RANFURLY

Ranfurly Superannuation Scheme
Tax Summary
July 2017

The Ranfurly Superannuation Scheme (**the Scheme**) is registered in New Zealand as a superannuation scheme under the Financial Markets Conduct Act 2013. This document gives general guidance on the taxation of the Scheme, the tax treatment of UK pension transfers and distributions paid by the Scheme for Australian resident members.

For tax purposes, the Scheme is domiciled in New Zealand and is subject to the Income Tax Act 2007. As a Qualifying Regulated Overseas Pension Scheme (**QROPS**) it is eligible to accept QROPS transfers from UK pension schemes, which are subject to the requirements of the UK Finance Act 2004. Scheme members resident in New Zealand are subject to the Income Tax Act 2007. Scheme members resident in Australia are subject to the Australian Income Tax Assessment Act 1997 as amended by the International Tax Agreements Amendment Bill (No.2) 2009 (**DTA**).

The information in this document is only intended to provide general guidance on New Zealand and Australian income tax law as it relates to Australian Scheme members and is an indication of the relevant legislation in effect as at the date of this document. The document also gives general guidance on UK taxation of UK pensions transferred to the Scheme. The application of tax law is fact specific. Investors should seek professional tax advice specific to their individual circumstances (including their foreign tax position) prior to investing in the Scheme so that they clearly understand the taxation implications of such an investment. Neither Ranfurly, nor the Supervisor, or any other person accepts any responsibility for the taxation consequences of the investors decision to invest in the Scheme.

Summary

Australian's investing into a New Zealand domicile superannuation scheme are taxed under the Australian Income Tax Assessment Act 1997 as amended by the DTA with New Zealand.

Generally, a superannuation payment from NZ fund or scheme to an Australian resident Member would attract a tax liability in Australia. However, under the DTA an Australian member shall not be taxed in Australia to the extent that the income would not be subject to tax in New Zealand if the Australian member was resident in New Zealand.

Under the DTA relief from Australian income tax is in principle available where:

- For lump sum payments: the payments are made under a retirement benefit scheme; or
- For pension, annuity or similar ongoing superannuation payments: such income paid under the Scheme would not be subject to tax in NZ if the Member were a resident of NZ.

Consideration needs to be given to the Australian general anti-avoidance rules which could potentially apply where the New Zealand superannuation scheme generates a tax benefit and the scheme has been entered into for the dominant purpose of obtaining the tax benefit. However, where there are commercial features or drivers that support the position that securing a tax benefit is not the dominant purpose of entering into the scheme, there is an argument that the general anti-avoidance provisions should not apply. This argument may be strengthened by the fact that the scheme is driven by amongst other things UK tax regulatory considerations.

Double Tax Agreement

Ordinarily, a superannuation payment arising through a New Zealand superannuation scheme made to an Australian resident member would be treated as if it were received from a non-compliant fund and attract an Australian tax liability. However, in respect of pensions and annuities and other ongoing superannuation payments, Article 18(1) of the DTA provides that:

> Pensions (including government pensions) and other similar periodic remuneration paid to a resident of a Contracting State [Australia] shall be taxable only in that State [Australia]. However, such income arising in the other Contracting State [New Zealand] …. shall not be taxed in the first-mentioned State [Australia] to the extent that such income would not be subject to tax in the other State [New Zealand] if the recipient were a resident of other State [New Zealand].

In addition, in respect of lump sum retirement benefits, Article 18(2) of the DTA provides that:

> Lump sums arising in a Contracting State [New Zealand] and paid to a resident in the other Contracting State [Australia] 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 [New Zealand].

It is noted that for superannuation payments included in Article 18 of the DTA paragraph 2.283 of the explanatory memorandum accompanying the DTA provides:

> The term pensions and other similar periodic remuneration is understood to include superannuation annuities, life annuities … but would not include financial products in the form of annuities as these are more appropriately covered under the Interest Article.

In respect of "income arising" in New Zealand it is considered that this refers to payments from the superannuation scheme, as opposed to income from the underlying investments of the scheme. This is supported by paragraph 2.294 of the explanatory memorandum accompanying the DTA:

> It is understood that pensions, other similar periodic remuneration and lump sums referred to in Article 18 (Pensions) will arise where the fund is established…

Superannuation Taxation

From the DTA we note that an Australian member of a New Zealand superannuation scheme will be taxed as though they are resident in New Zealand for the purpose of their pension payments.

We also note that pensions, other similar periodic remuneration and lump sums referred to in Article 18 (Pensions), will arise where the fund is established, which is New Zealand.

What is important is how New Zealanders are taxed on their investments into and withdrawals out of New Zealand superannuation schemes.

Basis of New Zealand Taxation
New Zealand adopts Taxed, Taxed, Exempt structure (**TTE**) for taxing superannuation schemes. Conceptually, contributions to New Zealand superannuation schemes are from tax paid income of the member, income earned by the scheme is taxed and withdrawals/distributions whether lump sum or periodic are exempt from tax.

Similarly, UK pension schemes are taxed on an exempt, exempt, taxed basis (**EET**). Contributions to UK pension schemes are from untaxed income of the member, income earned by the scheme is untaxed and withdrawals/distributions whether lump sum or periodic are taxable.

UK Pension Transfer
When a UK pension is transferred from a UK pension scheme to a New Zealand superannuation scheme, tax is calculated on the transferred amount to avoid the situation where the transferred pension becomes ETE or EEE. Since April 2014 New Zealand has applied two methods of calculating the tax payable on the transferred pension but there are exceptions and exemptions can also apply. The two methods of taxation, Schedule Method and Formula Method, are not discussed in depth in this document as they do not apply to an Australian tax resident member and we will concentrate on the exemptions.

Four-year exemption period for foreign superannuation withdrawals
For New Zealand resident's, and correspondingly Australians under the DTA, generally the four-year exemption period applies to foreign superannuation withdrawals received during the exemption period. A withdrawal includes a pension transfer. There are some exceptions to its application and certain conditions must met by the member however if the Australian members has never been a New Zealand resident the exceptions should not apply.

If a member qualifies for a four-year exemption period, a foreign superannuation withdrawal received during this period is exempt from New Zealand tax.

The exemption doesn't require a person to be a non-tax resident for a minimum period. The exemption period is available to both new migrants and returning New Zealanders. Also, it is not possible to opt out of the exemption period.

This exemption applies if a member:

- first acquired an interest in a foreign superannuation scheme while a non-resident for New Zealand tax purposes, and
- hasn't previously had this exemption.

The exemption starts on the first day they're a New Zealand tax resident.

It finishes 48 months after the month they first meet the requirements for being a New Zealand tax resident, by either having a permanent place of abode or by being in New Zealand for more than 183 days in any 12-month period. The exemption also ends if the member becomes a non-tax resident.

As an Australian tax resident member is to be taxed under the DTA as if they are a New Zealand tax resident, it is important to note that, a new New Zealand tax resident would be exempt from tax on their UK pension transfer under the Four-year Exemption provisions and hence and Australian tax resident should receive the same treatment.

However, for an Australian tax resident, a UK Pension transfer made from a UK pension scheme after 9 March 2017 will be subject to a 25% UK charge (the 'overseas transfer charge'). See Overseas Transfer Charge below.

Scheme Income

All superannuation scheme income, other than certain employer contributions, is subject to tax. Income earned by the scheme is considered as 'trustee income'. Taxable income of the trustee is taxed at either 28% in the case of a widely-held superannuation scheme, or 33% if it is not widely-held. The Scheme would be considered widely-held. However, if the superannuation scheme has elected Portfolio Investment Entity (**PIE**) tax status, the income of the scheme is attributed to members and taxed by the scheme at PIE level at the individual members Prescribed Investor Rate (**PIR**) and is not tax as trustee income.

The Ranfurly Superannuation Scheme is structured as a Multi-rate PIE that is a Foreign Investment Zero-rate PIE (**FIZ PIE**).

Once a member has transferred their UK pension to the Scheme or made a pension contribution from personal income, the Scheme will tax the income of the Scheme at the PIE level and it will not be taxable in the hands of the member, provided that the correct PIR is notified by the member to the Scheme. See more on Portfolio Investment Entity Status below.

As an Australian tax resident member will be taxed under the DTA as if they are a New Zealand tax resident, it is important to note that the income of the PIE is not taxable in the hands of the New Zealand resident member and hence the same tax treatment should be applied to an Australian member if the correct PIR rate has been notified to the Scheme.

Additionally, non-New Zealand tax resident members of the Scheme can elect a PIR rate of 0% and will be taxed on their attributed income within the Scheme at that rate. See Portfolio Investment Entity Status below.

Withdrawals from the Scheme
Distributions from a Scheme, which is a PIE, to a member are generally not taxable in the Member's hands on the basis that the distribution is either:

- A return of capital (from the surrender/redemption of the members interest in the PIE); or
- A distribution of tax paid income (income having already been taxed at the PIE level, as outlined above, and thus will be excluded income of the member.)

However, upon a withdrawal from the PIE, the PIE will need to have elected to pay tax on exit, otherwise the member will be taxable in respect of the income of the PIE derived during the exit period. The Scheme has elected the "Exit" filing type so members have no taxable income on withdrawals. The member must also have elected the correct PIR so their assessable income is correctly taxed by the Scheme during membership of the Scheme and on exit.

To summarise, income of a PIE is attributed to the members but taxed at the PIE level, except in limited circumstances when it is taxed in the member's hands. Distributions from the PIE to the member are not taxed in the member's hands except to the extent the distribution includes income that has not been taxed at the PIE level due to one of those circumstances existing. The Scheme has been structured so that if a member makes the correct PIR nomination, income of the PIE is taxed at the PIE level and not in the members hands, and distributions are taxed on withdrawal so no tax is payable in the members hands, as it is a return of capital or excluded income.

Portfolio Investment Entity Status

The Scheme has elected to become a Portfolio Investment Entity under the Income Tax Act 2007 section HM. As the Scheme invests in foreign assets and holds only a minimal level of New Zealand assets, the Scheme is eligible and has elected to become a Multi Rate PIE that is a Foreign Investment Zero-Rate PIE.

Registration
The Schemes registration as a FIZ PIE was granted on 23 November 2016. The Scheme has elected an Exit basis for filing and attributes income daily.

PIE Taxation
The tax treatment of investments in PIEs can be described as a combination of look-through and withholding.

A PIE has the obligation to:

- calculate its pre-tax income;
- attribute this to each of its members in proportion to their interest in the PIE; and,
- return income tax calculated on the aggregate of each member's proportionate share of the pre-tax income multiplied by that member's PIR.

The attribution of income earned by the PIE to its members arises irrespective of whether the income is paid out / distributed to the member in that income year.

Tax Rates for Members of the PIE
Under the PIE rules, while the Scheme maintains FIZ PIE status, members of the Scheme can elect to be taxed at the following rates, their Prescribed Investor Rate:

- Foreign investors
  - 0% (if they meet the Notified Foreign Investor Requirements, see below)
- New Zealand residents – at their margin tax rate either
  - 10.5%,
  - 17.5% or
  - 28%

Tax is calculated daily and attributed monthly by the Scheme administrators, or on a member making a withdrawal or transferring from the Scheme, and is paid through the redemption of units in the fund.

Notified Foreign Investor
For a member, who is not New Zealand resident, to be treated as a Notified Foreign Investor (**NFI**) and to be taxed at a 0% rate they must meet and maintain the following conditions:

- Not be resident in New Zealand,
- Must provide a date of birth,
- Must provide a home address in their country or territory where they reside for tax purposes,
- Must provide their tax file (IRD) number in the country or territory where they reside for tax purposes, or a declaration if they are unable to provide this number,
- Must state in the Scheme application that they wish to be treated as a NFI.

The Scheme gathers this information as part of the application process.

If a foreign investor does not notify the Scheme that they wish to be treated as a NFI then they will be taxed at the highest PIR rate - 28%.

Some tax, if any, may be payable at 1.44% on New Zealand sourced interest.

Once a year, the Scheme will ask the member to confirm their NFI details are still valid. This is done by the Scheme as part of the annual tax statement process. If the Scheme receives no response the Scheme may continue to treat the client as a NFI.

UK Tax Requirements

As a QROPS the Scheme must comply with the UK Finance Act 2004 as it applies to QROPS.

Overseas Transfer Charge
Since March 9, 2017, if a member is not a NZ tax resident at the time of their UK pension transfer to New Zealand, they will be subject to a 25% UK tax, the Overseas Transfer Charge (**OTC**). This charge will also apply if, in the five clear and complete UK tax years after a member's transfer, the member's tax residency changes e.g. they move from New Zealand to Australia, or they on-transfer their UK Pension Transfer Accumulation to another scheme that is not domiciled in New Zealand. The Scheme managers will deduct the charge from the members account and pay this to HMRC, if this charge

becomes applicable. The manager of the Scheme is jointly and severally liable for payment of the OTC.

The OTC does not apply to transfers between QROPS where the original UK pension was transferred out of the UK prior to 9 March 2017.

Conversely, if a member moves from Australia to New Zealand within 5 years of transferring their UK pension, the OTC will be refundable by HMRC. The member will need to contact HMRC to reclaim the OTC that was deducted on the UK pension transfer.

Members must tell the scheme manager about any change to their address or tax residency while they are a member of the scheme.

Unauthorised withdrawals
HMRC will levy member payment charges on withdrawals made from the Scheme that do not meet the UK tax rules applying to QROPS. When a member makes an unauthorised withdrawal of their UK transfers amount an unauthorised member payment charge of 55% will apply on the withdrawal. As a rule, the manager would refuse to allow non complying payment to be made from the Scheme.

Where a member's pension transfer occurred more than 5 years ago, and they have been UK tax non-resident for 5/10 year and all other standard criteria are met, such as age 55+, a member payment charges will not apply to the withdrawal.

For members whose pension transfer occurred before 6 April 2017 the member must have been non-UK tax resident for 5 full and complete UK tax years if a member payment charge is not to apply.

For members whose transfer occurred after 6 April 2017 the member must have been non-UK tax resident for 5 full and complete UK tax years if a member payment charge is not to apply.

For a member withdrawal that meet the standard criteria but does not meet the 5 year transfer rule or 5/10 year non residence rule the member payment charge will be levied on 75% of the withdrawn amount with tax payable at the members marginal tax rate.

Members are responsible for these tax charges if they apply.

Lifetime Allowance
When transferring from a UK Registered Pension Scheme, any pension funds which have not already been designated to commence paying benefits (which is to say where the pension payments have been started or considered started), or for any portion of the pension funds which has not been so designated, or where the Member is not yet age 75, will be tested against the UK Lifetime Allowance test. This test, which is designed to take into account all pension benefits, tests to see if the total pension holdings, relative to certain enhancements which may on occasion be available, are in excess of the taxed advantaged limits prescribed by HMRC, currently GBP1m. Where the transfer amount is considered to be in excess of this amount, a tax charge of 25% may be levied prior to transfer.

Australian Anti Avoidance

Australia has general anti-avoidance provisions in Part IVA of the Income Tax Assessment Act 1936 (Cth).

These provisions apply where the following inter-related tests are satisfied:

- there must be a "scheme";
- the scheme must generate a "tax benefit"; and
- the scheme must have been entered into for the "dominant purpose" of securing the tax benefit.

If these rules apply, the Commissioner of Tax has the power to deny/cancel any Australian members tax benefits associated with the Scheme.

The Australian general anti-avoidance rules could potentially apply where there is a scheme which generates a tax benefit and the scheme has been entered into for the dominant purpose of obtaining the tax benefit. The scheme may be considered to give rise to a tax benefit where, if the scheme had not been entered into, the superannuation payments from New Zealand would be assessable in Australia. However, where there are commercial features or drivers that support the position that securing a tax benefit is not the dominant purpose of entering into the scheme, there is an argument that the general anti-avoidance provisions should not apply. This may be strengthened by the fact that the scheme is driven by amongst other things UK tax regulatory considerations.

The ATO's may have an alternative view on the application of treaty interpretation/relief and the general anti-avoidance provisions to those expressed in this document. Advisers/Members should ensure that the dominant purpose for transferring a members UK pension to the Scheme is not to benefit from the tax structure of the Scheme.