


PR 2012/4 - Income tax: tax consequences for a Holder of NSW Waratah Inflation Protected Annuity Bonds and NSW Waratah Fixed Rate Bonds

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Product Ruling

Income tax: tax consequences for a Holder of NSW Waratah Inflation Protected Annuity Bonds and NSW Waratah Fixed Rate Bonds

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ⓘ 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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.

No guarantee of commercial success

The Commissioner **does not** sanction or guarantee this product. Further, the Commissioner gives no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. The Commissioner recommends a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document. If the scheme is not carried out as described, participants lose the protection of this Product Ruling.

Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the entity(s) who applied for the Product Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Product Ruling.

What this Ruling is about

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified in the Ruling section apply to the defined class of entities, who take part in the scheme to which this Ruling relates. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated.
2. In this Product Ruling the scheme is an investment in NSW Waratah Inflation Protected Annuity Bonds (IABs) and/or NSW Waratah Fixed Rate Bonds (FRBs) offered by New South Wales Treasury Corporation (TCorp) under separate Offer Documents.
3. This Product Ruling does not address:
 - the taxation consequences of acquiring, holding and disposing or redeeming a FRB, other than as per paragraphs 16(f) and 55 to 59 of this Product Ruling;
 - the taxation consequences of acquiring, holding and disposing or redeeming an IAB where it has been acquired via transfer within 12 months of its maturity by a Holder that is:
 - an individual; or
 - a superannuation entity, a managed investment scheme or an entity substantially similar to a managed investment scheme under foreign law with assets of less than \$100 million; or
 - an ADI, a securitisation vehicle or other financial sector entity with an aggregated turnover of less than \$20 million; or
 - another entity with an aggregated turnover of less than \$100 million, financial assets of less than \$100 million and assets of less than \$300 million;
 - the taxation consequences to arise under Subdivision 230-G upon the transfer or sale of an IAB; and
 - the taxation consequences of borrowing funds to acquire IABs or FRBs, including the deductibility of interest on funds borrowed to acquire IABs or FRBs.

Class of entities

4. This part of the Product Ruling specifies which entities can rely on the Ruling section of this Product Ruling and which entities cannot rely on the Ruling section. In this Product Ruling, those entities that can rely on the Ruling section are referred to as a Holder.

5. The class of entities who can rely on the Ruling section of this Product Ruling consists of those Holders that are accepted to participate in the scheme described in paragraphs 17 to 34 of this Product Ruling on or after the date this Product Ruling is published and on or before 30 June 2014. They must have an intention of staying in the scheme until it is completed (that is, holding on to their investment until maturity).

6. The class of entities who can rely on the Ruling section of this Product Ruling does **not** include entities who:

- intend to terminate their involvement in the scheme prior to its completion; or
- are accepted to participate in the scheme described in paragraphs 17 to 34 of this Product Ruling before the date of this Product Ruling or after 30 June 2014.

Superannuation Industry (Supervision) Act 1993

7. This Product Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA). The Commissioner gives no assurance that the scheme is an appropriate investment for a superannuation fund. The trustees of superannuation funds are advised that no consideration has been given in this Product Ruling as to whether investment in this scheme may contravene the provisions of SISA.

Qualifications

8. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 17 to 34.

9. If the scheme actually carried out is materially different from the scheme that is described in this Product Ruling, then:

- this Product Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Product Ruling may be withdrawn or modified.

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Date of effect

11. This Product Ruling applies prospectively from 7 March 2012, the date it is published. It therefore applies only to the specified class of entities that enter into the scheme between 7 March 2012 and 30 June 2014, being its period of application. This Product Ruling will continue to apply to those entities even after its period of application has ended for the scheme entered into during the period of application.

12. However the Product Ruling only applies to the extent that there is no change in the scheme or in the entity's involvement in the scheme.

Changes in the law

13. Although this Product Ruling deals with the income tax and superannuation laws enacted at the time it was issued, later amendments may impact on this Product Ruling. Any such changes will take precedence over the application of this Product Ruling and, to that extent, this Product Ruling will have no effect.

14. Entities who are considering participating in the scheme are advised to confirm with their taxation adviser that changes in the law have not affected this Product Ruling since it was issued.

Note to promoters and advisers

15. Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention the Commissioner suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling has issued.

Ruling

16. Subject to paragraph 3 of this Product Ruling and the assumptions in paragraph 34 of this Product Ruling:

- (a) Subject to subsection 159GP(7) of the *Income Tax Assessment Act 1936* (ITAA 1936), IABs do not have an eligible return for the purposes of subsection 159GP(3);
- (b) Pursuant to subsection 159GP(7) of the ITAA 1936, some of the interest paid on the IABs is taken to be properly attributable to a period in excess of one year and therefore not taken to be periodic interest for the purposes of Division 16E. By virtue of the operation of subsection 159GP(7), IABs therefore have an eligible return for the purposes of subsection 159GP(3) and are qualifying securities as defined under subsection 159GP(1);

- (c) Holders will be subject to Division 230 in respect of their IABs;
- (d) For the purposes of subsection 230-105(1), Holders will have a 'sufficiently certain overall gain' in respect of their IABs;
- (e) For the purposes of subsection 230-130(1), Holders will bring to account their gains and losses in respect of their IABs over the period between the date on which they are acquired and the Maturity Date;
- (f) IABs and FRBs are capable of being held by Holders who are trustees of a complying superannuation fund paying an account-based pension as part of the fund's segregated current pension assets for the purposes of section 295-385;
- (g) Provided the scheme ruled on is entered into and carried out as described in this Ruling, the anti-avoidance provisions in Part IVA of the ITAA 1936 will not apply to Holders.

Scheme

17. The scheme that is the subject of this Ruling is identified and described in the following documents:

- application for a Product Ruling as constituted by documents and information received on 31 October 2011, 11 November 2011 and 1 December 2011;
- draft Offer Document for the IABs, including the Conditions, dated 8 November 2011 and 9 February 2012;
- draft **Deed Poll** for the IABs, received on 1 December 2011 and 9 February 2012;
- Offer Document for the FRBs, including the Conditions, dated 4 August 2011; and
- **Deed Poll** for the FRBs, dated 11 August 2011.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

18. The documents highlighted in paragraph 17 of this Product Ruling are those that a Holder will/may be a party to. For the purposes of describing the scheme to which this Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Holder, or any associate of a Holder, will be a party to, which are a part of the scheme.

19. All Australian Securities and Investment Commission (ASIC) requirements are, or will be, complied with for the term of the agreements.

20. In its role as central borrowing agency for the state of New South Wales, TCorp has established a debt issuance programme under which it will issue debt instruments under authority of the *Public Authorities (Financial Arrangements) Act 1987 (NSW)* (PAFA Act) in the form of IABs and FRBs, each being a direct, unconditional, unsubordinated and irrevocable debt obligation of TCorp constituted by and owing under, the respective Deed Polls executed by TCorp.

21. IABs and FRBs are only offered by TCorp in Australia to Australian tax residents such as trusts (including trustees of complying superannuation funds), individuals, incorporated bodies and unincorporated associations. To purchase an IAB or FRB, Applicants must execute the Application Form contained in the relevant Offer Document and provide the executed form to the Registry together with their invested amount (referred to as an Application Payment in the Offer Document for the IABs and an Application Amount in the Offer Document for the FRBs). No additional fees or charges are payable to TCorp by Applicants.

22. Upon acceptance of an Applicant's application, the Registry will issue the Applicant with a Certificate of Inscription as evidence of the inscription of the IAB or FRB on the Register. Entries in the Register constitute conclusive evidence that the person so entered is the absolute owner of the IAB or FRB (that is, the Holder), and thereby taken to have notice of, and is bound by, the relevant Deed Poll, Offer Document and Conditions.

IABs

23. IABs will be issued in series commencing each January, April, July or October of each calendar year and can be acquired with a minimum Application Payment of \$25,000 and multiples of \$1,000 thereafter.

24. IABs provide Annuity Payments payable monthly on each Annuity Payment Date up to and including the Maturity Date. Each Annuity Payment will be calculated in accordance with the formula set out under Condition 4.3. In general terms, they will comprise of a repayment of principal component and a component of interest adjusted for quarterly increases in inflation as reflected in the CPI. Together, both components (excluding the increased adjustments in interest due to the CPI) equal 1% of a Holder's Application Payment accepted by TCorp to be invested in the IAB (the Base Annuity Payment). If the quarterly change in the CPI is negative, the Annuity Payments will be maintained at their then existing level until the CPI index increases to above the previous highest level during the term of the IAB.

25. All of the Application Payment invested is returned to Holders over the term of their IAB. The number of Annuity Payments Holders will receive will exceed 100 (therefore exceeding 100% of their Application Payment) and depends on the Series of the IAB held and the market interest rates applicable at the establishment of the Series. The interest rate applicable to, and the number of Annuity Payments payable for, each Series will be confirmed when a Holder's application for IABs is accepted by TCorp and specified on TCorp's website.

26. Holders will receive their first Annuity Payment on the 15th day of the calendar month immediately following the Annuity Commencement Date (that is, the 15th of January, April, July or October, whichever occurs first following the calendar month in which TCorp accept an application).

27. Holders may request TCorp to buy back their IABs. TCorp may, in its discretion, agree to a buy back request where a Holder is able to establish any special extenuating circumstances, such as financial hardship, or other circumstances which would justify early buy back of the IABs on compassionate grounds. If TCorp accepts an application for buy back, TCorp will buy back the IABs at the Buy Back Amount on the Buy Back Date. The Buy Back Amount, which may be more or less than the amount of the principal outstanding under the IABs at the time, will be paid in addition to the Annuity Payment due on the Buy Back Date.

28. IABs are not annuities for the purposes of the *Life Insurance Act 1995*, nor do they meet the annuity standards in the *Superannuation Industry (Supervision) Regulations 1994*.

FRBs

29. FRBs can be acquired with a minimum Application Amount of \$10,000 and multiples of \$1,000 thereafter. Each FRB bears interest on its outstanding principal amount from (and including) its Interest Commencement Date to (but excluding) its Maturity Date at a fixed rate of interest. Interest is payable in arrears semi-annually for the term of the FRBs. Holders of FRBs will receive 100% of their Invested Amount and the final interest payment on the fixed Maturity Date. The interest rate and Maturity Date applicable to each series of FRBs will be specified on TCorp's website.

30. At any time after the first Interest Payment Date after a Holder has acquired FRBs, the relevant Holder may require TCorp to redeem all or some of the FRBs held by the Holder for a price determined by TCorp at the time of the requested redemption on a face value basis by reference to the Reserve Bank of Australia bond pricing formula for Commonwealth Government treasury bonds and the prevailing market conditions. Holders redeeming only some of the FRBs held must retain FRBs equal to or greater than the minimum Invested Amount of \$10,000. The amount received upon redemption of FRBs prior to maturity may be more or less than the amount of a Holder's Invested Amount.

IABs and FRBs

31. The due payment of interest and the repayment of the principal in respect of both IABs and FRBs are guaranteed by the New South Wales Government pursuant to the PAFA Act.

32. Holders may transfer their IABs or FRBs in whole, in Australia and to an Australian tax resident by lodgement of a Transfer and Acceptance Form with the Registry. Any transfer is subject to TCorp being satisfied as to the contents of the Transfer and Acceptance Form. Upon registration and entry of the transferee in the Register, the transferor ceases to be entitled to future benefits under the Conditions in respect of the transferred IABs or FRBs and the transferee becomes so entitled.

33. Unless previously bought back or redeemed, each IAB or FRB held by a Holder on the Maturity Date is redeemable by TCorp. TCorp does not have the right to redeem any IABs or FRBs prior to maturity, but may at any time offer to purchase them from Holders.

Assumptions

34. This Ruling is made on the basis of the following assumptions:

- (a) all of the Holders are Australian residents for taxation purposes;
- (b) a Holder that is:
 - an individual; or
 - a superannuation entity, a managed investment scheme or an entity substantially similar to a managed investment scheme under foreign law with assets of less than \$100 million; or
 - an ADI, a securitisation vehicle or other financial sector entity with an aggregated turnover of less than \$20 million; or
 - another entity with an aggregated turnover of less than \$100 million, financial assets of less than \$100 million and assets of less than \$300 million,will not acquire an IAB via transfer within 12 months of its maturity;
- (c) Holders of IABs have not made a valid tax-timing election under Division 230;

- (d) to the extent that a Holder is a trustee of a superannuation fund paying a superannuation income stream benefit, the Holder:
- holds, or otherwise deals with the investment solely to enable the discharge of all or part of their liabilities (contingent or not) in respect of those superannuation income stream benefits that are payable by the fund at the time of holding, and obtains before the date for lodgement of the fund's income tax return the required actuary's certificate (refer subsection 295-385(3)); or
 - holds, or otherwise deals with the investment solely to enable the fund to discharge all or part of its liabilities (contingent or not) as they become due, in respect of superannuation income stream benefits that are payable by the fund at that time and are prescribed by the *Income Tax Assessment Regulations 1997* (ITAR 1997) for the purposes of section 295-385 (refer subsection 295-385(4)), where those liabilities at all times during the income year were liabilities in respect of prescribed superannuation income stream benefits (refer subsection 295-385(5));
- (e) the market value of the assets held by a Holder that is a complying superannuation fund to support the prescribed superannuation income stream benefit does not exceed the account balance supporting the benefit (refer subsection 295-385(6));
- (f) Holders that are complying superannuation funds are not prevented from making such an investment by any particular terms of the fund's trust deed, and are not in breach of any stated investment strategy of the fund;
- (g) the scheme will be executed in the manner described in the Scheme section of this Ruling and the scheme documentation mentioned in paragraph 17 of this Product Ruling; and
- (h) all dealings between the Holders and TCorp will be at arm's length.

Appendix 1 – Explanation

❶ ***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.***

IABs are qualifying securities

35. Securities which are qualifying securities as defined in subsection 159GP(1) of the ITAA 1936 will be subject to the accruals provisions of Division 16E. A qualifying security must, among other requirements, have an eligible return. Subsection 159GP(3) defines an eligible return in relation to a security as follows:

For the purposes of this Division, there shall be taken to be an eligible return in relation to a security if at the time when the security was issued it is reasonably likely, by reason that the security was issued at a discount, bears deferred interest or is capital indexed or for any other reason, having regard to the terms of the security, for the sum of all payments (other than periodic interest payments) under the security to exceed the issue price of the security, and the amount of the eligible return is the amount of the excess.

36. Thus, if the return (other than of the issue price) to Holders of IABs consists only of periodic interest payments, the IAB will not have an eligible return and will not be a qualifying security for the purposes of Division 16E of the ITAA 1936.

37. The circumstances in which an amount of interest will be periodic interest are determined by the application of subsections 159GP(6) and 159GP(7) of the ITAA 1936. An amount of interest payable will not be periodic interest if the payment is not made in a manner which satisfies the provisions of subsection 159GP(6). Subsection 159GP(6) provides that:

For the purposes of this Division, where an amount of interest is payable under a security, the amount shall be taken to be periodic interest if the period between the commencement of the period in respect of which the interest is expressed to be payable and the time at which the interest is payable is less than or equal to one year.

38. Therefore, if part of the Annuity Payments payable to a Holder of an IAB constitutes 'an amount of interest' that is paid at least annually, subsection 159GP(6) of the ITAA 1936 will take that interest payable to be periodic interest for the purposes of Division 16E, subject to the operation of subsection 159GP(7).

39. The IABs constitute a loan on which interest is payable. The Annuity Payments payable by TCorp as an unsecured debt obligation comprise a component of interest, being the difference between the Holder's Application Payment and the sum of the Annuity Payments to be received by the Holder in respect of their IABs, which is the compensation to the lender (that is, the Holders) to be kept out of the use and enjoyment of the principal sum (that is, the Application Payment). In addition, the interest component will be calculated by reference to the principal sum, the payment of which will be made on a monthly and therefore periodic basis (refer *Federal Commissioner of Taxation v. Myer Emporium Ltd* [1987] HCA 18; (1987) 163 CLR 199; 87 ATC 4363; (1987) 18 ATR 693; *Federal Wharf Co. Ltd v. Deputy Federal Commissioner of Taxation* (1930) 44 CLR 24; and *Steele v. Federal Commissioner of Taxation* [1999] HCA 7; (1999) 197 CLR 459; 99 ATC 4242; (1999) 41 ATR 139).

40. The interest component of the Annuity Payments payable by TCorp under the IABs is taken to be periodic interest under subsection 159GP(6). Subject to the operation of subsection 159GP(7) and excluding the interest component of the Annuity Payments, the sum of all payments to be received by a Holder in respect of an IAB could not exceed its issue price and the IABs therefore do not have an eligible return for the purposes of subsection 159GP(3).

41. A payment which satisfies the provisions of subsection 159GP(6) of the ITAA 1936 will nevertheless not constitute periodic interest if it is considered to be 'properly attributable' to a period in excess of one year.

42. The effect of the application of subsection 159GP(7) of the ITAA 1936 to an interest payment that is expressed to be payable for a period less than or equal to one year, and would otherwise be periodic interest by the operation of subsection 159GP(6), is that if the Commissioner considers that the amount of the interest is properly attributable to a period in excess of one year, then the payment will not be regarded as periodic interest for the purposes of Division 16E.

43. In applying subsection 159GP(7) of the ITAA 1936, the Commissioner will consider the effective interest rate in each interest period of the security and will assume that these provisions *prima facie* apply whenever the effective interest rates vary, so that some of the interest payments under the security will not be periodic interest (paragraphs 22 and 24 of Taxation Ruling TR 96/3).

44. The Annuity Payments made by TCorp over the term of an IAB will increase in line with increases in the CPI and will not be reduced if and when the CPI falls. Further, the CPI calculation is cumulative in nature, such that the amount of interest calculated by reference to the CPI increases over time and it can be reasonably expected at the time of issue of the IABs that the effective rate of interest payable under the IABs will also rise over their term.

45. As such, the Commissioner will determine, pursuant to subsection 159GP(7) of the ITAA 1936, that the interest component of monthly Annuity Payments will not be properly attributable to the period over which they are expressed to be payable and may not be considered to be periodic interest for the purposes of Division 16E. Some of the interest payments will thus form part of an eligible return in relation to the IABs for the purposes of subsection 159GP(3) and the IABs will constitute qualifying securities as defined under subsection 159GP(1).

Division 230 – taxation of financial arrangements

46. Division 230 sets out the tax treatment of gains or losses from a 'financial arrangement'. Generally, a financial arrangement is a cash settlable legal or equitable right to receive a financial benefit, or obligation to provide such benefit, or a combination of one or more such right and/or obligations (subsection 230-45(1)). A right to receive or obligation to provide a financial benefit can be cash 'settable' under subsection 230-45(2) if the benefit is money, or if it is a right the taxpayer intends to satisfy or settle by receiving money, or if it is an obligation that the taxpayer intends to satisfy or settle by providing money.

47. The IABs constitute a financial arrangement for the purposes of Division 230 on the basis that Holders have cash settlable rights to receive a financial benefit in the form of monthly Annuity Payments over the term of the IABs, and a cash settlable obligation to provide a financial benefit in the form of an Application Payment to TCorp.

48. As a consequence, Division 230 applies in relation to gains or losses from IABs held by Holders. The exceptions to the application of Division 230 in section 230-455 do not apply.

49. Where an overall gain or loss from a financial arrangement is sufficiently certain at the time when the arrangement starts, the accruals method under Subdivision 230-B applies to the gain or loss (subsection 230-100(2)).

50. A sufficiently certain overall gain or loss from a financial arrangement at the time the arrangement starts is one that is of a particular amount or at least a particular amount, with regard only to financial benefits that are sufficiently certain to be received and provided to the extent that at least some of the amount or value of the benefit is, at that time, fixed or determinable with reasonable accuracy (sections 230-105 and 230-115).

51. For the purposes of determining whether a Holder will make an overall gain or loss in respect of the IABs, Holders will need to take into account their obligation to provide an Application Payment to TCorp and their right to receive monthly Annuity Payments from TCorp. Having regard to the terms of the IABs:

- the Application Payment to be provided by the Holders to TCorp will be for an amount that, at the time of acquisition of the IABs, is fixed or determinable with reasonable accuracy, and therefore a financial benefit that Holders are sufficiently certain to provide; and
- the amount of the Annuity Payments TCorp is obligated to make to the Holders on a monthly basis over the term of the IABs will, having regard to the assumptions in subsection 230-115(4), (5) and (6), be determinable with reasonable accuracy, and therefore a financial benefit that Holders are sufficiently certain to receive.

52. As the Annuity Payments to be received by Holders will comprise an aggregate of Base Annuity Payments in excess of 100% of their Application Payment, as well be increased by a rate that reflects the CPI, it is sufficiently certain for the purposes of subsection 230-105(1) that at the time of acquisition Holders will make an overall gain from their IABs to which the accruals method will apply.

53. Where, under the accruals method, a Holder has a sufficiently certain overall gain from an IAB under subsection 230-105(1), the period over which the gain is to be spread in accordance with subsection 230-130(1) is the period of the arrangement, being the period that starts when the Holder starts to have the IAB (that is, the date on which details of the Holder's acquisition of the IAB are entered in the Register) and ends when the Holder ceases to have the IAB, assuming the Holder will continue to hold the IAB until maturity (that is, the Maturity Date on which the final Annuity Payment is to be made).

54. Running balancing adjustments must be made by a Holder in accordance with subsections 230-175(1) and 230-175(2) respectively if the financial benefit (that is, the Annuity Payments) received or to be received is less or more than the amount estimated.

Can IABs and FRBs be held by complying superannuation funds as segregated current pension assets?

55. A complying superannuation fund is entitled to an exemption for so much of its income as is attributable to its liability to pay current pensions. More specifically and pursuant to section 295-385, a complying superannuation fund is entitled to an exemption from income tax for so much of its ordinary income or statutory income (other than assessable contributions or non-arm's length income of the fund) to the extent that it is derived from the fund's segregated current pension assets, the meaning of which is set out in subsections 295-385(3), (4), (5) and (6).

56. Under this method of determining the exempt amount, the complying superannuation fund segregates its assets as specifically relating to its current pension liabilities to pay 'superannuation income stream benefits' as certified in an actuary's certificate or as prescribed by regulations. The prescribed superannuation income stream benefits include account-based pensions within the meaning of the *Superannuation Industry (Superannuation) Regulations 1994* (SISR) (regulation 295-385.01 of the ITAR 1997).

57. Subject to regulation 995-1.03 of the ITAR 1997, a superannuation income stream benefit is defined under regulation 995-1.01 of the ITAR 1997 to mean a payment from an interest that supports a 'superannuation income stream'. A superannuation income stream itself is defined under regulation 995-1.01 of the ITAR 1997 to include an income stream that is taken to be a pension for the purposes of the SISA in accordance with subregulation 1.06(1) of the SISR.

58. An account-based pension is a pension that meets the requirements in subregulation 1.06(1) of the SISR and in accordance with subregulation 1.03(1) of the SISR, is a pension that is provided in accordance with the rules of a fund that both meet the standards of subregulation 1.06(9A) of the SISR and are described in paragraph 1.06(9A)(a) of the SISR.

59. IABs and FRBs are assets of a type to which, for the purposes of paragraph 1.06(9A)(a) of the SISR, an account balance may be attributed. Subject specifically to the assumptions set out in paragraphs 34(d) to (f) of this Product Ruling, these bonds are therefore capable of being held by Holders who are trustees of complying superannuation funds as segregated current pension assets to support the payment of account-based pensions. Ultimately, whether any particular complying superannuation fund does hold the IABs and FRBs as part of its segregated current pension assets for the purposes of section 295-385 will depend on each fund's particular facts and circumstances.

Part IVA – anti-avoidance

60. Provided that the scheme ruled on is entered into and carried out as disclosed in this Ruling, it is accepted that the scheme is an ordinary commercial transaction and Part IVA of the ITAA 1936 will not apply.

Appendix 2 – Detailed contents list

61. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 96/3

Subject references:

- exempt income
- income tax
- producing assessable income
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- superannuation
- taxation administration
- taxation of financial arrangements

Legislative references:

- ITAA 1936 Div 16E
- ITAA 1936 159GP(1)
- ITAA 1936 159GP(3)
- ITAA 1936 159GP(6)
- ITAA 1936 159GP(7)
- ITAA 1936 Pt IVA
- ITAA 1997
- ITAA 1997 Div 230
- ITAA 1997 230-45(1)
- ITAA 1997 230-45(2)
- ITAA 1997 Subdiv 230-B
- ITAA 1997 230-100(2)
- ITAA 1997 230-105
- ITAA 1997 230-105(1)
- ITAA 1997 230-115
- ITAA 1997 230-115(4)
- ITAA 1997 230-115(5)
- ITAA 1997 230-115(6)

- ITAA 1997 230-130(1)
- ITAA 1997 230-175(1)
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- ITAA 1997 Subdiv 230-G
- ITAA 1997 230-455
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- ITAA 1997 295-385(4)
- ITAA 1997 295-385(5)
- ITAA 1997 295-385(6)
- ITAR 1997 295-385.01
- ITAR 1997 995-1.01
- ITAR 1997 995-1.03
- SISR 1994 1.03(1)
- SISR 1994 1.06(1)
- SISR 1994 1.06(9A)
- SISR 1994 1.06(9A)(a)
- Public Authorities (Financial Arrangements) Act 1987
- Superannuation Industry (Supervision) Regulations 1994
- Life Insurance Act 1995
- SISA 1993
- TAA 1953
- Copyright Act 1968

Case references:

- Federal Commissioner of Taxation v. Myer Emporium Ltd [1987] HCA 18; (1987) 163 CLR 199; 87 ATC 4363; (1987) 18 ATR 693
- Federal Wharf Co. Ltd v. Deputy Federal Commissioner of Taxation (1930) 44 CLR 24
- Steele v. Deputy Commissioner of Taxation [1999] HCA 7; (1999) 197 CLR 459; 99 ATC 4242; (1999) 41 ATR 139

ATO references

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