



Treasury Laws Amendment (KiwiSaver Scheme) Regulations 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 25 November 2021

David Hurley
Governor-General

By His Excellency's Command

Jane Hume
Minister for Superannuation, Financial Services and the Digital Economy

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1 Name

This instrument is the *Treasury Laws Amendment (KiwiSaver Scheme) Regulations 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	27 November 2021
2. Schedule 1	The later of: (a) the start of the day after this instrument is registered; and (b) immediately after the commencement of Part 1 of Schedule 2 to the <i>Treasury Laws Amendment (2020 Measures No. 5) Act 2020</i> .	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Income Tax Assessment Act 1997*;
- (b) the *Superannuation Industry (Supervision) Act 1993*;
- (c) the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Income Tax Assessment (1997 Act) Regulations 2021

1 Section 301-170.01

Before “For”, insert “(1)”.

2 At the end of section 301-170.01

Add:

- (2) For the purposes of subsection 301-170(4) of the Act, a superannuation lump sum that is paid to a KiwiSaver scheme provider under subsection 20H(2) or (2AA) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* is prescribed.

Note: A superannuation lump sum prescribed by this subsection is not a *departing Australia superannuation payment* (see subsection 301-170(4) of the Act).

3 Subsection 1000-1.08(1)

Omit “Section 301-170.01”, substitute “Subsection 301-170.01(1)”.

Superannuation Industry (Supervision) Regulations 1994

4 Regulation 12A.01 (paragraph (d) of note 2)

Omit “amount.”, substitute “amount; and”.

5 Regulation 12A.01 (after paragraph (d) of note 2)

Insert:

- (e) amounts paid by the Commissioner of Taxation to a KiwiSaver scheme provider under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

6 Regulation 12A.02 (definition of *Australian-sourced amount*)

Repeal the definition, substitute:

Australian-sourced amount means:

- (a) an amount that:
- (i) was originally accrued in a complying superannuation fund; and
 - (ii) is subsequently received by a KiwiSaver scheme; and
 - (iii) is identified by the receiving KiwiSaver scheme as an amount described in subparagraph (i); or
- (b) an amount that:
- (i) is paid by a KiwiSaver scheme provider to a complying superannuation fund; and
 - (ii) is identified by the complying superannuation fund as an amount described in subparagraph (a)(i); or
- (c) an amount that:
- (i) is paid to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and
 - (ii) is identified by the Commissioner of Taxation as an amount described in subparagraph (a)(i); or

- (d) an amount that:
- (i) is paid by the Commissioner of Taxation to a complying superannuation fund under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and
 - (ii) is identified by the complying superannuation fund as an amount described in subparagraph (a)(i).

Note: As part of trans-Tasman retirement savings portability, an Australian-sourced amount may eventually be received by the same complying superannuation fund in which it originally accrued or another complying superannuation fund. It will still be an Australian-sourced amount at that time.

7 Regulation 12A.02 (definition of *New Zealand-sourced amount*)

Repeal the definition, substitute:

New Zealand-sourced amount means:

- (a) an amount that:
 - (i) was originally accrued in a KiwiSaver scheme; and
 - (ii) is subsequently received by a complying superannuation fund; and
 - (iii) is identified by the complying superannuation fund as an amount described in subparagraph (i); or
- (b) an amount that:
 - (i) is paid by a complying superannuation fund to a KiwiSaver scheme provider; and
 - (ii) is identified by the KiwiSaver scheme provider as an amount described in subparagraph (a)(i); or
- (c) an amount that:
 - (i) is paid to the Commissioner of Taxation under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and
 - (ii) is identified by the Commissioner of Taxation as an amount described in subparagraph (a)(i); or
- (d) an amount that:
 - (i) is paid by the Commissioner of Taxation to a KiwiSaver scheme provider under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and
 - (ii) is identified by the KiwiSaver scheme provider as an amount described in subparagraph (a)(i).

Superannuation (Unclaimed Money and Lost Members) Regulations 2019

8 Section 4

Insert:

element untaxed in the fund has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

superannuation benefit has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

taxable component has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

9 After Part 7

Insert:

Part 8—Payment of amounts to KiwiSaver scheme provider

20 Payment of amounts to KiwiSaver scheme provider

- (1) For the purposes of subparagraphs 17(2)(aa)(iii), 20H(2)(ba), 20QF(2)(aa)(iii), 21E(2)(aa)(iii) and 24G(2)(aa)(iii) of the Act, this section prescribes the matters that must be satisfied for the Commissioner to make a payment of an amount in respect of a person to a KiwiSaver scheme provider.
- (2) The following matters are prescribed:
 - (a) the person has emigrated permanently to New Zealand;
 - (b) the person has given the Commissioner proof of residence at an address in New Zealand following the person's emigration to New Zealand;
 - (c) the person has opened a KiwiSaver scheme account;
 - (d) the Commissioner has been given sufficient details of the KiwiSaver scheme and the account number to which the amount is to be paid;
 - (e) the KiwiSaver scheme provider will accept the amount;
 - (f) the taxable component of any superannuation benefit that is paid by the Commissioner would not consist of, or include, an amount that is an element untaxed in the fund.