

**ACTEK SUPERANNUATION PTY LTD atf ACTEK SUPERANNUATION FUND**  
**A Unitholder in : The ARP Growth Fund**

c/- R.D. & B.D.Fowler

18<sup>th</sup> August 2011

**SUPPLEMENTARY Submission to the Enquiry into the collapse of TRIO Capital and any other related matters**

**Could Australian Tax Office be empowered to grant “special dispensations ?**

We refer the enquiry to the submission we lodged on 16<sup>th</sup> August 2011 and ask that you also consider this SUPPLEMENTARY submission made by ACTEK SUPERANNUATION PTY LTD as Unitholders in ARP Growth Fund. which is based on the experience of the loss of almost all the life savings totalling approx. \$1.78 million of the two members of the Fund Roy Douglas Fowler and Barbara Dawn Fowler.

We were aged 78 years and 75.5 years when TRIO and ARP Growth Fund collapsed in 2009 and we lost the major part of our superannuation. Being over 75 years we were unable to put into our ACTEK Superannuation Fund any other funds we may have or may receive in future. We therefore asked the Australian Tax Office on 25<sup>th</sup> June 2010 if we could be granted a “special dispensation” to enable us to put funds into our Superannuation to obtain the benefit of the tax advantages. Many other Unitholders in ARP Growth Fund are in a similar position.

The ATO replied on 19<sup>th</sup> July 2010 (see copy of letter attached below) that under existing legislation this was not allowed.

We suggest that this matter could be regarded under your Terms of Reference Item **11) of “any other matters relevant to the collapse of Trio Capital in the further improvement of the financial services sector and consumer protection.**

We request that consideration be given to how a change could possibly be made to legislation to enable the ATO to grant “special dispensations” under extenuating circumstances such as this.

Given the hundreds of millions of dollars the ATO has unexpectedly collected in Excess Contributions Tax (ECT) (\$394.4 million in 2007-2009) they are surely in a position to make this small concession as an appropriate use of some of these funds.

Over 91% of ARP Growth Fund Unitholders are over 60 with little or no chance of replacing lost superannuation funds. There are most likely more in other TRIO collapsed funds. If we were allowed to reinvest in our superannuation, the need for Centrelink to make pension payments to many would be reduced.

We hope you consider this worthy of your consideration and again thank you for the opportunity to participate.

**ACTEK SUPERANNUATION PTY LTD atf ACTEK SUPERANNUATION FUND**

Roy Douglas Fowler

Barbara Dawn Fowler

Director

Director



Mr Roy D Fowler

*Copy in Complaint  
file &  
Tax file 10/11*



Australian Government  
Australian Taxation Office

Reply to: PO Box 3100  
PENRITH NSW 2740  
Contact officer: Eric Buls  
Phone: 13 28 69  
Fax: 1300 669 846

19 July 2010

## Superannuation contributions For your information

Dear Mr Fowler

Thank you for your enquiry received 25 June 2010, regarding superannuation contributions for fund members over the age of 75 and your request for the Commissioner to give dispensation to allow you to contribute additional funds to your superannuation fund.

We attempted to contact you by phone on several occasions but we were unsuccessful, therefore we provide the following written advice.

The following advice is general in nature and is not binding on the Commissioner.

Under the Superannuation Industry (Supervision) Regulations 1994 Part 7.04(1) superannuation contributions for a person aged 75 or over cannot be accepted by a superannuation fund except under limited circumstances.

A superannuation fund cannot accept contributions for a member who has reached the age of 75, other than mandated employer contributions.

It is further advised that the Commissioner, under the current legislation does not have the authority to provide dispensation for a superannuation fund to accept further contributions from members who are aged 75 or over other than mandated employer contributions.

### More information

If you have any questions, please phone **13 28 69** between 8.00am and 5.00pm, Monday to Friday, and ask for Eric Buls on extension **10024**.

When you phone us, please have the reference number **1011484670645** ready so we can quickly access your case details.

Yours sincerely

Neil Olesen  
Deputy Commissioner of Taxation

Per  
(Eric Buls)

*In view of loss of most of my Super  
I asked for a special dispensation  
to allow me to put the proceeds from  
Maabi into our Super Fund.  
Can I do anything further?*

*Doug 21/7/10*

*PS How is Maabi wind up & funds  
to Rodelfa progressing?*