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DRAFT TAXATION DETERMINATION TD 2013/D7

ASFA provide comments to the ATO in relation to draft Taxation Determination TD2013/D7 (draft TD) which poses an answer to the question:

> Income tax: in what circumstances is an asset of a complying superannuation fund a segregated current pension asset under section 295-385 of the income Tax Assessment Act 1997?

ASFA commented that the draft TD appeared to have been written primarily with its applicability to an SMSF in mind and commented that segregation, and what is necessary to constitute effective segregation, is a growing subject of interest to the large APRA regulated superannuation funds and their advisers.

ASFA noted the absence of specific reference to defined benefit funds and requested that the draft TD also consider the subject matter from the perspective of these and large APRA regulated funds, and the variety of arrangements such funds may have for the allocation of earnings.

ASFA recommended that, given the importance of the subject matter, consideration be given to releasing the subject matter as a Taxation Ruling.

ASFA provided the following recommendations with respect to specific parts of the draft TD:

Paragraphs 1 and 2: Only whole assets can be segregated
ASFA recommended that the draft TD be amended to indicate it is possible to segregate partial assets where the balance of the partial asset is not owned by the fund or where the part-asset is capable of being transferred or of being redeemed for cash.

Paragraphs 2, 56 to 58 and footnote 4: A bank account is a single chose in action at law
ASFA recommended that the term 'chose in action' be replaced by common English or alternatively the draft TD properly define the term and explains its application to a bank account.

ASFA recommended that the position regarding bank accounts be reviewed so as to provide consistency with both the forex requirement and the treatment of uncertified shares as set out in paragraph's 56 to 58 of the draft TD so at to permit existing industry practices to continue unhindered.

ASFA recommended that further guidance be provided as to what other expenses may be considered to be essential and incidental or necessary for the purpose of paragraph 7 and Example 4.

Paragraph 3: The nexus between segregation of assets and allocation of earnings
ASFA provided three examples and requested that the specific situations outlined in the examples be addressed by the draft TD.

Paragraph 9: A fund that only has members in receipt of pensions cannot use the unsegregated assets approach
ASFA recommended that the paragraph be expanded to cover a number of issues raised in the submission.

Paragraph 10: The application of Part IVA where an asset is disposed of shortly after being segregated and a capital gain is realised

ASFA recommended that the draft TD be amended to reflect the obligation on trustees of both APRA and ATO regulated fund trustees to consider the expected tax consequences for the fund in relation to the investments covered by its investment strategy.

ASFA recommended that either the reference to the application of Part IVA be removed or the draft TD be expanded to include appropriate examples that would assist an understanding of the ATO view of acceptable practice."

Paragraphs 64 to 67: Segregated assets must be "invested, held in reserve or otherwise dealt with"

ASFA recommended that the topic considered by paragraphs 64 to 67 be rethought with a view to providing a better form of wording.