



# Tax Alert - Superannuation

## Commissioner Releases Draft Ruling on Total & Permanent Disability Insurance Premiums

In December 2010, the Commissioner of Taxation ("**Commissioner**") released a draft ruling setting out his preliminary views regarding the deductibility of Total & Permanent Disability ("**TPD**") insurance premiums. All trustees of superannuation funds should review their insurance arrangements to confirm that they will not be caught out by this important change in tax policy.

### Background

As part of the rewrite of the taxation of superannuation fund rules into the Income Tax Assessment Act 1997, the Government acknowledged that its proposed narrow definition of permanent disability did not accord with generally accepted practices within the superannuation industry.

Therefore, following representations from the superannuation industry, the Government legislated transitional rules which generally ensured that premiums on traditional TPD policies with broader definitions of permanent disability (such as the inability for a member to work in their current or normal occupation) remained deductible until 30 June 2010.

However, from 1 July 2011, superannuation funds will be required to comply with the new narrower definition. The key requirement of the new definition is that is unlikely the person can ever be gainfully employed in a capacity for which he or

she is reasonably qualified because of education, experience or training. The Commissioner's draft ruling outlines how he will apply the new rules from 1 July 2011.

### Summary of Ruling

In summary, the Commissioner has ruled

- TPD premiums will be wholly deductible where the policy only provides benefits which will fund a superannuation fund's obligation to provide a current or contingent "disability superannuation benefit" as defined, but only partly deductible where benefits under the policy can be received for other purposes, and not deductible at all where benefits will be received wholly for other purposes;
- The link between the benefits that may be paid and "disability superannuation benefits" as defined is required to be determined with reference to the insured events under the TPD policy;

- It is not necessary for the definitions used in TPD policies and trust deeds to align precisely with the wording of the definition of a “disability superannuation benefit” for deductions to be available, although it will be essential that the key conditions are satisfied;
- There is no need for certainty that benefits will in fact be provided, i.e. due to no insured event occurring. However, there does need to be certainty that insurance benefits which may be received will be eligible under the trust deed to be paid to members as “disability superannuation benefits”; and

- Where it is uncertain benefits which may be received will relate to “disability superannuation benefits”, superannuation funds are required to apportion the deductibility of TPD premiums based on an actuary’s certificate.

The Commissioner has also provided a number of examples as to how his views will apply to various definitions of permanent disability traditionally used in TPD policies.

## Action Points

With the grace period for TPD premium deductibility coming to an end shortly, and the release of the Commissioner’s views on how the new rules will apply, superannuation funds should now review their TPD policies and trust deeds to determine if their premiums will continue to be deductible post 1 July 2011, and if not, determine what action is required, including:

- Amending policies and trust deeds; or
- Updating their tax return preparation procedures to ensure only allowable deductions are claimed.



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