MONTFORT
INTERNATIONAL PLC
Global Financial Planning

Wednesday, 01 July 2009

The Pension Review

IMPORTANT
The following submission is an update to the Montfort International earlier submission emailed UK (Fri 27/02/2009 00:21)

By means of introduction, our submission comes from a firm based in UK, that specialises in financial and retirement planning for those who one day might plan or live their retirement outside of the UK. We have operated as consultants in this field since the early 1990's and have over the years:

1. Co-Designed the first Australian superannuation product designed specifically to receive a UK pension transfer (Tower Bridge for Tower Life).
2. Appeared before the "TAXATION OF TRANSFERS FROM OVERSEAS SUPERANNUATION FUNDS, PUBLIC HEARING 17 MAY 2002" (Australian Senate).
3. Co-developed with UK's tax authority Her Majesty's Revenue and Customs (HMRC) http://www.hmrc.gov.uk/pensionschemes/faqs.htm . This is in relation to Qualifying Recognised Overseas Pension Schemes (QROPS) being the UK's granting of status recognition of non-UK retirement products which are capable of receiving the asset held within a UK pension scheme.
4. Submitted Key Research Information to HMRC that led to the Australian specific UK tax ruling http://www.hmrc.gov.uk/pensionschemes/ps-newsletter36.htm which has transformed the reasons as to why a UK pension should be transferred to Australia.
5. Developed UK based retirement solutions for Australians based in UK and UK residents moving to Australia, that factor in benefits held overseas. Such processes can and do enhance the value of benefits. The transfer of benefits immediately to Australia within a period of six months can seriously damage benefits previously accrued ex-UK.
6. Co-Developed Advice Factfinds and Technical Advice Documents with UK's Personal Finance Society in relation to advising those who one day might plan or live their retirement outside of the UK. This work was to deal with the advice issues surrounding the delivery of advice where two countries tax, retirement and social security systems come head to head and the consequent problems created by compatibility failings;

We would like to now present our views. We have supplied this submission in haste, for which we apologise, we are available to expand on these comments should they be so required. We believe some of our commentary may present a totally different picture to other submissions, i.e. that of expertise looking in. In so doing we are addressing some of the core problems facing migrants to Australia and returning Australians whose retirement planning needs special consideration. There are so many significant differences between Australia and the UK and the options available to those holding UK retirement products, some non-Australian products can be infinitely more attractive to an Australian solution.

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- The Australian Retirement System fails to accept that one day an Australian resident may decide to live and or retire ex-Australia. Whereas other countries notably UK allow their schemes to be transferred into Australia, Australia prevents transfers out unless one has entered Australia under a temporary visa. **STRICTLY OPERATED EXITING AUSTRALIA OVERSEAS SUPERANNUATION TRANSFERS SHOULD BE INTRODUCED AND KEENLY REGULATED. IT IS BUT UNFAIR AUSTRALIA BOTH ACCEPTS UK TRANSFERS AND RETAINS UK TRANSFERS BUT WILL NOT LET A DEPARTING AUSTRALIAN RESIDENT TRANSFER BENEFITS OVERSEAS OR BACK TO UK. A SCHEME TRANSFERRED IN SHOULD BE SEGREGATED FROM OTHER BENEFITS AND BE FREE TO LEAVE AUSTRALIA WHEN THE MEMBER GIVES UP PERMANENT RESIDENCY.**

  FAILURE TO ADDRESS THIS POSITION COULD RESULT IN OVERSEAS SUPERANNUATION SCHEMES BANNING TRANSFERS INTO AUSTRALIA. PLEASE NOTE THAT THE UK HAS ALREADY ADJUSTED ITS RULES TO ASSIST AUSTRALIA ON TWO OCCASIONS. IS IT BUT NOT TIME FOR AUSTRALIA TO RECIPROCATE?

- Australia should embrace the reality that a superannuation benefit should be able to be transferred ex-Australia. Protected cells could be put in place that would allow this facility, within other jurisdictions, i.e. a superannuation fund could be moved to UK and then moved back. UK QROPS allow this option and UK schemes operate under such principles. In other words **WE SEE NO REASON WHY SUPERANNUATION VEHICLES CANNOT BE ESTABLISHED IN AUSTRALIA AND EX-AUSTRALIA THAT WOULD ALLOW SUCH TRANSFERABILITY IN AND OUT.**

- There is a perception that if a person moves to Australia then they must ALWAYS move their retirement funds to Australia. This is seen by Montfort International as advice driven at times by those who do not put their client's needs first. Why is this, the case? Here are some examples.

  - UK allows access to capital and income from retirement plans for those born pre 06/04/60 at age 50, and those born after 06/04/60 at age 55. Those who transfer their funds to Australia are denied this right. They must be advised of this option

  - UK allows access to full capital access after 5 UK tax years absence from the UK, allowing for an early retirement. These are funds built up in UK. We see a raft of complaints from those who in years to come will want to know why their funds cannot be accessed after the 5 years absence. These people having their retirement benefits trapped in an Australian Superannuation scheme will know of others who will be able to retire earlier due to the flexibility of non-Australian solutions. There is indeed a need to respect that the rules of the ceding schemes countries regulation may well provide benefits and permit options not available either in Australia or better utilised at a later date by a later transfer in. In summary many funds have been moved to Australia without consideration of the options that are allowed using UK and non-UK vehicles – this is fundamentally unfair and needs immediate attention and we urge those charged with reviewing the Australian retirement system to address this issue with haste.

  - Those who have moved to Australia permanently may well change their plans and may have been advised to transfer their funds to Australia to find their retirement monies trapped in Australia. As residents of another country what reason has Australia to retain their benefits? Different rules should apply to permanent residents as opposed to citizens.

THERE IS AN URGENT NEED TO BUILD ADVICE MONITORING INTO AUSTRALIAN SUPERANNUATION ADVICE REGULATIONS. SUCH PRACTICES WOULD RECOGNISE THAT FUNDS SHOULD NOT NECESSARILY BE MOVED TO AUSTRALIA AND THAT ALL TRANSFERS MUST ADHERE TO AN ADVICE MODEL THAT FACTORS IN ALL OPTIONS AVAILABLE TO THOSE LIVING IN AUSTRALIA WITH UK PENSIONS. WE AS A FIRM HAVE SEEN PENSIONS MOVED TO AUSTRALIA WHICH

a. Should not have
b. Have had the wrong values moved
c. Have lost valuable UK benefit

IT APPEARS THAT IN SUCH CASES THE ADVISOR RECOMMENDING THE TRANSFER HAD, RECEIVED LITTLE OR NO TRAINING IN UK PENSION FUNDS AND THE WAY THEY WORK

- There has been a call for the A$450,000, 3 year limit on superannuation funding to be lifted in order to allow UK pensions to be transferred to Australia. Australia has no reason to change its rules as perfectly adequate options allow funds to be stored ex-Australia and to be "dripped into Australia" where necessary. There is no need in our opinion for this A$450,000 to be increased as these options are often far more beneficial to the former UK resident.
- Many migrants may have been panicked into moving a retirement fund to Australia all because of the threat of a tax liability of funds not moved within six months. Though this is a simplistic illustration, such advice plays upon old tax rules when for example A$100,000 grew to A$150,000 and A$50,000 was subject to tax at one stage at nigh on 50%. Today the facility exists for the fund to "pay the tax but at 15%" which in this once again simplistic example equates to 15% of A$50,000, being A$7,500 which represents 5% of the A$150,000.

  Many are having their retirement disturbed as they are not made aware that the 5% of fund value is at jeopardy is not the main issue. The mere fact that the FX between UK and Australia moved 5% in a day in October 2008, challenges any reason built solely on tax. This is no longer a tax issue it is a planning issue and a currency decision and getting the best value out of ones retirement benefits.
- Options exist for UK pension funds to be transferred to Australia and where exactly A$150,000 or any sum up to A$450,000 has to be moved this is indeed deliverable using non-Australian options. This we believe been seen as a problem. It is not the problem that been made out. The problem that exists in Australia is driven by those supplying advice either not aware of options ex-Australia or unwilling (if aware) to work with experts in other countries. Advice has to start in the country where the funds are resident, as once funds are moved to Australia options fall away. UK schemes have been specifically designed that do allow A$ purchase and accommodate this perceived problem. If the A$ were purchased in UK there is control over the amount that would be transferred in. If the A$ are purchased in Australia this can lead to under delivery of the A$150,000 or over delivery – leading to both UK and Australian tax consequences. The argument that the A$150,000 limit leads to tax problems exists in the main only where non-Australian input is factored in.

WE BELIEVE REGULATORY CONTROLS NEED TO BE INTRODUCED TO PROTECT THE GENERAL PUBLIC. IT SHOULD BE MANDATED THAT WHERE A FUND IS MOVED FROM UK TO AUSTRALIA - IT SHOULD BE DEMONSTRATED THAT ADVICE WAS SOUGHT FROM THE CEDING SCHEME OR AN ADVISOR IN THE CEDING COUNTRY AND CAN BE EVIDENCED THAT OPTIONS GIVEN UP HAVE BEEN TAKEN INTO CONSIDERATION BEFORE A TRANSFER TAKES PLACE.

Our above commentary would apply to many of the questions posed. It is our considered opinion that migrant's retirement monies need to be protected. And it is our considered opinion that they are not being made aware of all their options, this is a serious issue.

The A$450,000 limit is seen as a problem, we don't believe there is a need to increase the limit as perfectly acceptable solutions allow pensions to be stored using non-Australian options.

As we only were made aware of this committee but a few days ago – this report is less intense than we would like to have submitted. We are able to assist further and should clarification be needed please advise by email, we appreciate that some of our observations may be new.

It is our considered opinion that those charged with reviewing Australia's retirement system must take into consideration the retirement benefits held by those who have accrued benefits ex-Australia. Furthermore that the principle of simply extracting benefits to an Australian superannuation scheme without full and proper due diligence can be extremely damaging to anyone moving to Australia.

Kind Regards,

Geraint Davies

Managing Director