



## ATO Interpretative Decision


ATO ID 2004/139

### Income Tax

### Apportionment of deductions: investment advisors fees

FOI status: may be released

Status of this decision: Decision Current

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## Issue

If a taxpayer pays ongoing financial advice fees for management of their self managed superannuation fund's investments as well as advice about their separate investment portfolio, can they deduct all of those fees under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) in their personal tax return?

## Decision

No. If a taxpayer pays for financial advice about their self managed superannuation fund investments as well as advice on their separate investment portfolio, the deduction allowable to the taxpayer under section 8-1 of the ITAA 1997 in their personal tax return for ongoing financial advice fees must be apportioned.

## Facts

The taxpayer engaged a financial advisor who arranged the investment of some of the taxpayer's funds in a self managed superannuation fund (SMSF), and advised them on other investment in a portfolio of unit trusts and shares.

The taxpayer paid the financial advisor a fee for setting up the SMSF and for drawing up a plan for their other investments. They didn't claim a deduction for these initial fees. The taxpayer is the trustee of the SMSF which pays them an annual pension.

The advisor charges the taxpayer an ongoing annual fee. Ten per cent of the fee relates to advice about the SMSF's investment income and ninety per cent relates to the taxpayer's other investments.

The taxpayer sought a private ruling on how much of the financial advisor's ongoing annual fee they can deduct in their personal tax return.

## Reasons for Decision

Section 8-1 of the ITAA 1997 provides that:

- (1) You can **deduct** from your assessable income any loss or outgoing to the extent that:
  - (a) it is incurred in gaining or producing your assessable income;...
- (2) However, you cannot deduct a loss or outgoing under this section to the extent that:
  - (a) it is a loss or outgoing of capital, or of a capital nature;
  - (b) it is a loss or outgoing of a private or domestic nature; or
  - (c) it is incurred in relation to gaining or producing your \*exempt income;...  
\* denotes a term defined in subsection 995-1(1) of the ITAA 1997.

This ATO ID does not consider the deductibility of initial fees paid by the taxpayer which is discussed under Taxation Determination TD 95/60. The fee for setting up the SMSF and the drawing up the investment plan occurs too early to be an expense that is part of the income producing process and is not deductible as it is capital or capital in nature.

The ongoing investment advisor fees would ordinarily be deductible to the extent that they are incurred in gaining or producing assessable income. However, in this case the taxpayer incurred the expenditure partly as an individual in relation to their investments and partly in their capacity as trustee of their superannuation fund. Ninety per cent of the ongoing investment advisor fees are an allowable deduction for the taxpayer on their personal tax return as they relate to investments producing income directly assessable in their hands.

The other ten per cent is not deductible in the taxpayer's personal tax return as it relates to investment advice for the superannuation fund of which the taxpayer is a trustee. Ten per cent of ongoing investment advisor fees would be an allowable deduction to the SMSF to the extent that it is incurred in gaining or producing the assessable income of the SMSF. It is not deductible to the SMSF to the extent that it is incurred in relation to gaining or producing exempt income. This is discussed under paragraphs 4-6 of Taxation Ruling TR 93/17.

**Date of decision:** 5 February 2004

**Year of income:** Year ended 30 June 2003

**Legislative References:**

*Income Tax Assessment Act 1997*  
section 8-1

**Related Public Rulings (including Determinations)**

Taxation Determination TD 95/60  
Taxation Ruling TR 93/17

**Keywords**

Investment advisers

**Date of publication:** 13 February 2004

**ISSN:** 1445-2782

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