation: a foreign superannuation withdrawal is not income of the person if the benefit is an interest of the person in the scheme withdrawn: (a) On the death of the person or under a relationship agreement arising from an event (the **relationship cessation**) that occurs when: (i) For a marriage or civil union of the person, the marriage or civil union is dissolved or the person and the person's spouse or civil union partner separate or begin to live apart (whether or not they continue to live in the same residence); (ii) For a de facto relationship of the person, the de facto relationship ends; and (b) For immediate reinvestment as an interest, in a foreign superannuation scheme outside Australia, of another person who is: (i) A spouse, civil union partner, or de facto partner of the person immediately before the death or the relationship cessation; and (ii) A New Zealand resident. [**s. CF 3(1)** as proposed in **cl. 8** of the Reported Foreign Superannuation Tax Bill]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION I: DEFINITIONS (continued)

(8) Exclusion of pensions and annuities	**(8) Exclusion of pensions and annuities** Officials declined a submission that the proposed new treatment for lump sums should also apply to pensions. The submitter was concerned that, by taxing pensions in full, there is no acknowledgement that pensions comprise both income and capital, and the methodology underlying the schedule method could be applied to pensions. Officials disagreed with this submission. Officials are of the view that the complexity of the current rules has been a factor in non-compliance in relation to lump sums that does not exist with periodic pensions. The taxpayer is simply required to include the value of the pension in their income tax return. This is consistent with the expectation of taxpayers. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **page 9**]
(9) What is a pension	**(9) What is a pension** A pension is income under s. CF 1(1). A pension is defined in s. CF 1(2) as follows: **Pension—** (a) Includes a gratuitous payment made to a person in return for services that the person, or their parent, child, spouse, civil union partner or de facto partner, former spouse, civil union partner or de facto partner, or dependant, provided to the payer when the payment would not have been made if the services had not been provided; and (b) Does not include a payment made to the person because of, and within 1 year after, the death of that parent, child, spouse, civil union partner or de facto partner, former spouse, civil union partner or de facto partner, or dependant. Certain New Zealand pensions are exempt under s. CW 28. Certain New Zealand annuities are exempt under [**s. CF 1**]
(10) What is an annuity	**(10) What is an annuity** An annuity is not defined in the Income Tax Act 2007. Certain New Zealand annuities are exempt: Annuities under New Zealand life insurance policies are exempt under s. CW 4; and Annuities from Crown bank accounts under s. CW 30. [**s. CW 4 & CW 30**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION I: DEFINITIONS (continued)

(11) Rights first acquired when non-resident	**(11) Rights first acquired when non-resident** Officials are of the view that the receipts-based approach contained in the bill should be available only where the rights in the foreign superannuation scheme were first acquired when the person was a non-resident. Where the person first acquired the rights in the foreign superannuation scheme while they were New Zealand resident, the FIF rules would generally apply. Under current law, foreign superannuation schemes are taxed either under the FIF rules, or taxed upon receipt (or transfer) under the company, trust, or other tax rules. Broadly speaking, rights acquired while a person was resident in New Zealand are subject to the FIF rules. The bill as introduced does not restrict the receipts-based approach to situations where the person was non-resident when they acquired the rights in the scheme, although persons who were New Zealand resident at the time of acquisition would not be eligible for the four-year exemption period (this means that they would instead apply the schedule or formula method based on the date that they acquired the rights in the scheme). However, officials consider that the receipts-based approach is not appropriate for taxpayers who first acquire rights in a foreign superannuation scheme while they are already New Zealand resident. Under existing law, this is reflected in the fact that the FIF rules generally apply where the rights in the foreign superannuation scheme were acquired while resident in New Zealand. The policy intention of the changes contained in the bill – in particular, moving to a receipts-based approach – is to make it easier for people who have migrated or returned from overseas with foreign superannuation to comply with their New Zealand tax obligations. While the receipts-based approach in the bill broadly approximates the FIF treatment in terms of the amount of tax actually payable, an important difference is that under the receipts-based approach, if a person leaves New Zealand before receiving the lump sum they will not be subject to any tax. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **page 6**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION I: DEFINITIONS (continued)

(11) Rights first acquired when non-resident (continued)	**(11) Rights first acquired when non-resident (continued)** Officials consider that allowing taxpayers who acquire rights in a foreign superannuation scheme while they are New Zealand resident to use the receipts-based approach could undermine the existing rules that generally apply for portfolio investments. For example, a New Zealand resident intends to retire overseas and wants to save for their retirement through a managed fund. If they choose to save through a New Zealand-based managed fund, they will be subject to New Zealand tax on their investment gains as they are earned (paid by the managed fund). If they choose to save through a foreign managed fund, they will be subject to New Zealand tax under the FIF rules on the gains as they are earned. If the receipts-based approach is available to them, it is possible that a taxpayer who intends to retire overseas may be able to invest into a foreign fund that is set up to provide retirement benefits, and choose to withdraw that lump sum when they move overseas. This would mean that they would not pay any tax on the gains they earned in that fund while they were New Zealand resident. Officials consider that this is not consistent with the underlying policy intention of the rules. Complexity can arise where rights in an employment-related scheme are acquired partly while non-resident and partly while resident. This could occur, for example, if the employer or employee continues to contribute to the scheme or where rights are vested while the person is a New Zealand resident. Under the existing rules which determine whether the FIF rules or other receipts-based rules apply, in many cases, such as where rights in an employment-related scheme were acquired partly while non-resident and partly while resident, the rules must be apportioned. That is, the FIF rules apply to those rights that were acquired while New Zealand resident and other tax rules would apply to the remainder of the rights. Officials do not favour such an apportionment approach, as it is highly complex and compliance-heavy. Rather, officials consider that the receipts-based approach should be available only where the person <u>first acquired the rights</u> while they were non-resident. A non-resident means someone who was not New Zealand resident under YD 1 of the Income Tax Act 2007. Where the person first acquired the rights in the foreign superannuation scheme while they were New Zealand resident, the FIF rules would generally apply. As noted above, in general, this recommendation would mean that there is no change from the position under existing law for those taxpayers with a foreign superannuation scheme that they have acquired while New Zealand resident, because the FIF rules generally apply where the rights in the foreign superannuation scheme were acquired while the person was resident. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **pages 6-7**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION II: INITIAL PERIOD OF RESIDENCY EXEMPTION

<table>
<tr>
<td>(1) Initial period of residency exemption</td>
<td>(1) Initial period of residency exemption

(a) A foreign superannuation withdrawal derived by a resident is subject to s. CW 28B, if the person:

(i) Is a resident under s. YD 1; and

(ii) Derives the foreign superannuation withdrawal in the exemption period referred to in s. CF 3(4) – see page 16 below.

[s. CF 3(2)(b) in cl. 8 of the Reported Foreign Superannuation Tax Bill]

(b) Under s. CW 28B, a foreign superannuation withdrawal is exempt income of a person if the person:

(i) Meets the requirements of s. CF 3(2)(b) – see above -; and

(ii) Derives the foreign superannuation withdrawal in the exemption period referred to in s. CF 3(4) for the person - see below.

[s. CW 28B in cl. 18 of the Reported Foreign Superannuation Tax Bill]</td>
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WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION II: INITIAL PERIOD OF RESIDENCY EXEMPTION (continued)

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<td>(2) Officials' Report on initial period of residency exemption</td>
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The specific exemptions relating to transitional residents have been removed.
Transitional residents will enjoy the same exemption period as other residents, from the time they are resident under s. YD 1 (i.e. from the commencement of transitional residence). This is explained below.
Issue: Parity between transitional residents and other residents
The current law provides for a four-year exemption for new migrants who meet the criteria for being a transitional resident. However, migrants who have been away from New Zealand for less than 10 years are not eligible to be a transitional resident. In addition to this, migrants who receive Working for Families tax credits during their transitional residence period will generally cease to be transitional residents.
A design feature of the new rules is to extend the four-year exemption to all taxpayers with interests in foreign superannuation schemes that were acquired while they were overseas. This will simplify the rules and ensure that everyone will receive an exemption period regardless of whether they are in receipt of Working for Families tax credits or were non-resident for less than 10 years.
The four-year exemption period that is proposed for residents who do not meet the transitional migrant criteria is intended to broadly match the rules for transitional residents.
However, the current drafting may lead to differences in the timing of the exemption period.
In particular, one submitter states that when a transitional resident receives Working for Families tax credits, they then cease to be a transitional resident. This submitter states that the exemption period would then be cut short for such a taxpayer. There is no such restriction for non-transitional residents who receive Working for Families tax credits (Charter Square Services).
This is not the policy intention. Rather, when a transitional resident ceases to be transitional resident part-way during their transitional residence period, their exemption period should still continue for the full 48 months. This is discussed in further detail in "Issue: Ceasing to be a transitional resident and the impact on the exemption period".
Officials consider that the exemption period available to non-transitional residents should be aligned with the exemption period that applies to transitional residents.
As such, it is recommended that the provision in the transitional residents rules that may result in a transitional residence period of slightly longer than 48 months should also be available to non-transitional residents in relation to their exemption period.
[Officials' Report on Submissions to the Finance and Expenditure Committee, pages 44-45]
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WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION II: INITIAL PERIOD OF RESIDENCY EXEMPTION (continued)

(2) Officials' Report on initial period of residency exemption (continued)	**Issue: Ceasing to be a transitional resident and the impact on the exemption period** Proposed section CF 3(3)(a) previously referred to someone who is a transitional resident under HR 8(2) disregarding any choice under HR 8(4). HR 8(2) provides the conditions under which a person may qualify as a transitional resident. HR 8(4) provides that a person is no longer a transitional resident either by choice or if they receive Working for Families tax credits. One submitter stated that if an election to not be treated as a transitional resident is made under HR 8(4), then CF 3(3)(a) would not work in its current form. This is because the person is not a transitional resident*(New Zealand Institute of Chartered Accountants).* The policy intention behind CF 3(3)(a) is that a person who otherwise qualifies as a transitional resident but is not a transitional resident because they receive working for families tax credits, should still receive a four-year exemption period. This is why proposed CF 3(3)(a) states "… disregarding any choice under section HR 8(4)" Officials acknowledge that the current drafting may not achieve this result. The submitter's suggestion may solve this issue. Another submitter stated that a person ceases to be a transitional resident when they apply for a benefit from Work and Income New Zealand. They are concerned that if this occurs partway through the four-year period, they would not get the benefit of the full exemption period *(Charter Square Services).* Officials note that HR 8(4) and subsequently HR 8(5) do not prevent an individual from being a transitional resident if they are in receipt of a benefit. As such, it is not the benefit from Work and Income New Zealand that disqualifies the person from being a transitional resident. Officials note, however, that Work and Income New Zealand may include certain Working for Families tax credits in the benefit that is provided to the individual. In this scenario, it is intended that the taxpayer would still receive the full four-year exemption period. As stated above, this is why proposed CF 3(3)(a) states "… disregarding any choice under section HR 8(4)". The alternate wording provided by the New Zealand Institute of Chartered Accountants may also resolve the concern raised by Charter Square Services. Officials agree that the proposed wording of CF 3(3)(a) may require amendment to reflect that a person who qualifies as a transitional resident but elects not to be one, should still receive a full exemption period. Officials note that the HR 8(3) provides for the calculation of the period of transitional residence. The timing of the exemption period for taxpayers who qualify as transitional residents (regardless of any choice under HR 8(4)) is the period provided by the transitional residence rules Officials agree that proposed CF 3(4)(a) which provides this should refer to HR 8(3). [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **pages 55-56**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION II: INITIAL PERIOD OF RESIDENCY EXEMPTION (continued)

(3) Who is a transitional resident	1. Under **s. CW 27**, income derived by a person who is a **transitional resident** is exempt income if the income is a **foreign-sourced amount** that is none of the following: (a) Employment income of a type described in **s. CE 1** in connection with employment or service performed while the person is a transitional resident; or (b) Income from the supply of services. 2. Under **s. HR 8(2)** a person is a **transitional resident** if: (a) They are resident in New Zealand through acquiring a permanent place of abode under s. YD 1(2) or through the 183-day rule in s. YD 1(3); and (b) For a continuous period of at least 10 years immediately before they meet the residence requirements in s. YD 1(2) or YD 1(3), they: (i) Did not meet those requirements; or (ii) Were not resident in New Zealand; and (c) They were not a transitional resident before the non-residence period; and (d) They have not ceased to be a transitional resident after the end of the non-residence period. 3. A **foreign-sourced amount** is income that is not treated as having a source in New Zealand under sections YD 4 and YZ 1. 4. Income described in **s. CE 1** is: salary or wages, an allowance, bonus, extra pay, or gratuity, expenditure on account of an employee, a benefit received under a share purchase agreement, directors' fees, compensation for loss of employment or service, any other benefit in money, and the market value of accommodation or an accommodation allowance. [**s. CW 27, CE 1 & s. YA 1** definition of foreign-sourced amount]
(4) Period of transitional resident exemption	Under **s. HR 8(3)** a natural person is a transitional resident for a period: (a) Beginning from the 1st day of residence under s. HR 8(2)(a) – see above -; and (b) Ending on the day that is the earlier of: (i) The day before the person stops being a New Zealand resident; and (ii) The last day of the 48th month after the month in which they meet the residence requirements of s. YD 1(2) or YD 1(3). [**s. HR 8(3)**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION II: INITIAL PERIOD OF RESIDENCY EXEMPTION (continued)

(5) Eligibility for exemption period	A person has an exemption period under s, CF 3(4) for an interest in the scheme if the person: (a) Does not have, before acquiring the interest, an exemption period for an interest in a foreign superannuation scheme; and (b) Acquires the interest as a non-resident – refer to the explanation in the *Officials' Report* on **pages 10-11 above**; and (c) Owns the interest as a non-resident until a date (the **exemption commencement**), whether before or after the commencement of this Act (i.e. the commencement of the Foreign Superannuation Tax Act when enacted), when the person becomes a New Zealand resident. **Note:** 1. The **exemption commencement** will be when the person becomes a New Zealand resident. 2. The exemption period will be available regardless of whether or not the person is a transitional resident; however 3. The exemption period will not be available for interests that were acquired while the person was resident in New Zealand. [**s. CF 3(3)** in **cl. 8** of the Reported Foreign Superannuation Tax Bill]
(6) Period of initial residency exemption	Under **s. CF 3(4)**, the period of the initial residency exemption (the **exemption period**) in which a foreign superannuation withdrawal may be exempt income of the person under **s. CW 28B** is the period from the exemption commencement to the earlier of: (a) The end of the period of 48 months beginning after the month in which the person meets the requirements of s. YD 1(2) or (3) ignoring the rule in s. YD 1(4); or (b) The date on which the person becomes a non-resident again. [**s. CF 3(4)** in **cl. 8** of the Reported Foreign Superannuation Tax Bill]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION II: INITIAL PERIOD OF RESIDENCY EXEMPTION (continued)

(7) Eligibility for exemption period	**Issue: Pre-1 April 2014 migrants should receive an exemption period** Submitters were concerned that under the previous drafting, it was not clear that residents who arrived before 1 April 2014 would be eligible for an exemption period. They request clarification that once the new provisions apply, they would also be capable of applying to all persons who held foreign superannuation interests as at 1 April 2014. **Comment** Officials considered that the existing drafting was sufficiently clear that taxpayers who became New Zealand resident before 1 April 2014 would have the exemption period available to them. The proposed legislation applies to foreign superannuation withdrawals derived on or after 1 April 2014. It then works backward to calculate a taxpayer's assessable period and thus, their exemption period. This means that for all withdrawals made on or after 1 April 2014, the taxpayer would have an exemption period available to them if they meet the other conditions. **Note: the exemption now refers to "before or after the commencement of the new Foreign Superannuation Act (when enacted).** [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **page 44**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION II: INITIAL PERIOD OF RESIDENCY EXEMPTION (continued)

<table>
<tr>
<td>(8) Definition of “exemption commencement” and “exemption period”</td>
<td>Issue: Definition of “exemption commencement” and “exemption period”

The timing of the “exemption commencement” should be made clearer.

The definitions of “exemption commencement” and “exemption period” should be made clearer as they are difficult to follow as presently drafted. The submitters acknowledge that the intention of the legislation is to have the exemption period begin when the person became resident (either under domestic legislation or for the purposes of a double tax agreement).

The submitters are of the view that the current drafting does not give a specific start date for the exemption period. It should be defined as the date upon which the relevant individual becomes a New Zealand resident who is not a non-resident for the purposes of a double tax agreement.

One submitter has provided possible alternative drafting that could clarify when the exemption period would start (New Zealand Law Society).

Comment

Officials agree that this provision may be able to be made clearer.

Officials also note that the provision as it relates to the start date of exemption period for non-transitional residents could also be improved.

Currently, the bill provides that the start of the exemption period for a person who is not a transitional resident is either 1. when the person becomes a New Zealand resident, or 2. when they “tiebreak” to New Zealand under a DTA (if they are a non-resident under a double tax agreement).

The second part of the provision was included to deal with the situation of a person who is resident under New Zealand’s domestic law, but who is treated as a non-resident of New Zealand under a double tax agreement. For example, they might own a house in New Zealand, then live and work in the UK for 7 years and acquire an interest in a UK scheme (while retaining ownership of their house in New Zealand), and then move back to New Zealand. Without the second part of the provision, it was unclear on which date their exemption period would start.

Officials now consider the concern originally identified would generally no longer arise, because Inland Revenue considers that a person will not retain their New Zealand residence under domestic law solely because they own a house in New Zealand.

As a result, the second part of the provision is no longer relevant.

This would also have the advantage of being more consistent with the exemption period start date for transitional residents.

[Officials’ Report on Submissions to the Finance and Expenditure Committee, pages 57-58]</td>
</tr>
</table>

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION III: EXEMPTIONS FOR WITHDRAWALS FROM AUSTRALIAN SCHEMES

(1) Australian superannuation withdrawals not included in income	**Australian superannuation scheme withdrawal exemption** Section CF 3(1) does not include withdrawals from Australian superannuation schemes. It stated on page 6 of the *Commentary* to the Bill that: "Withdrawals from Australian schemes and transfers from Australian schemes to New Zealand schemes, are generally not taxed under the Australia-New Zealand double tax agreement or under the forthcoming trans-Tasman superannuation portability agreement (which will take effect from 1 July 2013). This treatment will continue under the new rules." [**s. CF 3(1)** in **cl. 8** of the Reported Foreign Superannuation Tax Bill]
(2) Exemption under Australia/NZ DTA	**Australia/NZ DTA lump sum from a retirement benefit scheme** Paragraph 2 of Article 18 of the double tax agreement between New Zealand and Australia deals with Pensions and states: "Lump sums arising in a Contracting State and paid to a resident of the other Contracting State under a retirement benefit scheme, or in consequence of retirement, invalidity, disability or death, or by way of compensation for injuries, shall be taxable only in the first-mentioned State." Therefore, a lump sum withdrawal by a New Zealand resident from an Australian scheme will not be taxable in New Zealand under this Article. [**Article 18** of the NZ/Australia double tax agreement]
(3) Exemption for transfers between Australian superannuation schemes	**Exemption for withdrawal in an Australian super scheme invested in another Australia Super scheme** An amount of income derived in an income year by a natural person as a withdrawal from a foreign superannuation scheme is exempt income if: (a) In the income year, the person invests the amount in another foreign superannuation scheme; and (b) Each foreign superannuation scheme is constituted in Australia and is: (i) An Australian approved deposit fund; or (ii) An Australian exempt public sector superannuation scheme; or (iii) An Australian regulated superannuation fund; or (iv) An Australian retirement savings account. [**s. CW 29**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION III: EXEMPTIONS FOR WITHDRAWALS FROM AUSTRALIAN SCHEMES (continued)

<table>
<tr><td>(4) Exemption for transfer from an Australian super fund to a KiwiSaver scheme</td><td>Exemption for amounts from Australian complying super schemes reinvested in KiwiSaver schemes

An amount of income derived in an income year by a natural person from an Australian complying superannuation scheme is exempt income if, in the income year, it is contributed to a KiwiSaver scheme.

[s. CW 29B inserted, on 1 July 2013, by s. 13 of the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act 2010]

The retirement savings portability arrangements took effect from 1 July 2013.

Retirement savings transferred from Australia may only be transferred into KiwiSaver funds in New Zealand. This means Australian savings cannot be transferred into any other private retirement funds (including complying funds).

[Inland Revenue Fact sheet - Trans-Tasman portability of retirement savings - How the new rules work]</td></tr>
<tr><td>(5) Officials' Report on Australian DTA pension override</td><td>Issue: DTA and Australian pension override

A submission was made that the legislation should expressly provide that the provisions of CF 3 are subject to applicable double tax agreements (DTAs) and the exemptions in CW29 and CW 29B.

Officials replied that the existing legislation is sufficiently clear that the applicable DTAs and the exemptions in CW29 and CW 29B apply to the proposed regime in CF 3.

The proposed legislation has been drafted so that CF 3(1) identifies which particular events are considered to be taxable.

Officials do not consider it necessary that the proposed legislation should expressly provide that proposed CF 3 is subject to the exemptions in CW 29 and CW 29B.

Subpart CW deals with exempt income. In particular, CW 29 and CW 29B exempt from income tax transfers between certain Australian superannuation schemes and transfers from Australian superannuation schemes into KiwiSaver. It follows that CF 3 would be subject to the provisions of CW.

Double tax agreements have an overriding effect under BH 1 of the Income Tax Act 2007.

However, officials agreed to consider these points for the purposes of any future guidance to be released.

[Officials' Report on Submissions to the Finance and Expenditure Committee, pages 52-53]</td></tr>
</table>

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION IV: EXEMPTION FOR TRANSFERS BETWEEN TWO FOREIGN SCHEMES

(1) Transfers between two foreign schemes not included in income	**Exemption (rollover relief) for transfers between two foreign (non-Australian) superannuation schemes** Section CF 3(1) does not include transfers between two foreign (non-Australian) superannuation schemes. It stated on page 6 of the *Commentary* to the Bill that: "A transfer between two foreign superannuation schemes typically gives rise to a taxable event under current law, being a disposal of rights in the first scheme and an acquisition of rights in the new scheme. Proposed new section CF 3(1) provides that a transfer from one foreign superannuation scheme to another foreign superannuation scheme will not be taxable. This may occur, for example, when a person disposes of their interest to purchase an annuity with a different provider, or if a person transfers from one foreign scheme to another foreign superannuation scheme in order to obtain better returns. Instead, the person will be taxed on the eventual withdrawal or payment (or transfer to an Australian or New Zealand scheme) based on the length of their New Zealand residence from when they initially acquired the interest (in the first scheme). As transfers from Australian schemes are typically exempt, as noted above, transfers from a foreign scheme to an Australian scheme will be taxable as if the transfer was made to a New Zealand scheme. **Example**: Sarah, a New Zealand resident, has an Individual Retirement Account in the United States. She wants to purchase an annuity with a different scheme provider. Under normal circumstances this would be taxable as it is a disposal and reacquisition. However, under the proposed new rules Sarah will get rollover relief so does not need to pay tax on the amount she withdraws to purchase the annuity. Any pension received while resident will be taxable under the current law." [**s. CF 3(1)** as proposed in **cl. 8** of the Reported Foreign Superannuation Tax Bill]
(2) Transfer to purchase an annuity not included in income	**Issue: Explicit legislative clarification that transfers to purchase an annuity are not income** A submission was made that the legislation should also expressly provide that withdrawals/transfers/commutations to purchase an annuity from a foreign provider are not income. Officials replied that under the proposed rules, the policy intention is that transfers from one foreign scheme to another foreign scheme will not be taxable. (This does not apply to transfers to Australian schemes, because subsequent withdrawals from Australian schemes are generally not taxable under New Zealand law). The policy intention is that this would also apply where the transfer is made in order to purchase an annuity from another foreign superannuation scheme. Officials consider that the drafting is sufficiently clear on this point. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **page53**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION IV: EXEMPTION FOR TRANSFERS BETWEEN TWO FOREIGN SCHEMES (continued)

(3) Ceasing to be a NZ resident will not trigger a taxing event	**Issue: Explicit legislative clarification of events that are not taxable** Submissions were made that: The legislation should expressly provide that transfers between foreign superannuation schemes outside Australia are not income; and The legislation should clarify that a person who ceases to be a resident of New Zealand does not automatically trigger a taxing event. **Officials' response** The proposed legislation has been drafted so that CF 3(1) identifies which particular events are considered to be taxable. It is implicit that the cessation of New Zealand residence is not a taxable event and no other part of the Income Tax Act 2007 would impose such an "exit tax". It is also implicit that transfers between non-Australian foreign superannuation schemes, or where the funds are used to purchase an annuity would not be taxable. Officials acknowledge that these submitters wish to improve the clarity of the proposed legislation, but consider that adding a specific provision to proposed CF 3 detailing events that are specifically *not* taxable would add unnecessary complexity to the proposed legislation. It could also create confusion as certain events may not appear in legislation as either taxable or non-taxable. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **page 54**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION V: EXEMPTION FOR TRANSFERS UPON DEATH OR MARRIAGE DISSOLUTION

(1) Exemption for transfers upon death or marriage dissolution	**Exemption for transfers upon death or marriage dissolution** As note on **page 8** above, Section CF 3 provides for <u>rollover relief</u> for withdrawals and reinvestments upon death or relationship cessation: a foreign superannuation withdrawal is not income of the person if the benefit is an interest of the person in the scheme withdrawn: (a) On the death of the person or under a relationship agreement arising from an event (the **relationship cessation**) that occurs when: (i) For a marriage or civil union of the person, the marriage or civil union is dissolved or the person and the person's spouse or civil union partner separate or begin to live apart (whether or not they continue to live in the same residence); (ii) For a de facto relationship of the person, the de facto relationship ends; and (b) For immediate reinvestment as an interest, in a foreign superannuation scheme outside Australia, of another person who is: (i) A spouse, civil union partner, or de facto partner of the person immediately before the death or the relationship cessation; and (ii) A New Zealand resident. [**s. CF 3(1B)** in **cl. 8** of the Reported Foreign Superannuation Tax Bill]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION V: EXEMPTION FOR TRANSFERS UPON DEATH OR MARRIAGE DISSOLUTION cont.

<table>
<tr>
<td>(2) Exemption for transfers following death and divorce restricted to surviving spouses</td>
<td>
Issue: Transfers following death and divorce
The rollover relief upon death has been restricted to surviving spouses and rollover relief for relationship termination has been included.
Submitters requested clarification of the treatment of transfers that occur following a relationship split, or upon death of the transferor.
Officials replied: The bill as originally drafted proposed that the transfer of a foreign superannuation interest to another person is a taxable event. This is the same position as existing law and would include situations where a transfer occurs as part of a relationship property agreement, for example upon divorce. The tax liability would be based on the transferor's years of residence.
Similarly, the bill also proposed that upon death, the transfer of a foreign superannuation interest would generally constitute a taxable event. The bill proposed an exception to this where, upon death, the foreign superannuation interest is transferred from one New Zealand resident to another New Zealand resident. In this case, rollover relief would be provided so that the interest is taxable when the transferee ultimately makes a withdrawal: their assessable period would be deemed to have begun when the deceased's assessable period began.
Several submitters noted that other provisions in the Income Tax Act ensure that a transfer which occurs as part of a relationship agreement is, in certain circumstances, not a taxable event. Instead, the transferee takes on the cost base of the transferor. Other provisions in the Act provide rollover relief only upon death in the situation where the interest is transferred to the surviving spouse, civil union partner, or de facto partner.
Officials now consider that a better approach would be to broadly align the treatment of transfers upon death and relationship split with the treatment in other parts of the Act, with some minor modifications to ensure that the integrity of the proposed new rules is maintained.
A transfer of a foreign superannuation interest from one person to another would generally constitute a taxable event. However, where the transfer occurs as a result of divorce, the end of a civil union, or the end of a de facto relationship and the transferee is a New Zealand resident, rollover relief would be provided. When a lump-sum withdrawal is ultimately made by the transferee, they would be taxed as though their assessable period had begun when their ex-partner's assessable period began.
Officials also propose that where the transfer occurs upon the death of the transferor, rollover relief would be provided only where the transferee is a New Zealand resident and is the surviving spouse, civil union partner, or de factor partner. The assessable period would similarly be calculated from the beginning of the deceased's assessable period. Transfers to any other person should be taxed when the transferor dies.
[Officials' Report on Submissions to the Finance and Expenditure Committee, p. 14]
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WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION V: EXEMPTION FOR TRANSFERS UPON DEATH OR MARRIAGE DISSOLUTION cont.

(3) Transfer upon death to a non-resident will be taxable	**Issue: Drafting clarification – transfer to a non-resident upon death** A submission was made that under the current drafting, the transfer of an interest from a New Zealand resident to a non-resident upon death would not be taxable. There should be confirmation that there would be permanent rollover relief on death where the beneficial interest transfers to a non-resident. **Officials' response** As noted in the section above, the original policy intention was that when an interest in a foreign superannuation scheme is transferred upon death from a New Zealand resident to a non-resident, the transfer would be taxable according to the deceased's assessable period. The current drafting does not adequately reflect this policy intention and the provision will need to be adjusted. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **p. 15**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION VI: EXEMPTION FOR AMOUNTS EXCEEDING ASSESSABLE WITHDRAWAL AMOUNT

<table>
<tr>
<td>(1) Exemption for an amount exceeding the assessable withdrawal amount</td>
<td>Exemption for amounts in excess of the assessable withdrawal amount

A foreign superannuation withdrawal derived by a person in the assessable period for the person referred to in s. CF 3(5B) is exempt income of the person under s. CW 28C, to the extent to which the foreign superannuation withdrawal exceeds:

(a) The amount calculated, using the formula in s. CF 3(7), as the assessable withdrawal amount, if the person uses the <u>schedule method</u>; or

(b) The amount calculated, using the formula in s. CF 3(13), as the assessable withdrawal amount, if the person uses the <u>formula method</u>.

[s. CF 3(2)(c) in cl. 8 and s. CW 28C in cl. 18 of the Reported Foreign Superannuation Tax Bill]

Note:

1. What is meant by the assessable period is covered in pages 27 - 29 below.

2. What is meant by the formula method is covered in pages 30 - 36 below.

3. What is meant by the schedule method is covered in pages 37 - 41 below.</td>
</tr>
</table>

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION VII: ASSESSABLE PERIOD

(1) Significance of assessable period	The **assessable period**, for a person and the interest of that person in a scheme, determines the part (the **assessable withdrawal amount**) of a foreign superannuation withdrawal that is treated as not being exempt income of the person. [**s. CF 3(5)** as proposed in **cl. 8** of the Reported Foreign Superannuation Tax Bill]
(2) Defining the assessable period	The **assessable period** for the person and a foreign superannuation withdrawal arising from an interest in the foreign superannuation scheme: (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. (b) Ends on the date when the person derives the foreign superannuation withdrawal (the **distribution time**). (c) Does not include a period in which the person is a non-resident. [**S. CF 3(5B)** as proposed in **cl. 8** of the Reported Foreign Superannuation Tax Bill]
(3) Aggregating multiple assessable periods	**Multiple assessable periods** Officials are of the view that the legislation needed to be amended so that multiple periods of residence are aggregated when calculating a taxpayer's assessable period, if a taxpayer has more than one period of residence for a given foreign superannuation interest: (a) This concerns someone who becomes resident with a foreign superannuation interest, ceases to be a resident, then becomes resident again. (b) The policy intention is at that all periods of residence during which the interest has been held will be aggregated for the purposes of calculating the assessable period. (c) Officials consider that the current drafting does not achieve this policy intention. If an individual held an interest in a foreign superannuation scheme during two different periods of residence, the current drafting would only calculate the assessable period in reference to the second period of residence. The current wording of the legislation would effectively ignore the first period of residence. (d) To ensure that the proposed legislation works as intended, a legislative amendment is required. (e) As the policy intention is that there would only be one assessable period for each foreign superannuation interest belonging to a person, further changes may be required to proposed CF 3(10) and CF 3(15)(d) which refer to "an assessable period". [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **p. 54**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION VII: ASSESSABLE PERIOD (continued)

<table>
<tr><td>(4) Calculating the assessable period when an interest in a foreign superannuation scheme is acquired</td><td>Calculating the assessable period when an interest in a foreign superannuation scheme is acquired

In calculating under s. CF 3(5B) the assessable period for a person who acquires an interest in a foreign superannuation scheme:

(a) If none of paragraphs (b) to (d) apply, the person is treated as acquiring the interest when the first contribution is made to the superannuation scheme, in relation to the rights, by or for the person; or

(b) If the person is converting existing rights of the person in another superannuation scheme (the former scheme) to corresponding rights of the person in the superannuation scheme, the person is treated as acquiring the interest when the person acquired the rights in the former scheme; or

(c) If the person is acquiring existing rights in the superannuation scheme from another person, other than by a transaction to which paragraph (d) applies, the person is treated as acquiring the interest when the person acquires the rights; or

(d) If the person is acquiring existing rights in the superannuation scheme of a New Zealand resident (the former owner) as a surviving spouse, civil union partner, or de facto partner of the deceased former owner, or under a relationship agreement arising from the end of the marriage, civil union, or de facto relationship, the person is treated as:

(i) Having owned the interest from the time the former owner acquired the interest; and

(ii) Having made all payments to the scheme that were made by or for the former owner; and

(iii) Having derived all distributions from the scheme that the former owner derived; and

(iv) Having been a New Zealand resident owning the interest during the assessable period of the former owner, at the time of the transfer, for the interest; and

(v) Continuing to own the interest from the time of the transfer.

[s. CF 3(18) as proposed in cl. 8 of the Reported Foreign Superannuation Tax Bill]</td></tr>
<tr><td>(5) Assessable period overrides other provisions in the Act</td><td>If the assessable period for a person and an interest begins before 1 April 2014, section CF 3 overrides any provision of the Income Tax Act 2007 that would otherwise quantify and allocate income of the person, from the part of the interest unaffected by withdrawals derived before 1 April 2014:

(a) For the period of ownership before 1 April 2014; and

(b) Not assessed for tax before 1 April 2014.

[s. CF 3(19) as proposed in cl. 8 of the Reported Foreign Superannuation Tax Bill]</td></tr>
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WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION VII: ASSESSABLE PERIOD (continued)

<table>
<tr>
<td>(6) Explanation in the Commentary to the Bill (before the Reported Back version)</td>
<td>
Explanation in the Commentary to the Bill

It is stated on page 9 of the Commentary that:

“If the person acquired the interest while they were non-resident, the assessable period will start when their exemption period ends.

If the person acquired the interest while they were resident, they are not eligible for an exemption period. Their assessable period will start when they acquire the interest.

The assessable period ends when a person becomes non-resident. …

As noted above, section CF 3(1) provides that transfers between two foreign schemes will generally not be taxed. Instead, the amount will be taxed under the schedule or formula method either when it is finally withdrawn or when it is transferred to a New Zealand or Australian superannuation scheme. The schedule and formula methods are based on the duration of residence since the interest in the first scheme was acquired, so the assessable period will begin on the date the interest in the first scheme was acquired.

When an interest in a foreign superannuation scheme is transferred to another person, the transfer will be taxable to the transferor based on their years of residence, if the transferor is a New Zealand resident. The recipient’s assessable period will begin when they first acquire the interest from the transferor, if they are a New Zealand resident. This will apply in situations such as a relationship split, where a relationship property agreement may transfer all or part of an interest in a foreign superannuation scheme from one party to the other.

For someone who loses residency and then becomes resident again, it is possible to have more than one assessable period. In this situation, the applicable assessable periods will be aggregated.

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. For example, a person migrates to New Zealand with an interest in a foreign superannuation scheme and they acquire an interest in another scheme while they are New Zealand-resident. The assessable period for the first interest will begin when their four-year exemption period ends and for the second interest it will begin when the second interest is acquired.

This will ensure that the new rules will still work as intended if an individual has interests in multiple schemes and transfers amounts at different points in time.

[s. CF 3(5) as proposed in cl. 8 of the Superannuation Tax Bill]
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WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION VIII: FORMULA METHOD

(1) Requirements to use the formula method	The **assessable withdrawal amount** for a foreign superannuation withdrawal derived by the person is calculated for the **formula method** under **s. CF 3(13)** if: (i) The scheme is a **foreign defined contribution scheme**; and (ii) The person has the information required for the application of the formula method; and (iii) The person derives no withdrawal, other than a pension or annuity, from the scheme before 1 April 2014; and (iv) The person has not used the schedule method for the interest in the scheme; and (v) For a person who acquires the interest in the scheme of a spouse, civil union partner, or de facto partner by a transfer referred to in **s. CF 3(18)(d)**, the other person did not use the schedule method for the interest in the scheme; and (vi) The person chooses to use the formula method for the interest in the scheme. [**s. CF 3(6)(b)** as proposed in **cl. 8** of the Reported Foreign Superannuation Tax Bill] **Foreign defined contribution scheme** means a foreign superannuation scheme that operates on the principle of allocating contributions to the scheme on a defined basis to individual members. [**s. YA 1** definition proposed in **cl. 103(10)** of the Reported Superannuation Tax Bill] It is stated on page 13 of the *Commentary* that: "The formula method is an alternative to the schedule method for people with a foreign defined contribution scheme if they have sufficient information. This method will tax actual investment gains derived while a person is a New Zealand resident (after the end of their exemption period). It was introduced following submissions on the issues paper. Proposed new sections CF 3(6)(b), CF 3(9), (10), (11), (12), (13), (14), (15) and (16), and section YA 1 "foreign defined contribution scheme" provide for the formula method. To use this approach, a person is required to obtain the market value of the foreign superannuation interest at the time the exemption period ends, as well as information about contributions made and other necessary information. Requirements relating to the quality of information will apply.

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION VIII: FORMULA METHOD (continued)

(2) The formula method calculation	The **assessable withdrawal amount** under the formula method is the amount calculated using the formula: $$\textbf{gain} \times (\textbf{grow rate} - 1) \times \textbf{tax rate} \times (\textbf{assessable years} - 1) + \textbf{gain}$$ [**s. CF 3(13)** as proposed in **cl. 8** of the Reported Foreign Superannuation Tax Bill]
(3) Formula items: Gain	<u>**Gain:**</u> Is the amount of the **distributed gain** referred to in **s. CF 3(9)** for the foreign superannuation withdrawal. Under **s. CF 3(9)**, the **distributed gain** is the part of a foreign superannuation withdrawal that is treated as consisting of gains made by the scheme during the assessable period, and is calculated using the formula: $$(\textbf{super withdrawal} \times \textbf{calculated gains fraction}) - \textbf{other gains}$$ <u>Super withdrawal:</u> Is the amount of the foreign superannuation withdrawal <u>Other gains:</u> Is the total amount of distributed gains referred to in **s. CF 3(9)** for foreign superannuation withdrawals in the assessable period before the distribution time. <u>Calculated gains fraction:</u> Is the greater of zero and the amount calculated as: $$\frac{\textbf{predistribution} + \textbf{withdrawals} - \textbf{value} - \textbf{contributions}}{\textbf{predistribution}}$$ <u>Predistribution:</u> Is the value of the interest in the scheme immediately before the distribution time. <u>Withdrawals:</u> Is the total amount of withdrawals from the interest in the scheme before the distribution time. <u>Value:</u> Is the value of the interest in the scheme at the beginning of the assessable period. <u>Contributions:</u> Is the amount of **recognised contributions** under **s. CF 3(16)** made to the interest in the scheme in the assessable period before the distribution time. [**s. CF 3(9), (10), (11) & (12)** as proposed in **cl. 8** of the Reported Foreign Superannuation Tax Bill]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION VIII: FORMULA METHOD (continued)

(4) Formula items: Tax Rate	<u>**Tax rate:**</u> Is the tax rate referred to in Schedule 6 ("Prescribed rates: PIE investments and retirement scheme contributions"), Part A, Table 1, Row 1. This is currently 28%. [**s. CF 3(15)(b)** as proposed in **cl. 8** of the Reported Superannuation Tax Bill]
(5) Formula items: Assessable Years	<u>Assessable years:</u> Is the greater of: (a) 1; and (b) The number of tax years beginning in the assessable period and before the distribution time. [**s. CF 3(15)(c)** as proposed in **cl. 8** of the Reported Superannuation Tax Bill]
(6) Formula items: Grow Rate	Grow rate is: $$\left(\frac{\textbf{accrued total}}{\textbf{value}}\right)^{\frac{\textbf{1}}{\textbf{assessable years}}}$$ <u>Value:</u> Is the value of the interest in the scheme at the beginning of the assessable period. <u>Accrued total:</u> Is the value of the interest in the scheme immediately before the distribution time, increased by the value of foreign superannuation withdrawals from the interest in the scheme in the assessable period before the distribution time, and reduced by the value of recognised contributions under **s. CF 3(16)** made to the scheme in the assessable period before the distribution time. [**s. CF 3(14) & (15)** as proposed in **cl. 8** of the Reported Superannuation Tax Bill]
(7) Formula items: Contributions	The value of a payment to the scheme is taken into account in the formulas in **s. CF 3(7), (11), and (14)** as a contribution (a **recognised contribution**) if the payment: (a) Is made when the person is a New Zealand resident who is treated as a New Zealand resident under all applicable double tax agreements; and (b) Is made by the person, by the person's employer, or for the benefit of the person; and (c) Is required by the rules of the scheme; and (d) Is subject to employer superannuation contribution tax or fringe benefit tax if made by the person's employer. [**s. CF 3(16)** as proposed in **cl. 8** of the Reported Foreign Superannuation Tax Bill]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION VIII: FORMULA METHOD (continued)

(8) *Commentary* on the Bill	It is stated on pages 13 to 14 of the *Commentary* that: "The formula in section CF 3(9) is: *Distributed gain = (super withdrawal x calculated gains fraction) – other gains ~~out~~* "Super withdrawal" is the amount of the foreign superannuation withdrawal and "other gains ~~out~~" (now referred to as "other gains" in the Reported Back Bill) is the total amount of distributed gains previously calculated under this formula for previous withdrawals in the assessable period. The "calculated gains fraction" is given by the formula in section CF 3(11): $$\frac{\textit{Predistribution + withdrawals - value - contributions}}{\textit{predistribution}}$$ "Predistribution" is the value of the person's interest in the scheme immediately before they made their foreign superannuation withdrawal. "Withdrawals" is the total amount of previous foreign superannuation withdrawals made in the assessable period. "Value" is the opening value of the person's interest in the scheme at the beginning of their assessable period. "Contributions" is the total amount of recognised contributions under section CF 3(16), as described above. Interest will be charged on the amount of taxable New Zealand gains to account for the deferral benefit that the person obtains by not paying tax on accrual (similar to the use-of-money interest rules). The interest will be payable at the same rate as the average growth of the person's superannuation interest over the number of years of residence. The interest component is contained in section CF 3(13) to (15). Taxpayers will not be able to switch from the schedule method to the formula method.
(9) *Commentary* on the Bill: Example on page 15	**Example on page 15 of the *Commentary*** Thomas migrates to New Zealand with a foreign superannuation scheme worth NZ$100,000. Ten years after Thomas' assessable period begins, his scheme is worth $180,000 and he withdraws a lump-sum amount of $60,000. Five years after this, his scheme is worth $150,000 and he withdraws the full amount. Thomas has made no contributions to the scheme while he has been New Zealand-resident.

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION VIII: FORMULA METHOD (continued)

<table>
<tr>
<td>(9) Commentary on the Bill: Example on page 15 (continued) – adjusted for changes in the Reported Back Bill</td>
<td>

Gain ~~*out*~~ (now simply “gain”) is the *distributed gain*, which under s. CF 3(9) is the part of a foreign superannuation withdrawal that is treated as consisting of gains made by the scheme during the assessable period, and is calculated as:

$$(\textbf{super withdrawal x calculated gains fraction}) \textbf{ - other gains}$$

Super withdrawal is the foreign superannuation withdrawal: Thomas’ first withdrawal 10 years after his assessable period begins is $60,000; Thomas’ second withdrawal 15 years after his assessable period begins is $150,000;

Calculated gains fraction is the greater of zero and the amount calculated as:

$$\frac{\textbf{predistribution + withdrawals - value - contributions}}{\textbf{predistribution}}$$

(a) *Predistribution* is the value of Thomas’ interest in the scheme immediately before each withdrawal: for Thomas’ first withdrawal, the predistribution is $180,000; for Thomas’ second withdrawal, the predistribution is $150,000.

(b) *Withdrawals* is the total previous withdrawals made in the assessable period: for Thomas’ first withdrawal, “withdrawals” is zero; for Thomas’ second withdrawal, “withdrawals” is $60,000.

(c) *Value* is the opening value of the person’s interest in the scheme at the beginning of the assessable period: for Thomas, this is $100,000, being the value of his interest when he migrated to New Zealand.

(d) *Contributions* for Thomas, this is zero.

<u>For Thomas’ first withdrawal, his “calculated gains fraction” is</u>:

$$\frac{\$180{,}000 + \$0 - \$100{,}000 - \$0}{\$180{,}000} = \frac{4}{9}$$

<u>For Thomas’ second withdrawal, his “calculated gains fraction” is</u>:

$$\frac{\$150{,}000 + \$60{,}000 - \$100{,}000 - \$0}{\$150{,}000} = \frac{11}{15}$$

Other gains ~~*out*~~ is distributed gains previously calculated under this formula for previous withdrawals in the assessable period: For Thomas’ first withdrawal, previously calculated “other gains ~~out~~” is zero. For Thomas’ second withdrawal, other gains ~~out~~ are $26,667, calculated as below.

(a) For Thomas’ first withdrawal, his “distributed gain” or *gain* ~~*out*~~ is:

$$\left(\$60{,}000 \text{ x } \frac{4}{9}\right) - \$0 = \$26{,}667$$

(b) For Thomas’ second withdrawal, his “distributed gain” or *gain* ~~*out*~~ is:

$$\left(\$150{,}000 \text{ x } \frac{11}{15}\right) - \$26{,}667 = \$83{,}333$$

</td>
</tr>
</table>

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION VIII: FORMULA METHOD (continued)

<table>
<tr>
<td>(9) Commentary on the Bill: Example on page 15(continued) – adjusted for changes in the Reported back Bill</td>
<td>
Interest will be charged, at the same rate as the average growth of the person's superannuation interest over the number of years of residence, on the amount of taxable New Zealand gains to account for the deferral benefit that the person obtains by not paying tax on accrual. The interest component is given by:
$$\textbf{gain x (grow rate - 1) x tax rate x (assessable years - 1)}$$
(a) Grow rate is:
$$\left(\frac{\textbf{accrued total}}{\textbf{value}}\right)^{\frac{1}{\textbf{assessable years}}}$$
(b) Accrued total Is the value of the interest in the scheme immediately before the distribution time, increased by the value of foreign superannuation withdrawals from the interest in the scheme in the assessable period before the distribution time, and reduced by the value of recognised contributions under s. CF 3(16) made to the scheme in the assessable period before the distribution time.
(c) Assessable years is the greater of 1 and the number of tax years beginning in an assessable period and before the distribution time.
(d) Tax rate is the tax rate referred to in Schedule 6, Part A, Table 1, Row 1. This is currently 28%.
Thomas' grow rates for the first and second withdrawals are calculated as follows:
(a) For Thomas' first withdrawal, the accrued total is:
$$\textbf{Predistribution value + earlier distributions - contributions = \$180,000 + 0 - 0 = \$180,000}$$
(b) For Thomas' second withdrawal, the accrued total is:
$$\textbf{\$150,000 + \$60,000 - 0 = \$210,000}$$
(c) Value is $100,000 for both the first and the second withdrawal.
(d) The assessable period is 10 for the first withdrawal and 15 for the second withdrawal.
(e) Grow rate for the first withdrawal:
$$\textbf{grow rate} = \left(\frac{180{,}000}{100{,}000}\right)^{\frac{1}{10}} = 1.0605$$
(f) Grow rate for the second withdrawal:
$$\textbf{grow rate} = \left(\frac{210{,}000}{100{,}000}\right)^{\frac{1}{15}} = 1.0507$$
</td>
</tr>
</table>

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION VIII: FORMULA METHOD (continued)

(9) *Commentary* on the Bill: Example on page 15 continued) – adjusted for changes in the Reported Back Bill	Thomas' assessable withdrawal amount for each of the first and second withdrawals is calculated as follows: (a) For Thomas' first withdrawal, the *assessable withdrawal amount* under the formula method is: **gain x (grow rate - 1) x tax rate x (assessable years - 1) + gain** **= $26,667 x (1.0605 -1) x 0.28 x (10 - 1) + $26,667 = $30,732.65** (b) For Thomas' second withdrawal, the assessable withdrawal amount under the formula method is: **= $83,333 x (1.0507 -1) x 0.28 x (15 - 1) + $83,333 = $99,894.93** Taxpayers will not be able to switch from the schedule method to the formula method.

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION IX: SCHEDULE METHOD

<table>
<tr><td>(1) Default method</td><td>The schedule method must be used to calculate a person's assessable withdrawal amount if:

(a) The person cannot use the formula method; or

(b) The person chooses not to use the formula method.

[s. CF 3(6)(a) as proposed in cl. 8 of the Reported Superannuation Tax Bill]</td></tr>
<tr><td>(2) The schedule method calculation</td><td>The assessable withdrawal amount under the schedule method is calculated using the formula:

$$(\textbf{super withdrawal - contributions left}) \textbf{ x } \textbf{schedule year fraction}$$

Super withdrawal:

Is the amount of the foreign superannuation withdrawal:

Contributions left:

Is the lesser of:

(a) The amount of the item super withdrawal; and

(b) The total amount of recognised contributions under s. CF 3(16) – see page 14 above - made in the assessable period before the distribution time, reduced, for each withdrawal (the earlier withdrawal), other than a pension or annuity, made in the assessable period before the distribution time, by an amount equal to the lesser of:

(i) The amount of the earlier withdrawal; and

(ii) The value of the item contributions left, immediately before the time of the earlier withdrawal.

Schedule year fraction:

Is the fraction given in schedule 33, column 2 of the row for which the entry in column 1 corresponds to the greater of 1 and the number of income years beginning:

(a) In the assessable period under s. CF 3(5B); and

(b) Before the distribution time.

[s. CF 3(7) & (8) proposed in cl. 8 of the Reported Superannuation Tax Bill]</td></tr>
</table>

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION IX: SCHEDULE METHOD

(3) Following the example on page 15 of the *Commentary*	**Let's follow the Example on page 15 of the Commentary as we did on pages 16 to 19 for the formula method:** Thomas migrates to New Zealand with a foreign superannuation scheme worth NZ$100,000. Ten years after Thomas' assessable period begins, his scheme is worth $180,000 and he withdraws a lump-sum amount of $60,000. Five years after this, his scheme is worth $150,000 and he withdraws the full amount. Thomas has made no contributions to the scheme while he has been New Zealand-resident. For Thomas' first withdrawal, the schedule year fraction for year 10 is 44.39%. Therefore, Thomas' assessable withdrawal amount under the schedule method will be $26,634. This compares with $30,732.65 under the formula method, as calculated on **page 36** above. For Thomas' second withdrawal, the schedule year fraction for year 15 is 64.08%. Therefore, Thomas' assessable withdrawal amount under the schedule method will be $96,120. This compares with $99,894.93 under the formula method, as calculated on **page 36** above. In this case, the schedule method provides better answers for both withdrawals. A comparison between methods will need to be made for the first withdrawal. Remember that taxpayers will not be able to switch from the schedule method to the formula method.

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION IX: SCHEDULE METHOD (continued)

<table>
<tr>
<td>(4) Explanation of the Schedule Method in the Commentary</td>
<td>
The Proposed new sections CF 3(6)(a), CF 3(7), (8) and (16) provide for the schedule method. The schedule method is the default method for taxing foreign superannuation withdrawals.
The schedule method deems a certain amount of the lump-sum receipt to be investment gains, based on the person's years of residence. The approach uses fractions that represent the proportion of the lump-sum receipt to be included in assessable income. The schedule year fractions increase with years of residence. The remainder of the lump-sum receipt is not assessable.
The fractions in proposed schedule 33 are set at the rate necessary to put a person who leaves their foreign superannuation overseas in the same position as if they had instead transferred their superannuation to New Zealand and paid tax on investment gains as they accrued. Given the assumptions (including a 5% post-tax interest rate in the foreign scheme), a person should conceptually be indifferent between keeping their superannuation overseas and transferring it to New Zealand. Further discussion of the policy rationale behind the schedule method can be found in the annex to the issues paper. [1]
A person's assessable income will be calculated as follows:
Assessable income = (super withdrawal – contributions left) x schedule year fraction
The term "super withdrawal" is the amount of the transfer or withdrawal made by the person.
The appropriate "schedule year fraction" to use is identified by calculating the number of income years beginning in the assessable period, before the person receives the lump sum. In short, this is the number of income years which begin after the person is a New Zealand resident and after their four-year "exemption period" ends. The effect of counting a person's years of residence from the end of the exemption period is to treat them as being non-resident during the exemption period. Gains which accrue during those four years will not be clawed back and taxed on receipt.
Example
Lucy's assessable period begins on 1 August 2020. She withdraws a lump sum of $50,000 on 27 January 2024. There are three income years beginning in Lucy's assessable period, so Lucy is required to use the schedule year fraction for year three. The corresponding schedule fraction is 14.06%, so her assessable income will be $7,030 (being $50,000 x 14.06%). Assuming Lucy's tax rate is 33%, she will be liable to pay $2,319.90 of tax on her $50,000 lump-sum withdrawal
</td>
</tr>
</table>

[1] *Taxation of foreign superannuation*, released on 24 July 2012.

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION IX: SCHEDULE METHOD (continued)

(4) Explanation of the Schedule Method in the Commentary (continued)

If the number of income years beginning in their assessable period is zero (that is, in the part-year in which their exemption period ended but before the start of the next income year), the person should use the schedule year fraction associated with year one.

Example

Karen's assessable period begins on 1 October 2020. She withdraws a lump sum of $50,000 on 5 February 2021, which means that an income year has not yet started during her assessable period. Karen is required to use the schedule year fraction for year one because the withdrawal was made between 1 October 2020 and 31 March 2022. The corresponding schedule fraction is 4.76%, so her assessable income will be $2,380 (being $50,000 x 4.76%). Assuming Karen's tax rate is 33%, she will be liable to pay $785.40 of tax on her $50,000 lump-sum withdrawal.

Proposed new schedule 33 provides the full schedule of rates per year of residence:

Schedule year	Schedule year fraction
1	4.76%
2	9.45%
3	14.06%
4	18.60%
5	23.07%
6	27.47%
7	31.80%
8	36.06%
9	40.26%
10	44.39%
11	48.45%
12	52.45%
13	56.39%
14	60.27%
15	64.08%
16	67.84%
17	71.53%
18	75.17%
19	78.75%
20	82.28%
21	85.74%
22	89.16%
23	92.58%
24	95.83%
25	99.08%
26+	100%

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION IX: SCHEDULE METHOD (continued)

(4) Explanation of the Schedule Method in the Commentary (continued)	The "contributions left" item in the formula is effectively a deduction for contributions made for or on behalf of a person while the person is a New Zealand resident, if the contributions satisfy certain conditions. The schedule method may otherwise treat some of the New Zealand contributions as gains and would result in over-taxation. Proposed new section CF 3(16) sets out these conditions: • At the time the contribution is made, the person must be a New Zealand resident under section YD 1 and not non-resident under a double tax agreement; • The contribution must be required under the rules of the foreign superannuation scheme (that is, voluntary contributions will not be eligible); • The contribution has been subject to New Zealand tax, such as being paid out of after-tax income or subject to employer superannuation contribution tax or fringe benefit tax (for an employer contribution); and • The contribution must not have previously been deducted under the schedule method. The contributions that are able to be deducted are restricted in this manner because the schedule rates already include an implicit allowance for contributions. For example, for the year one schedule rate, 4.76% of the withdrawal is treated as taxable New Zealand-sourced gains and the remainder is treated as non-taxable amounts (that is, contributions as well as gains derived while non-resident). A number of submitters on the issues paper argued that there should be no restrictions on the types of contributions that are deductible. This would not be appropriate, as it could lead to contributions being effectively deducted more than once – first, by being deducted as "contributions left" in the formula and, secondly, by then being allocated out using the schedule rates.

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION X: KIWISAVER WITHDRAWAL TO MEET TAX LIABILITY

<table>
<tr>
<td>(1) KiwiSaver scheme withdrawal to meet superannuation tax liability</td>
<td>
New Schedule 1, cl.14C of the KiwiSaver Act 2006 provides for a withdrawal to meet the tax liability on a foreign superannuation withdrawal:

1. A member may, on application to the trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme), withdraw an amount for the payment of the member's liability for:
(a) Tax, other than interest or penalties, arising under the Income Tax Act 2007 from the member's withdrawal of an interest in a foreign superannuation scheme and conversion of the interest into an interest in a KiwiSaver scheme; or
(b) Repayment obligations arising under the Student Loan Scheme Act 2011 from the member’s withdrawal of an interest in a foreign superannuation scheme and conversion of the interest into an interest in a KiwiSaver scheme.

2. The amount withdrawn may not 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 referred to in paragraph (1)(a); 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 referred to in paragraph (1)(b).

3. An application under cl. 14C(1) must:
(a) Be made within the period of 24 months beginning with 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.

4. 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.

[Cl. 14C proposed to be inserted into Schedule 1 of the KiwiSaver Act 2006 by cl. 115 of the Reported Foreign Superannuation Tax Bill]
</td>
</tr>
</table>

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION X: KIWISAVER WITHDRAWAL TO MEET TAX LIABILITY (continued)

(2) Explanation of the KiwiSaver withdrawal in the Commentary (before Bill was reported back)	In some cases, foreign superannuation may be transferred into a locked-in superannuation scheme, such as KiwiSaver. This may lead to cashflow difficulties for the person as they cannot access any of the transferred amount to pay the resulting tax liability. To address this, new clause 14A will be inserted into schedule 1 of the KiwiSaver Act 2006. This will allow a person to withdraw an amount up to the value of the tax due from their KiwiSaver scheme. If a taxpayer wishes to use this facility, they will be required to provide a statutory declaration to their KiwiSaver provider. The manager of the KiwiSaver scheme must be sufficiently satisfied that the requested amount does not exceed what a hypothetical tax liability could be for that person in relation to that interest. The money will be paid to the individual rather than directly to Inland Revenue, so the individual will be responsible for ensuring that their tax liability is paid. **Example:** Hannah transfers her interest worth $100,000 in a UK scheme into a KiwiSaver scheme on 1 July 2014. She makes an application to the manager of her KiwiSaver scheme on 6 October 2015 to withdraw the amount of her tax liability arising from the transfer. She provides a signed statutory declaration and the documents required by the manager. The KiwiSaver manager approves the withdrawal and Hannah uses the funds to pay her tax liability.
(3) Officials' Report explanation of student loan issues	**Student loan repayment obligation arising from a transfer of a foreign superannuation scheme into KiwiSaver** Officials are of the view that when a taxpayer applies to their KiwiSaver provider to withdraw the amount of the tax liability arising from the transfer into KiwiSaver, they should also be able to withdraw an additional amount to meet a student loan repayment obligation. This should be limited to the amount of the student loan repayment obligation that is attributable to the assessable income in relation to the foreign superannuation transfer: (a) Where a portion of the foreign superannuation transfer is taxable income, a corresponding student loan repayment obligation may arise for that income year. (b) Officials consider that this is an appropriate result as the portion included in the income tax return is income derived by the person, and so should be taken into account when calculating such obligations. (c) However, officials acknowledge that taxpayers who transfer their foreign superannuation interest into KiwiSaver may experience further cash flow difficulties in meeting their student loan repayment obligations that arise from that transfer. (d) Officials therefore consider that when a taxpayer applies to their KiwiSaver provider to use the proposed withdrawal mechanism to pay their transfer tax liability, they should also be permitted to withdraw an applicable amount to meet their student loan repayment obligations, but only to the extent that it arises as a result of the transfer. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **pages 29 - 30**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION X: KIWISAVER WITHDRAWAL TO MEET TAX LIABILITY (continued)

(4) Officials' Report explanation of time limit for withdrawal mechanism	**Time limit for withdrawal mechanism** Officials are of the view that the time limit applying to when an application for a KiwiSaver withdrawal may be made should be 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 should also be made clearer that the withdrawal mechanism is only available when the lump sum has been assessed as income: (a) The proposed legislation currently provides that, in order to use the proposed KiwiSaver withdrawal mechanism, the application to the KiwiSaver provider needs to be made within two years of the transfer. (b) However, the tax liability is only confirmed when the taxpayer returns the appropriate portion of the transfer in their income tax return and it is assessed as income. (c) Therefore officials consider it more appropriate for the two-year limit to start from when the lump sum has been assessed as income. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **p. 30**]
(5) Officials' Report explanation of notification and payment to Inland Revenue	**Notification of withdrawal and payment to Inland Revenue** Officials are of the view that KiwiSaver providers should be required to notify Inland Revenue upon allowing a withdrawal from KiwiSaver to pay a person's tax liability and should also pay the amount directly to Inland Revenue if their systems allow them to do so: (a) The proposed withdrawal mechanism allows a KiwiSaver provider to approve a withdrawal from KiwiSaver to pay a person's tax liability, in limited circumstances. (b) At the moment there is no requirement for KiwiSaver providers to notify Inland Revenue about the request or pay the amount directly to Inland Revenue. We consider that this is inappropriate as Inland Revenue may not be aware of an individual withdrawing an amount and failing to pay their tax liability. (c) We consider that requiring KiwiSaver providers to notify Inland Revenue upon allowing a withdrawal, and requiring them to pay the amount direct to Inland Revenue (if their systems allow it) will support the integrity of the KiwiSaver rules and ensure that the withdrawal mechanism operates as intended. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **p. 29**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION X: KIWISAVER WITHDRAWAL TO MEET TAX LIABILITY (continued)

(6) Officials' Report explanation of use of the withdrawal mechanism by partial transfers into KiwiSaver schemes	**Partial transfers into KiwiSaver and withdrawal mechanism** 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. **Officials commented as follows:** The withdrawal option is only available to taxpayers who have transferred into KiwiSaver schemes. There are a number of New Zealand superannuation schemes that are not part of the KiwiSaver regime. The reason behind creating a withdrawal option for KiwiSaver is due to the ease of making an amendment to the KiwiSaver Act 2006. Extending the withdrawal option to non-KiwiSaver schemes would require amending the trust deed for each scheme. Officials note that there is nothing preventing non-KiwiSaver schemes from providing such a withdrawal facility without government intervention. 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'). This 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. However, a taxpayer who has transferred to a non-KiwiSaver superannuation scheme may know what their liability arising from the transfer is. They may then transfer this exact amount of the tax liability from a non-KiwiSaver scheme to a KiwiSaver scheme and then use the withdrawal facility to withdraw that full amount and pay Inland Revenue. The submitter notes that the current drafting of the proposed legislation does not prevent this from occurring. Officials do not think that this will be a significant issue as the majority of transfers made by UK migrants will be into KiwiSaver schemes. Inland Revenue will monitor the situation to see if any problems will arise. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **p. 31**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION XI: FOREIGN INVESTMENT FUND (FIF) RULES CHANGES

<table>
<tr><td>(1) Changed 2nd category of attributing FIF interests</td><td>Section EX 29(3) is being replaced as follows:

CATEGORY 2: FIF SUPERANNUATION INTEREST The second category is a FIF superannuation interest, held as a beneficiary or a member.

[Replacement s. EX 29(3) proposed in cl. 40 of the Superannuation Tax Bill]

FIF superannuation interest means, for a person and an income year (the current year), an interest held by the person, in a foreign superannuation scheme as a beneficiary or member that:
(a) The person acquires, or is treated as acquiring, when a resident of New Zealand other than:
(i) From a person who acquired the interest when a non-resident; and
(ii) By a transaction described in s, CF 3(18)(d) – i.e. by a transfer to a surviving spouse upon death, or a spouse upon the dissolution of a marriage; or
(b) The person acquires, or is treated as acquiring, when a non-resident and that:
(i) Is an attributing interest for an income year (the qualifying year) ending before 1 April 2014; and
(ii) Is treated by the person as an attributing interest in a return of income for the qualifying year <u>filed before 20 May 2013</u> (the day on which the Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Bill was introduced); and
(iii) Is held by the person for the period (the qualifying period) from the end of the qualifying year to the beginning of the current year; and
(iv) Is treated by the person as an attributing interest in returns of income for the income years in the qualifying period.

[s. YA 1 definition in cl. 103(9) of the Reported Foreign Superannuation Tax Bill]</td></tr>
<tr><td>(2) Clarifying that no FIF income had to be earned in order to have complied with the FIF rules</td><td>(2) Clarifying that no FIF income had to be to have complied with the FIF rules

The Finance and Expenditure Committee noted that:

“To ensure that taxpayers who have already complied with the FIF rules do not face higher compliance costs, the bill would permit them to continue using the FIF rules rather than requiring them to comply with the new regime. However, the bill as introduced does not make it clear whether this would also apply where a taxpayer had earned no income, or incurred a loss, from the foreign investment fund, in which case no evidence of compliance would be recorded in their tax return.

We recommend amending the definition of FIF superannuation interest in clause 103(9) to make it clear that a taxpayer who had complied with the FIF rules in relation to a foreign superannuation interest, but had earned no income from the foreign investment fund, or incurred a loss, would remain free to use the FIF rules.”

[Commentary in the Reported Foreign Superannuation Tax Bill]</td></tr>
</table>

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION XI: FOREIGN INVESTMENT FUND (FIF) RULES CHANGES (continued)

(3) Turning off the FIF rules for non-compliance in the past	**Issue: "Turning off" the FIF rules for non-compliance in the past** Submitters were concerned at the potential for double taxation if Inland Revenue pursues past non-compliance in the case of a person who did not comply with the FIF rules and is subject to the new rules on lump sums received after 1 April 2014: The FIF rules should not apply where lump-sum withdrawals are taxed from 1 April 2014 under the new rules; or The legislation should be amended to ensure that only one regime –either the FIF regime or the proposed new regime – applies to withdrawals derived after 1 April 2014. This issue does not apply to people who have already made a withdrawal. **Officials replied:** Officials expect that a large group of people have not accounted for income under the FIF rules in previous years. The policy intention is that these taxpayers would be subject to the proposed new rules on any withdrawals made on or after 1 April 2014. <u>It is not intended that these taxpayers would also be subject to audit activity on their unpaid FIF tax</u>. This is because the proposed rules for taxing lump sums would account for any tax that should have been paid on accrual, regardless of whether that tax was paid. Officials agree that if these taxpayers were subject to the new rules on lump sums, but also remained liable for unpaid FIF tax in relation to that scheme, there would be an element of double taxation. This is undesirable. It is also undesirable that taxpayers be subject to the FIF regime rather than the proposed new rules, if they do not meet the conditions for grandparenting. <u>Officials agree that, in these situations, the FIF rules should not apply to a person's interest for past years if their interest is subject to the new rules</u>. This proposal would ensure that taxpayers are not over-taxed, and also has the advantage of simplicity, which is consistent with the intent of the proposed rules. (It should be noted that an exception to this would be where the taxpayer acquired the interest in the foreign superannuation scheme while already New Zealand resident. As noted in this report, officials consider that the receipts-based approach should be available only where the rights in the scheme were first acquired while non-resident. This means that these taxpayers would still be subject to the FIF rules and so would remain liable for unpaid FIF tax.) [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **pages 38-39**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION XI: FOREIGN INVESTMENT FUND (FIF) RULES CHANGES (continued)

(4) Potential double taxation of taxpayers who have paid FIF tax but choose not to use the grandparenting option	**Issue: Recognising FIF tax already paid for taxpayers who choose not to use the grandparenting option** The issue relates to taxpayers who currently have an interest in a foreign superannuation scheme and have returned FIF income in the past. Under the proposed new rules, those taxpayers would be able to continue using the FIF rules, as long as they complied with the FIF rules prior to 20 May 2013 (the date of introduction of the bill). All other taxpayers must account for tax under the new rules (that is, upon receipt). Taxpayers who choose not to use the grandparenting provision could be subject to double taxation of the same income when they move from accounting for income under the FIF rules to paying tax under the proposed new rules. The underlying issue is that the new rules do not account for FIF tax already paid. Officials note that under the FIF rules, no tax is paid when a withdrawal is ultimately made. The new rules propose allowing this tax treatment to continue for taxpayers who have already returned income under the FIF rules. This means that taxpayers who continue to use the FIF rules will not be overtaxed. Officials acknowledge that there is potential for effective over-taxation if a person chooses to be taxed under the new rules instead of continuing to be taxed under the FIF rules. However, it is not clear why a taxpayer would generally wish to use the new rules if they have already paid tax under the FIF rules. Officials do not consider that this is an issue that will arise in practice. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **pages 37-38**]
(5) Evidence of compliance with FIF rules when no FIF income or disclosure	**Evidentiary issues: no FIF income returned and no disclosure made** **Officials agreed** and the Finance and Expenditure Committee also noted (see **page 46** above) that a taxpayer may have complied with the FIF rules in relation to a foreign superannuation interest, but have no FIF or may have a FIF loss. This would not be included in the person's tax return. It is not clear that they will be grandparented under the FIF rules, as the amount returned will be zero. Officials agree that taxpayers in this situation should be able to continue using the FIF rules. A submitter noted that Inland Revenue may not be aware that a taxpayer has complied with the FIF rules because where there is a double tax agreement in force, a FIF disclosure form is not required. **Officials replied** that do not consider that any special rules are needed. The person must be able to show that they were subject to the FIF rules and complied with their obligations under the FIF rules, including correctly returning FIF income (if there was any) in respect of the FIF interest. Officials will include a comment to this effect in a Tax Information Bulletin or similar guidance following enactment. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **p. 42**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION XI: FOREIGN INVESTMENT FUND (FIF) RULES CHANGES (continued)

(6) Repeal of existing exemptions for Australian superannuation and new resident's accrued superannuation	The following existing exemptions are to be repealed : (a) The exemption for Australian regulated superannuation savings in s. EX 33; and (b) The new resident's accrued superannuation entitlement exemption in s. EX 42. Sections CQ 5 and DN 6 are to be correspondingly amended: [Amendment of **s. CQ 5** & **s. DN 6** in **cl. 9** & **cl. 30** respectively, & repeal of **s. EX 33 & s. EX 42** in **cl. 41** & **42**, respectively, of the Reported Superannuation Tax Bill]
(7) Exemption for superannuation interest that is not a FIF superannuation interest	Under new **s. EX 42B**, a person's right to benefit from a foreign superannuation scheme as a beneficiary or member will not be an attributing interest in the foreign superannuation scheme if the right is not a FIF superannuation interest for the person. [**s. EX 42B** proposed in **cl. 43** of the Reported Foreign Superannuation Tax Bill]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION XI: FOREIGN INVESTMENT FUND (FIF) RULES CHANGES (continued)

(8) Explanation in the *Commentary* (before transfers on death or marriage dissolution amendments)	***Transitional measures: FIF rules can continue to apply for certain interests (grandparenting)*** A new definition of a "FIF superannuation scheme" has been inserted in section YA 1 to enable the FIF rules to continue to apply to interests when the person has complied with the FIF rules by the introduction date of the new legislation. These people will have the option to either continue to return income under the FIF rules (that is, they will be grandparented), or to apply the new rules instead. If a person continues to apply the FIF rules, any withdrawals or transfers in relation to that foreign superannuation interest will not be taxed under the proposed new rules. There are certain requirements that must be satisfied in order for a person to use the FIF rules in relation to a particular foreign superannuation interest. Some will be determined based on past behaviour. These criteria must be met each time a person seeks to apply the FIF rules (that is every income year from 1 April 2014): • The person must have had an attributing interest in a FIF under section EX 29 for an income year up to and including the 2014 income year (the qualifying year); • For the relevant income year, the FIF must have been a foreign superannuation scheme; • The person must have calculated their FIF income or loss resulting from that attributing interest under one of the methods specified in section EX 44; and • The FIF income or loss must have been included in a tax return filed with Inland Revenue by the date of introduction of this bill. A person who does not meet these criteria by 1 April 2014 may not continue to use the FIF rules for the 2015 income year (commencing 1 April 2014) or subsequent years. The effect of these criteria is straightforward. A person who complied with the FIF rules for a prior year, and filed that return before the introduction of this bill, may be grandparented under the FIF rules. If a person has two or more interests in foreign superannuation schemes, the criteria are assessed per interest (not just once for that person). That person must then continue to return FIF income or losses in relation to that grandparented interest for all income years after 1 April 2014. If FIF income or loss is not returned in a year (in which the person still holds the interest), the interest will cease to be grandparented. The person must pay tax under either the schedule method or the formula method on any subsequent withdrawal. A person whose foreign superannuation assets are valued at less than the $50,000 minimum threshold in section CQ 5(1)(d) may choose to apply the FIF rules in this manner, as long as the above criteria are satisfied. **Example** Aaron is a migrant to New Zealand and acquired a permanent place of abode in May 2006. He was a transitional resident until the end of May 2010. For the 2011 income year, Aaron complied with the FIF rules in relation to his foreign superannuation interest, and included the FIF income in his tax return before the filing date. He does not return FIF income in relation to this interest in the 2012 to 2014 income years because the interest qualified for a FIF exemption following a change in the foreign superannuation scheme's rules which made it locked-in. As at 1 April 2014, the criteria are still satisfied as Aaron correctly returned FIF income in the 2011 income year. Despite the exemption, Aaron will have to return FIF income in relation to his interest for the 2015 income year in order for it to remain grandparented.]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION XII: CONSEQUENT CHANGES TO THE DIVIDEND AND TRUST TAX RULES

(1) Foreign superannuation withdrawal is not a dividend	New s. CD 36B will provide that: An amount paid to a person by a company that is a foreign superannuation scheme is not a dividend if the person derives the amount as a: (a) Foreign superannuation withdrawal; or (b) A pension. [**s. CD 36B** as proposed in **cl. 6** of the Reported Superannuation Tax Bill] Officials wished to clarify that a pension derived from a foreign superannuation scheme that is a company should not be a dividend because in many cases, the foreign superannuation scheme will legally be a unit trust, and therefore subject to the company tax rules. The proposed legislation provides that, when the foreign superannuation scheme is a company, a lump sum withdrawal is not a dividend. It is instead intended that the lump sum will be subject to the new rules. In current legislation, pensions are taxed under a separate charging provision. However, it appears that it may not be clear whether this provision takes precedence over the company and trust rules. It should be clarified that a pension received from a foreign superannuation scheme that is a company should be taxed as a pension and not be treated as a dividend. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **page 12**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION XII: CONSEQUENT CHANGES TO THE DIVIDEND AND TRUST TAX RULES

<table>
<tr><td>(2) Foreign superannuation withdrawal is not a taxable distribution from a foreign trust</td><td>For a trust that is a foreign trust at the time a distribution to a beneficiary is made, a distribution is not a taxable distribution if it is a distribution of:
• A foreign superannuation withdrawal; or
• A pension.

[s. HC 15(4)(cb) & (cc) proposed in cl. 66 of the Reported Foreign Superannuation Tax Bill]

Officials wished to clarify that pensions derived from a foreign superannuation scheme that is a trust should not be taxed under the trust rules, because in some cases, the foreign superannuation scheme will legally be a trust, and therefore subject to the trust tax rules.

The bill proposes that a lump sum withdrawal from a foreign trust that is a foreign superannuation scheme will not be a taxable distribution. It is instead intended that the lump sum will be subject to the new rules.

In current legislation, pensions are taxed under a separate charging provision. However, it appears that it may not be clear whether this provision takes precedence over the company and trust rules.

It should be clarified that a pension received from a foreign superannuation scheme that is a trust should be taxed as a pension and not be taxed under the trust rules.

[Officials' Report on Submissions to the Finance and Expenditure Committee, page 12]</td></tr>
<tr><td>(3) A contributor to a foreign superannuation scheme is not a settlor</td><td>New s. HC 27(3B) will provide that:

A person who makes a contribution to a trust that is a foreign superannuation scheme is not a settlor of the trust.

[s. HC 27(3B) proposed by cl. 67 of the Reported Foreign Superannuation Tax Bill]

The bill provides that a contribution made to a foreign superannuation scheme will not automatically mean that the person is a settlor. This means that contributions to a superannuation scheme from a person made while they are New Zealand resident will not result in the foreign trust becoming a non-complying trust.

Officials declined a submission that the amendment that a person who makes a contribution to a trust that is a foreign superannuation scheme is not a settlor of the trust should be retrospective, rather than applying from 1 April 2014. Officials considered that a retrospective change of this nature may cause further uncertainty, and therefore did not favour this approach.

[Officials' Report on Submissions to the Finance and Expenditure Committee, pages 13-14]</td></tr>
</table>

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION XIII: TEMPORARY AMNESTY FOR PRE-1 APRIL 2014 WITHDRAWALS

(1) Optional treatment of withdrawals from foreign superannuation schemes	1. An optional treatment of withdrawals from foreign superannuation schemes applies when a person: (a) Derives an amount from a foreign superannuation scheme as a withdrawal other than a pension or annuity in the period beginning on 1 January 2000 and ending with 31 March 2014; and (b) Does not include the withdrawal (the **omitted withdrawal**) in a return of income for the income year in which the amount was derived; and (c) Is not assessed before 1 April 2014 for income included in the omitted withdrawal; and (d) Chooses to include in a return of income for an income year (the **return year**) that is the 2013-14 or 2014-15 income year an amount of assessable income as relating to all omitted withdrawals from the foreign superannuation scheme. 2. The person is treated as deriving, in the return year, from the omitted withdrawals an amount of assessable income (the **withdrawal income**) equal to 15% of the total amount of the omitted withdrawals. 3. The amount of the liability of the person for income tax (the **withdrawal tax liability**) arising from the omitted withdrawals is the difference between the person's income tax liability for the return year, with the withdrawal income included in the person's assessable income for that year, and the income tax liability that the person would have for the return year if the withdrawal income were not included in the person's assessable income for that year. 4. This section overrides the law applying to the taxation of the omitted withdrawals when the person derived the omitted withdrawals and of the person's interest in the foreign superannuation scheme for the period ending by 31 March 2014 in which the person had the interest. [**s. CZ 21B** proposed in **cl. 25** of the Reported Foreign Superannuation Tax Bill]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION XIII: TEMPORARY AMNESTY FOR PRE-1 APRIL 2014 WITHDRAWALS (continued)

(2) Explanation in the Commentary	***Transition – low cost option for withdrawals from 1 January 2000 to 31 March 2014*** Proposed new sections CZ 21B of the Income Tax Act 2007, CF 3 of the Income Tax Act 2004, and CC 4 of the Income Tax Act 1994 allow an optional method in addition to the current provisions for lump-sum transfers and withdrawals up to 31 March 2014, including past transfers that have not complied with the current law. The alternative to using the current provisions is the option to pay tax on only 15 percent of the lump-sum amount. The remainder of the lump sum will not be assessable. This is a simple option which is intended to encourage compliance before the introduction of the new rules. People who have complied with the existing law and paid the associated tax will not be able to reassess their position using the 15 percent option. To use the option, a person will need to return 15 percent of the lump-sum amount in their 2013–14 or 2014–15 tax returns. Penalties and interest will not apply from the tax year in which the withdrawal or transfer was made. The 15 percent option will continue to be available in later years, but the legislation proposes that penalties and use-of-money interest will be calculated from the 2014–15 tax year. The proposed legislation will be changed to clarify that this will be done by amending the person's 2014–15 income tax return. As with other forms of income, it should be noted that the portion of the lump sum that is assessable income may impact a person's entitlements and obligations for that tax year, such as child support, Working for Families, and student loans. If the person does not use the option to pay tax on 15 percent of the amount, then they must apply the law as it was at the time that they made the withdrawal. The original due date for payment of tax would still apply if there is a positive amount of income under reassessment. This means that any relevant penalties and use-of-money interest will apply from the income year in which the transfer or withdrawal occurred.

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION XIII: TEMPORARY AMNESTY FOR PRE-1 APRIL 2014 WITHDRAWALS (continued)

(3) Officials' Report explanation of 15% amnesty: amnesty is not compulsory	**15% option does not apply retrospectively** One submitter stated that people who complied with the law previously should not have to pay 15% tax on a retrospective basis. Another submitter stated that the changes should not be brought in retrospectively; the new rules should apply on a prospective basis. **Officials commented as follows:** The 15% option does <u>not</u> retrospectively impose a tax liability on any individuals. Taxpayers who made a lump-sum withdrawal or transferred their foreign superannuation scheme before 1 April 2014 and complied with the law that existed at the time in relation to their scheme are not required to take further action. This includes people who have not paid any tax because an exemption applied to their situation under existing law (for example, because they were a transitional resident at the time). In these situations, the taxpayer will have no tax obligations as there was no liability under the existing law. However, officials understand that a number of people who made a withdrawal or transfer may not have complied with their tax obligations. These taxpayers can apply the law as it applied to their interest at the time that they made the withdrawal. They may be subject to use-of-money interest or penalties, although these may be reduced where the taxpayer voluntarily discloses their tax liability. Alternatively, they can choose to use the 15% option proposed in the bill. The 15% option is a concessionary, low-cost alternative option for taxpayers who have made a lump-sum withdrawal or transfer before 1 April 2014, and who did *not* fulfil their tax obligations in relation to the foreign superannuation interest. Under this option, the person can include 15% of their lump sum as income in their 2013–2014 or 2014–2015 tax return, and apply their marginal tax rate to that amount. For example, a person who transferred $100,000 would include $15,000 in their tax return. If their tax rate is 33%, they will have tax to pay of $5000. It is important to note that taxpayers are not required to use the 15% option proposed in the bill and may instead choose to apply the law as it existed at the time [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **pages 32-33**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION XIII: TEMPORARY AMNESTY FOR PRE-1 APRIL 2014 WITHDRAWALS (continued)

(4) Officials' Report explanation of 15% amnesty: amnesty available despite prior non-compliance with FIF rules	**Amnesty available for withdrawals from FIF interests** A submission was made that taxpayers who did not comply with the FIF rules should be able to use the 15% option if they have made a lump-sum withdrawal before 1 April 2014. Another submission was made that it should be clarified that taxpayers who have not complied with their obligations are able to choose between applying the law as it was at the time of withdrawal in each of the relevant income years, or paying tax on 15% of the withdrawal. If there were any applicable exemptions available to them at the time taxpayers should be able to utilise these. **Officials commented as follows:** The policy intention is that taxpayers who have made a withdrawal and who have not complied with their obligations are able to choose between applying the law as it was at the time of withdrawal, or paying tax on 15% of the withdrawal. If there were any applicable exemptions available to them under the law that applied at the time, taxpayers should be able to utilise these. Officials consider that this is, in general, sufficiently clear in the legislation. However, one submitter noted that the current drafting does not seem to allow taxpayers who were non-compliant with the FIF rules and who made a withdrawal to use the 15% option in relation to past lump-sum withdrawals. Instead these people would only be able to use the law that existed at the time (i.e. recalculate their FIF liabilities). Officials agree that the proposed legislation should be clarified so that non-compliant FIF taxpayers who made a lump-sum withdrawal before 1 April 2014 should have the 15% option available to them. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **p. 35**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION XIII: TEMPORARY AMNESTY FOR PRE-1 APRIL 2014 WITHDRAWALS (continued)

(5) Officials' Report explanation of 15% amnesty: 15% option will not apply to post-31 March 2014 withdrawals	**15% option will not apply to withdrawals after 31 March 2014** A submission was made that the 15% option should be extended so that taxpayers who transfer their foreign superannuation scheme up to six months after 1 April 2014 are eligible to use the 15% option. **Officials commented as follows:** The policy intention is that taxpayers who derive a lump sum on or after 1 April 2014 would be subject to the proposed new regime. Officials consider that it would be inappropriate to have the concessionary 15% option available for a longer period as it would undermine the proposed new regime. Furthermore, officials consider that as part of the submission it would be necessary to amend the application date of the proposed regime, because it would be inappropriate to have the proposed new regime and the concessionary 15% option both applying at the same time. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **p. 36**]
(6) Officials' Report explanation of 15% amnesty: amnesty will not apply to post 31 March 2014 withdrawals by non-compliant FIF taxpayers	**15% option will not apply to post 31 March 2014 withdrawals by non-compliant FIF taxpayers** A submission was made that taxpayers who did not comply with the FIF rules, and have *not* made a withdrawal by 31 March 2014 should be permitted to use the 15% option in relation to their foreign superannuation interest as if they had made a withdrawal. That is, they should be able to return 15% of the value of the FIF interest in respect of their past FIF obligations. **Officials commented as follows:** Officials note that the underlying problem is that there is potential for effective double taxation, if the person is subject to tax under the new rules. Officials note that the proposal to waive previous FIF obligations (Issue: "Turning off" the FIF rules for non-compliance in the past) would address this problem. [*Officials' Report on Submissions to the Finance and Expenditure Committee*, **p. 40**]

WITHDRAWALS FROM FOREIGN SUPERANNUATION SCHEMES

SECTION XIII: TEMPORARY AMNESTY FOR PRE-1 APRIL 2014 WITHDRAWALS (continued)

<table>
<tr>
<td>(7) Officials' Report explanation of 15% amnesty: use of 15% option after the 2014-15 income year</td>
<td>Use of 15% option after the 2014-15 income year

Officials are of the view that when a non-compliant taxpayer chooses to use the 15% option in proposed CZ 21B in an income year after 2014–15, they should have their 2014–15 income year reassessed:

(a) Consider the situation where a non-compliant taxpayer chooses in, say, the 2018–19 income year to use the 15% option in relation a lump sum derived before 1 April 2014.

(b) The current drafting allows the taxpayer to return the 15% in their 2018–19 income tax return. However, the drafting provides that the due date associated with the tax on that 15% would be that of the 2014–15 income year.

(c) This would not be feasible for Inland Revenue's systems as it would require there to be a split due date for the person's terminal tax liability in 2018–19 income year.

(d) The drafting should be amended so that in such a scenario, the taxpayer should have their 2014–15 income tax return reassessed by Inland Revenue in order to use the 15% option.

[Officials' Report on Submissions to the Finance and Expenditure Committee, p. 52]</td>
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