Australian Institute of Superannuation Trustees

28 January 2014

Ms Penny Dally
Australian Taxation Office
GPO Box 9977
ADELAIDE SA 5001

Email: Penny.Dally@ato.gov.au

Dear Ms Dally,

Re: Draft Taxation Ruling TR 2013/D7

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 $600 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.

AIST welcomes the opportunity to comment on this draft taxation ruling, noting that the main implications are for the trustees of superannuation funds, which are our members. In this submission, we will not be addressing in detail the draft taxation ruling ("TR 2013/D7", "the draft ruling", "the new ruling"), as our concerns are largely at a high level.

The objectives of replacing Taxation Ruling TR 93/17

AIST's members welcome taxation rulings generally, as these provide valuable information as to how the ATO will apply tax law in their interpretation. However, we are uncertain as to why a new tax ruling is necessary in light of the fact that the law with regards to the apportionment of expenses has not actually changed.

We also note that the draft tax ruling relates specifically to apportionment of expenses, and not the other issues that TR 93/17 addressed. In addition to this, we note at paragraph 72 that the draft ruling is to be supplemented by another draft ruling that is scheduled to be issued for comments in March 2014. Given that this is less than two months away, we wonder why the two draft rulings were not combined into a draft ruling that comprehensively replaced TR 93/17 in full.

Lastly, we notice that, although a considerable amount of work has been done in writing a new ruling, we note that the changes are somewhat minor. We applaud the efforts to include worked examples and consider examples 1 to 5 to be of excellent quality. However, we believe that this guidance could have been attached by way of a series of tax determinations, or even by way of an FAQ/fact sheet.

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Without knowing what is to be contained in the subsequent draft ruling to be issued in March, we are not certain that AIST is in a position to comment on the points above, and recommend that this draft ruling be withdrawn and replaced by an 'omnibus' edition that is designed to cover all of the content of TR 93/17, not the separate parts of it. However, this would be subject to the points raised above: If the law has not changed, we are not certain what objectives are satisfied in replacing the document in the first place.

Methods of apportioning income

TR 93/17 makes the explicit observation at paragraph 7 that two methods may be used (which are described) to apportion expenses. However, the new tax ruling makes no mention of methods which may be used, other than applying "fair and reasonable" criteria to whichever method is chosen.

We wish to point out that tax rulings provide invaluable guidance to superannuation trustees and their staff, and consider that not providing these methods removes a layer of guidance which can be relied upon insofar as deciding a method of apportionment that could be used. In actual fact, we consider that resorting to leaving it up to trustees to making decisions such as these introduces uncertainty, which we believe that tax rulings are supposed to resolve.

We recommend that the methods named in paragraph 7 of TR 93/17 be re-considered in the interests of trustees.

We believe that example 5, which deals with mergers, is an additional example of where uncertainty is created by removal of different methods, where consideration of different methods and their advantages and weaknesses can provide a more valuable source of guidance to practitioners.

If you have any further questions regarding this submission, please contact Richard Webb, Policy & Regulatory Analyst on 03 8677 3835 or at rwebb@aist.asn.au .

Yours sincerely,

Tom Garcia
Chief Executive Officer