IT 2617 - Income tax: approved form of actuarial certificates in relation to the taxation of complying superannuation funds

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TAXATION RULING NO. IT 2617

INCOME TAX APPROVED FORM OF ACTUARIAL CERTIFICATES IN RELATION TO THE TAXATION OF COMPLYING SUPERANNUATION FUNDS

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I 1012407	ACTUARY'S CERTIFICATES SUPERANNUATION FUNDS	273A, 273B, 279, 282B, 283

OTHER RULINGS ON THIS TOPIC: IT 2573

PREAMBLE

Part IX of the Income Tax Assessment Act 1936 (the Act), comprising sections 267 to 315, deals with the taxation of complying and non-complying superannuation funds and approved deposit funds (ADFs) and pooled superannuation trusts (PSTs) (collectively referred to as 'eligible entities'). Part IX first applied to assessments for the year of income in which 1 July 1988 occurred.

2. In a number of cases Part IX requires the trustee of a complying superannuation fund to obtain an actuary's certificate. As a result of amendments made by the Taxation Laws Amendment Act (No.3) 1990 the requirements for actuarial certificates were removed or modified. The changes apply to assessments for the year of income in which 1 July 1988 occurred and all subsequent years. However, if a trustee lodged a return of income before the legislation was enacted, the amendments do not apply unless the trustee of the fund makes an appropriate election (section 30 of the Taxation Laws Amendment Act (No.3) 1990).

3. The trustee of a fund is required to obtain an actuary's certificate before the certificate date. 'Actuary's certificate' and 'certificate date', defined in subsection 267(1) of the Act, require the certificate given by an actuary to be in a form approved in writing by the Commissioner of Taxation and to be obtained by the trustee of the complying superannuation fund before the date the return of income of the fund to which the certificate relates is lodged, or such later date as the Commissioner allows. An 'actuary', also defined in subsection 267(1) of the Act, means a Fellow or an Accredited Member of the Institute of Actuaries of Australia (section 37 of the Taxation Laws Amendment Act 1990).

4. The Commissioner will not be releasing standard certificates

to be completed by an actuary. Instead, it is proposed to specify the standard information to be provided in actuarial certificates if they are to be accepted as being in an approved form. This Ruling sets out the information to be provided in actuarial certificates.

5. In certain circumstances, Part IX also requires written notices to be given or obtained that will affect the tax treatment of superannuation funds or the benefits paid by such funds. The form and manner of these notices to be given or obtained under subsections 27AB(4), 82AAT(1B), 159SS(1), 274(4), 274(7) and sections 275 and 290A of the Act has been set out in Taxation Ruling No. IT 2573.

RULING
Section 273A and 273B certificates

6. Section 282B allows an exemption from tax for the amount of normal assessable income (as defined in section 267) of a complying superannuation fund that is derived from segregated current pension assets. Section 273A provides that assets are segregated current pension assets if, firstly, they are invested, held in reserve or otherwise dealt with exclusively for the purpose of enabling the complying superannuation fund to satisfy its liability to discharge all or some of its current pension liabilities as they fall due. Secondly, under paragraph 273A(b) of the Act, the trustee of the fund must obtain an actuary's certificate before the certificate date to certify that the segregated current pension assets are sufficient, having regard to the expected earnings on those assets, to allow the fund to meet its current pension liabilities as they fall due.

7. It is accepted that a certificate covering up to a maximum of 3 years of income is appropriate for the purposes of paragraph 273A(b). In such cases, the certificate must be prepared in the first income year to which the certificate relates.

8. The trustee of the fund must also ensure that the segregated current pension assets of the fund continue to satisfy paragraph 273A(a) of the Act at all times during the period covered by the certificate. It is not sufficient for a trustee to simply determine at the time of the actuary's certificate which assets are to be segregated. In addition, trustees cannot retrospectively segregate assets to obtain an exemption for income derived from those assets prior to segregation. This is because at the time the income was derived, the assets were not segregated current pension assets.

9. The certificate required under paragraph 273A(b) must be in the form approved by the Commissioner of Taxation. The Commissioner will not be releasing a standard form for the certificate. However, the actuary's certificate will be accepted as having been given in the approved form if it includes the following information :

- the name of the complying superannuation fund covered by the certificate;

- the full name of one of the trustees of the fund;
- the year(s) of income covered by the certificate;
- the date to which the values of the segregated current pension assets and current pension liabilities of the fund relates (i.e. the "particular time" for the purposes of section 273A);
- the value of segregated current pension assets held by the fund at that date;
- the value of current pension liabilities of the fund at that date;
- the expected rate of the fund's earnings on the segregated current pension assets;
- the earning rate adopted in determining the value of the current pension liabilities;
- confirmation that the valuation is consistent with any Guidance Notes issued by The Institute of Actuaries of Australia;
- a statement that the actuary is satisfied that the amount of the assets, if accumulated after the particular time at the rate the actuary expects will be the rate of the fund's earnings on those assets, would provide the amount required to discharge in full the whole or the part, as the case may be, of the current pension liabilities as they fall due;
- the name, address and qualifications of the actuary giving the certificate;
- the date of the certification; and
- the actuary's signature.

10. Section 273B of the Act complements section 273A and applies to segregated non-current pension assets - that is, assets that are invested, held in reserve or otherwise dealt with exclusively for the purpose of enabling the fund to meet all or a part of its non-current pension liabilities as they fall due. The income derived from these assets is not subject to a specific exemption and in particular is excluded from the calculation of the exemption (if any) available under section 283 of the Act (see paragraph 16).

11. Under paragraph 273B(b), the trustee of the fund must obtain an actuary's certificate before the certificate date, to certify that the segregated non-current pension assets, together with any future contributions, are sufficient, if accumulated at the expected rate of the fund's earnings on those assets, to provide the amount needed for the fund to meet the whole or a part of its non-current pension liabilities as they fall due.

12. It is also accepted that a certificate covering up to a maximum of 3 years of income is appropriate for the purposes of paragraph 273B(b). The comments made in paragraphs 7 and 8 of this Ruling regarding section 273A certificates and segregated current pension assets also apply to section 273B certificates and segregated non-current pension assets.

13. The certificate required under paragraph 273B(b) must be in a form approved by the Commissioner of Taxation. As with other certificates it is not proposed to release a standard form for

this purpose. However, the actuary's certificate will be accepted as having been given in the approved form if it includes the following information :

- the name of the complying superannuation fund covered by the certificate;
- the full name of one of the trustees of the fund;
- the year(s) of income covered by the certificate;
- the date to which the values of the segregated non-current pension assets and non-current pension liabilities of the fund relates (i.e. the "particular time" for the purposes of section 273B);
- the value of the segregated non-current pension assets held by the fund at that date;
- the estimated rate or amount of any recommended future contributions at that date;
- the value of non-current pension liabilities of the fund at that date;
- the expected rate of the fund's earnings on the segregated non-current pension assets;
- the earning rate adopted in determining the value of the non-current pension liabilities;
- confirmation that the valuation is consistent with any Guidance Notes issued by The Institute of Actuaries of Australia;
- a statement that the actuary is satisfied that the amount of the assets, together with any future contributions, if accumulated after the particular time at the rate the actuary expects will be the rate of the fund's earnings on those assets, would provide the amount required to discharge in full the whole or the part, as the case may be, of the non-current pension liabilities as they fall due;
- the name, address and qualifications of the actuary giving the certificate;
- the date of the certification; and
- the actuary's signature.

Section 273A and 273B certificates given before the date of issue of this Ruling

14. Section 273A and 273B certificates may have been given before the issue of this Ruling and/or before the date of commencement of the changes made by the Taxation Laws Amendment Act (No.3) 1990. Such certificates will be expected to contain the information described in paragraphs 9 and 13. However, if the certificates do not contain details of the expected rate of the fund's earnings on the segregated current/non-current pension assets, the earning rate adopted in determining the current/non-current pension liabilities, or confirmation that the valuation is consistent with Guidance Notes issued by The Institute of Actuaries of Australia they will still be accepted as having been given in an approved form.

15. Unless the trustee of the fund elects otherwise, where the fund's return of income was lodged before the date of commencement of subsection 30(2) of the Taxation Laws Amendment

Act (No.3) 1990 (16 June 1990), the certification as to the segregated current pension assets or segregated non-current pension assets will be based on the rate of the fund's earnings on those assets during the preceding year of income instead of the expected rate of the fund's earnings on those assets. The election needs to be made by notice in writing to the Commissioner of Taxation and lodged with the Commissioner before 17 August 1990, or within such further time as the Commissioner allows.

Section 283 certificate

16. Section 283 of the Act exempts a portion of the normal assessable income (as defined in section 267) of a complying superannuation fund referable to its current pension liabilities. For the purposes of section 283, income which is exempt from tax under section 282B and income derived from segregated non-current pension assets of the fund are excluded.

17. The formula for determining the amount of the fund's income which is exempt under section 283 is as follows:

$$\frac{\text{unsegregated current pension liabilities}}{\text{unsegregated superannuation liabilities}}$$

The components of the formula are defined by reference to the average liabilities of the fund in the year of income. Liabilities in respect of which any segregated assets are held are excluded from both components of the formula. The basis for ascertaining the value of these liabilities is set out in subsections 283(3) and 283(4) of the Act.

18. Under subsection 283(3), the value at a particular time in the year of income of the fund's liabilities of a particular kind is the amount that, together with any future contributions to fund the relevant superannuation benefits, if accumulated after the particular time at the rate the actuary expects will be the rate of the fund's earnings on assets (other than segregated assets), would provide the amount required to meet the particular liabilities as they fall due. Further, the valuation is to be made in accordance with an actuary's certificate, which must be obtained by the trustee of the fund before the certificate date.

19. For the purposes of section 283, the actuary's certificate must be in the form approved by the Commissioner of Taxation. As with other certificates, the Commissioner will not be releasing a standard form for the certificate. However, if subsection 283(3) was used (without reference to subsection 283(4)) to ascertain the value of particular liabilities of the fund for the purposes of the formula in subsection 283(2), the actuary's certificate will be accepted as having been given in the approved form if the certificate includes the following information :

- the name of the complying superannuation fund covered by the certificate;
- the full name of one of the trustees of the fund;
- the year of income covered by the certificate;

- the date to which the values of the assets and liabilities of the fund relates (i.e., the "particular time" for the purposes of section 283);
- the value of the current pension liabilities of the fund at that date, not including liabilities in respect of which any segregated current pension assets are held;
- the value of the superannuation liabilities of the fund at that date, not including liabilities in respect of which any segregated current pension assets are held;
- the value of all the assets of the fund at that date;
- the average value of the current pension liabilities of the fund during the year of income, not including liabilities in respect of which any segregated current pension assets are held;
- the average value of the superannuation liabilities of the fund during the year of income, not including liabilities in respect of which any segregated current pension assets or segregated non-current pension assets are held;
- the earning rate adopted in determining the value of the particular liabilities;
- the expected rate of the fund's earnings on assets (other than segregated assets);
- the estimated rate or amount of any recommended future contributions at that date;
- confirmation that the valuation is consistent with any Guidance Notes issued by The Institute of Actuaries of Australia;
- a statement that the actuary is satisfied that the value at a particular time in the year of income of the fund's liabilities of a particular kind, together with any future contributions in respect of the superannuation benefits concerned, if accumulated after the particular time at the rate the actuary expects will be the rate of the fund's earnings on assets (other than segregated assets), would provide the amount required to meet in full the liabilities as they fall due;
- the name, address and qualifications of the actuary giving the certificate;
- the date of the certification; and
- the actuary's signature.

20. Given that it may not be feasible for a fund to have its total superannuation liabilities revalued by an actuary every year, subsection 283(4) of the Act provides a basis for an alternative valuation of those liabilities in years between actuarial valuations, but only where the fund has no segregated assets.

21. The formula for determining the alternative valuation of those liabilities at the particular time is as follows :

$$\frac{\text{last value of liabilities} \times \text{current value of assets}}{\text{last value of assets}}$$

The 'last value of liabilities' is the most recent valuation of the fund's liabilities as certified by an actuary. The 'last

value of assets' is the value, at the time of the most recent valuation of the liabilities, of all of the assets of the fund, as shown in an actuary's certificate. The 'current value of assets' is the value of all of the assets of the fund at the particular time, as certified by an actuary.

22. If subsection 283(4) was used to ascertain the value of the superannuation liabilities of the fund for the purposes of the formula in subsection 283(2), the actuary's certificate will be accepted as having been given in the approved form for the purposes of section 283 if the certificate includes the following information (rather than the information set out in paragraph 19 above) :

- the name of the complying superannuation fund covered by the certificate;
- the full name of one of the trustees of the fund;
- the year of income covered by the certificate;
- the particular time and year of income covered by the most recent actuarial valuation of the liabilities of the fund and the name of the actuary who gave that valuation;
- the value of the superannuation liabilities of the fund as shown in the most recent actuarial valuation of the liabilities of the fund;
- the value of all the assets of the fund as at the date of the most recent actuarial valuation of the liabilities of the fund;
- the date to which the current value of the assets and the value of the current pension liabilities of the fund relates (i.e., the "particular time" for the purposes of section 283);
- the current value of the assets of the fund at the particular time;
- the value of the superannuation liabilities at the particular time as derived by applying the ratio specified in subsection 283(4);
- the average value of the superannuation liabilities of the fund during the year of income;
- the value of the current pension liabilities of the fund at the particular time;
- the average value of the current pension liabilities of the fund during the year of income;
- the earning rate adopted in determining the value of the current pension liabilities;
- the expected rate of the fund's earnings on assets;
- the estimated rate or amount of any recommended future contributions at that date;
- confirmation that the valuation is consistent with any Guidance Notes issued by The Institute of Actuaries of Australia;
- a statement that the actuary is satisfied that the value at a particular time in the year of income of the fund's liabilities of a particular kind, together with any future contributions in respect of the superannuation benefits concerned, if accumulated after the particular time at the rate the actuary expects will be the rate of

the fund's earnings on assets, would provide the amount required to meet in full the liabilities as they fall due;
- the name, address and qualifications of the actuary giving the certificate;
- the date of the certification; and
- the actuary's signature.

Section 283 certificate given before the date of issue of this Ruling

23. Section 283 certificates may have been given before the issue of this Ruling and/or before the date of commencement of the changes made by the Taxation Laws Amendment Act (No.3) 1990. Such certificates will be expected to contain the information described in paragraphs 19 or 22. However, if the certificates do not contain details of the expected rate of the fund's earnings on the segregated current/non-current pension assets, the earning rate adopted in valuing liabilities, or confirmation that the valuation is consistent with any Guidance Notes issued by The Institute of Actuaries of Australia, they will still be accepted as having been given in an approved form.

24. Unless the trustee elects otherwise, where the fund's return of income was lodged before the date of commencement of subsection 30(2) of the Taxation Laws Amendment Act (No.3) 1990 (16 June 1990), the value of the liabilities will be determined by reference to the rate of the fund's earnings on assets (other than segregated assets) during the preceding year of income instead of the rate the actuary expects will be the rate of the fund's earnings on those assets. The election needs to be made by notice in writing to the Commissioner of Taxation and lodged with the Commissioner before 17 August 1990, or within such further time as the Commissioner allows.

Subsection 279(3) certificates

25. Under subsection 279(3) of the Act, where a complying superannuation fund is claiming a deduction, under paragraph 279(1)(d) or subsection 279(2) of the Act, for the cost of providing death or disability cover for members, the trustee of the fund must obtain an actuary's certificate before the certificate date.

26. Where paragraphs 279(1)(a), (b) or (c) do not apply, paragraph 279(1)(d) provides that a complying superannuation fund may claim a deduction for the cost of providing death and disability cover in respect of its members equal to the portion of the premium paid for an insurance policy that is attributable to death and disability cover. Paragraphs 279(1)(a), (b) and (c) deal with premiums paid for whole of life policies, endowment policies and policies where the death or disability component is specifically identified. Subsection 279(2) allows a deduction to a complying superannuation fund that carries the risk for the provision of death or disability benefits. Under this subsection, the fund may claim a deduction equal to the arm's length premium that could be expected to be paid for an insurance

policy to cover the risk not insured outside the fund.

27. For the purposes of subsection 279(3), the actuary's certificate must be in a form approved by the Commissioner of Taxation. As with other certificates the Commissioner will not be releasing a standard form for the certificate. However, the actuary's certificate will be accepted as having been given in the approved form if it includes the following information :

- the name of the complying superannuation fund covered by the certificate;
- the full name of one of the trustees of the fund;
- the year of income covered by the certificate;
- the subsection under which the deduction is being claimed;
- if the deduction is being claimed under paragraph 279(1)(d) - the total amount of premiums paid for insurance policies which are partly in respect of a current or contingent liability of the fund to provide death or disability benefits for the members of the fund and the portion of those premiums that relates to the death and disability cover;
- if the deduction is being claimed under subsection 279(2) - the value of the death and disability liability not covered by an insurance policy and confirmation that the deduction is based on the arm's length premium as is reasonable in the circumstances;
- confirmation that the valuation is consistent with any Guidance Notes issued by The Institute of Actuaries of Australia;
- the name, address and qualifications of the actuary giving the certificate;
- the date of the certification; and
- the actuary's signature.

Subsection 279(3) certificates given before the date of issue of this Ruling

28. Subsection 279(3) certificates may have been given before the issue of this Ruling and/or before the changes were made by the Taxation Laws Amendment Act (No.3) 1990. Such certificates will be expected to contain the information described in paragraph 27. However, if the certificates do not contain confirmation that the valuation is consistent with Guidance Notes issued by The Institute of Actuaries of Australia, they will still be accepted as having been given in an approved form.

29. Unless the trustee of the fund elects otherwise, where the fund's return of income was lodged before the date of commencement of subsection 30(2) of the Taxation Laws Amendment Act (No.3) 1990 (16 June 1990), the deduction for the cost of providing death or disability cover for members will be determined as follows :

- if the deduction was being claimed under the previous subsection 279(1) - the total amount of premiums for insurance policies which are partly in respect of a

current or contingent liability of the fund to provide death or disability benefits for members of the fund and the portion of those premiums that relates to the death and disability cover;

- if the deduction was being claimed under the previous subsection 279(2) - the value of the death and disability liability not covered by an insurance policy and confirmation that the deduction is based on the lowest arm's length premium for an insurance policy to cover the liability.

The election mentioned above needs to be made by notice in writing to the Commissioner of Taxation and lodged with the Commissioner before 17 August 1990, or within such further time as the Commissioner allows.

COMMISSIONER OF TAXATION
8 November 1990