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Overseas Pensions Forum - options for reform

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New Zealand Superannuation and Overseas Pensions: Issues and Principles for Reform

The New Zealand Superannuation and
Retirement Income Amendment Act 2009

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International Issues With Social Security

- If someone spends their working life in more than one country, they may encounter problems with pensions.
- These can arise in several areas:
 - They may be liable to contribute to a social security (pension) scheme in more than one country;
 - Their eligibility or entitlement to receive pensions in one (or both) countries may be reduced or terminated;
 - There may be problems for them receiving a full pension in the country they wish to retire in.

- One reason why cross-border pension issues are sometimes problematic and difficult to resolve is due to the wide variations found in the retirement income policies of different countries.
- For example, there may be different emphases upon Tier I and Tier II pensions and the way those pensions are funded and administered.

- These differences tend to make harmonisation of pensions arrangements across borders more difficult.
- Most countries are aware of the need for their pension schemes to accommodate individuals who migrate in/out during their working lives and incorporate some provision for those individuals although these may not necessarily address all disadvantages a migrant may face.

Social Security Agreements

- Some countries supplement their domestic social security arrangements for migrants by entering into treaties (known as “social security agreements” or “SSAs”) with other countries to harmonise pension arrangements for individuals who have spent their lives between the two.
- SSAs are similar in some ways to double tax agreements (DTAs) which are negotiated to prevent double taxation on cross border transactions and income flows.

- There are much fewer SSAs than DTAs in place.
- SSAs have a more difficult task in harmonising and coordinating social security than DTAs income tax matters because of the wide variation in retirement income policies of different countries and the extent the state plays a role providing retirement income.

How do these International Agreements Interact with Domestic Law?

- Under international law, international treaties overrule (or are superior to) the domestic law of the two signatory states.

- In the income tax arena, **double tax agreements** are usually designed to provide taxpayers with a better (or at least equal) treatment that a taxpayer would get under a country's domestic law.
- They are regarded as a “shield not a sword”.
- Double tax agreements cannot create a tax liability when there is no underlying provision in the domestic law of one of the states.
- Unfortunately this principle does not appear to apply with SSAs –some can make people worse off.

How Are International Issues Dealt With Under NZS?

- The international interface of NZS is particularly important because NZ is a country with substantial migration flows.
- Eligibility for NZS for those who migrate to NZ is dealt with under the 10 year residency rule. To get NZS, applicants require 10 years of NZ residency after the age of 20, 5 of which must be after the age of 50. (Note: Totalisation provisions under NZ's SSCs require certain overseas residency to count as NZ residency.)

- In addition, applicants must be “ordinarily resident” in NZ at the time of their application.
- If a migrant receiving NZS is eligible for an overseas pension that is similar to NZS, that pension is deducted from any NZS paid (deduction policy).

- There are no issues about individual liability to fund social security in NZ since it is funded from general taxation, although funding issues are addressed at the Government level under some SSAs.

- If someone who has lived in NZ after the age of 20 but wishes to retire elsewhere, they *may* be able to receive NZS outside of NZ under the “portability rules”. This is subject to 2 major provisos:
 - They must be ordinarily resident in NZ when they apply for NZS.
 - Their ability to receive NZS under these “portability rules” may be affected by a SSA if they retire in one of 8 countries.

- The portability rules are in two parts:
 - Pacific Islands portability
 - General portability (applies to all other countries other than the Pacific Island ones).
- Pacific Island retirees can receive NZS at the full rate after 20 years NZ residency. (A proportional payment of NZS is available after 10 years residency.)

- Until 2009, NZS was payable in non-Pacific Island countries after 10 years of NZ residency but only at half rates (50%).
- Only one rate was offered -50%. From 2009 this was changed so it is now variable -anywhere from 0% to 100%.
- In both cases NZS paid overseas is exempt from NZ income tax.

- These NZS rules are relatively simple but can be arbitrary in their application and may give rise to major inequities.
- The NZS rules are over-ridden if a person retires to one of 8 countries with which NZ has concluded a SSA. This may not necessarily leave them better off or with a more appropriate treatment.

The 2009 Act

- In November 2009 the Government passed the *New Zealand Superannuation and Retirement Income Amendment Act* which changed the **general portability rules** for NZS.

- It did not change anything for those falling within the scope of the 8 SSAs, nor anything for those retiring in NZ bringing foreign pensions with them despite some earlier statements that some of these matters would be reviewed.
- Thus the scope of the changes under the 2009 Act are quite narrow.

What Changed With The 2009 Act?

- Under the earlier general portability rules, NZS could be paid outside of NZ after 10 years residency but only at one rate (50%).
- That has now changed so that the amount paid outside NZ is determined by the number of years the superannuitant has lived in NZ between the ages of 20 and 65.

- Full payment of NZS outside of NZ is now possible if the superannuitant spent 45 years of their working life in NZ.
- Residency after 65 years is no longer taken into account for general portability but is still done so for Pacific Islands portability.

- The existing Pacific Island portability rules were not changed and retirees can still receive NZS at full rates after 20 years residency.

- NZS continues to be paid overseas exempt from NZ tax. This may mean a superannuitant retiring overseas may enjoy a larger pension than if they had retired in NZ.
- There may be in future some changes to this tax treatment for those who go on an extended overseas trip but do not take up residence in another country.

Are These Changes An Improvement?

- **YES** and **NO**.
- The new formula for general portability is much fairer outcome for those who have worked all their lives in NZ between 20-65 years.
- Reduces the amount payable to elderly migrants retiring outside of NZ when they have contributed little (if anything) during their working lives.

- But still does not address the issue that NZS is paid overseas exempt from NZ tax which may result in a larger net pension.
- It does not change the privileged status for Pacific Island retirees.
- Does nothing for retirees suffering a disadvantage under one of NZ's SSAs –particularly the Australian one.

- It addresses only one of many international problems with NZS despite acknowledgment by the Select Committee that there were others.
- The changes are likely to benefit relatively few people, while many others continue to be disadvantaged.
- It does, however, create a platform if NZ was to adopt proportional funding approach in both directions.

Remaining Problems

- The 2009 Act did not address a number of major problem areas:
 - That the Australian (and UK) SSCs may make someone worse off than the general portability provisions.
 - NZers retiring in Australia are penalised (over any other country) but provides incentives for Australians to retire in NZ and collect NZS when they have never contributed to the NZ tax base.
 - It does not change anything for retirees who bought overseas pensions to NZ that are deducted from NZS.

- Fails to address inconsistencies in the application of the deduction policy;
- Continues to provide a privileged position for Pacific Islander retirees;
- Does not address the fiscal risks to NZ in the Australian SSC.

- It is strange why changes to improve the general portability provisions were given such a priority while Parliament deliberately avoided addressing other inequities.