

understanding the transfer of UK retirement benefits

Due to the increasing number of individuals who temporarily work overseas or who immigrate to Australia, the number of people who have accumulated foreign retirement benefits is becoming more common. This is particularly so for retirement benefits generated in the United Kingdom (UK).

Consequently, the issues relevant to the transfer of retirement benefits accumulated in the UK have been outlined in this Understanding Series information flyer.

INTERACTION OF UK AND AUSTRALIAN RULES

Transferring a foreign retirement benefit from the UK necessitates the consideration of rules and regulations across two Countries.

- Firstly consideration needs to be given to whether it is the individuals best interests to transfer the retirement benefit in the first instance, and
- If it is determined that it is in their interests to do so, the most tax-effective way of facilitating the transfer.



This article by Frank Camilleri (above), National Technical Manager.

In order to ensure an informed choice can be made regarding the first issue, a firm specialising in providing advice on UK retirement benefits should be engaged. This will enable the Shadforth Financial Group (SFG) to work collaboratively with the specialist UK firm to ensure the individual's UK retirement benefit is transferred to an Australian superannuation fund only if it is in their interests to do and if so, in the most effective manner.

It is important to note that the UK retirement system is complex and a decision to transfer a UK retirement benefit should not be made without receiving advice from an appropriately qualified specialist.

TAXATION TREATMENT OF A FOREIGN RETIREMENT BENEFIT IN AUSTRALIA

The tax treatment will depend on how long an individual has been an Australian tax resident when the benefit is received by an Australian superannuation fund. Generally, an individual becomes an Australian tax resident upon arriving in Australia with the intention of taking up permanent residence.

If the transfer is completed within six months of becoming an Australian tax resident, the transfer will generally not be taxed when received by an Australian superannuation fund. In contrast, if it is completed after the six month period has elapsed, part of the transferred benefit may be subject to tax. The amount subject to tax is referred to as the 'taxable portion' and is the difference between the value of the benefit on the date the individual became an Australian tax resident and the value on the date the benefit is transferred.

It is also important to note that a transfer of a UK retirement benefit to an Australian superannuation account is a contribution and not a rollover. As contributions to superannuation are subject to limits and the relevant limit will need to be taken into account.

There is a choice about how the taxable portion will be taxed:

- The first option is to have the taxable portion included as part of the individual's income and subject to tax at their personal marginal tax rate. In this situation, the taxable portion will count towards the relevant contribution limit.
- Alternatively, an individual can elect to have the taxable portion taxed within the Australian superannuation fund. In this situation, tax of 15% will be deducted and the taxable portion will not impact on the superannuation contribution limits.

CASE STUDY

Andrea is 39 years of age and as returned to Australia after working in the UK for a number of years. On her arrival the value of her accumulated a UK retirement benefit is £35,000.

After arriving in Australia, she commenced the process to transfer her retirement benefit however it took around eight months to finalise the transfer. The value of her UK retirement benefit at closure was £37,000 and the exchange rate at the time meant she received \$2.50 for each £1.

Therefore, the total amount transferred was \$92,500 (£37,000 x 2.5) which included a taxable portion of \$5,000 (i.e. £2,000 x 2.5).

As Andrea has a marginal tax rate of 46.5% (including the Medicare levy), she elects to have the taxable portion taxed in her Australian superannuation fund at 15%. This election has resulted in a net superannuation contribution of \$91,250 (tax of \$1,250 is deducted; i.e. \$5,000 x 15%).

In contrast, had Andrea elected to pay tax personally, her net benefit would have reduced to \$89,675 (tax of \$2,325 is deduction; i.e. \$5,000 x 46.5%). This is highlighted in Table 1 (over).

Table 1: Personal tax versus superannuation payment

Option 1 – Elect to Pay Tax Personally		Option 2 – Elect to Pay Tax in Super Fund	
Total Amount Transferred £37,000 x 2.5	\$92,500	Total Amount Transferred £37,000 x 2.5	\$92,500
Less Value at date of Arrival £35,000 x 2.5	\$87,500	Less Value at date of Arrival £35,000 x 2.5	\$87,500
Portion of Transfer Subject to Tax	\$5,000	Portion of Transfer Subject to Tax	\$5,000
Tax if Paid Personally \$5,000 x 46.5%	\$2,325	Tax if Paid in Super \$5,000 x 15%	\$1,250
Net Foreign Benefit	\$89,675	Net Foreign Benefit	\$91,250

CONTRIBUTING TO SUPERANNUATION

As has been mentioned above, the transfer of a foreign benefit to an Australian superannuation fund is treated as a contribution. This has two implications:

- Firstly, is the individual eligible to contribute? Anyone under the age of 65 may contribute to superannuation. However if the individual is aged 65 and over, a work test must be satisfied. Those who are aged 75 and over are generally unable to contribute to superannuation.
- Secondly, will the transfer result in the contribution limits being exceeded? There are several factors which impact on the extent to which the amount transferred will impact on the contribution limits. There are significant penalties if the contribution limits are exceeded.

Another issue is whether the Australian superannuation fund is authorised by the relevant UK authorities to

accept foreign benefits originating from the UK. Australian superannuation funds must submit an application to receive this authorisation. If a UK retirement benefit is transferred to an Australian superannuation fund which has not been appropriately authorised, the UK tax penalties are severe (up to 55% of the amount transferred).

The important point here is that advice should be sought before the process is commenced to transfer the retirement benefit to Australia. Once the transfer process commences it may be difficult, if not impossible, to stop and significant consequences may result.

PRESERVATION AND TAXATION

Once the foreign benefit is transferred into an Australian superannuation fund, it is subject to the standard preservation rules. That is the amount transferred cannot be accessed until certain conditions are met (i.e. attainment of age 65, or full retirement after age 55). Consequently, depending on the age of the person, the foreign may be inaccessible for many years.

In addition, the standard tax rules will apply. For example, withdrawals made prior to age 60, regardless of whether the withdrawal is a lump sum amount or a regular income payment, may be subject to tax.

It is also important to note that tax may also be imposed by UK authorities if a withdrawal is made within a certain period of time and exceed certain amounts. This tax may apply if the individual making the withdrawal from an Australian superannuation fund, which contains a UK retirement benefit, has been a tax resident in the UK within the last five UK financial years.

Finally, the UK will generally impose a tax penalty if the amount transferred exceeds a set limit referred to as the 'Lifetime Allowance'.

SUMMARY

Transferring a retirement benefit from the UK can be complicated with a number of conflicting issues needing to be considered. First and foremost is whether the UK retirement benefit should be transferred. The SFG has established a relationship with a specialist firm in the UK who can provide this advice. The next step is to consider how best to structure the transfer to ensure the net benefit received in the Australian superannuation fund is optimised and future tax implications are reduced.

Advice is critical to ensure an informed decision is made and this can be achieved by the SFG working collaboratively with a firm who specialises in providing advice on UK retirement benefits. As noted above, Advice should be sought prior to the transfer process commencing as once it has, it may be difficult to stop and significant consequences may result.



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