

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

Contents

1 Name 1

2 Commencement 1

3 Authority 1

4 Schedules 1

Schedule 1—Amendments 2

Income Tax Assessment (1997 Act) Regulations 2021 2

Superannuation Industry (Supervision) Regulations 1994 2

Superannuation (Unclaimed Money and Lost Members) Regulations 2019 3

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 *Treasury Laws Amendment (2020 Measures No. 5) Act 2020*. | 11 December 2021  (paragraph (b) applies) |

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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.