

TD 98/27 - 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 cover sheet is provided for information only. It does not form part of *TD 98/27 - 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 document has changed over time. This is a consolidated version of the ruling which was published on 2 December 1998

Taxation Determination

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?

Preamble

The number, subject heading, date of effect and paragraphs 1 to 7 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the *Taxation Administration Act 1953* and are legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is binding on the Commissioner.

Date of effect

This Determination applies to years commencing both before and after its date of issue. However, this 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 21 and 22 of Taxation Ruling TR 92/20).

1. No. A deduction is not allowable under the *Income Tax Assessment Act 1936* (ITAA 36) for premiums on insurance policies where income payments are made during periods of temporary disability longer than two years. This applies to the extent that insurance premiums relate to benefits for the period beyond two years where a policy was entered into or renewed after the date of issue of this Determination, unless approval has been given under the provisions of subparagraphs (c)(ii) or (iii) of the definition of death and disability benefit in subsection 267(1).
2. A deduction is allowed under section 279 for complying superannuation funds for so much of any insurance premiums paid as is attributable to the provision of death and disability benefits for the members of the fund.
3. Death or disability benefit, as defined in subsection 267(1) of the ITAA36, means a benefit provided in the event of the death, or the permanent or temporary disability, of the member. A temporary disability benefit, when the member is unable to perform the normal duties of the member's employment, must not exceed two years, or such longer period as may be approved by the Australian Prudential Regulation Authority (APRA - formerly the Insurance and Superannuation Commission) for the purposes of section 62 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act). Where approval, specifying a maximum period for the provision of temporary disability benefits for a member of a complying superannuation fund has not been given by APRA under section 62, the Commissioner of Taxation may approve a period in relation to a member of a complying superannuation fund. Neither the Commissioner of Taxation nor APRA has issued an approval in relation to a member for a specific fund.

4. 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. If the conditions are met, the SIS Act does not prevent the long term provision of temporary disability benefits. APRA has advised the ATO that due to the legislative position, it will not consider requests for fund specific approvals in relation to a member for extended payment of temporary disability benefits as required by subsection 267(1) of the ITAA 36.

5. The Commissioner of Taxation has not issued specific approval in relation to a member of a fund for payment of temporary disability benefits in excess of two years under subparagraph (c)(iii) of the definition of death and disability benefit in subsection 267(1). The Commissioner considers a benefit payable to a member for more than two years assumes more of the nature of a permanent disability benefit. After the payment of temporary disability benefits for a period of two years, the trustees should be in a position to determine whether the member is permanently disabled.

6. In considering any approvals under subparagraph (c)(iii), the Commissioner will have regard to the benefits paid by a fund to a particular member. This allows the Commissioner to take into account the particular circumstances relating to the individual member. It is necessary to demonstrate that the particular member is regularly being assessed and there is a reasonable expectation that the member will be able to return to the normal duties of the member's employment.

7. It is apparent, however, that a number of trustees of superannuation funds were of the incorrect opinion that the Approval of Provision of Benefits, under paragraph 62(1)(v) of the SIS Act, by APRA, constituted approval under subparagraph (c)(ii) of the definition of death and disability benefit in subsection 267(1) of the ITAA 36. In view of this, the Commissioner of Taxation will allow a deduction for premiums paid on any policy that is currently on risk, for salary continuance products for temporary disability for a period longer than two years. No deduction will be allowed where a policy is entered into or renewed after the date of issue of this Determination, for premiums for salary continuance products in respect of temporary disability for a period longer than two years, to the extent that those premiums relate to benefits for a period exceeding two years, unless specific approval is provided under subparagraphs (c)(ii) or (iii) of subsection 267(1) of ITAA 36.

Example

8. *On 1 January 1999, a superannuation fund offers benefits for members in the event of death, or permanent or temporary disability. Temporary disability benefits are payable for the period of the disability. The superannuation fund has insured against its liability for death or disability benefits. The fund has not obtained any specific approvals under subparagraphs 267(1)(c)(ii) or (iii).*

9. *The superannuation fund is allowed a deduction for so much of the insurance premium as is attributable to the provision of benefits in the event of death or permanent disability, and so much as is attributable to the provision of benefits in the event of temporary disability for a period not exceeding two years. However, the superannuation fund cannot deduct premiums paid for an insurance policy to the extent that the premium relates to benefits for temporary disability for the period beyond two years.*

FOI INDEX DETAIL: [Reference No.](#) I 1017927

Previously issued as Draft TD 98/D2

[Related Determinations:](#)

[Related Rulings:](#)

[Subject Ref:](#) accident and disability insurance; salary continuance; superannuation funds; temporary disability

[Legislative Ref:](#) ITAA 267(1); ITAA 267(1(c)(ii); ITAA 267(1(c)(iii); ITAA 279; SISA 62; SISA 62(1)(b); SISA 62(1)(v); SISR Pt 6; SISR Sched 1

[Case Ref:](#)

[ATO Ref:](#) NAT 98/521-0

ISSN 1038 - 8982