IT 2573 - Income tax : approved form and manner of notices in relation to the taxation of superannuation business and benefits.

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TAXATION RULING NO. IT 2573

INCOME TAX : APPROVED FORM AND MANNER OF NOTICES IN RELATION TO THE TAXATION OF SUPERANNUATION BUSINESS AND BENEFITS.

F.O.I. EMBARGO: May be released

REF N.O. REF: 89/7981-2 DATE OF EFFECT: Immediate

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1011746	APPROVED DEPOSIT FUNDS APPROVED PERSONS NOTICES SUPERANNUATION FUNDS	27AB, 82AAT, 159SS 267, 274, 275, 290A

PREAMBLE The Taxation Laws Amendment Act (No.2) 1989 and the Taxation Laws Amendment (Superannuation) Act 1989 inserted into the Income Tax Assessment Act 1936 (the Act) new Part IX, comprising sections 267 to 315. Part IX deals with the taxation of complying and non-complying superannuation funds and approved deposit funds (ADFs) and pooled superannuation trusts (PSTs) (collectively referred to as 'eligible entities').

2. In a number of cases Part IX requires a written notice or certificate to be given or obtained that will affect the way these eligible entities are subject to tax. These notices are to be given either to a particular person specified in the law (e.g., the trustee of a superannuation fund) or the Commissioner of Taxation or included in a return of income. In addition, written notices that may be given under subsections 27AB(4), 82AAT(1B) and 159SS(1) will affect the treatment of superannuation funds under Part IX or the benefits paid by such funds.

3. The various notices and certificates are generally required to be given or lodged within the time and in the form and manner approved by the Commissioner of Taxation. However, the Commissioner will not be releasing standard notices or certificates to be completed by appropriate persons. Instead it is proposed to specify the standard information to be provided in relevant notices and certificates if they are to be accepted as being in an approved form.

4. This ruling sets out the information to be provided in notices other than those certificates required, under the law, to be given by an actuary. A further ruling will deal with the form of those actuarial certificates which are covered by sections 273A, 273B, 279 and 283 of the Act.

5. One particular notice (a notice given under subsection

274(4)) dealt with in this ruling may only be given by an 'approved person' as defined in subsection 267(1) of the Act, i.e., a person included in a class of persons approved by the Commissioner of Taxation. This ruling also lists the classes of persons approved for the purposes of the definition of 'approved person'.

RULING A) Subsection 82AAT(1B) and subsection 274(4) notices

6. In all but one instance, member's contributions to a complying superannuation fund will be taxable income of the fund (taxable contributions) unless either a subsection 82AAT(1B) or 274(4) notice is given to the trustee of the superannuation fund. The exception is dealt with in subsection 274(6) and applies where a member's contributions exceed the maximum deductible amount under section 82AAT (presently $3,000). In that case the contributions in excess of the maximum are not taxable contributions.

7. The major effect of a subsection 82AAT(1B) or 274(4) notice is to exempt from tax otherwise taxable contributions, i.e., the first $3,000 of contributions made to a complying superannuation fund by a member of the fund. A complementary effect of a section 82AAT(1B) notice is that contributions covered by the notice are not deductible under section 82AAT.

8. To be effective, subsections 82AAT(1C) and 274(5) require that the subsection 82AAT(1B) and 274(4) notices must be given in a form and manner approved by the Commissioner of Taxation. The Commissioner will not be releasing standard forms for these notices. However, relevant notices will be accepted as having been given in the approved form and manner if the notices include the following information:

Subsection 82AAT(1B) notice

- the name and residential address of the person giving the notice;
- the amount of the contribution or contributions made on the date or during the period covered by the notice;
- the date the contribution was made or the period during which contributions were made;
- the date of the notice;
- the amount of the contributions to be treated as an amount to which subsection 82AAT(1B) applies;
- an acknowledgment that the amount of contributions specified for the purpose of subsection 82AAT(1B) is not tax deductible (this is merely a reminder of that consequence for the person giving the notice); and
- the person's signature.

Subsection 274(4) notice

- a statement that the person giving the notice is satisfied that, apart from subsection 82AAS(3), the person or each of the persons referred to in the notice would not be an eligible person for the purposes of Subdivision AB of Division 3 of Part III of the Income Tax Assessment Act 1936;

- the name or names of the persons or the class of persons (e.g. all of the members of the fund who are in a particular class of members, or even all of the members of the fund) to be covered by the notice;

- the name, address and status of the person giving the notice, e.g., self or employer of specified person(s);

- the year of income covered by the notice;

- the date of the notice; and

- the signature of the person authorised to give the notice.

Subsection 82AAT(1B) and 274(4) notices given before the date of issue of this ruling

9. Subsection 82AAT(1B) and 274(4) notices may have been given before the issue of this ruling that do not include all of the information outlined above. Such notices will be accepted as having been given in an approved form and manner if

- in the case of a subsection 82AAT(1B) notice they

  - identify the person giving the notice;

  - identify the amount of the contribution to be claimed or not claimed as a tax deduction; and

  - specify the period covered by the notice.

- in the case of a subsection 274(4) notice they

  - identify each person or class of persons to be covered by the notice;

  - identify the relevant year of income for which the notice applies;

  - identify the person giving the notice; and

  - include a statement that the person giving the notice is satisfied that, apart from subsection 82AAS(3), the person or each of the persons referred to in the notice would not be an eligible person for the purposes of Subdivision AB of Division 3 of Part III of the Income Tax

Assessment Act 1936.

Approved persons

10. A subsection 274(4) notice may only be given to the trustee of a complying superannuation fund by an 'approved person'. The term 'approved person' is defined in subsection 267(1) and is a person included in a class of persons approved by the Commissioner of Taxation. To be approved, a class of persons needs to be made up of persons who are in a position to make the statement required under subsection 274(4), i.e., that a contributor to a superannuation fund is not an eligible person within the meaning in Subdivision AB of Division 3 of Part III of the Act. A contributor to a superannuation fund will not be an eligible person within the meaning in Subdivision AB if superannuation support is provided for the contributor other than by way of superannuation agreement contributions as defined in subsection 82AAS(1).

11. Having regard to the knowledge required by an approved person, the following classes of persons are approved for the purposes of the definition of 'approved person' in subsection 267(1) in relation to the giving of subsection 274(4) notices to a trustee of a complying superannuation fund in respect of the year of income ended 30 June 1989 and the year ending 30 June 1990 (changes to the classes of persons for later years may be required because of the proposed changes to the law announced in the 1989 Budget, dealing with deductibility of personal superannuation contributions):

- all of the members of the complying superannuation fund, i.e. a member of a fund may give the appropriate notice in respect of that member's own contributions;

- employers of members of the complying superannuation fund, i.e., an employer may give a notice in respect of the employer's employees who are members of the fund;

- any other person making contributions to a fund on behalf of an "eligible employee" as described in subsection 82AAA(1) of the Act where that person is entitled to a deduction under section 82AAC in respect of those contributions;

- the administrator of the complying superannuation fund, but only where

  - the administrator is not the trustee of the complying superannuation fund; and

  - the administrator knows that contributions are being made or are required to be made to the fund in respect of each person named or the class of persons covered by the subsection 274(4) notice and the contributions are not merely superannuation agreement contributions; and

- in the case of a superannuation fund established under a law of the Commonwealth or a State or Territory, the Minister responsible for the administration of the Act or a person authorised by the Minister to give a notice on the Minister's behalf.

B) Subsection 274(7), 27AB(4) and section 159SS notices

12. The trustee of an employer-sponsored, complying superannuation fund can, with the consent of the contributor, give a notice to the Commissioner of Taxation under subsection 274(7) to exempt from tax otherwise taxable contributions. It has been decided that the notice referred to in subsection 274(7) may be given by answering a question in the Form F tax return for superannuation funds and ADFs. In the 1989 Form F the relevant question is question 3 on page 3. This question asks whether a superannuation fund is seeking exemption from tax on otherwise taxable contributions under subsection 274(7) and, if so, asks for the amount of contributions sought to be treated as exempt.

13. The amount of contributions made to a complying superannuation fund which can be treated as exempt under subsection 274(7) is limited by subsection 274(8). The limit is an amount calculated by reference to the amounts of untaxed elements paid in the year of income that are covered by subsection 27AB(4) notices and the total of amounts of non-rebatable pensions specified in section 159SS notices.

Subsection 27AB(4) notices

14. Under subsection 27AB(4), the trustee of a superannuation fund is required to notify an eligible termination payment (ETP) recipient in writing of the amount of the relevant untaxed element of the ETP for the purposes of that subsection. The standard Statements of Termination Payment provided by the Taxation Office have been altered to allow the trustee of a superannuation fund to show the amount of untaxed element for the purposes of subsection 27AB(4). The approved method for giving a subsection 27AB(4) notice is completion of the appropriate block on the Statement of Termination Payment for the particular ETP.

Section 159SS notices

15. Similarly, a trustee of a superannuation fund may give a notice to a person in receipt of a rebatable superannuation pension specifying that all or part of the pension is a non-rebatable amount. The notice must be given in writing and within the time and in the manner approved by the Commissioner of Taxation. As with other notices it is not proposed to release a standard form for this purpose. However, a section 159SS notice will be accepted as having been given in the approved manner if the notice includes the following information:

- the name and residential address of the person in receipt of the pension;

- the name of the fund paying the rebatable superannuation pension;
- the date of payment of the rebatable superannuation pension or the period covered by the notice;
- the amount of the rebatable superannuation pension;
- the amount of the non-rebatable amount;
- the date of the notice; and
- the name and signature of the trustee of the fund paying the rebatable superannuation pension.

16. A section 159SS notice must be given by the superannuation fund to the person in receipt of the pension in respect of each instalment of pension that is paid. A separate notice may be given with each instalment of pension, or an advance notice for a specific period, not exceeding one year, may be given on or before the date of the first pension instalment paid in that period. An advance notice should specify the amount of each pension payment that is to constitute a non-rebatable amount. Where an advance notice is given a further notice must be given if the non-rebatable amount is to be altered (e.g., where it is adjusted because of a change in the amount of pension payments). Such a notice is to be given on or before the date of payment of the first pension instalment with an amended non-rebatable amount.

17. It is not acceptable for a section 159SS notice to be given after the end of an income year in respect of the total of pension payments made during that year. However, a superannuation fund should also notify the person in receipt of the pension of the total amounts specified in section 159SS notices in a year of income with the group certificate for that year.

Subsection 27AB(4) and section 159SS notices in respect of benefits paid before this ruling

18. Some funds that wish to use the exemption given by subsection 274(7) may not have given notices prior to the date of issue of this ruling under subsection 27AB(4) or section 159SS within the time and manner approved. In these cases certain notices will be accepted as having been given within the time and manner approved. To be accepted, it is to be a requirement that, at the time of payment, the relevant ETP or pension payment was paid, and any PAYE tax instalment taken out, on the basis that all or part of the ETP or pension payment would be attributable to an untaxed source, i.e., at the time of payment it was assumed the fund would not pay tax on some or all of the contributions made to the fund and accordingly the amount of the ETP or pension payment and any PAYE tax instalment were larger than they would otherwise have been. Further, such notices must be given no later than 90 days after the date of

issue of this ruling or on or before the time when the fund's income tax return for the year ended 30 June 1989 is lodged, whichever is later.

C) Section 275 notices

19. Under subsection 275(1), a written notice is required when a complying superannuation fund or complying ADF transfers taxable contributions to a life assurance company, a registered organisation or a PST. The effect of such a notice is to include the taxable contributions specified in the notice in the assessable income of the life assurance company, registered organisation or PST and to exclude them from the assessable income of the superannuation fund or ADF.

20. There will be no standard approved form for this notice. It has been decided that the notice referred to in subsection 275(1) may be given by answering a question in the Form F tax return for superannuation funds and ADFs. In the 1989 Form F the relevant question is question 4 on page 3. This question requests the trustee of a fund to indicate whether the fund, with the consent of the transferee, transferred taxable contributions to a life assurance company, registered organisation or a PST and, if so, to show the name of the transferee/s as well as the amount of contributions transferred. Where a superannuation fund is exempted from having to lodge a return of income for a particular year of income, a separate section 275 notice may be given. The notice should specify the following information and must be lodged with the Commissioner of Taxation within three months of the end of the superannuation fund's year of income:

- the names of the complying superannuation fund and the fund's trustee;
- the year of income covered by the notice;
- the name of each life assurance company, registered organisation or pooled superannuation trust to which taxable contributions were transferred;
- the amount of taxable contributions transferred to each transferee;
- the date of the notice; and
- the signature of the trustee.

D) Section 290A notices

21. Under subsection 290A(3) an ADF is required to give a notice to the Commissioner where the ADF makes an election in relation to the definition of "reckoning time" in subsection 290A(4). The election allows the ADF to choose a day other than the beginning of the year of income (the reckoning time) in the year of income, on which the proportion of the ADF's income to be exempt under section 290A is calculated. The proportion of income to

be exempt is found by comparing the amount remaining on deposit as at the reckoning time for eligible depositors that was also on deposit at 25 May 1988, with the total amount on deposit as at the reckoning time for all depositors.

21. It has been decided that this notice may be given by answering a question in the Form F tax return for superannuation funds and ADFs. In the 1989 Form F the relevant question is question 5(b) on page 3. This question asks whether the reckoning time at which the components in the formula in subsection 290A(2) were determined was a time other than the beginning of the year of income and, if so, the reckoning time chosen.

COMMISSIONER OF TAXATION
14 December 1989