



# ***PR 2019/7 - Income tax: PPS Mutual Professionals Choice - 2019***

 This cover sheet is provided for information only. It does not form part of *PR 2019/7 - Income tax: PPS Mutual Professionals Choice - 2019*

 This document has changed over time. This is a consolidated version of the ruling which was published on *27 April 2022*



## Product Ruling

### Income tax: PPS Mutual Professionals Choice – 2019

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#### **📌 Relying on this Ruling**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

*[Note: This is a consolidated version of this document. Refer to the Legal Database ([ato.gov.au/law](http://ato.gov.au/law)) to check its currency and to view the details of all changes.]*

#### **No guarantee of commercial success**

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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**

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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

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1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified in the Ruling section apply to the defined class of entities that takes 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 involves the purchase and holding of a PPS Mutual Accidental Death Insurance and Profit-Share Account (Profit-Share Plan) and one or more PPS Mutual core insurance plans issued by NobleOak Life Limited (NobleOak) and offered under the PPS Mutual Professionals Choice Product Disclosure Statement (PDS).
3. Broadly, and subject to paragraph 4 of this Product Ruling, this Ruling addresses:
  - The assessability of an Accidental Death Benefit and a Profit-Share Benefit paid under a Profit-Share Plan.
  - The deductibility of premiums incurred in respect of a Profit-Share Plan.
  - The deductibility of premiums incurred in respect of PPS Mutual Income Protection Insurance (Income Protection Insurance).
  - The assessability of a Death Benefit or a Terminal Illness Benefit under PPS Mutual Life Insurance (Life Insurance) held inside of superannuation.
  - The deductibility of premiums incurred in respect of Life Insurance held inside of superannuation.
  - The assessability of a TPD Benefit paid under PPS Mutual Total and Permanent Disability Insurance (TPD Insurance) held inside of superannuation.
  - The deductibility of premiums incurred in respect of TPD Insurance held inside of superannuation.
4. This Product Ruling does not address:
  - The tax consequences arising from the following types of insurance offered under PPS Mutual Professionals Choice
    - trauma insurance
    - business expenses insurance
    - blood borne disease insurance, and
    - child insurance.

- The tax consequences arising in relation to Life Insurance or TPD Insurance owned by a Member that is not the trustee of a complying superannuation fund.
- The tax consequences arising in relation to any benefits and options available under Life Insurance other than the Death Benefit and Terminal Illness Benefit.
- The tax consequences arising in relation to any benefits and options available under TPD Insurance other than the TPD Benefit.
- The tax consequences arising in relation to Income Protection Insurance held outside of superannuation by a Member that is an entity other than the Life Insured under that Income Protection Insurance or the employer of the Life Insured under that Income Protection Insurance.
- The assessability of a payment of a benefit under Income Protection Insurance held by a Member that is the trustee of a complying superannuation fund.
- The assessability of any benefits and options available under Income Protection Insurance other than the total disability benefit or the partial disability benefit (apart from what is said about the 'specific injuries benefit' and the 'trauma benefit').
- The tax consequences arising from insurance cover provided under Home Duties Income Protection Insurance (which relates to the Life Insured's inability to perform all of their Home Duties).
- A Member's entitlement to a rebate under section 160AAB of the *Income Tax Assessment Act 1936* (ITAA 1936) in relation to an assessable Profit-Share Benefit received under the Profit-Share Plan.
- The tax consequences arising for the recipient upon the on-payment of a benefit received under a PPS Mutual insurance plan by a Member that is the trustee of a complying superannuation fund.
- The tax consequences arising from the transfer of ownership of a PPS Mutual insurance plan to another entity.
- The tax consequences of borrowing funds to purchase a PPS Mutual insurance plan, including the deductibility of interest on funds borrowed.
- Whether this scheme constitutes a financial arrangement for the purposes of Division 230 (Taxation of financial arrangements).

## Class of entities

5. 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.

6. The class of entities that can rely on the Ruling section of this Product Ruling consists of those entities that are Australian residents for taxation purposes and are:

- (a) An individual (other than in the capacity of a trustee of a trust estate) who is a Member of the PPS Mutual Benefit Fund (the Fund) and purchases the Profit-Share Plan on or after 1 July 2019 and on or before 30 June 2022.
- (b) An entity nominated by the individual referred to in paragraph 6(a) of this Product Ruling as a beneficiary under that Profit-Share Plan.
- (c) The deceased estate of the individual referred to in paragraph 6(a) of this Product Ruling.
- (d) An individual (other than in the capacity of a trustee of a trust estate) who is a Member of the Fund, purchases Income Protection Insurance on or after 1 July 2019 and on or before 30 June 2022, and is the Life Insured under that Income Protection Insurance.
- (e) An entity that is a Member of the Fund, purchases Income Protection Insurance on or after 1 July 2019 and on or before 30 June 2022, and is the employer of the Life Insured under that Income Protection Insurance.
- (f) The trustee of a complying superannuation fund within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993* (SISA) that is a Member of the Fund and purchases the Profit-Share Plan and one or more of the Life Insurance, the TPD Insurance and the Income Protection Insurance on or after 1 July 2019 and on or before 30 June 2022.

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

- Are not Australian residents for taxation purposes.
- Purchase a PPS Mutual insurance plan before 1 July 2019 or after 30 June 2022.
- Are not one of the entities listed in paragraph 6 of this Product Ruling.

***Superannuation Industry (Supervision) Act 1993***

8. This Product Ruling does not address the provisions of the 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**

9. 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 49 of this Ruling.

10. 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.

**Date of effect**

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11. This Product Ruling applies from 1 July 2019. It therefore applies only to the specified class of entities that enter into the scheme from 1 July 2019 until 30 June 2022, 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 as described in paragraphs 17 to 49 of this Ruling, or in the entity's involvement in the scheme.

**Changes in the law**

13. Although this Product Ruling deals with the income tax 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 4 and the assumptions in paragraph 49 of this Product Ruling:

**PPS Mutual Profit-Share Plan**

- (a) The Profit-Share Plan is an 'eligible policy' for the purposes of section 26AH of the ITAA 1936.
- (b) A Profit-Share Benefit paid under a Profit-Share Plan held by a Member who is the Life Insured or the trustee of a complying superannuation fund will be a 'bonus' to which subsection 26AH(6) of the ITAA 1936 may apply, and will not otherwise be assessable as ordinary or statutory income under the ITAA 1936 or the ITAA 1997.
- (c) For the purposes of subsection 26AH(13) of the ITAA 1936, which on application 'resets' the date of commencement of the relevant eligible policy, only premiums payable in respect of the Profit-Share Plan (and not any other PPS Mutual insurance plan held in respect of the same Life Insured) are relevant and to be taken into account.
- (d) An Accidental Death Benefit received by the nominated beneficiary or the deceased estate of the Life Insured under a Profit-Share Plan held by a Member who is the Life Insured under the Profit-Share Plan will not be included in the assessable income of the beneficiary or deceased estate, as applicable, under section 6-5 or section 6-10.
- (e) A capital gain or capital loss made by the nominated beneficiary or the deceased estate of the Life Insured upon receipt of an Accidental Death Benefit under a Profit-Share Plan held by a Member who is the Life Insured under the Profit-Share Plan will be disregarded pursuant to table item 4 in subsection 118-300(1).
- (f) An Accidental Death Benefit received by a Member that is the trustee of a complying superannuation fund under a Profit-Share Plan held by that trustee will not be included in the assessable income of the fund under section 6-5 or section 6-10.

- (g) A capital gain or capital loss made by a Member that is the trustee of a complying superannuation fund upon receipt of an Accidental Death Benefit under a Profit-Share Plan held by that trustee will be disregarded pursuant to table item 5 in subsection 118-300(1).
- (h) Premiums incurred by a Member who is the Life Insured in respect of a Profit-Share Plan they hold will not be deductible under section 8-1.
- (i) A Member that is the trustee of a complying superannuation fund will be entitled to a deduction under section 295-465 for the whole of the premiums that trustee incurs in respect of a Profit-Share Plan in the income year in which the premiums are paid.

#### **PPS Mutual Income Protection Insurance**

- (j) Premiums incurred by a Member who is the Life Insured in respect of Income Protection Insurance they hold will be deductible under section 8-1 to the extent that they do not relate to the 'specific injuries benefit' and the 'trauma benefit'.
- (k) Premiums incurred in respect of Income Protection Insurance held by a Member that is an employer of the Life Insured under that Income Protection Insurance will be deductible under section 8-1 to the extent that they do not relate to the 'specific injuries benefit' and the 'trauma benefit'.
- (l) Premiums incurred in respect of Income Protection Insurance held by those referred to in paragraphs 16(j) and (k) of this Product Ruling will not be deductible under section 8-1 to the extent that they relate to the 'specific injuries benefit' and the 'trauma benefit'. Pursuant to the assumption at paragraph 49(d) of this Product Ruling, the portion of the premiums incurred in respect of Income Protection Insurance which relate to the specific injuries benefit and the trauma benefit (where the Extras Package Option is selected) is 5%.
- (m) A Member that is the trustee of a complying superannuation fund will be entitled to a deduction under section 295-465 for the whole of the premiums that trustee incurs in respect of Income Protection Insurance in the income year in which the premiums are paid.



## **PPS Mutual Life Insurance**

- (n) A Death Benefit or a Terminal Illness Benefit received by a Member that is the trustee of a complying superannuation fund under Life Insurance held by that trustee will not be included in the assessable income of the fund under section 6-5 or section 6-10.
- (o) A capital gain or capital loss made by a Member that is the trustee of a complying superannuation fund upon receipt of a Death Benefit or Terminal Illness Benefit under Life Insurance held by that trustee will be disregarded pursuant to table item 5 in subsection 118-300(1).
- (p) A Member that is the trustee of a complying superannuation fund will be entitled to a deduction under section 295-465 for the whole of the premiums that trustee incurs in respect of Life Insurance in the income year in which the premiums are paid.

## **PPS Mutual Total and Permanent Disability Insurance**

- (q) A TPD Benefit received by a Member that is the trustee of a complying superannuation fund under TPD Insurance held by that trustee will not be included in the assessable income of the fund under section 6-5 or section 6-10.
- (r) A capital gain or capital loss made by a Member that is the trustee of a complying superannuation fund upon receipt of a TPD Benefit under TPD Insurance held by that trustee will be disregarded pursuant to table item 7 in subsection 118-300(1).
- (s) A Member that is the trustee of a complying superannuation fund will be entitled to a deduction under section 295-465 for the whole of the premiums that trustee incurs in respect of TPD Insurance in the income year in which the premiums are paid.

## **Anti-avoidance provisions**

- (t) Provided the scheme ruled on is entered into and carried out as described in this Product Ruling, the anti-avoidance provisions in Part IVA of the ITAA 1936 will not apply to an entity referred to in paragraph 6 of this Ruling.

## Scheme

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

- application for a Product Ruling as constituted by documents and information received on 26 August 2015, 28 August 2015, 4 September 2015, 12 October 2015, 23 February 2016, 27 April 2016, 29 May 2019, 27 June 2019, 22 August 2019, 16 March 2020 and 23 March 2020
- PPS Mutual Professionals Choice Product Disclosure Statement dated 2 May 2016
- PPS Mutual Professionals Choice Supplementary Product Disclosure Statement dated 6 April 2018
- PPS Mutual Professionals Choice Product Disclosure Statement dated 1 April 2020, and
- PPS Mutual Benefit Fund Rules (the Rules) dated 1 February 2016, as amended, and received on 27 June 2019.

**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. For the purposes of describing the scheme to which this Product Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which an entity referred to in paragraph 6 of this Ruling, or any associate of such entity, will be a party to, which are a part of the scheme. Capitalised terms have the meaning provided in the PDS and/or the Rules.

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

### Overview

20. NobleOak, a registered life insurer, established the Fund pursuant to the Rules for the purposes of PPS Mutual Professionals Choice.

21. PPS Mutual Professionals Choice is a product designed by PPS Mutual Insurance Pty Ltd (PPS Mutual Insurance). Services in relation to product and business development, distribution support, and underwriting of the business are provided by PPS Mutual Insurance pursuant to the terms of a product development and distribution agreement it has entered into with NobleOak.

22. Insurance cover issued by NobleOak under PPS Mutual Professionals Choice comprises of:

- life, total and permanent disability, trauma, income protection, and business expenses (collectively referred to as core insurances)
- blood borne disease and child (collectively referred to as additional insurances), and
- the Profit-Share Plan insurance.

With the exception of the Profit-Share Plan, these insurance covers can be provided as either stand-alone cover or (in certain circumstances) linked together with other covers. These insurance covers can also be provided as either single cover inside or outside superannuation or (in certain instances) split inside and outside of superannuation across two separate plans.

23. Entitlement to the provision of these insurance covers as determined by the Rules is exclusively available to an entity (a person who may or may not be different to the Life Insured, a company or a trustee (including the trustee of a superannuation fund)) that has been accepted as a Member of the Fund. To become a Member of the Fund, a person, company or trustee must meet the eligibility criteria contained in the Rules; apply to NobleOak to become a Member of the Fund; and have their application for insurance accepted by NobleOak.

24. Generally, an application for insurance requires, amongst other things, the proposed Life Insured under that application to be, at the time of the application, an Australian Resident; a PPS Mutual Member; and within the age limits applying to the cover being requested.

25. A PPS Mutual Member is a member of PPS Mutual Limited (PPS Mutual), a company owned by its members and of which PPS Mutual Insurance is a wholly owned subsidiary.

26. Membership of PPS Mutual (which arises as a consequence of becoming the Life Insured under a PPS Mutual insurance plan) is only available to those individuals who are currently practising in, or are currently eligible to practice in, one of a number of eligible professions.

27. Applications and eligibility requirements are assessed by PPS Mutual on behalf of NobleOak. Where an Applicant has been accepted as a Member of the Fund and has been provided with insurance cover, the Rules, together with the information contained in the most recent Certificate of Membership that NobleOak has issued to the Member, will form the terms and conditions of the Member's insurance contract with NobleOak.

28. The Applicant must pay any applicable premium that NobleOak requires to be paid prior to the commencement of the insurance cover. Premiums are thereafter due and payable annually in advance. The premiums payable in respect of a PPS Mutual

insurance plan, including the Profit-Share Plan, are for the benefit(s) provided by that plan, and not for any Profit-Share Benefit that may be payable by NobleOak under the terms of the Profit-Share Plan (as discussed at paragraphs 32 to 43 of this Product Ruling).

29. None of the PPS Mutual insurance plans offered by the Fund will have any cash surrender value. No bonuses will accrue or be paid in respect of a PPS Mutual insurance plan offered by the Fund, except the Profit-Share Plan.

30. None of the PPS Mutual insurance plans have an investment-related component and so the benefits payable under those plans do not include investment income.

31. Membership of the Fund ceases for a Member when no further insurance cover is being provided to the Member by the Fund due to the termination of the insurance cover (for any reason).

#### **PPS Mutual Profit-Share Plan**

32. Unlike each of the other insurance plans available under the Fund, the Profit-Share Plan will not be available to purchase separately. Rather, it will be a plan that is automatically issued whenever one of the other core insurances is purchased.

33. The Profit-Share Plan will either be owned by the Life Insured under a core insurance plan (who is therefore a PPS Mutual Member) or, in situations where a core insurance plan provided by the Fund is owned by the trustee of a superannuation fund, that trustee. The Life Insured under both the Profit-Share Plan and the referable core insurance plan, each owned by the trustee of a superannuation fund, will be the same individual.

34. The Profit-Share Plan contains two components, Accidental Death Insurance and the Profit-Share Account.

35. Under the Accidental Death Insurance component of the Profit-Share Plan, NobleOak will pay an Accidental Death Benefit (a lump sum) of \$10,000 where the Life Insured dies while they are covered by the Profit-Share Plan as a direct result, and within 90 days, of an Accident. The recipient of the Accidental Death Benefit may vary (as per the Rules) depending on who, or what type of entity (as referred to in paragraph 33 of this Product Ruling), owns the Profit-Share Plan.

36. The Profit-Share Account is a notional account maintained within the Fund for the benefit of its Members. The Profit-Share Pool, being the accumulated funds from which Profit-Share Benefits are paid to Members, will broadly track the profitability of the Fund and will be the mechanism by which the insurance operations are run on a mutual basis.

37. Amounts will be notionally allocated annually to each Profit-Share Account maintained for each holder of a Profit-Share Plan. The allocation:

- will be based on the profit-share rates determined annually by the Appointed Actuary, and approved by the Board of NobleOak
- will be expected to be proportional to the premiums paid for the year in respect of each Life Insured on all PPS Mutual insurance plans effected over the same Life Insured; and the existing balance of the Profit-Share Account, and
- may be positive (where there is a surplus and the profit-share rate is positive) or negative (where there is a loss and the profit-share rate is negative).

38. The balances in the Members' Profit-Share Accounts are not guaranteed to the Members and can be affected by investment performance and claims experience, amongst other things. Profit-Share Account balances can never be less than zero.

39. The Profit-Share Benefit only becomes payable (or part payable) to a Member when a payment circumstance occurs with a payment percentage greater than zero. A Profit-Share Benefit equating to 100% of the balance that has accrued to the Member in their Profit-Share Account is payable under the Profit-Share Account component of the Profit-Share Plan in the following circumstances:

- automatically, at any time, if a benefit is paid on a PPS Mutual insurance plan that results in that and all other benefits for the relevant Life Insured terminating
- on request, or if all benefits covering the relevant Life Insured under a PPS Mutual insurance plan expire or lapse, after 20 years of continuous coverage under the Profit-Share Plan on the Life Insured, and
- on request, or if all benefits covering the relevant Life Insured under a PPS Mutual insurance plan expire or lapse, upon the first anniversary of the Profit-Share Plan after the Life Insured has reached age 65.

40. A Profit-Share Benefit of 5% of the balance that has accrued to the Member in their Profit-Share Account (less any percentage amounts previously withdrawn) is payable after 10 years and thereafter annually for each full year of continuous coverage that exceeds 10 years from the first Profit-Share Plan commencement date where, after 10 years but less than 20 years of continuous coverage under the Profit-Share Plan on the Life Insured:

- it is requested by the Member, or
- all benefits covering the relevant Life Insured under a PPS Mutual insurance plan expire or lapse.

In this circumstance the partially forfeited Profit-Share Account balance remains within the Profit-Share Pool and is available for notional allocation to other Members as part of the next annual profit allocation.

41. No Profit-Share Benefit is payable where a Member ceases their membership in the Fund because all benefits covering the Life Insured under a PPS Mutual insurance plan expire or lapse before they have achieved 10 years of continuous coverage under the Profit-Share Plan. In this circumstance the forfeited Profit-Share Account balance remains within the Profit-Share Pool and is available for notional allocation to other Members as part of the next annual profit allocation.

42. The premium payable in respect of the Profit-Share Plan is included in an administration fee charged to Members by NobleOak and subsequently paid by NobleOak on each Member's behalf. This premium has been set by reference to the expected costs to the Fund of providing the \$10,000 Accidental Death Benefit. There is no loading for expense or profit margin on the premium for the Accidental Death Benefit, and no portion of the premium is referable to the provision of the Profit-Share Benefit.

43. The Profit-Share Plan is a 'life policy' as defined in section 9 of the *Life Insurance Act 1995*, and therefore satisfies the definition of a 'life insurance policy' under subsection 995-1(1).

### **PPS Mutual Life Insurance**

44. Under Life Insurance NobleOak will pay:

- the Death Benefit (a lump sum) equal to the Sum Insured where the Life Insured dies, or
- (what is referred to in the PDS and this Product Ruling only as)<sup>1</sup> the Terminal Illness Benefit (a lump sum) equal to the Sum Insured where the Life Insured meets the definition of Terminal Illness,

while the Life Insured is covered by Life Insurance. The recipient of the Death Benefit may vary (as per the Rules) depending on who, or what type of entity, owns the Life Insurance.

### **PPS Mutual TPD Insurance**

45. Under TPD Insurance NobleOak will pay the TPD Benefit (a lump sum) equal to the Sum Insured to the holder of the TPD Insurance where the Life Insured suffers injury or illness causing Total and Permanent Disability, while the Life Insured is covered by the TPD Insurance. The Life Insured's Total and Permanent Disability will be assessed according to the Total and Permanent Disability

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<sup>1</sup> Appendix 2 of the Rules provides for the payment of the Death Benefit where the Life Insured either dies or becomes Terminally Ill.

definition that applies to the cover as at the TPD Insurance's commencement date.

## **PPS Mutual Income Protection Insurance**

46. Under Income Protection Insurance NobleOak will pay a total or partial disability benefit, as applicable, to the holder of the Income Protection Insurance where the injury or illness causing the Total Disability (as per the relevant definition that applies to the cover) or the Partial Disability occurred while the Life Insured is covered by the Income Protection Insurance; the Life Insured remains Disabled for at least the duration of the relevant Waiting Period; and remains Totally Disabled thereafter.

47. The total or partial disability benefit will be paid monthly in arrears (as a Monthly Benefit), starting from the end of the Waiting Period. The maximum period of time that the Monthly Benefit will be paid while the Life Insured remains continuously Totally Disabled and/or Partially Disabled is referred to as the Benefit Period.

48. As part of an Extras Package Option available under Income Protection Insurance at extra cost to Members other than those that are a superannuation fund, NobleOak will pay, among other benefits, a specific injuries benefit or a trauma benefit, as applicable, to the holder of the Income Protection Insurance where a specified event set out in the Rules of Appendix 5 occurs while the Life Insured is covered by the Income Protection Insurance. These benefits will be paid for a specified period, regardless of whether the Life Insured is working or not.

## **Assumptions**

49. This Ruling is made on the basis of the following assumptions:
- (a) Each of the entities referred to in paragraph 6 of this Product Ruling is an Australian resident for taxation purposes.
  - (b) Each of the superannuation funds holding a PPS Mutual insurance plan is a complying superannuation fund within the meaning of section 45 of the SISA.
  - (c) Complying superannuation funds holding a PPS Mutual insurance plan will not choose, pursuant to subsection 295-465(4), to determine its deduction entitlement under section 295-470 for premiums paid.
  - (d) The method of apportionment of the premiums incurred in respect of Income Protection Insurance, as determined by NobleOak's Appointed Actuary, is fair and reasonable.
  - (e) The insurance cover provided under Income Protection Insurance purchased by an entity referred to in

paragraph 6(d) of this Product Ruling does not include Home Duties Income Protection Insurance (coverage relating to the Life Insured's inability to perform all of their Home Duties).

- (f) Any benefit received under a PPS Mutual insurance plan by a Member that is the trustee of a complying superannuation fund will be on-paid by that fund directly to the Life Insured or, where applicable, to the deceased Life Insured's estate or nominated beneficiary.
- (g) Income Protection Insurance held by a Member that employs the Life Insured is purchased to replace revenue that is expected to be lost due to the Total or Partial Disability of the Life Insured, and not to protect against a capital risk.
- (h) All dealings between any of the entity's referred to in paragraph 6 of this Product Ruling and NobleOak will be at arm's length.
- (i) The scheme will be executed in the manner described in the Scheme section of this Product Ruling and the scheme documentation referred to in paragraph 17 of this Ruling.

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**Commissioner of Taxation**2 October 2019

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## Appendix 1 – Explanation

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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.***

### **Assessability of benefits received under plans held by Members who are the Life Insured**

#### ***Total or partial disability benefit under Income Protection Insurance assessable as ordinary income under section 6-5***

50. Section 6-5 includes income according to ordinary concepts (ordinary income) in assessable income. Income according to ordinary concepts refers to an accepted usage of the word ‘income’ and income that Courts have determined is ordinary income.

51. The characterisation to be accorded to the total or partial disability benefit payable as Monthly Benefits to a Member under Income Protection Insurance will depend on the purpose of the payments and the circumstances of their receipt: *Tinkler v Commissioner of Taxation* [1979] FCA 136 per Brennan J. Under the Income Protection Insurance, a Member who is the Life Insured takes out the insurance with the intention to receive the Monthly Benefits on the happening of a specified event, being their Total or Partial Disability which prevents them from performing the duties of their (or where applicable, any) occupation necessary to produce an income. The Monthly Benefits payable under the Income Protection Insurance in the event of the Member’s Total or Partial Disability are intended to compensate the Member for the loss of earnings.

52. Ordinarily, the receipt of insurance proceeds to replace lost earnings would be ordinary income: *Commissioner of Taxation (Cth) v Smith* [1981] HCA 10 (*Smith*). This is to be distinguished from circumstances under which the receipt of insurance proceeds is intended to compensate for the loss of earning capacity.

53. Accordingly, Monthly Benefits paid by NobleOak under Income Protection Insurance upon the Total or Partial Disability of the Member are ordinary income (and not capital receipts), assessable under section 6-5.

#### ***Accidental Death Benefit under the Profit-Share Plan and specific injuries and trauma benefits under Income Protection Insurance not assessable as ordinary income under section 6-5***

54. As is the case in respect of a Member’s Total or Partial Disability, the characterisation to be accorded to both an Accidental Death Benefit payable under the Profit-Share Plan in respect of the Member’s death by Accident, and the specific injuries and trauma benefits payable under Income Protection Insurance will depend on the purpose of the payments and the circumstances of their receipt.

55. Members who are the Life Insured are issued with a Profit-Share Plan with the intention for their nominated beneficiary or deceased estate to receive the Accidental Death Benefit on the happening of the death of the Member from an Accident. The Accidental Death Benefit payable in the event of the Member's accidental death is intended to compensate the Member's nominated beneficiary or deceased estate for the loss of earning capacity of the Member.

56. Ordinarily, the receipt of insurance proceeds in the form of a lump sum would not come within the term of ordinary income where the payment has been made in the event of death or for deprivation or impairment of earning capacity: *The Commissioner of Taxation of the Commonwealth of Australia v Slaven* [1984] FCA 17. Such payments are capital in nature.

57. Accordingly, an Accidental Death Benefit paid by NobleOak under the Profit-Share Plan is a capital receipt, and is not assessable under section 6-5 as ordinary income.

58. Under the Income Protection Insurance, Members who are the Life Insured may select the Extras Package Option with the intention of receiving the specific injuries benefit or the trauma benefit on the happening of a relevant specified event. That event may or may not prevent the Member from performing the duties of their occupation. Any specific injuries or trauma benefit payable by NobleOak under the Extras Package Option may therefore not be intended to compensate the Member for the loss of earnings.

59. Accordingly, the specific injuries benefit and the trauma benefit under the Extras Package Option available under the Income Protection Insurance is a capital receipt, and is not assessable under section 6-5 as ordinary income.

***Accidental Death Benefit under the Profit-Share Plan and specific injuries and trauma benefits under Income Protection Insurance not assessable as statutory income under section 15-30***

60. Section 6-10 includes statutory income in assessable income (that is, amounts that are not ordinary income but are included in assessable income by another provision). Section 15-30 is one such provision which operates to include in your assessable income an amount received by way of insurance or indemnity for the loss of an amount if the lost amount would have been included in your assessable income and the amount received is not assessable as ordinary income under section 6-5.

61. Whether a payment received by way of insurance or indemnity is subject to tax under paragraph 26(j) of the ITAA 1936 (the predecessor to section 15-30) was considered in *Commissioner of Taxation v Inkster, H M* [1989] FCA 626 and *Groves v. United Pacific Transport Pty. Ltd. and Thompson* (1965) Qd. R. 62. As the compensation paid under these cases was for the loss of earning

capacity, as distinct from the loss of income which would have been assessable income if the loss had not occurred, it was held that any payment thus received was not subject to assessment under paragraph 26(j) of the ITAA 1936. For paragraph 26(j) of the ITAA 1936 to have applied, it would have been necessary to demonstrate that an actual loss of income suffered by the insured had been indemnified.

62. The Accidental Death Benefit paid by NobleOak under the Profit-Share Plan, and any specific injuries benefit or trauma benefit paid by NobleOak under the Income Protection Insurance, are payments received, as applicable, by the Member or their nominated beneficiary or deceased estate by way of insurance. However, the Accidental Death Benefit is for the loss of the Member's earning capacity (where the Member is the Life Insured), and not for the loss of income. Any payment received to compensate for the loss of earning capacity is a capital receipt and does not fall to be assessed under section 15-30. Similarly, any specific injuries or trauma benefits may not be for the loss of any income. As capital receipts, such benefits will also not fall to be assessed under section 15-30.

### **Assessability of benefits received under plans held by Members that are complying superannuation funds**

63. Subsection 295-85(2) states that if a CGT event happens involving a CGT asset owned by a complying superannuation fund, section 6-5 (among other provisions) does not apply in respect of that event (subject to the application of one of the exceptions at subsections 295-85(3) and (4)).

64. This means that the capital gains tax (CGT) provisions are the primary code for calculating gains or losses realised by complying superannuation funds from such a transaction. The normal weighing up that applies between the ordinary income and deduction provisions and the CGT provisions does not apply.

65. None of the exceptions in either subsections 295-85(3) or (4) apply to any CGT event happening to Members in relation to their PPS Mutual insurance plans. As such, any gain or loss realised by a Member that is a complying superannuation fund upon receipt of a benefit under either the Profit-Share Plan, the Life Insurance or the TPD Insurance will, by the operation of subsection 295-85(2), not need to be considered for the purposes of section 6-5, but will constitute a capital gain or capital loss as determined under the CGT provisions (and in accordance with paragraphs 67 to 79 of this Product Ruling).

66. For the reasons set out in paragraphs 60 to 62 of this Product Ruling in relation to an Accidental Death Benefit received by a nominated beneficiary or deceased estate of a Member who owns (and is the Life Insured under) a Profit-Share Plan, an Accidental Death Benefit under a Profit-Share Plan; a Death Benefit or a Terminal Illness Benefit under the Life Insurance; and a TPD Benefit

under the TPD Insurance received by a Member that is a complying superannuation fund would not be assessed as statutory income under section 15-30.

### **Capital gain or loss from payment of benefits received under plans disregarded**

67. Under subsection 108-5(1) a CGT asset is any kind of property or a legal or equitable right that is not property. Contractual rights under an insurance policy are legally enforceable rights and therefore a CGT asset according to the definition in subsection 108-5(1).

68. Where NobleOak makes a payment of a benefit in satisfaction of an entity's contractual rights under a PPS Mutual insurance plan, that entity's ownership of those rights is discharged or satisfied. This discharge or satisfaction of the contractual rights gives rise to CGT event C2 (paragraph 104-25(1)(b)).

69. The recipient of the benefit makes a capital gain from this CGT event if their capital proceeds from the ending of the ownership of their asset are more than the asset's cost base or, alternatively, a capital loss if those capital proceeds are less than the asset's reduced cost base (subsection 104-25(3)).

### ***Section 118-37 – specific injuries or trauma benefits under Income Protection Insurance held by Members who are the Life Insured***

70. Section 118-37 disregards a capital gain or capital loss relating to compensation or damages received by a taxpayer as a result of any wrong, injury or illness they or their relative suffered.

71. A receipt of an amount under an insurance policy for a non-death benefit (including injury or trauma) constitutes a form of compensation or damages covered by subparagraph 118-37(1)(a)(ii) where the amount is received for a wrong, injury or illness suffered personally by the recipient or the recipient's relative.

72. Any capital gain or capital loss the Member makes under section 104-25 upon payment of the specific injuries or trauma benefit by NobleOak under the Extras Package Option of the Income Protection Insurance upon injury or trauma suffered by the Member (as the Life Insured) will be disregarded under subparagraph 118-37(1)(a)(ii).

### ***Section 118-300 – Accidental Death Benefit under the Profit-Share Plan held by Members who are the Life Insured***

73. Section 118-300 exempts certain capital gains and losses made in respect of a policy of insurance on the life of an individual. The meaning to be given to the expression 'policy of insurance on the

life of an individual' includes, but is not limited to, life insurance policies within the common law meaning of that term. It can apply to other life insurance policies as defined in subsection 995-1(1) but only to the extent that those policies provide for a sum of money to be paid if an event happens that results in the death of an individual (Taxation Determination TD 2007/4 *Income tax: capital gains tax: is a 'policy of insurance on the life of an individual' in section 118-300 of the Income Tax Assessment Act 1997 limited to a life insurance policy within the common law meaning of that expression?*).

74. Table item 4 in subsection 118-300(1) provides that a capital gain or capital loss made from a CGT event happening in relation to a CGT asset that is an interest in rights under a policy of insurance on the life of an individual is disregarded where that CGT event happens to an entity that acquired the interest in the policy for no consideration.

75. A nominated beneficiary or deceased estate of the Life Insured would be taken to have acquired rights under the Profit-Share Plan for no consideration. The beneficiary or deceased estate will therefore be entitled under table item 4 in subsection 118-300(1) to disregard any capital gain or capital loss they make under section 104-25 from the receipt of a payment of an Accidental Death Benefit by NobleOak.

***Section 118-300 – Accidental Death Benefit under the Profit-Share Plan and Death Benefit or Terminal Illness Benefit under Life Insurance held by Members that are complying superannuation funds***

76. Table item 5 in subsection 118-300(1) provides that a capital gain or capital loss made from a CGT event happening in relation to a CGT asset that is an interest in rights under a policy of insurance on the life of an individual is disregarded where that CGT event happens to the trustee of a complying superannuation entity for the income year in which the CGT event happened.

77. The trustee of a complying superannuation fund who owns a Profit-Share Plan and Life Insurance will therefore be entitled under table item 5 in subsection 118-300(1) to disregard any capital gain or capital loss made by the fund under section 104-25 from the receipt of a payment of an Accidental Death Benefit and/or a Death Benefit or a Terminal Illness Benefit by NobleOak.

***Section 118-300 – TPD Benefit under TPD Insurance held by Members that are complying superannuation funds***

78. Table item 7 in subsection 118-300(1) provides that a capital gain or capital loss made from a CGT event happening in relation to a CGT asset that is an interest in rights under a policy of insurance against an individual suffering an illness or injury (such as a Total and Permanent Disability) is disregarded where that CGT event happens

to the trustee of a complying superannuation entity for the income year in which the CGT event happened.

79. The trustee of a complying superannuation fund who owns TPD Insurance will therefore be entitled under table item 7 in subsection 118-300(1) to disregard any capital gain or capital loss made by the fund under section 104-25 from the receipt of a payment of a TPD Benefit by NobleOak.

### **Deductibility of premiums in respect of plans held by Members who are the Life Insured**

#### ***Premiums in respect of the Profit-Share Plan not deductible under section 8-1***

80. Generally, the question of whether a premium is deductible is answered by reference to whether the benefits, when paid, would be assessable. In discussing the operation of subsection 51(1) of the ITAA 1936 (being the equivalent of section 8-1) in the High Court decision of *Smith, Gibbs, Stephen, Mason, and Wilson JJ* held that:

What is incidental and relevant in the sense mentioned falls to be determined not by reference to the certainty or likelihood of the outgoing resulting in the generation of income but to its nature and character, and generally to its connection with the operations which more directly gain or produce the assessable income. It is true that the payment of the premium in June 1978 did not result in the generation of any income in that year, but there is a sufficient connection between the purchase of the cover against the loss of ability to earn and the consequent earning of assessable income to bring the premium within the first limb of sec 51(1).

81. Murphy J delivered a separate judgment but concurred with the view of the majority of their Honours and stated:

In general, if receipts under such a policy would be treated as income, the premiums should be treated as allowable expenditure, and if the receipts would be treated as capital the premiums should not be allowable expenditure.

82. As the Accidental Death Benefit payable by NobleOak under a Profit-Share Plan held by a Member who is the Life Insured is intended to compensate for the loss of earning capacity of the Member and is treated as capital (see paragraphs 54 to 57 of this Product Ruling), the premiums incurred by the Member in respect of the Profit-Share Plan are not incurred in gaining or producing assessable income and are not deductible under section 8-1.

#### ***Extent of deductibility of premiums under section 8-1 in respect of Income Protection Insurance***

83. As the total and partial disability benefits payable by NobleOak as Monthly Benefits under Income Protection Insurance held by a Member who is the Life Insured are intended to compensate for the loss of earnings of the Member and would be

assessable to the Member (see paragraphs 50 to 53 of this Product Ruling), the premiums incurred by a Member in respect of the Income Protection Insurance, excluding the portion of any premiums that relate to the specific injuries or trauma benefits, are incurred in gaining or producing assessable income and deductible under section 8-1.

84. As the specific injuries or trauma benefit available as part of the Extras Package Option and payable by NobleOak under the Income Protection Insurance may not be intended to compensate for the loss of earnings of the Member (as the Life Insured) and are treated as capital (see paragraphs 58 and 59 of this Product Ruling), the premiums incurred by the Member in respect of the Income Protection Insurance are not incurred in gaining or producing assessable income to the extent that they relate to these specific benefits, and are not deductible under section 8-1.

85. Section 8-1 does not prescribe any method of apportioning expenditure. The portion of the premiums incurred by a Member under Income Protection Insurance which may not be deductible under section 8-1, as per paragraph 84 of this Product Ruling, should be determined pursuant to a method of apportionment that is both fair and reasonable in the circumstances. Pursuant to the assumption at paragraph 49(d) of this Product Ruling, the portion of the premiums which relate to the specific injuries and trauma benefits where the Member elects to purchase the Extras Package Option, and is therefore not deductible under section 8-1, is 5%.

### **Deductibility of premiums in respect of Income Protection Insurance held by Members that employ the Life Insured**

86. Taxation Ruling IT 155 *Key man insurance – assessability of proceeds and deductibility of premiums* sets out the Commissioner's views on the taxation aspects of 'key man' insurance, a term used to denote insurance on the life of a director, partner, employer or other 'key' person associated with a taxpayer in business. In relation to accident and term insurance policies taken out by employers in respect of employees (and more generally in relation to such insurances taken out by entities other than the individual life insured), IT 155 broadly provides (at paragraph 7) that benefits should be considered as received on revenue account and assessable as ordinary income where the purpose of the insurance was to fill the place of a revenue receipt which the event insured against has prevented from arising. This proposition may also be used as a basis for the determination of claims for the deduction of premiums.

87. The relevance of the purpose for which the insurance is taken out was further discussed in the context of premium deductibility at paragraph 12 of IT 155 as follows:

As a general rule, it will be necessary when the question of allowing deductions for premiums is under consideration to make special efforts to determine the purpose for which the insurance was taken out. For instance, if the taxpayer made a firm declaration of his

purposes at the time of paying a particular premium in respect of an accident or term policy and those purposes were such as to make the proceeds of the policy assessable in accordance with the principles explained in the Carapark Holdings case, it would be accepted in the absence of exceptional circumstances that the premiums were allowable as deductions. These are not the only circumstances, however, in which claims may be admitted without seeking further information. There could be odd cases in which it would be appropriate to look for the true purpose before allowing a claim for a deduction (e.g. where a comparatively large premium is claimed and there are grounds for assuming that the taxpayer may be able to establish that any proceeds received would be on capital account) but this exercise could usually be left until such time as a taxpayer has received a payment and claimed that it does not represent assessable income.

88. It follows that the premiums incurred in respect of Income Protection Insurance held by a Member that is an employer of the Life Insured under that Income Protection Insurance will be deductible under section 8-1 where:

- the purpose for which the Income Protection Insurance is taken out is to replace profits or revenues that are expected to be lost due to the Total or Partial Disability of the Life Insured (as assumed for the purposes of this Product Ruling at paragraph 49(g) of this Ruling), and
- the Income Protection Insurance is not held by the Member to protect against a capital risk (as assumed for the purposes of this Product Ruling at paragraph 49(g) of this Product Ruling).

89. As noted in paragraph 48 of this Product Ruling, the specific injuries or trauma benefit available as part of the Extras Package Option under the Income Protection Insurance is payable by NobleOak on the happening of a relevant specified event which may not prevent the Life Insured from performing the duties of their occupation. The receipt of such benefit by a Member that is an employer of the Life Insured may therefore not be for the purpose of replacing a revenue receipt which the relevant specified event has prevented from arising, and is treated as capital.

90. The premiums payable in respect of Income Protection Insurance by a Member that employs the Life insured are similarly not on revenue account to the extent that they relate to these specific benefits (if at all), and therefore are not deductible under section 8-1. See paragraph 85 of this Product Ruling for the relevant apportionment to be applied to the premium where these benefits are selected.

### **Deductibility of premiums in respect of plans held by Members that are complying superannuation funds**

91. Subsection 295-465(1) sets out the requirements for determining a deduction for premiums paid by a complying



superannuation fund for insurance policies. Subsection 295-465(1) provides that:

A complying superannuation fund can deduct the proportions specified in this table of premiums it pays for insurance policies that are (wholly or partly) for current or contingent liabilities of the fund to provide benefits referred to in section 295-460 for its members. It can deduct the amounts for the income year in which the premiums are paid.

92. Table item 5 in subsection 295-465(1) states that a complying superannuation fund can deduct that part of a premium that is specified in the policy as being wholly for the liability to provide benefits referred to in section 295-460. Section 295-460 sets out the benefits for which insurance premium deductions are available.

### ***Premiums in respect of the Profit-Share Plan and Life Insurance deductible under section 295-465***

93. Section 295-460 relevantly lists a 'superannuation death benefit' at paragraph (a) of that section. A superannuation death benefit is defined in subsection 307-5(1) in the context of a superannuation fund payment to mean:

A payment to you from a superannuation fund, after another person's death, because the other person was a fund member.

94. The terms of the Profit-Share Plan provide for a \$10,000 lump sum Accidental Death Benefit payable by NobleOak upon the death of the Life Insured by Accident. The terms of the Life Insurance similarly provide for a lump sum Death Benefit payable by NobleOak upon the death of the Life Insured.

95. When on-paid by the relevant superannuation fund to the deceased Life Insured's estate or nominated beneficiary, the Accidental Death Benefit or the Death Benefit, as applicable, will be a superannuation death benefit as defined in subsection 307-5(1).

96. Pursuant to paragraph 295-460(aa), benefits for which insurance premium deductions are available to complying superannuation funds also includes those 'consisting of an amount payable to an individual because a terminal medical condition exists in relation to the individual'. A terminal medical condition is defined for these purposes in regulation 303-10.01 of the *Income Tax Assessment Regulations 1997* (ITAR 1997)<sup>1A</sup> to exist in relation to a person at a particular time if the following circumstances exist:

- (a) two registered medical practitioners have certified, jointly or separately, that the person suffers from an illness, or has incurred an injury, that is likely to result in the death of the

<sup>1A</sup> On 1 April 2021, the ITAR 1997 was repealed and the *Income Tax Assessment (1997 Act) Regulations 2021* (ITAR (1997 Act) 2021) commenced. From 1 April 2021, the term 'terminal medical condition' is defined in section 995-1.06 of the ITAR (1997 Act) 2021, and the references to regulation 303-10.01 of the ITAR 1997 in this Product Ruling should be read to mean section 995-1.06 of the ITAR (1997 Act) 2021.

- person within a period (the **certification period**) that ends not more than 24 months after the date of the certification;
- (b) at least one of the registered medical practitioners is a specialist practising in an area related to the illness or injury suffered by the person;
  - (c) for each of the certificates, the certification period has not ended.

97. In addition to providing for a lump sum Death Benefit upon the death of the Life Insured, the terms of the Life Insurance also provide for the payment of a lump sum Terminal Illness Benefit by NobleOak upon the Terminal Illness of the Life Insured. In the context of Life Insurance held by a Member that is the trustee of a complying superannuation fund, the term 'Terminal Illness' is defined in Appendix 2 of the Rules in a way which satisfies the definition of a 'terminal medical condition' in regulation 303-10.01 of the ITAR 1997.

98. When on-paid by the relevant superannuation fund to the Terminally Ill Life Insured, the Terminal Illness Benefit will be a benefit of the type referred to in paragraph 295-460(aa).

99. It is therefore considered that:

- whilst a Profit-Share Plan held by the trustee of a complying superannuation fund is partly for current or contingent liabilities of the fund to provide a superannuation death benefit referred to in section 295-460, and partly to provide a Profit-Share Benefit in the circumstances set out in paragraphs 39 and 40 of this Product Ruling, as the whole of the premiums paid by the trustee in respect of the Profit-Share Plan is referable to the provision of the superannuation death benefit (as per paragraph 42 of this Product Ruling), they will be fully deductible to the fund under table item 5 in subsection 295-465(1), and
- Life Insurance held by the trustee of a complying superannuation fund is wholly for current or contingent liabilities of the fund to provide either a superannuation death benefit or a benefit because of a terminal medical condition referred to in section 295-460, and as such the whole of the premiums paid by the trustee in respect of the Life Insurance will be deductible to the fund under table item 5 in subsection 295-465(1).

***Premiums in respect of TPD Insurance deductible under section 295-465***

100. Section 295-460 relevantly lists a 'disability superannuation benefit' at paragraph (b) of that section. A disability superannuation

benefit is defined by subsection 995-1(1) as meaning a superannuation benefit if:

- (a) the benefit is paid to an individual because he or she suffers from ill-health (whether physical or mental); and
- (b) 2 legally qualified medical practitioners have certified that, because of the ill-health, it is unlikely that the individual can ever be gainfully employed in a capacity for which he or she is reasonably qualified because of education, experience or training.

101. The terms of the TPD Insurance provide for a lump sum TPD Benefit payable by NobleOak where the Life Insured has suffered a Total and Permanent Disability. Total and permanent disablement of the Life Insured may be established on any one of a number of alternative bases as described in Appendix 3 of the Rules. Under each of those bases for TPD Insurance held by the trustee of a complying superannuation fund it is a requirement that the Life Insured is, as a result of illness or injury suffered, unlikely to ever engage in any occupation for which he/she is reasonably suited by way of education, training or experience.

102. Although it is not an express term of the TPD Insurance that the assessment as to the Life Insured's unlikeliness to ever engage in any occupation for which they are reasonably suited by way of education, training or experience be certified by two legally qualified medical practitioners (as per paragraph (b) of the definition of disability superannuation benefit), the TPD Benefit will nevertheless be considered as a disability superannuation benefit as defined in subsection 995-1(1) when on-paid by a superannuation fund to the Life Insured.

103. In support of this, Taxation Ruling TR 2012/6 *Income tax: deductibility under subsection 295-465(1) of the Income Tax Assessment Act 1997 of premiums paid by a complying superannuation fund for an insurance policy providing Total and Permanent Disability cover in respect of its members* says at paragraphs 168 and 169:

168. It is not necessary for the definition of insured events in a TPD insurance policy to exactly align with the definition of a 'disability superannuation benefit' in subsection 995-1(1) in order for a deduction to arise under subsection 295-465(1). For example, the conditions of the policy may use different terms in regard to the certification required from medical practitioners. However, it is expected that the tests will be at least equivalent to those in the definition of a 'disability superannuation benefit'.

169. Where an insurance policy does not mandate the need for two medical certificates, in practice it is expected that a life insurance company would not payout on a claim without having sought the advice of at least two medical practitioners, or applied a commercially equivalent process. For the purpose of determining whether a deduction is available within subsection 295-465(1) the Commissioner accepts that the processes specified in the insurance policy do not need to mandate the provision of two medical

certificates in order for the insurance policy to be considered to be in respect of a 'disability superannuation benefit'.

104. It is therefore considered that TPD Insurance held by the trustee of a complying superannuation fund is wholly for current or contingent liabilities of the fund to provide a disability superannuation benefit referred to in section 295-460, and as such the whole of the premiums paid by the trustee will be deductible to the fund under table item 5 in subsection 295-465(1).

***Premiums in respect of Income Protection Insurance deductible under section 295-465***

105. Pursuant to paragraph 295-460(c), benefits for which insurance premium deductions are available to complying superannuation funds also includes:

a benefit consisting of an amount payable to an individual under an income stream because of the individual's temporary inability to engage in gainful employment, that is payable for no longer than:

- (i) 2 years; or
- (ii) if an approval under section 62 of the *Superannuation Industry (Supervision) Act 1993* is in force for benefits of that kind and the approval specifies a longer maximum period – that longer period; or
- (iii) if there is no such approval in force – a longer period allowed by the Commissioner.

106. The terms of Income Protection Insurance provide for a total disability benefit or a partial disability benefit payable by NobleOak as a Monthly Benefit upon the Life Insured's ongoing Total Disability or Partial Disability, as applicable, beyond the duration of the Waiting Period. Under no circumstances can the maximum period of time that the total or partial disability benefit will be paid exceed the Life Insured's period of disablement.

107. Whilst none of the relevant regulators has issued an approval to an individual superannuation fund for the purposes of section 62 of the SISA, the Australian Prudential Regulation Authority and the Australian Taxation Office each issued a general 'Approval of Provision of Benefits'<sup>2</sup> regarding the provision of temporary disability benefits under subparagraph 62(1)(b)(v) of the SISA, amongst other

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<sup>2</sup> *Superannuation Industry (Supervision) approval of provision of benefits No. 1 of 2007* issued by the Australian Prudential Regulation Authority on 20 November 2007 and *Superannuation Industry (Supervision) Act approval of provision of benefits (No. 1) 2007* issued by the Australian Taxation Office on 6 December 2007.

matters. The approvals, which together apply to all complying superannuation funds and are still in force:

- reflect the provisions of the SISA and its Regulations that permit temporary disability benefits to be paid 'for a period not exceeding the period of incapacity', and
- constitute an approval of a longer benefit payment period (a period not exceeding the period of incapacity), as contemplated by subparagraph 295-460(c)(ii).

108. When on-paid by the relevant superannuation fund to the Life Insured, the monthly total or partial disability benefit will therefore be an income stream of the type referred to in subparagraph 295-460(c)(ii), that is, an income stream payable to the Life Insured because of their temporary inability to engage in gainful employment, and for no longer than the maximum period specified in an approval issued under section 62 of the SISA.

109. It is therefore considered that Income Protection Insurance held by the trustee of a complying superannuation fund is wholly for current or contingent liabilities of the fund to provide a benefit under an income stream referred to in section 295-460, and as such the whole of the premiums paid by the trustee will be deductible to the fund under table item 5 in subsection 295-465(1).

### **Application of section 26AH to the Profit-Share Plan**

110. Subsection 26AH(6) of the ITAA 1936 includes all or part of amounts received as or by way of bonuses under certain life assurance policies ('eligible policies'), which but for section 26AH of the ITAA 1936 would not be included in the assessable income of the recipient, in the assessable income of the recipient when received within ten years of the date on which the first or only premium paid under the policy was paid (the 'eligible period').

111. An 'eligible policy' in respect of which section 26AH of the ITAA 1936 may apply is defined in subsection (1) of that provision to mean 'a life assurance policy in relation to which the date of commencement of risk is after 27 August 1982, other than a funeral policy (as defined in the *Income Tax Assessment Act 1997*) issued on or after 1 January 2003'.

112. The term 'life assurance policy' is defined in subsection 6(1) of the ITAA 1936 as having the meaning given to life insurance policy by the ITAA 1997. A 'life insurance policy' is defined in subsection 995-1(1) as having the meaning given to the expression 'life policy' in section 9 of the *Life Insurance Act 1995*.

113. A Profit-Share Plan issued to a Member referred to in paragraph 6 of this Product Ruling is an eligible policy for the purposes of section 26AH of the ITAA 1936 as:

- it has a date of commencement of risk, being the date of commencement of the period in respect of which the first premium paid under the Profit-Share Plan is paid, which is after 27 August 1982
- it is not a 'funeral policy', as defined in subsection 995-1(1), and
- it is a life assurance policy by virtue of it constituting a life policy under section 9 of the *Life Insurance Act 1995* (see paragraph 43 of this Product Ruling).

114. The term 'bonus' is not defined for the purposes of section 26AH of the ITAA 1936 but is explained at paragraph 8 of Taxation Ruling IT 2346 *Income tax: bonuses paid on certain life assurance policies – section 26AH – interpretation and operation* in the context of 'more traditional policies' as a guaranteed addition to the amount insured, payable when the amount insured is payable and representing both a form of participation by the policy holder in the issuing company's profits and a share in the surpluses derived by the issuing company during the period the policy is in force. Such a bonus, where received under an eligible policy that matures or is surrendered, forfeited or otherwise terminated within the eligible period of ten years after commencement, falls within the scope of section 26AH of the ITAA 1936.

115. A Profit-Share Benefit paid by NobleOak from the balance of a Profit-Share Account maintained for each Member who owns the Profit-Share Plan is considered to have characteristics that are consistent with the description of a bonus in IT 2346. These characteristics include relating and being linked to a life assurance policy, being additional to the Accidental Death Benefit payable upon the death of the Life Insured by Accident, and providing the Member with participation in the Fund's profits, as derived during the period the Member's Profit-Share Plan is in force.

116. Payments of Profit-Share Benefits by NobleOak from the balance of a Profit-Share Account maintained under a Profit-Share Plan (as discussed at paragraphs 39 and 40 of this Product Ruling) will therefore be subject to section 26AH of the ITAA 1936 (subject to paragraph 117 of this Product Ruling) and will not be assessable under any other provision of the ITAA 1936 or the ITAA 1997. Specifically, a Profit-Share Benefit received under the Profit-Share Plan will (subject to paragraph 117 of this Product Ruling) be included as assessable income pursuant to subsection 26AH(6) of the ITAA 1936 to the following extent:

- where it is received within the first 8 years of the eligible period, the whole amount

- where it is received in the ninth year of the eligible period, two-thirds of the amount
- where it is received in the tenth year of the eligible period, one-third of the amount, and
- where it is received after the tenth year of the eligible period, none of the amount.

117. Irrespective of the timing of the receipt of a Profit-Share Benefit by a Member that is the trustee of a complying superannuation fund (as the holder of the Profit-Share Plan and the entity in respect of which the Profit-Share Account is maintained), subsection 26AH(6) of the ITAA 1936 will not apply to include that Profit-Share Benefit in the fund's assessable income (subparagraph 26AH(7)(b)(i) of the ITAA 1936).

118. As an anti-avoidance measure, subsection 26AH(13) of the ITAA 1936 provides for a substituted date of commencement to apply if premiums increase by a certain amount from year to year. Where the premium payable under an eligible policy in relation to an assurance year exceeds by more than 25% the premium payable under the policy in the immediately preceding assurance year, the policy is deemed to have commenced at the beginning of the year in which the premium was increased. The effect of subsection 26AH(13) of the ITAA 1936 is to cause the 10 year eligible period in respect of an eligible policy to run from the commencement of that new period rather than from the date upon which the risk was first insured.

119. Where the premium payable in respect of the Profit-Share Plan in relation to an assurance year exceeds the premium payable under that Profit-Share Plan in the immediately preceding assurance year by more than 25%, the 10 year eligible period in respect of the Profit-Share Plan will be deemed by application of subsection 26AH(13) of the ITAA 1936 to have commenced at the beginning of the year in which the premium was increased, rather than at the date of commencement of the period in respect of which the first premium under the Profit-Share Plan was paid.

120. A Profit-Share Account is not maintained under, or in respect of, a PPS Mutual insurance plan other than a Profit-Share Plan. Therefore, an increase in a premium payable by a Member in respect of a PPS Mutual insurance plan other than a Profit-Share Plan will not give rise to an application of subsection 26AH(13) of the ITAA 1936.

## **Part IVA – anti-avoidance**

121. Provided that the scheme ruled on is entered into and carried out as disclosed in this Product 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**

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

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Not previously issued as a draft

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