Technical Note 05

# Issues for Australian Superannuation Schemes & New Zealand Kiwisavers as QROPS (or not)

AES INTERNATIONAL

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# Issues for Australian Superannuation Schemes ("ASSs") and New Zealand Kiwisavers ("NZKs") as QROPS (or not)

## Introduction

We have played some small part in having this important issue flagged up in the press, both in the UK and (shortly) "down under".

We now take this opportunity of clarifying the position and explaining how it is that the other type of New Zealand pension scheme, Superannuation Funds, are unaffected.

## Purpose of Note

This Note covers:

A. why it is that ASSs and NZKs may well now (since 6 April) **not** meet the requirements to be a QROPS.

B. reassurance to the advisory community that New Zealand Superannuation Funds **do** continue to meet the relevant requirements.

## Background

An amendment to a key UK statutory instrument (SI 2006 no 206) became effective on and from 6 April 2015. The result of this amendment is that an overseas pension scheme is only capable of being a Recognised Overseas Pension Scheme ("**ROPS**") if its scheme rules provide that benefits arising from UK tax relieved funds must not be paid unless the member has reached age 55 or is in ill health. Other than the "ill-health" provision there is no exception to this rule.

Many ASSs and NZKs do not meet these requirements and so a transfer in to such schemes from a UK registered pension scheme after 5 April 2015 will be an "unauthorised payment" and carry a 55% tax charge. Schemes have received a letter from HMRC enquiring about their ROPS status.

## A. ASSs and NZKs

These scheme types have existed in Australia and New Zealand respectively for many years. They were originally put in place for domestic reasons, in the same way that a typical personal pension scheme operated by a life office in the UK is designed to meet the requirements of the UK market. Such schemes do not necessarily have an eye on the specific requirements for schemes outside their own jurisdictions in order for those other schemes to be capable of making transfers. If the other scheme can meet such requirements, then it can; if it can't, then that is the end of the matter.

Many of these schemes had themselves placed on the HMRC list of (originally) QROPS and (now) ROPS because in the ordinary course of their business they would occasionally be approached by a potential client who had UK pension rights and wished to bring them home to their country of origin, or new country of residence. To join an ASS an individual must be resident in Australia; similarly to join a NZK the individual must be resident in New Zealand.

NZKs are a little like UK stakeholder pension schemes. They are low-cost arrangements and include a small element of tax subsidy in respect of member contributions.

What both types of scheme (ASSs and NZKs) have in common is that in certain circumstances it is possible for members to access their funds early – before age 55.

Arguably there is a great deal of common sense in this ability for the member to access funds early; for example: in Australia one ground is financial hardship, and in New Zealand (so far as it relates to NZKs) a ground is buying a first home.

The problem is that although such schemes formerly met the requirements to be ROPS, they no longer do so because of the ability of members, in the circumstances laid out as examples, to be able to access funds before age 55, if such a facility applies to UK tax relieved funds.

These schemes will not in the main look to change their rules to remove such a facility as these rules are fundamental to their domestic market. Thus it would seem inevitable that in time many schemes of these types will disappear from the HMRC list of ROPS.

We are aware that all Australian schemes recognised by HMRC as ROPS have been written to by HMRC requiring them under HMRC's information powers to set out their position regarding their age 55 rule. If they do not respond by 19 June 2015 then the scheme will be subject to an exclusion order, and no longer qualify as a QROPS. On the other hand, responding that benefits will continue to be available before age 55 from UK tax relieved funds will similarly result in exclusion. Logically the exclusion would be backdated to 6 April 2015, being the point at which the relevant conditions were not met.

UK registered pension schemes which make transfers out to such schemes from 6 April 2015 onwards will have made an unauthorised payment, resulting in a 55% tax charge liability on the member, who is obliged to disclose that through a self-assessment tax return.

## B. New Zealand Superannuation Funds

Whereas NZKs are only open to residents of New Zealand, New Zealand Superannuation Funds are open to "natural persons": those persons' place of residence is of no relevance.

There are therefore a small number of New Zealand Superannuation Funds which are specifically designed for and marketed to non-New Zealand residents. The most well-known of these is the Endeavour Scheme.

These schemes are structured so that they will continue to meet the ROPS requirements despite HMRC's changes.

In fact a key reason for publishing this technical advice note is so it will form a source of reference when, as we expect, there are some significant omissions from the HMRC ROPS list when it is published at the beginning of July 2015.

If you have any questions about this note, please do not hesitate to contact us.

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