

# Residency and bringing superannuation to Australia

by Chris Wallis, Victorian Bar & Director of Tax Matrix Pty Ltd

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## Appendix D – transferring from a 401K

### Question on a blog

<http://www.askmehelpdesk.com/taxes/rollover-401k-australia-13833.html>

#### *LyndalW*

Do you know if it's possible to rollover a 401k plan to Australia without being taxed or without penalty?

I have roughly \$9000 in my 401k and want to know the best thing to do with this money when I move back to Australia permanently.

I don't want to be penalized/taxed 30% and would like to keep it as a retirement fund but be able to keep contributing to it until then (which won't be so easy from Australia if I keep it in the US)

#### *Response from an Atlanta Tax Expert – Senior tax expert*

Lyndalw:

The best way is to roll it over into a rollover IRA. That way, you can avoid the 30% withholding and the 10% early withdrawal penalty.

However, you will have to keep it in the U.S. if you want to continue to fund it. Why you would want to do this while you live in Australia is questionable, since I believe there would be no tax advantage to such a strategy.

There are probably procedures available to you to transfer it to Australia. You should contact an Australian tax professional when you return to determine what they are. You should be able to handle the transfer of the assets from the U.S. to Australia using phone calls, e-mail and regular snail mail when the time comes.

#### *From Jnileshwar*

I am in exactly the same position - 5 years working in the US and now permanently living in Australia. I have spent a considerable amount of time trying to get an answer about this and have been unable to... I get the same response as you did ... "there is probably some procedure..." not exactly set in stone and I've found that when I ask a US consultant they tell me to speak to people in Australia and vice versa.

Rollover to the IRA is very easy and you don't get penalised. Moving an Rollover IRA to Australia is either not possible or not documented anywhere.

If you have a better answer, I'd very much like to know it

#### *MukatA – Tax Expert*

Moving an IRA to Australia will depend upon tax treaty between the U.S. and Australia. I have not read the tax treaty, but I doubt that there is any such provision.

The money in 401K or IRA is money earned in the U.S. and you have not paid tax on the money. So why will the U.S. allow money to be transferred without paying income tax.

One option is to withdraw entire money, pay 10% penalty and report the money as your ordinary income on the U.S. tax return.

Nonresidents should invest in 401K or IRA after clearly understanding all the implications.

#### *Designrox1103*

We are just arrived in Canberra 5 weeks ago. We do have two 401K accounts in the USA.

Our goal is to bring them over here from the USA so they might earn higher interest and yields. How did you finally sort out your 401K?

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### ***IntlTax***

The 401(k) plan cannot be "rolled over" into an Australian plan. You may be able to avoid U.S. tax on the 401(k) distribution if the distribution is considered a "pension" distribution under the U.S.-Australia income tax treaty. See Article 18 of the Treaty.

Whether the distribution is considered a pension distribution depends on several factors, including age, length of employment, and death, disability or separation of service (ideally retirement). If you are under age 55, it is unlikely that a lump sum distribution from a 401(k) would qualify as a pension distribution under the Treaty.

Even if you meet requirements, the 401(k) administrator may decide to withhold U.S. tax (if they don't withhold and it turns out they should have, they can be held liable for the tax). If the administrator withholds and you believe that the distribution should qualify as a pension, then you can file a U.S. tax return to request a refund of the taxes withheld.

It may be possible to get a ruling from the IRS in advance to confirm that the distribution should be treated as a pension distribution. See, for instance, Private Letter Ruling 200416008.