


***TD 2007/3 - Income tax: is a deduction allowable to complying superannuation funds, under section 279 of the Income Tax Assessment Act 1936, for insurance premiums attributable to the provision of benefits for members in the event of temporary disability longer than two years?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *28 March 2007*



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## Taxation Determination

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Income tax: is a deduction allowable to complying superannuation funds, under section 279 of the *Income Tax Assessment Act 1936*, for insurance premiums attributable to the provision of benefits for members in the event of temporary disability longer than two years?

**❗ This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*. A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes. If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

### Ruling

1. Yes. A deduction is allowable to a complying superannuation fund under section 279<sup>1</sup> of the *Income Tax Assessment Act 1936* (ITAA 1936) for premiums on insurance policies where income payments may be made to members of that fund pursuant to such a policy during periods of temporary disability which last longer than two years. A deduction will be allowable, where the insurance premiums relate to benefits payable for a period potentially exceeding two years, provided that the benefits payable under the terms of the insurance policy comply with the requirements of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

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<sup>1</sup> Section 279 of the ITAA 1936 was repealed by the *Tax Laws Amendment (Simplified Superannuation) Act 2007*. That Act also enacted section 295-460 of the *Income Tax Assessment Act 1997* (ITAA 1997), which expressed the same idea in a different form of words, in order to use a clearer or simpler style. By subsection 1-3(2) of the ITAA 1997, the ideas are taken not to be different just because different forms of words were used. Additionally, the Note to this subsection observes that a public ruling about a provision of the ITAA 1936 is taken also to be a ruling about the corresponding provision of the ITAA 1997, so far as the two provisions express the same ideas: see section 357-85 in Schedule 1 to the *Taxation Administration Act 1953*.

# TD 2007/3

## **Date of effect**

2. This Determination applies both before and after its date of issue. However, the Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

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**Commissioner of Taxation**

28 March 2007

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## Appendix 1 – Explanation

**①** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

### Explanation

3. The SIS Act is administered by the Australian Prudential Regulatory Authority (APRA), and the Commissioner of Taxation ('the relevant regulators'). APRA's predecessor was the Insurance and Superannuation Commission (ISC).

4. A deduction is allowed under section 279 of the ITAA 1936 for complying superannuation funds for so much of any insurance premiums paid as is attributable to the provision of death or disability benefits for the members of the fund.

5. Death or disability benefit, as defined in subsection 267(1) of the ITAA 1936, means a benefit provided in the event of the death, or the permanent or temporary disability, of the member. A deduction is allowable under section 279 of the ITAA 1936 for so much of the premium for a temporary disability benefit as is incurred to provide for a benefit that is:

- (i) to be provided to the member for a period during which the member is unable to perform the normal duties of the member's employment; and
- (ii) is provided to a member by way of income, but

no deduction is available to the extent that the benefit may be provided for a period exceeding two years, unless:

- (iii) there is in force at the beginning of the disability period an approval given in relation to the fund for the purposes of section 62 of the SIS Act and that approval specifies a maximum period for the provision of death or disability benefits; or
- (iv) If an approval is not given to the fund under section 62 of the SIS Act, the Commissioner of Taxation may approve in writing a further period.

6. In interpreting the words 'an approval in relation to the fund for the purposes of section 62 of the SIS Act' and the term 'maximum period' in the definition of death or disability benefit, in section 267 of the ITAA 1936, regard must be had to the context in which these words are used. (See *MLC Ltd & Anor v. DFC of T* 2002 ATC 5105; 51 ATR 283.)

7. Subparagraph (c)(ii) of the definition of death or disability benefit provided in subsection 267(1) of the ITAA 1936 makes specific reference to section 62 of the SIS Act. It therefore follows that the SIS Act, the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations), and the rulings, policies and practices of the relevant regulators are relevant considerations in interpretation of this definition. Specifically, the provision of temporary disability benefits is recognised as an ancillary purpose under paragraph 62(1)(b) of the SIS Act. The actual payment of such benefits to a member is subject to the payment standards in Part 6 of the SIS Regulations, and the conditions of release as set out in Schedule 1 of the SIS Regulations. Payment of benefits for temporary disability is allowed subject to a number of conditions being met. That is, the SIS Act does not prevent the long term provision of temporary disability benefits if those conditions are complied with.

8. None of the relevant regulators has issued an approval to an individual superannuation fund for the purposes of section 62 of the SIS Act to specify a maximum period in which to pay temporary disability benefits in excess of two years. However, on 1 July 1997, the Insurance and Superannuation Commissioner issued a general 'Approval of Provision of Benefits' regarding the provision of temporary disability benefits under subparagraph 62(1)(b)(v) of the SIS Act, amongst other matters. The approval of 1 July 1997, which applies to all complying superannuation funds, and which is still in force, reflects the provisions of the SIS Act and its Regulations that permit temporary disability benefits to be paid 'for a period not exceeding the period of incapacity' (SIS Regulations Schedule 1 item 109).

9. As none of the relevant regulators has issued approvals to individual superannuation funds, the general ancillary purposes approval issued by the ISC applies to regulated superannuation funds.

10. Accordingly, the ISC Approval of Provision of Benefits of 1 July 1997 constitutes an approval of a longer benefit payment period (a period not exceeding the period of incapacity), as contemplated by subparagraph (c)(ii) of the definition of death or disability benefit provided in subsection 267(1) of the ITAA 1936.

### **Previous Rulings**

11. Taxation Determination TD 98/27 is withdrawn on and from the issue date of this Determination. The views stated in this Determination replace those expressed in TD 98/27.

### **Administration**

12. The Commissioner's view provided by this Determination, being an interpretation of long-standing provisions of the ITAA 1936, applies to periods before, as well as after its publication. Accordingly, trustees of some complying superannuation funds may now wish to claim a deduction, in accordance with this Determination, where that deduction was previously not allowed under the view expressed by TD 98/27. In some such cases the statutory period within which objections to assessments must be lodged may have elapsed [refer to section 14ZW of the *Taxation Administration Act 1953* (TAA)].

13. Paragraphs 14 to 17 of this Determination explain when a request by a trustee of a complying superannuation fund for the exercise of the Commissioner's discretion to treat a taxation objection as having been lodged within the statutory time limits may be granted, where the objection relates to the withdrawal of Taxation Determination TD 98/27.

14. Section 14ZW of the TAA provides that persons must lodge taxation objections with the Commissioner within certain specified periods of time.

15. Where the required time for lodgement of an objection has passed, subsection 14ZW(2) of the TAA gives the Commissioner discretion to accept a request to deal with the objection as if it had been lodged within time.

16. Law Administration Practice Statement PS LA 2003/7 provides general guidance for tax officers when making decisions on requests to deal with late taxation objections as if they were lodged within time. Paragraph 24 of the practice statement lists situations where, subject to the need to decide each case on its particular facts, extensions of time may be appropriate. These include situations where incorrect tax office advice or publications led to the delay.

17. Accordingly, in the absence of any special circumstances, it might be expected that where a late objection is lodged claiming a deduction because of the change in interpretation made by this Determination, the Commissioner will treat it as having been lodged within time.

## References

### *Previous draft:*

Not previously issued as a draft

### *Related Rulings/Determinations:*

TR 2006/10

### *Previous Rulings/Determinations:*

TD 98/27

### *Subject references:*

- accident and disability insurance
- Commissioner's discretion to treat late taxation objections as having been lodged within time
- Complying Superannuation Funds
- death or disability benefit
- deduction for premiums for death or disability cover
- salary continuance
- superannuation funds
- temporary disability

### *Legislative references:*

- ITAA 1936 267
- ITAA 1936 267(1)

- ITAA 1936 279
- ITAA 1997 1-3(2)
- ITAA 1997 295-460
- SIS Act 62
- SIS Act 62(1)(b)
- SIS Act 62(1)(b)(v)
- SIS Regulations Pt 6
- SIS Regulations Sch 1
- TAA 1953
- TAA 1953 14ZW
- TAA 1953 14ZW(2)
- TAA 1953 Schedule 1, 357-85
- Tax Laws Amendment (Simplified Superannuation) Act 2007

### *Case references:*

- MLC Ltd & Anor v. DFC of T (2002) 196 ALR 502; (2002) 2002 ATC 5105; (2002) 51 ATR 283; [2002] FCA 1491; (2002) 126 FCR 37

### *Other references:*

- Law Administration Practice Statement PS LA 2003/7

### ATO references

NO: 2006/2681

ISSN: 1038-8982

ATOlaw topic: Income Tax ~~ Deductions ~~ insurance expenses