Session on-demand

The Tax Institute

UK Pension Transfers to Australia

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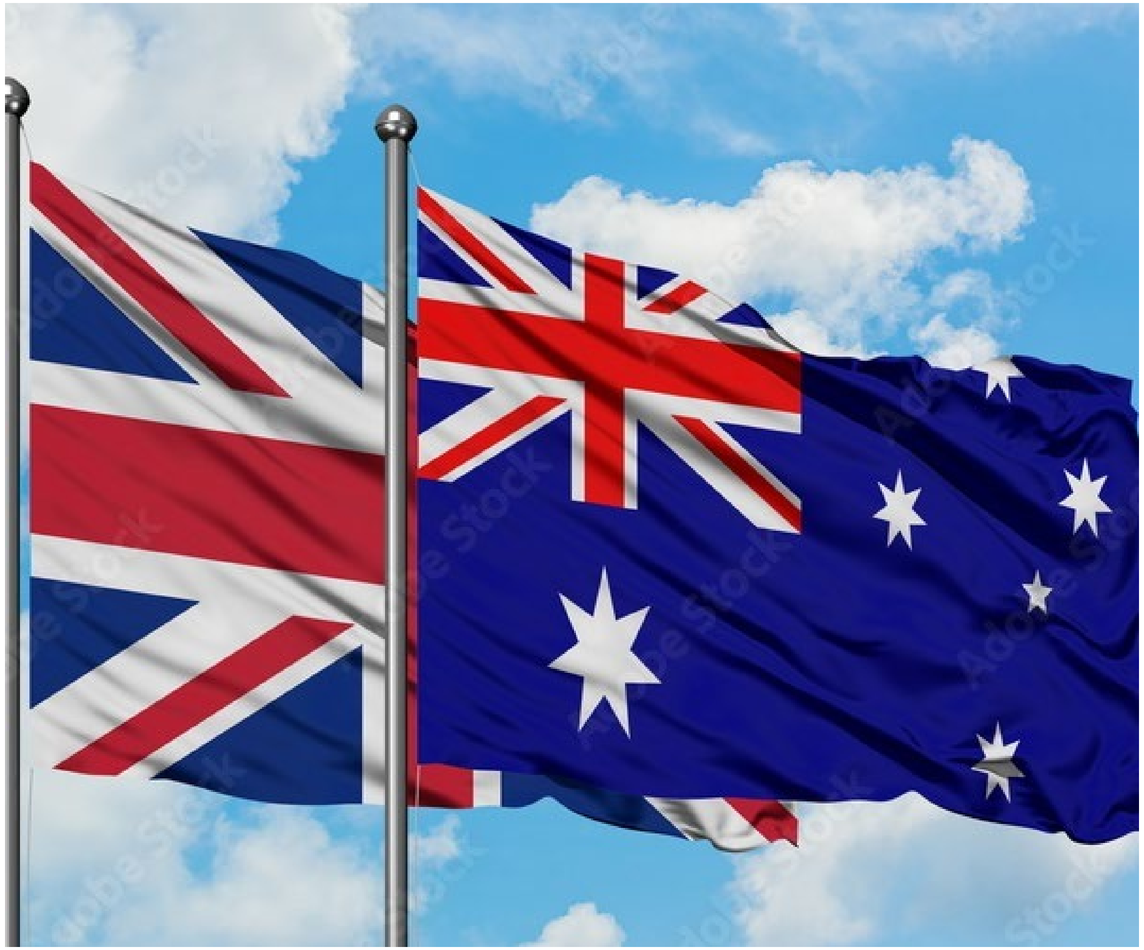
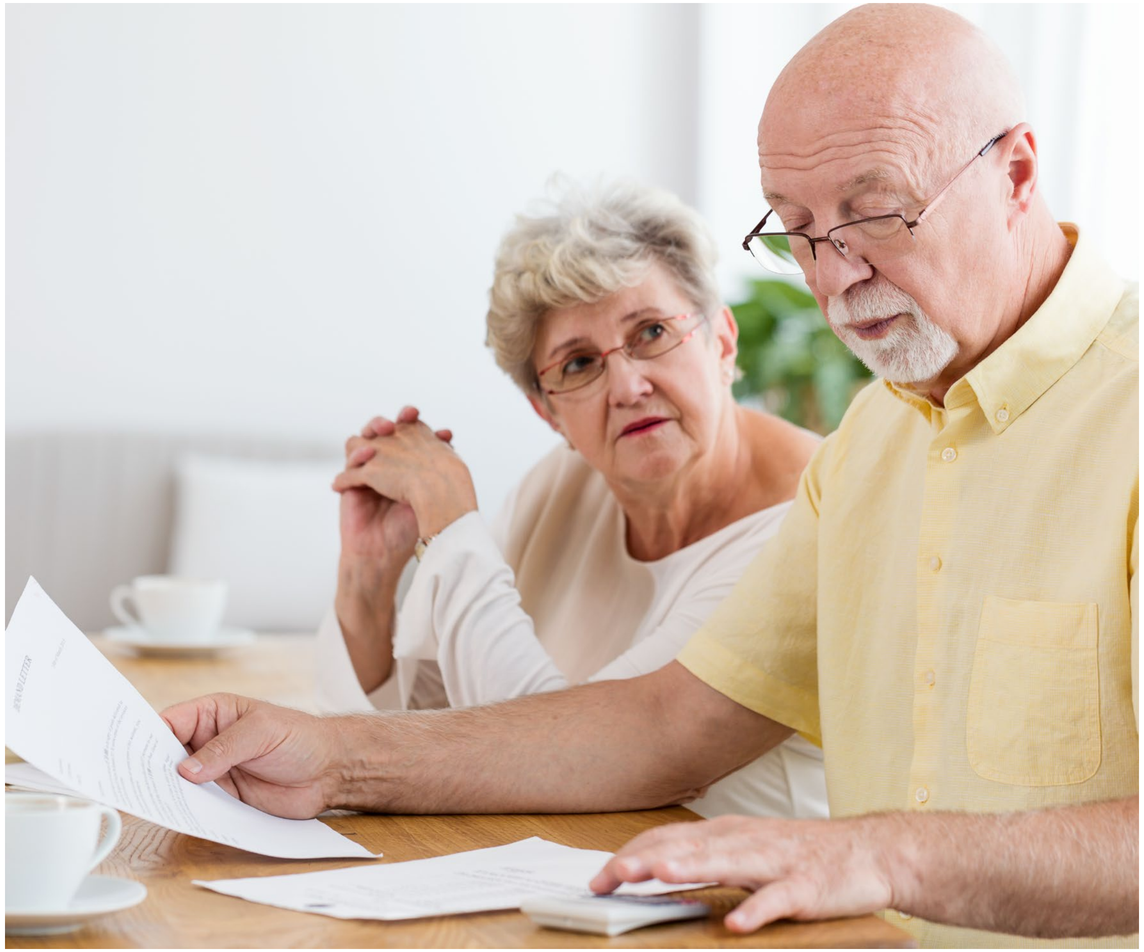
Agenda

- UK Payments – Australian Taxation Treatment:
  - Pension / Annuity
  - Lump-sum
- UK tax considerations
- Transfer requirements from the UK
- Recent changes / considerations:
  - Australia
  - UK



Payments from UK Pension Schemes The Australian Tax Position



Foreign Pension Payments

- Payments from foreign pensions are fully assessable in individual's name in Australia
- No eligibility for a rebate with respect to the payments
- Deductions available:
  - UK National Insurance Pension or from the Pension Service – 8% deduction
  - Other UK pensions: request for determination of Undeducted Purchase Price (NAT 16543
    - The ATO will determine how much of your pension that you contributed to, and divide it by your life expectancy at the commencement of the pension.

Lump Sum – Within Six Months of Australian Residency

- Tax-free to individual in their personal name (ITAA 97 s 305-60)
- Could be paid directly into superannuation in Australia
- Would be non-concessional contribution if paid directly to super, as no taxable component
- Simples………..
  - Can be difficult to achieve, especially paying to the individual, unless the transferring fund is aware of the details almost before the individual comes to Australia
  - To transfer to super in Australia, need Recognised Overseas Pension Scheme (ROPS), which can be SMSF
  - Also, transferring fund needs to be happy with their own position re residency of the member, given Overseas Transfer Charge (OTC)

Lump Sum – Outside Six Months of Australian Residency

- High level:
  - balance as at date of residency, plus contributions since residency – tax-free in the individual's personal name
  - growth / increase in value between date of residency and date of transfer – taxable at individual's marginal tax rate (ITAA 97 s 305-70)
  - Growth is classified as "applicable fund earnings" or AFE
  - AFE calculation – ITAA97 s 305-75
- AFE can be taxed in superannuation fund at 15%
  - election made under ITAA97 s 295-200

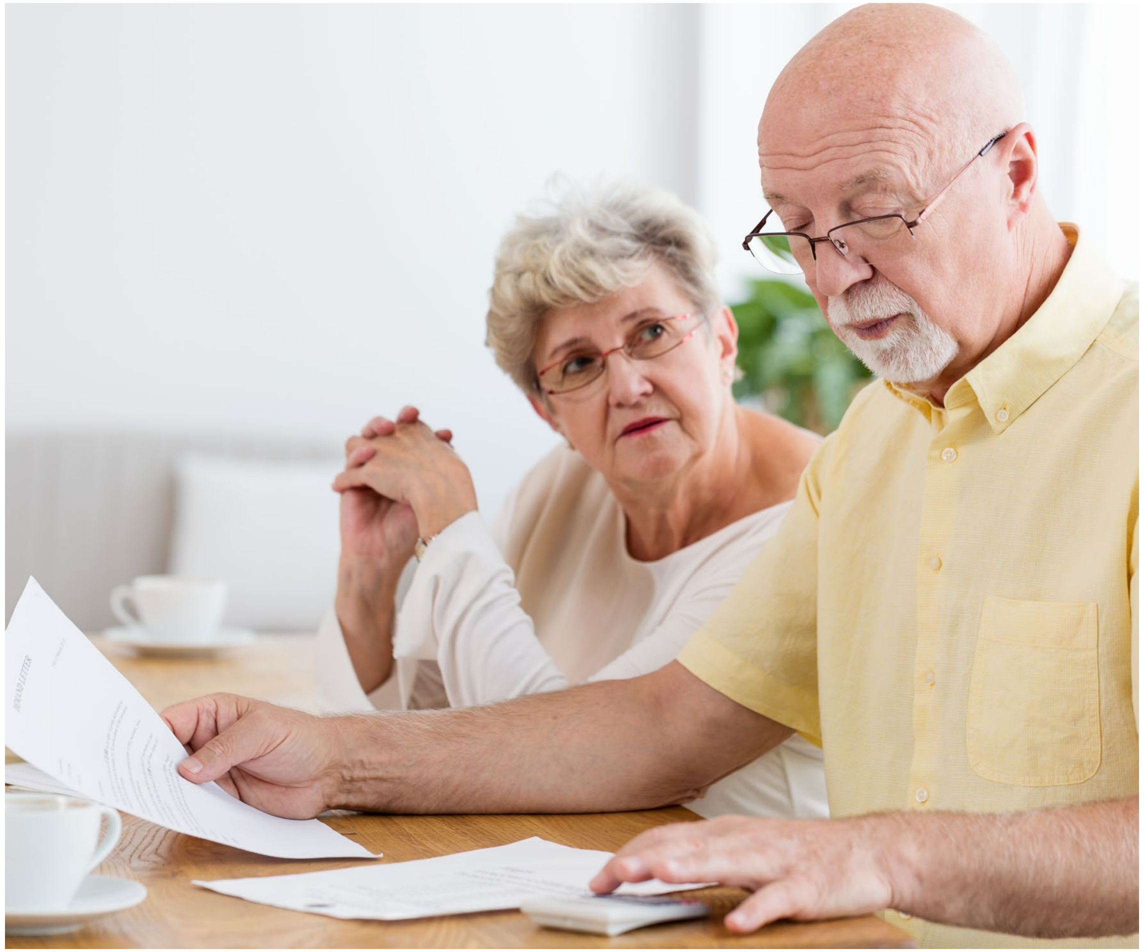
Lump Sum – Outside Six Months of Australian Residency

- Strict conditions to be met to use the concession (ITAA 97 s 305-80):
  - must be no benefits remaining in the source foreign super fund
  - all of the lump-sum needs to be paid into Australian fund
  - Came v Commissioner of Taxation (AATA 3951) notwithstanding
- Treatment in the superannuation fund:
  - AFE component – taxed at 15%, and neither concessional nor non-concessional contribution
  - non-growth component – non-concessional contribution (ITAA 97 s 292-90)

Foreign Superannuation Fund

- For the above taxation treatment (taxation of growth component and the ability to elect that the growth component is included in fund's assessable income), the transfer must be from a "foreign superannuation fund"
- UK Funds, and funds where the source benefits have come from the UK (for example, QROPS / ROPS in Guernsey, Malta, Gibraltar, Isle of Man, Jersey) would satisfy
- Also applies to international schemes in other jurisdictions just as Bermuda where the scheme rules replicate UK provisions for the relevant international company, but the jurisdiction of the scheme is offshore to the UK

UK Pension Transfers UK Requirements



Recognised Overseas Pension Scheme (ROPS) Considerations

- Since 2015 with respect to ROPS:
  - Pension Age Test
  - Fund can’t make payments before age 55, in circumstances other than ill-health
  - Although Australian funds generally satisfy this condition given our preservation age, as the “financial hardship” and “compassionate grounds” conditions of release allow for release prior to 55, standard Australian funds don’t qualify
  - Pension age is increasing to age 57 in a few years time

Impact

- Either update the deed of an existing fund, or set up a new fund with the relevant provisions
- Provisions that ARE SUFFICIENT:
  - Limiting the members of the fund to those who are aged 55 and over
  - Therefore, anyone who is under 55 can’t be a member
  - Have to wait for the members to reach age 55 before such a fund is set-up, or spouses join that particular fund.

Practically……

- Once 55, set up new SMSF and apply for ROPS status (UK requirement)
- Have UK monies transferred across
- Depending on the strategy, could consider keeping the benefits in existing funds separate, so then not subject to UK restrictions and reporting
- Reporting requirements – at least 10 years back to the UK, but what is reported is not onerous
- NEED TO WATCH – Taxable property provisions under UK Finance Act
    - SMSF can't invest in residential property with UK rollover funds (even if it satisfies SIS provisions)
    - If the fund does, the value of the property investment in the context of UK tax relieved funds can be taxed at up to 55% in the UK

Overseas Transfer Charge (OTC)

- An individual with UK pension benefits can only transfer their benefits to an international ROPS if the ROPS and the individual are resident in the same country
  - If that isn't the case, 25% tax impost in the UK on the UK tax relieved benefits transferred
  - This also applies if the individual moves money to ROPS in Australia and then within five years ceases to be an Australian resident – balance of the tax relieved funds then subject to the 25% charge
- Have UK monies transferred across
- Depending on the strategy, could consider keeping the benefits in existing funds separate, so then not subject to UK restrictions and reporting
- Reporting requirements – at least 10 years back to the UK, but what is reported is not onerous
- NEED TO WATCH – Taxable property provisions under UK Finance Act

UK Pension Options

- Once age 55, UK pension members can take their benefits as either:
  - An annuity
  - A flexible access drawdown fund (FAD) – like an Account-Based Pension in Australia, although no minimum drawdown
  - An Uncrystallised Funds Pension Lump Sum (UFPLS)
  - Transfer to a ROPS
- A FAD is taxed as follows in the UK:
  - 25% is tax-free
  - Balance is taxed like a pension in the UK (marginal tax rate)
- A UFPLS is taxed as follows in the UK:
  - 25% is tax-free
  - Balance is taxed like a pension in the UK (marginal tax rate)

Impact

- Multiple options available for taking benefits upon attaining age 55
- Could certainly transfer benefits to Australian ROPS
- HOW ABOUT, as an example, instead of applying for ROPS status at age 55 to rollover benefits, consider using the UFPLS provisions
  - Tax out a lump-sum
  - 25% is tax-free, 75% is taxed as a pension in the UK
  - Make a contribution of the amount into an Australian super fund
  - Wouldn’t prohibit the investment decisions in the SMSF re residential property
- WHAT ABOUT THE TAX ON THE 75% THAT ISN’T TAX-FREE IN THE UK?

UK Tax on 75%

- In the UK, this will be taxed like pension income, at the individual’s marginal rate in the UK
- UNLESS, there is a Double Taxation Agreement (DTA) that contains provisions regarding pensions
- Australia and the UK have a DTA
- The taxation right for “pension payments” rests with………
  - THE RESIDENT COUNTRY
  - Being AUSTRALIA.
- Prior to December 2023, HMRC had confirmed that more than one UFPLS payment would fall under the DTA, and they wouldn’t assert their taxing right

UFPLS – Australian Tax Treatment

- Treatment in Australia of the payment?
- Pension, or lump-sum payment?
  - The 75% is taxed as pension payments in the UK
  - However, is classified as a UFPLS
- So, from an Australian perspective, is it a lump-sum, or a pension?
  - ITAA 307-65 defines “superannuation lump-sum”
  - ITAA 307-70 defines “superannuation income stream benefit”.

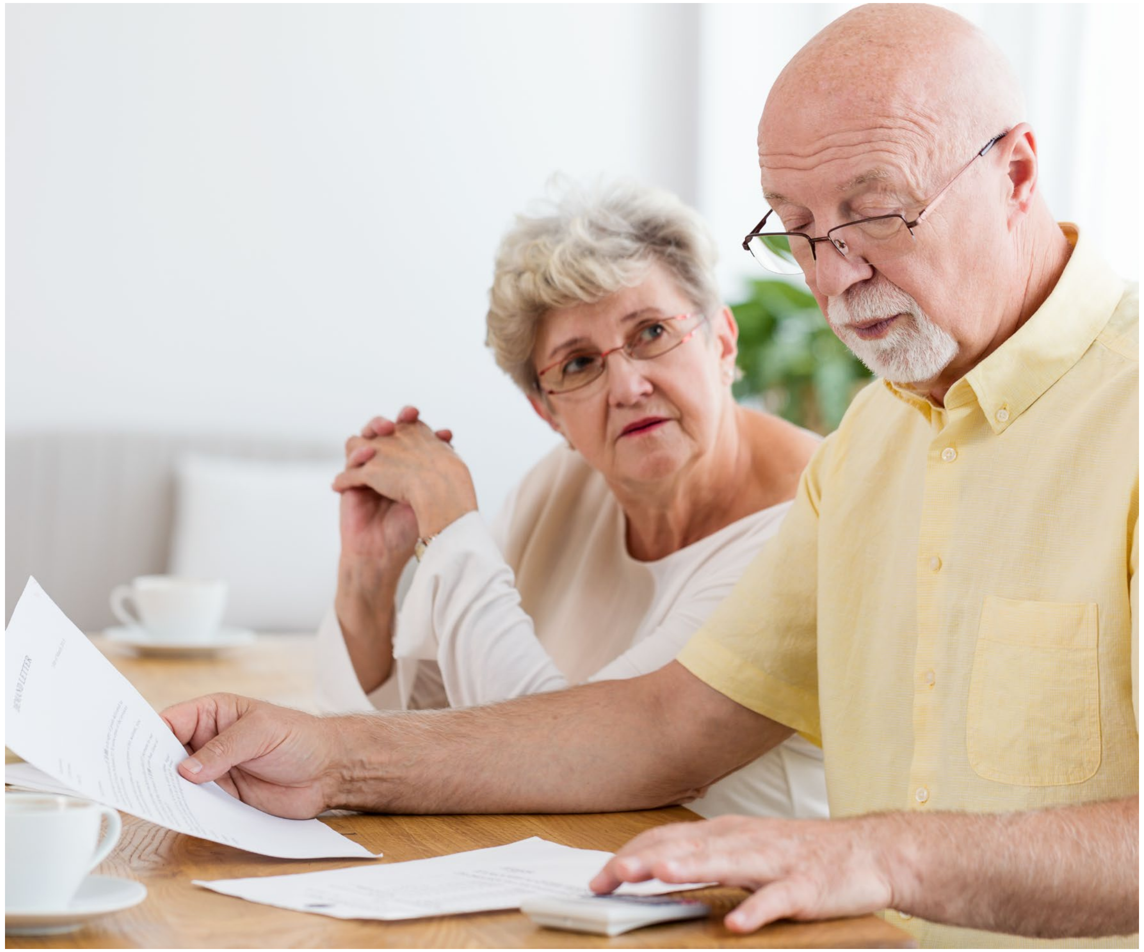
UFPLS – Australian Tax Treatment

- ATO treats as a lump-sum from foreign super fund
- ITAA97 subdivision 305-B applies
- Growth (AFE) and non-growth components:
  - Not just on the 75% either, but the entire lump-sum
  - The “tax-free” status of the 25% in the UK is irrelevant
  - This is where some people do fall foul, as have been told “25% tax-free”, however that is in the UK only, NOT Australia
- Growth taxed at marginal rate, or super fund tax rate if transferred directly to super, and election made
- Cake, and eat it too?
  - Treated as a pension in the UK and therefore Australia has the taxing right under the DTA (HMRC view from non-statutory clearance obtained for specific taxpayers and then able to more widely apply)
  - Treated as a lump-sum in Australia and therefore only growth / AFE component taxed in Australia at marginal tax rate.

Practicalities of UFPLS

- Although it can be accomplished, is not straightforward to implement;
  - All of the above can take 12 pluUK withholding provisions and getting a nil tax code (NTC)
  - Getting clearance that HMRC agrees that a UFPLS is subject to the DTA and Australia has the taxing right (current issue – see below)
  - Convincing the pension scheme that it can be done
  - Previously could only receive up to LTA, as >LTA was 55% UK tax
- s months to get to the point where the UFPLS that is the balance of the account can be paid
- May not often be the preferred approach given that timing
- However, is preferred where the individual has benefits in the UK where:
  - The non-growth component is in excess of the NCC
  - Releasing the excess NCC may have been an issue
  - The associated earnings on the excess may be prohibitive

Strategies to Transfer UK Benefits (some now in doubt though……)



Strategies for Transferring UK Benefits

- Generally, in order to satisfy the UK requirements and the Australian contribution requirements, the following strategy is undertaken;
  - Calculate the growth (AFE) and non-growth (NCC) component in Australia
  - The strategy is then based on whether the non-growth component is less than the NCC limit for the individual:
    - Excess contribution implications?
    - Alternative strategies to be implemented in the UK first?
    - What is the timing / costs involved?

1. Pension from the UK

- Member receives a regular pension / annuity from the UK
- Fully taxable in Australia at their marginal tax rate
  - Could be a deductible amount, depending on the history for the member
  - If DB, won’t have UPP
- If an annuity, often reversionary to a spouse – between 65% and 70% of the pension account
- Often no benefits paid when the member and the reversion both die – no capital sum to the estate
- Ongoing link to the UK, and foreign exchange considerations
- Not often the preferred scenario.

2. Where Non-Growth <NCC

- Non-growth component is less than the individual's NCC cap:
  - Set up a new SMSF that is a ROPS, or use the publicly available ROPS in Australia (only one at this stage)
  - Transfer the UK benefit directly to the Aussie ROPS
  - The UK scheme is familiar with the transaction, and as the fund is a ROPS, they are ticking the boxes on their end
  - Fund and the member are Australian residents, so no OTC
  - Generally, if Non-Growth is <NCC, then value will be <OTA
  - The AFE component will be included in the income of the fund and taxed at 15% - where the relevant election form is completed and provided to the Aussie ROPS
  - The non-growth component is NCC, but within the cap, so no excess.

3. Non-Growth > NCC
Multiple SIPP strategy over time

a) Year 1:
   i. SIPP1 transfer to SIPP2: AFE plus NCC available
   ii. SIPP2 – transfer 100% to Australian ROPS where AFE taxed at 15% and non-growth within NCC, so no excess issue

b) Year 4: repeat the above, looking at any renewed growth amount

c) Year 7: repeat the above, looking at any renewed growth amount

d) Year 10 (maybe…): repeat the above, looking at any renewed growth
   i. may not have to go to year 10, could be resolved at year 4 or 7
   ii. may not have any NCC available by that time if total benefits plus ongoing earnings, plus other super already in Australia would be higher than the upper TSB threshold
   iii. have to retain benefits in the UK over the period – investment considerations?

3. Non-Growth > NCC Trigger Excess NCC

Where excess to NCC, then need to:

- Exercise care and be aware of the timing and implications
- What does an excess NCC mean?
  - Either excess NCC tax (47%) – not generally desirable, and taxpayer would have to elect this, as the default is release, or
  - Release from the fund – reportable to HMRC and then potentially 55% tax if considered to be an unauthorised payment
- Does the member have other Australian superannuation benefits?
  - Can we release the excess plus AE from that account?
  - Is there sufficient super benefits there to undertake that strategy?
- Ensure that both the UK and Australian implications are satisfied.

4. UFPLS

- Could receive one or more UFPLS payments to the individual
  - As above, where more than one payment, HMRC considers that Australia has the taxing right under the DTA
  - Process for that to be undertaken is cumbersome and not timely (6-12 months to receive NTC)
- Tax implications in Australia:
  - AFE – taxed at marginal tax rate
  - If AFE is not substantial, member could be happy with that outcome, especially if they can make concessional contributions (and have carry forward amounts available)
  - Their benefits are then entirely out of the UK system – no ongoing ROPS reporting, although still personal five-year non-residency payment considerations given DTA
  - Is not generally the option that most people select, unless they are only just out of the UK, and after the six-month timeframe given the tax implications on the AFE being taxed at marginal rate

5. PCLS then FAD

- Could receive a PCLS
  - 25% of benefit up to LSDBA (£268,275 is standard LSDBA, but could have higher amount)
  - in the UK is tax-free
  - Australia will tax on the AFE on the payment at the individual's marginal tax rate
  - Balance to receive 25% (so 75% leftover) is then "crystallised" under the UK provisions
  - If original scheme was >£1,073,100, will still have some uncrystallised amounts

5. PCLS then FAD ……cont

- How is the balance transferred?
  - Can only receive then FAD payments, or
  - 100% transfer to ROPS
- If FAD payments:
  - regular payments would be fully taxed in Australia as foreign pension payments
  - if looking at paying balance as substantial FAD payment, risk that Australia will treat as above – fully taxable
  - could apply for PBR where argument that treated as a lump-sum for tax purposes, so 305-75 applies (AFE calculation)
  - cost of PBR and timing on response from the ATO for the outcome
  - also still need NTC for the UK scheme to not withhold tax

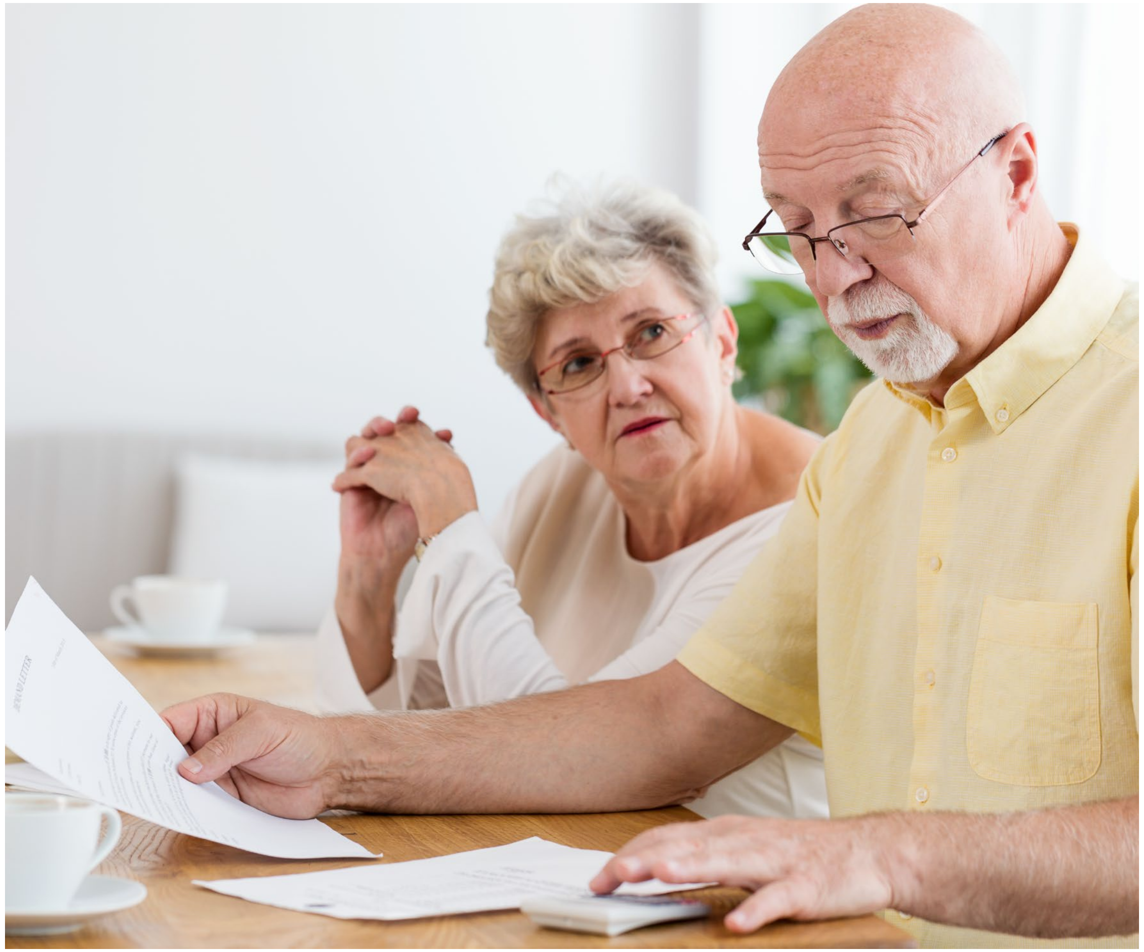
NOT GENERALLY PREFERRED (by us), given ATO risk and cost for PBR where UFPLS is available – more likely to do option 4 with UFPLS. Would look at where benefits greater than the Lifetime Allowance (LTA) in the past.

6. Combination of 3 with 4 or 5

Consider multiple step process:

1. What is the growth / AFE and non-growth
2. If non-growth >NCC, consider:
   a) Split UK account into multiple SIPPs
   b) SIPP2 – AFE plus NCC cap
   c) SIPP1 – balance (all non-growth component)
3. Transfer SIPP2 to Australian ROPS
4. Receive UFPLS’s or PCLS and then FAD from SIPP1
   a) No further tax in Australia (except on any growth between transfer to SIPP2 and UFPLS)
   b) Transfer of all UK benefits to Australia within 9-12 months (don’t have to wait four to ten years)
   c) Can be a cumbersome process, and also if FAD, require PBR.

Case Study



Case Study – Homer and Marge

- Homer (58) and Marge (53) moved to Australia in 2016;
- Homer has been working for BP in Australia since then;
- He has a benefit within the BP UK scheme that is worth approximately £750,000, although he could start a pension from the benefit of £20,000 per annum, indexed;
- The value when he and Marge first moved to Australia was £550,000;
- Homer and Marge have an SMSF, with benefits as follows at 30 June 2023:
  - Homer: $520,000
  - Marge: $200,000
- Homer and Marge also have a discretionary trust with investments, where they receive approximately $100,000 per annum income each year, which they will split between them when Homer retires from his current job – at the moment it is all distributed to Marge;
- What options are available to Homer to transfer his UK benefits to Australia (assume an exchange rate of 1AUD:0.52GBP), where any transfer would likely occur in the 2024/2025 financial year?

Option One – Pension Commencement

Homer receives the annuity from his DB scheme:

1. £20,000 per annum (indexed) would be fully assessable to Homer
2. Perhaps there is an annual deductible amount available – unlikely given employer supported DB scheme?
3. Approximately $38,500 per annum – if Homer and Marge have $100,000 of other income between them, and in the pursuit of splitting their income, then Homer would have assessable income of say $68,000, where the tax would be approximately $14,000. The pension's proportion of that is approximately half, or $7,000
4. When Homer dies, 65% - 70% of the pension would continue to Marge
5. Upon both their passing, no capital sum available for the children
6. Ongoing connection with the UK (could be a pro, or a con…….)

Option Two – 100% Transfer to SMSF ROPS

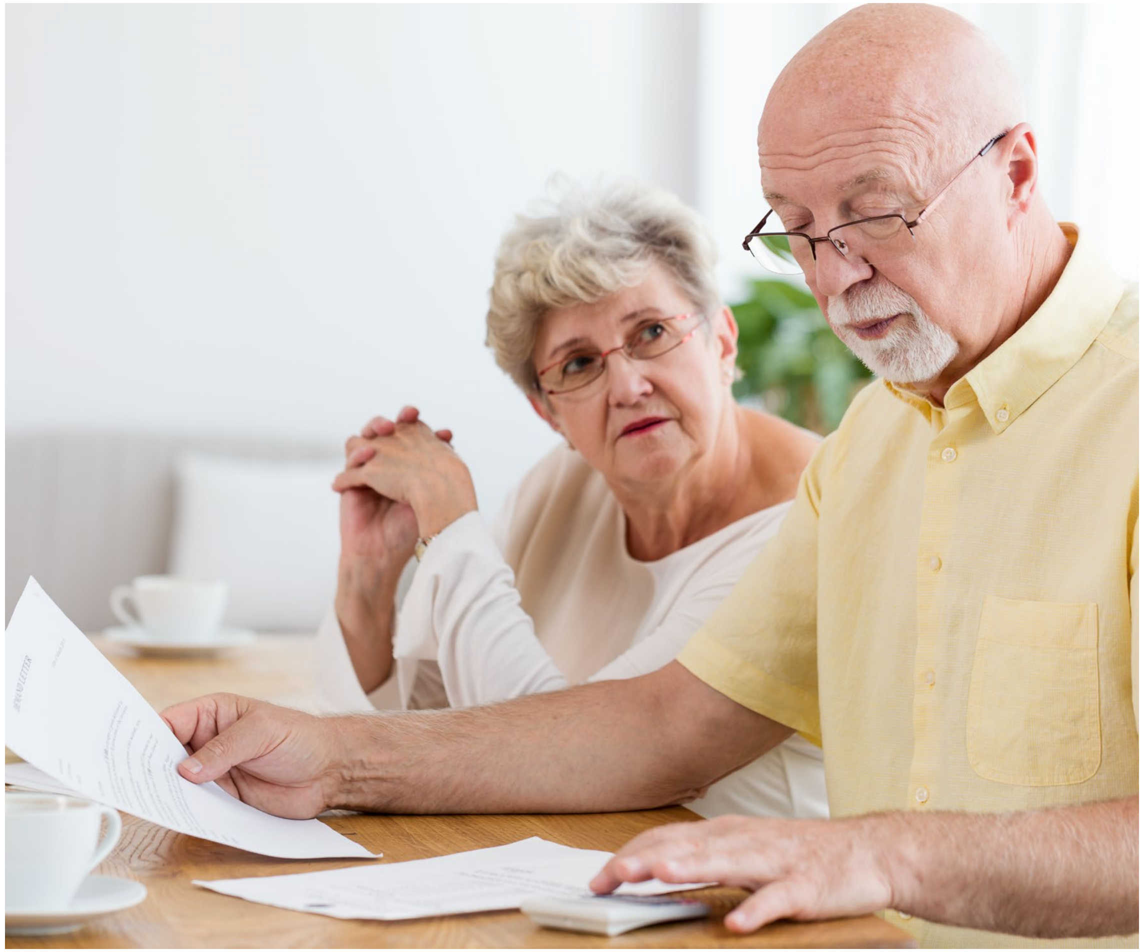
1. Need to set up new SMSF that is a ROPS – Marge can't be a member (can't use current SMSF)
2. Would have to move the DB scheme to new SIPP in the UK
3. Growth component: £200,000 ($384,615) – taxed at 15% ($57,690);
4. Non-Growth component: £550,000 ($1,057,690) – NCC;
5. Excess of $697,690 for Homer (TSB under $1.66M & assume no recent NCC)
   - AE of approximately $117,108 (11.19% (2023/2024 rate) from 1 July 2024 through to end December 2025);
   - Release from superannuation fund of approximately $800,000;
   - Could be released from the original SMSF – there isn't enough however, so implications on release from ROPS SMSF for Homer?
   - Tax on the AE (at highest marginal tax rate): $55,040
   - Less: 15% tax offset means total tax of $17,566
6. Total tax payable on the transfer of approximately $95,164 (6.6%)
7. Release from superannuation in December 2025 likely at the earliest

Option Three – Multi-step Transfer

Multiple transfer to Australia:

1. Need to set up new SMSF that is a ROPS (or use public offer ROPS)
2. Would have to move the DB scheme to new SIPP in the UK (SIPP1)
3. Then, need to set up multiple SIPPs in the UK:
   - SIPP2: £380,000 (£200,000 AFE plus NCC available (approx £180,000 with a buffer));
   - SIPP1: balance of £370,000 (amount in excess of the NCC);
4. SIPP2 gets transferred to ROPS in Australia
   - Has growth component: £200,000 ($384,615) – taxed at 15% ($57,690);
   - Non-Growth component: £180,000 ($346,150) – NCC within the cap;
5. SIPP1 – what happens with that?
   - Unlikely to be able to transfer to super for Homer before BF period is served, and then have to see balance and whether close to TSB thresholds in year four (~$1.2M TSB after transfer, so could be okay)
   - Could then look at a UFPLS strategy with the balance?

NOW:
ATO and HMRC Interpretative Changes



UK – 7 April 2024 (new tax year)

- New legislation from 7 April 2024 that has effectively "rebranded" the previous LTA to be the OTA and LSDBA
- Where a transfer from a UK scheme occurs to an international scheme, will be assessed towards the OTA
- If greater than the OTA, will be subject to OTA charge of 25% on the amount above
- Disincentive for transfers if benefits are greater than the OTA (standard £1,073,100, but individuals could have a higher OTA in some instances)
- So, implementation of strategy 6 above, being a mix of transfer to ROPS and UFPLS / PCLS would be attractive
  - amount transferred to ROPS would count towards the OTA
  - as within the OTA, no OTA charge
  - balance is then transfer direct to the individual, so doesn't count towards the OTA
  - no limit on UFPLS under new LSDBA provisions

HOWEVER:
HMRC – December 2023

- HMRC DRAFT guidance on application of DTA to lump-sum payments
- Would apply to all DTAs, not just between Australia and the UK
- Where DTA doesn't address lump-sum payments (some do, not the Australian / UK DTA however)
  - irregular payments (whether as UFPLS or FAD) would not fall within the pensions article of the DTA (article 17), but would be considered under the "other income" article of the DTA (article 23)
  - irregularity of payments is based on:
    - non-periodic / abnormal
    - significantly different to the usual payments made
    - any impact on the remaining pension pot and ability to receive subsequent regular pension payments
    - may need to be assessed over the course of several years to ascertain whether payments are indeed irregular (over the course of a year a £20,000 one-off payment may be irregular, however if that is consistent year on year, then wouldn't indicate irregularity)

Implications on UK side

- If we sought to implement strategy 6, issue with the payments to the individual from a UK perspective:
  - if they are irregular (not akin to the receipt of regular amounts, like an annuity may provide), then HMRC may not apply Article 17 of the DTA where Australia has the taxing right, but Article 23
  - any such payments may therefore have tax claw-back from HMRC
  - even with a NTC in place
  - NTC removes the withholding from a payment, but doesn’t prevent HMRC coming knocking at a later date to recover this tax NOT withheld on such a payment
  - Substantial UK tax risk of any UFPLS or non-regular FAD payment
- PCLS up to the LSDBA still okay from UK perspective (only), as tax-free
- Therefore, have to transfer to ROPS to mitigate HMRC tax issues
  - 100% - NCC considerations, or
  - multiple transfers – takes many years. HOWEVER…..

ATO – Interpretative Change

- The provisions that apply to the calculation of the AFE on transfers are contained in ITAA97 section 305-75(2) and (3)
  - 305-75(2) applies where the individual is "an Australia resident at all times during the period to which the lump sum relates"
  - 305-75(3) applies where the individual becomes an "an Australia resident after the start of the period to which the lump sum relates"
- Each sub-section has slightly different calculation methodology, which has a substantial impact on the calculation of the AFE on a transfer
- The concept of the "period to which the lump sum relates" has not been fully addressed in any public or private rulings in the context of which section applies, as any such questions have generally been with respect to:
  - the proportion of residency days that applies to a transfer where a taxpayer has been in and out of the country (see ATO ID 2009/124)
  - whether the AFE on a proportionate transfer has a proportionate approach applied (ATOIDs 2012/48 and 2012/49)
  - the calculation of the AFE where the benefit is a DB scheme

ITAA97 section 305-75(3)

- As noted above, the growth component / AFE is generally the increase in value since residency, which arises due to the operation of the formulas in the ITAA97
- It is also the first component of any transfer, and not proportionate
- So, after the first transfer where all of the growth is “cleared out” in the first transfer to ROPS in Australia (provided it is split apart like the first step of Strategy 3), then the balance is expected to be “non-growth”
- This was because of the formula in 305-75(3), where the AFE was calculated as (let’s use Homer’s Option Three after the transfer from SIPP1 to SIPP2 to the ROPS):
  - The sum of:
    - Value at the date of the last transfer (£370,000)
    - Contributions since the last transfer (£0)
    - Transfers in since the last transfer (£0)
  - Is subtracted from the value at the date of the next transfer (£370,000)
  - So, the AFE would be £370,000 less £370,000, or zero.

ITAA97 section 305-75(2)

- Or, 305-75(2) where the AFE was calculated as:
  - The sum of the amount in the account (again, using Homer's eg):
    - Attributable to contributions (£0)
    - Attributable to transfers in (£370,000, being the remaining balance of the transfer in)
  - Is subtracted from the value at the date of the next transfer (£370,000)
  - So, AFE is then again £370,000 less £370,000, or zero
- As is evident with the above application, either of those formulas as applied by the industry after the clear out of the initial AFE would effectively equate to benefits that were present at the date of residency, and no growth applicable.

ATO – December 2023

- After a long period of time of consultation with the ATO regarding several PBRs where we were confirming the treatment of a final FAD as a lump-sum for tax purposes, in December 2023 the ATO provided a draft PBR that had a different application of the above sub-sections:
    - Any new SIPP set up after residency would be subject to 305-75(2)
    - 305-75(2) states that the AFE is:

      (a) Work out the total of the following amounts:

      (i) The part of the lump sum that is attributable to contributions made by or in respect of you on or after the day when you become a member of the fund (the start day);

      (ii) The part of the lump sum (if any) that is attributable to amounts transferred into the fund from any other foreign superannuation fund during the period

      (b) Subtract that total amount from the amount in the fund that was vested in you when the lump sum was paid

      (c) Add the total of any previously exempt fund earnings

ATO – December 2023

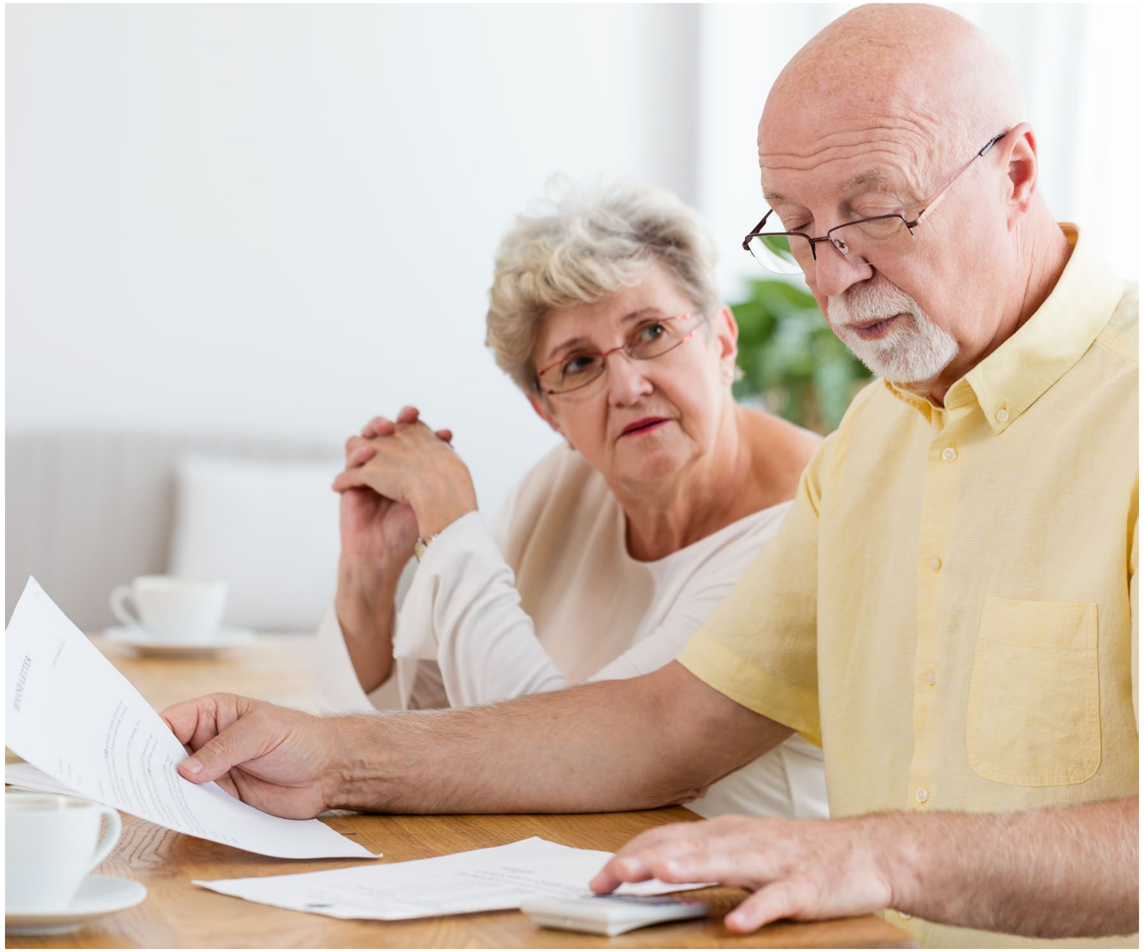
- Therefore, how that would then apply to Homer where he implemented Option Three above, after having moved his DB scheme to a new SIPP?
  - transfer from DB to SIPP1 would have resulted in the AFE calculation of the £200,000 – that is then Previously Exempt Fund Earnings (PEFE) in SIPP1
  - When the amount is transferred from SIPP1 to SIPP2 of £380,000 to move the PEFE and NCC cap, the calc of the AFE on that transfer would be:

305-75(2)	£
Part of **the lump-sum** attributable to contributions	0
Part of **the lump-sum** attributable to amts transferred from other foreign funds	380,000
Sum	**380,000**
Amount Vested in you when lump-sum is paid	750,000
Difference (raw AFE) on the lump-sum	370,000
Add PEFE	200,000
Total AFE on transfer from SIPP1 to SIPP2	**570,000**
But limited to the lump-sum	380,000

ATO – December 2023

- The **expected AFE** on the transfer of £380,000 is £200,000, being the PEFE only from the transfer from the DB to SIPP1
- **However**, under this formula, it is the balance that is leftover in the scheme that is the raw AFE on any transfer, plus you then also need to add the PEFE (if any)
- This then means that ANY partial transfer from the UK where money is consolidated into a new account post residency needs to be re-assessed:
  - It is the balance remaining in the source scheme that is the AFE, plus then adding any PEFE
  - So, if you leave behind more than what is transferred, will have higher AFE than expected (like in the above example)
  - Where the transferred amount is higher (say close to 100%), then that is more likely to have an NCC component to it (depending on any previous PEFE)
    - eg, where Homer transferred under Option Two (SIPP1 to ROPS), the amt of the lump-sum is £750,000, and the vested balance at the time of the transfer is £750,000, then there is no raw AFE with respect to that transfer
    - the PEFE of £200,000 would still be added from the transfer from the DB to SIPP1

A Few Further Homer Examples



One
Homer DB PEFE Transfer Only

- Homer transfers just the PEFE amount from SIPP1 to SIPP2 to ROPS:

305-75(2)	£
Part of ***the lump-sum*** attributable to contributions	0
Part of ***the lump-sum*** attributable to amts transferred from other foreign funds	200,000
Sum	**200,000**
Amount Vested in you when lump-sum is paid	750,000
Difference (raw AFE) of the lump-sum	550,000
Add PEFE	200,000
Total AFE on transfer from SIPP1 to SIPP2	**550,000**
But limited to the lump-sum	200,000

- So, then this has the outcome of the increase in value since residency being taxable in the ROPS in Australia

Two
£300,000 subsequent transfer

- After the above transfer, Homer transfers £300,000 from SIPP1 to SIPP3 to ROPS:

305-75(2)	£
Part of ***the lump-sum*** attributable to contributions	0
Part of ***the lump-sum*** attributable to amts transferred from other foreign funds	300,000
Sum	**300,000**
Amount Vested in you when lump-sum is paid	550,000
Difference (raw AFE) of the lump-sum	250,000
Add PEFE (none as Transfer One cleared it out)	0
Total AFE on transfer from SIPP1 to SIPP3 to ROPS	**250,000**
Non-Concessional Contribution component	50,000

- So, then there would be another £250,000 taxable as AFE than what would be expected under the current way these amounts are calculated
- NCC component within the NCC cap

Three
Subsequent PCLS of £137,500

- After the above transfer under Example One, Homer takes a PCLS of 25% of the remaining balance of £550,000:

305-75(2)	£
Part of ***the lump-sum*** attributable to contributions	0
Part of ***the lump-sum*** attributable to amts transferred from other foreign funds	137,500
Sum	**137,500**
Amount Vested in you when lump-sum is paid	550,000
Difference (raw AFE) of the lump-sum	412,500
Add PEFE (none as Transfer One cleared it out)	0
Total AFE on PCLS from SIPP1 to Homer	**412,500**
But limited to the lump-sum	137,500

- In this scenario, the PCLS would have been expected to be tax-free both in the UK and Australia, however now fully taxable in Australia.

Four
UFPLS x 2 strategy

- After the above transfer under One, Homer takes a small UFPLS of £4,000 to apply for the NTC, and then the balance as a final UFPLS once that is issued:

305-75(2)	£4,000 UFPLS £	Balance as UFPLS £
Part of ***the lump-sum*** attributable to contributions	0	
Part of ***the lump-sum*** attributable to amts transferred from other foreign funds	4,000	546,000
Sum	**4,000**	**546,000**
Amount Vested in you when lump-sum is paid	550,000	546,000
Difference (raw AFE) of the lump-sum	546,000	0
Add PEFE (none, as Transfer One cleared it out)	0	0
Total AFE on UFPLS from SIPP1 Homer	**546,000**	**0**
But limited to the lump-sum	4,000	N/A

- In this scenario, the desired Australian outcome is achieved (notwithstanding the £4,000 would be fully taxable in Australia at marginal rate
- HOWEVER……. now need to overlay the UK position

Four
UK Position on UFPLS x 2 strategy

- Per the above, the UK will look to assert their taxing right, with consideration that Article 17 of the DTA doesn't apply (pensions article)
- So, the £546,000 UFPLS balance transfer would then be at risk of recovery for tax in the UK
  - First 25% would be tax-free (as within the LSDBA)
  - Remaining 75% - taxed at UK marginal rate
- That's if HMRC even issue a NTC with respect to the first UFPLS – we are seeing that since June 2023 they are taking longer to issue, or rejecting on the basis that the DTA doesn't apply to UFPLS
- Would have FITO available in Australia, but as nothing taxable in Australia on the £546,000, no offset
- **So, this strategy isn't going to work under the UK changes**

Five
Small FAD payments then final FAD

- After the above transfer under One, Homer takes small, regular FAD payments of £1,000 per month over six months to apply for the NTC
- Then the balance is paid as a final FAD once that is issued:
  - Regular FAD payments would be fully taxable in Australia as pension
  - Final FAD (with PBR outcome of lump-sum under ITAA 97 305-70):

305-75(2)	£
Part of ***the lump-sum*** attributable to contributions	0
Part of ***the lump-sum*** attributable to amts transferred from other foreign funds	544,000
Sum	**544,000**
Amount Vested in you when lump-sum is paid	544,000
Difference (raw AFE)	0
Add PEFE	0
Total AFE on Final FAD payment to Homer	**0**
But limited to the lump-sum	N/A

Five
UK and Australian Position

- Similar to example Four, as the final FAD is an irregular payment, the UK will look to assert their taxing right, with consideration that Article 17 of the DTA doesn’t apply (pensions article)
- So, the £544,000 final FAD payment transfer would then be at risk of recovery for tax in the UK
- Risk in Australia also – that the final FAD is a foreign pension payment, and therefore fully taxable.
  - would want to apply for PBR specific to the taxpayer to confirm the treatment and mitigate the risk
  - until the Commissioner releases any draft guidance in this regard

- **So, this strategy isn’t going to work under the UK changes or the Australian provisions (unless PBR)**

Six – various transfer amounts post DB to SIPP1

- Homer just transfers the benefits from SIPP1 to SIPP2 to ROPS – the calculation of that overall transfer based on different amounts:

305-75(2)	£750,000 Transfer £	£600,000 Transfer £	£500,000 Transfer £
Part of ***the lump-sum*** attributable to contributions	0		
Part of ***the lump-sum*** attributable to amts transferred from other foreign funds	750,000	600,000	500,000
Sum	**750,000**	**600,000**	**500,000**
Amount Vested in you when lump-sum is paid	750,000	750,000	750,000
Difference (raw AFE) of the lump-sum	0	50,000	150,000
Add PEFE	200,000	200,000	200,000
Total AFE on transfer from SIPP1 to SIPP2 to ROPS	**200,000**	**250,000**	**350,000**
Non-Concessional Contribution Component	550,000	500,000	400,000

Six
UK and Australian Position

- Ultimately, given the issues with the UK position on payments to individuals personally, and any partial transfers under the Australian provisions (with exceptions), the best option is a 100% transfer to ROPS
- What about the excess NCC however?
  - Refunding provisions under the Australian rules (default)
  - If we refund from the ROPS, what are the reporting requirements and then payment classifications in the UK?
  - Authorised payment or unauthorised payment?

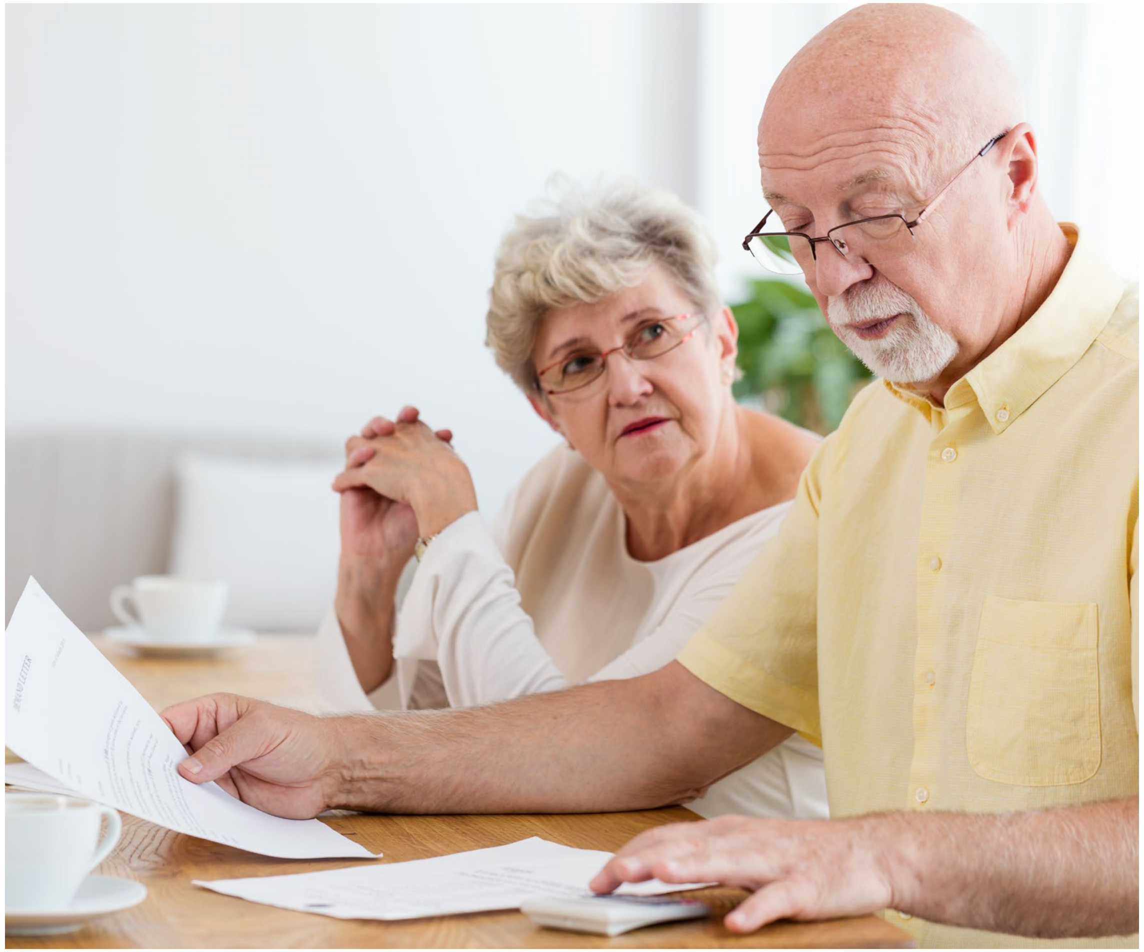
Six
UK and Australian Position

- Previously:
  - Where the member could access their superannuation as they had reached their preservation at the time of the release of the excess, then they could access superannuation (even if only under TRP provisions), and therefore considered authorised payment
  - Risks remained regarding member between 55 and 60 at the time of release as they weren't eligible to access their superannuation under Australian provisions
- Intel in March 2024 from HMRC:
  - Individuals are eligible to access under the UK provisions at UK pension age (current 55, moving to 57)
  - Provided the deed for the relevant ROPS Fund allows the release of excess NCC, then the release would NOT be unauthorised
  - Reportable as an authorised member payment

Six
UK and Australian Position

- Therefore, strategy from now would generally be:
  - 100% transfer to ROPS in Australia
  - Where excess NCC, release under the refunding provisions:
    - From non-ROPS where available
    - Can come from ROPS
    - Appropriate reporting to HMRC to be undertaken
- Calculation of the AFE very important to consider
- Could consider alternative strategy to retain maximum amount in super in Australia, but would be higher AFE and tax. Can take 10 plus years to be ahead with maximising super in Australia (although Division 296 could jeopardise that)

What Now / Next Steps?



ATO Interpretation

- ATO is alive to the fact that the interpretation is different to previous guidance
- ATO acknowledged contrary to the intentions of the legislation, however they are tasked with interpreting the law, not drafting it
- The legislation (introduced in 2004) hasn’t remained current with changes to the contribution caps in Australia:
  - Splitting the accounts in the UK was undertaken to mitigate an excess given:
    - the refunding provisions and unknown position on classification of the release as authorised or unauthorised
    - The AE position and tax on the AE at marginal rates with 15% offset –higher tax than multiple transfers
    - Timing of release of the excess – can be 18 – 24 months from the transfer
  - Changes in 2017 imposing a TSB, which then made the partial splits with substantial benefits in the UK impossible to transfer 100% without having an excess ultimately to deal with

What about transfers in progress? Do we pull the pin?

- Depends on the intended transfer amounts:
  - If 100% already (whether to ROPS or individual), no action required
    - although note issues in the UK at the time of writing (still draft)
    - UK legislative changes from 7 April 2024 – there is a risk of crystallised benefits before 7 April 2024 being double-counted against OTA, and subject to OTA charge
    - expected legislative amendment to rectify
    - potential choice to still proceed, however HMRC systems not necessarily up to date on that front, but we are seeing transfers begin to occur again
- If partial transfers, consider whether they can be revisited, and alternative instructions provided (given 305-75(2))
- Might still be okay if 305-75(3) applies, as there is recognition of balance after the last transfer
- PCLS – try and stop, given Australian tax implications on partial transfers

Transfers Already Received

- again, the position depends on how the transfer was undertaken
- could be substantial Australian tax risks on the AFE calculations
- risk areas:
  - PCLS – likely to be fully taxable at individual’s MTR as you are leaving 75% behind
  - partial transfers where AFE calculation is under-stated, and the election under ITAA97 section 305-80 only covers a lower amount, so the difference is then fully taxable to the individual (ITAA97 section 305-70)
  - UFPLS payments up to the LTA, where subsequent benefits are then taken above the LTA as FAD – the UFPLS up to the LTA would have had a balance remaining, so some of the UFPLS would have been AFE
- HOWEVER, in our discussions with the ATO, they have indicated that they intend to take a compliance approach to transfers already received

Transfers Already Received

- Compliance approach:
  - No compliance resources to be allocated to transfers undertaken prior to a particular date (to be confirmed) where an alternative calculation of the AFE and PEFE is undertaken
  - The date of those transfers that this will apply to is yet to be confirmed
    - Could be those up to 30 June 2024, or a different date in the 2023/2024 financial year
    - NOT expected to be an earlier date
- Intention is to release publicly the interpretation and the implications ASAP, so that the public and the industry has the complete picture:
  - although the PBR we have been involved with that will then appear on the PBR register provides some initial guidance (minimal given the redactions)
  - releasing public guidance is a substantial undertaking, so may not receive for some months.

Thank you

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