



3 February 2012

Mr Damian Byrnes
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RE: TR 2011/D6 - Income tax: deductibility under subsection 295-465(1) of the *Income Tax Assessment Act 1997*

Dear Damian,

This is a joint submission from IFS Insurance Broking (IFSIB) and the Australian Institute of Superannuation Trustees (AIST). We have previously made joint submissions along with Industry Super Network (ISN) on the recent Treasury consultation paper on this subject^{1,2}.

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$450 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

IFS Insurance Broking was established in 1995 by Industry Fund Services Pty Ltd (IFS) to provide a range of insurance services to Industry Superannuation Funds and associated network entities. IFS Insurance Broking is also a subsidiary of the Industry Super Holdings Group of Companies which is owned by 35 major superannuation funds. The Group employs approximately 1,000 staff and manages over \$32 billion in funds under management.

Upon our reading of the Draft Tax Ruling, we would like to raise a few initial concerns with regards to not-for-profit superannuation funds.

Deduction for specified part of the premium under item 5 in the table in subsection 295-465(1)

A deduction for the whole of the TPD premium will be allowed under item 5 in the table in subsection 295-465(1) where the occurrence of an event is certain to result in a fund liability. Our

¹ Joint IFSIB, AIST & ISN Submission to Treasury, Consultation paper - Deduction for the cost of total and permanent disability insurance provided through superannuation, July 2011

² Joint IFSIB, AIST & ISN Submission to Treasury, Draft Regulations – Streamlining deductions for the cost of disability Insurance through superannuation, August 2011



interpretation (as implied in examples 4, 6 and 7) is that this will be applicable only where a TPD definition includes one or more of:

- Any occupation,
- Activities of Daily Living (ADL) and
- Domestic Duties (DD).

Our concerns are that this is only implied in the examples - it is not stated in the actual ruling. For the removal of doubt, the components that are deemed by the Commissioner certain to result in a fund liability should be referenced in the ruling.

Also there is no reference to the definitions of ADL and DD for determining whether a policy definition is as restrictive, and therefore that a certain liability will arise and item 5 can be applied. Our interpretation of the ruling is that the conditions described in 295.465.01(5) only apply if item 6 of the table in subsection 295-465(1) applies.

Further, we would propose that Everyday Working Activities (EWA), Cognitive Loss (CL) plus other definition components becoming common in the market place would also have this certainty, but are excluded. We would like an indication as to what scope the Commissioner has to include other common components within the ruling in the future.

Deduction for part of the premium under item 6 in the table in subsection 295-465(1)

Where any amount of the TPD premium cannot be deducted under item 5, as there is uncertainty as to the funds liability to provide a 'superannuation disability benefit', item 6 must be used to apportion the premiums deductible. The ruling for item 6 specifies the table 295.465.01(1) can be used.

This implies that for a fund that has any components other than Any Occupation, ADL and DD, then item 6 must be applied either to the whole of the premium or to that part of the premium that relates to the components that cannot be deducted under item 5. This means that the majority of superannuation funds will need to apply item 6, as they will generally have additional components of the definition³. Further very few, if any, not-for-profit funds have a TPD premium rate split between the various components and therefore will need to apply item 6 to the entire TPD premium.

The final version of table 295.465.01(1) includes ADL, DD, Cognitive Loss (CL) and Loss of Limbs (LL) components as being 100% deductible when combined with Any Occupation as long as the insurance policy definitions are as least as restrictive as those defined in 295.461.01(5). This implies that the Commissioner does not believe there is certainty of a liability for the CL and LL components as they are not allowed under item 5, however 100% deduction is allowable. This seems contradictory.

³ Ibid, 1



Further, we would like direction given as to who must make the determination that the definition components are as at least restrictive.

Where a superannuation fund has a component, other than those included in table 295.461.01(1), our interpretation of the ruling is that an actuarial certificate will be required on an annual basis. Any fund with recently common components such as EWA and specific loss type definitions (that pay on a specific event occurring such as quadriplegia, paraplegia etc), will immediately not be able to use the table and will have the additional annual expense of providing an actuarial certificate. These more recent common components⁴ are designed to enhance the objectivity to the TPD claim assessment process whilst ensuring from the insurers perspective that the member will never be able to work again in any occupation, and therefore would certainly lead to a liability for the fund. However, based on our interpretation of the current ruling, these funds will need to obtain annual actuarial certification, simply to confirm that 100% of the TPD premium is deductible.

We request direction from the Commissioner as to;

- What scope is there for the Commissioner to include other components within the table in the future?
- Will funds be able to get an individual tax ruling from the Commissioner to confirm that their individual component does or does not lead to a certain liability, and if there is not a certain liability, what percentage of deduction will be allowable?
- What is the process in these situations?

Where there is no scope for additions to the components defined in the regulations, our recommendation would be that the ruling should at least recognise that these other components exist and that they are intentionally excluded.

If you have any further questions regarding this submission, please contact:

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Yours sincerely,

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⁴ Ibid, 2