

CORPORATE SUPER ASSOCIATION

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Mr Trevor Thomas
Director
Superannuation, Retirement and Voluntary Savings Unit
The Treasury
Langton Crescent
CANBERRA ACT 2600

Dear Mr Thomas

SUBMISSION DEDUCTIONS FOR DISABILITY INSURANCE PREMIUMS

We refer to the Media Release no 027 of 13 October 2009 issued by the Hon Chris Bowen, relating to deferral of the application of the restrictions for income tax deductions for disability benefit premiums for the trustees of superannuation funds. This letter concerns the general policy approach regarding such premiums.

Background – Corporate Superannuation Association

Established in 1997, the Association is the representative body for large corporate superannuation funds and their employer-sponsors. The Association represents a total of 46 funds controlling 39 billion dollars of member funds. In general, these funds are sponsored by corporate employer sponsors with membership restricted to employees from the same holding company group, but we also include in our membership a few multi-employer funds with similar employer involvement and focus.

Our funds typically are established without shareholder interests in the governing body, and no profit is derived from the operations of our funds. This also means that any cost of compliance increase has a direct impact on members' benefits. The funds are run as mutual entities, where the decisions are the responsibility of a trustee board. The board provides equal representation for employer and employee interests.

Deductions for disability premiums

Implications of Division 295 re-write

We note that it is the view of the Australian Taxation Office that the rewritten provisions in Division 295 of the *Income Tax Assessment Act 1997* (the **1997 Act**) merely reflect the previous meaning of section 279 of the *Income Tax Assessment Act 1936* (the **1936 Act**).

We consider that whether or not the rewrite has resulted in a change in the law, the focus needs to be on good policy. We do not believe that allowing or disallowing a deduction to trustees for premiums relating to disability benefits other than “all occupations” total and permanent disablement, will affect the revenue base, as the employer would be able to claim the deduction for the total disability premium if the trustee could not.

We believe that the policy focus should be on clear and consistent legislation that does not obstruct the efficient operation of employers’ businesses and the straightforward administration of superannuation funds.

Release of benefits and deductibility of premiums: constraints

The circumstances when a trustee may release benefit to a member (prior to satisfaction of another condition of release) are restricted to those set out in Schedule 1 to the Superannuation Industry (Supervision) Regulations. In general, disability benefits may only be cashed by a member, prior to age retirement or death, if they are paid in circumstances of:

- permanent incapacity (trustee reasonably satisfied that the member is unlikely to engage in further employment for which the member is reasonably qualified by education, training or experience: Regulation 6.01); or
- temporary incapacity (results in cessation of gainful employment but is not permanent incapacity).

Section 295-460 of the 1997 Act allows a deduction for premiums insuring liability of the trustee to pay disability benefits which are restricted to the following:

- permanent disability benefits payable when two legally qualified medical practitioners have certified that because of ill health the member is unlikely ever to be gainfully employed in a capacity for which he is she is reasonably qualified because of education, experience or training; and

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- temporary disability benefits payable (generally not longer than two years, but can be extended) because the member is temporarily unable to engage in gainful employment.

We accept that the *Superannuation Industry (Supervision) Act* (the *SIS Act*) conditions for release of disability benefits and the (current) 1997 Act conditions for deductibility of premiums relate, in practical terms to very similar situations.

Benefits that may be provided under the sole purpose test

However, it is consistent with the sole purpose test for the trustee of a fund to provide benefits in a broader range of circumstances than those required (in isolation) to satisfy a condition of release. Under section 62 of the SIS Act, benefits that may be provided by a complying fund include those for situations of temporary disability, or permanent disability such that the member can no longer perform his or her job.

Thus a fund may provide permanent disability benefits in relation to a situation where the member cannot perform his or her existing job. If these cannot be released until retirement or until another condition of release is satisfied, they may still be provided by the fund, and may augment the member's ordinary retirement benefit.

For a superannuation fund to provide such benefits is in the public interest. If a person loses a hand (to take an example) while performing a job, it is not unreasonable that his or her retirement benefits should be augmented. This can be a way in which an employer chooses to fund compensation. It may be administratively simpler for the employer to provide this cover through the superannuation fund rather than taking out a separate employer policy. One insurance policy can be used rather than several, the fund's experience in negotiating contracts or funding self insured benefits may be of assistance, and group discounts and exemptions may save costs.

It is open to a trustee to insure a range of contingencies in order to assist the funding of benefits that the trustee provides as permitted under section 62.

We believe that it should be possible for a superannuation fund trustee to insure, and receive a deduction for the cost of insuring, benefits provided under the fund's deed that are in the public interest.

We also believe that similar conditions should apply in the case of self-insurance. We believe that this is good policy.

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As indicated above, we do not believe that this results in loss to revenue, as the deduction for insuring such benefits could be obtained by the employer as a business expense.

Yours sincerely



Mark N Cerché
Chairman
Corporate Superannuation Association