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asfa
the voice of super

File Name: 2013/19

3 May 2013

Penny Dally
Australian Taxation Office

Email: penny.dally@ato.gov.au

Dear Ms. Dally,

RE: Review of Taxation Ruling TR 93/17 – Income Tax: Income tax deductions available to superannuation funds

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the request for comments on the scope of the proposed content for a replacement Ruling for TR 93/17.

ASFA strongly supports the proposal to expand the content and provide examples as to how the law applies.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. We focus on the issues that affect the entire superannuation system. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

General comments

We have sought the views of the members of our Tax Standing Advisory Panel.

There is likely to be great interest in the replacement Ruling across all of the superannuation industry. Accordingly, it is vital that the replacement Ruling is issued first as a Draft Ruling, and that sufficient time is provided for all interested parties to make comments on the Draft. ASFA further requests that the ATO commits to taking into consideration all comments received during this process, prior to the finalisation of the Ruling. ASFA confirms that we will make further submission in response to such a Draft Ruling

We note that the focus of the replacement Ruling will remain on section 8-1 of the *Income Tax Assessment Act 1997* and will look at specific deduction provisions only to the extent of clarifying whether or not an item is deductible under a specific provision rather than under section 8-1.

You have noted that the replacement Ruling will touch on certain common expenses that are not deductible under section 8-1 because they are capital in nature. In this regard, one type of expense which is not covered, but that is increasingly being incurred by super funds, is merger related expenses. ASFA suggests that this topic should be included in the ruling and include reference to the interaction between section 8-1 and section 40-880 in relation to these types of expenses (and thus potentially providing a linkage to relevant comments in existing ruling TR 2011/6).

ASFA also notes the final dot point on page 1 of the request for comments. We consider that the replacement Ruling should deal specifically with the appropriate methodology to apportion deductibility for those expenses that may indirectly relate to both assessable and exempt income (for example, audit fees where some of a fund's investment income is exempt as it relates to current pension liabilities). The replacement Ruling should clarify:

- Whether the apportionment formula in present TR 93/17 remains appropriate;
- The circumstances in which this formula may not be appropriate, or when funds may choose to apply a different apportionment approach; and
- The appropriate calculation of the different elements of the formula (for example, the extent to which non-assessable contributions, including rollovers and successor fund transfer amounts, should be included in the denominator).

Other comments

Although appearing to be out of scope of this ruling, ASFA suggests that consideration be given to publishing a ruling on the operation of section 295-485: Deductions for increased amount of superannuation lump sum death benefit (anti-detriment payments). This suggestion is made in light of the increased usage of the provision by superannuation funds in relation to lump sum death benefits paid in respect of both accumulation and pension members after their death We also understand that the legislation implementing the Government's announced changes to the operation of taxation rules with respect to the cessation of a pension will make specific reference to anti-detriment payments.

With respect to those proposed new rules, the wording of the Government's announcement suggests that the new rules may require interpretation of terms such as 'as soon as practicable'. If this is the case, ATO guidance will be required to provide a degree of comfort to trustees of superannuation funds in the application of the law and to ensure consistency of application across the superannuation sector.

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I trust that the information contained in this submission is of value.

If you have any queries or comments regarding the contents of our submission, please contact ASFA's Principal Policy Adviser, Robert Hodge, on (02) 8079 0806 or by email rhodge@superannuation.asn.au.

Yours sincerely

Fiona Galbraith
Director, Policy