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Superannuation technical minutes, June 2011

6.4 TR 93/17 - clarification of which expenses must be apportioned

Issue raised

Do expenses deductible under sections other than section 8-1 of the ITAA 1997 need to be apportioned, or can they be claimed in full?

For example, do the following (not an exhaustive list) need to be apportioned:

- insurance premiums (deductible under section 295-465)
- future liability to pay benefits (deductible under section 295-470)
- increased amount of superannuation lump sum death benefits (deductible under section 295-485)
- annual return lodgement levy (deductible under section 25-5)
- depreciation (deductible under Division 40)
- capital works (deductible under Division 43).

Background information

TR 93/17 provides that expenses need to be apportioned if they are incurred partly in producing assessable income and partly in producing exempt income.

In particular, paragraph 6 states that:

'Expenditure incurred in gaining or producing exempt income only is not deductible. Expenditure (eg general administrative expenses of managing a superannuation fund) which is incurred partly in producing assessable income and partly in gaining exempt income must be apportioned. The expenditure is deductible only to the extent to which it is incurred in producing assessable income. Each of the expenses listed in paragraph 4 would need to be apportioned if it is incurred partly in producing assessable income and partly in producing exempt income'

Paragraph 4 states that the following typical expenses (deductible under section 8-1 of the ITAA 1997) would need to be apportioned:

- actuarial costs
- accountancy fees
- audit fees
- costs of complying with OSSA (now taken to be SIS)
- trustee fees and premiums under an indemnity insurance policy
- costs in connection with the calculation and payment of benefits to members
- investment advisor fees and costs in providing pre-retirement services to members
- subscriptions for membership paid by the fund to ASFA
- other administrative costs incurred in managing the fund.

Paragraph 5 provides comment about the deductibility (or otherwise) of various other expenses, however unlike paragraph 4, it does not mention the apportionment of such deductible expenses.

Paragraph 26 states that:

'Expenditure is deductible under section 8-1 to the extent that it is incurred in gaining or producing assessable income or necessarily incurred in carrying on a business for that purpose (and is not of a capital, private or domestic character). Therefore, some apportionment is necessary if expenditure is incurred partly in deriving assessable income and partly in deriving exempt income: *Ronpibon Tin*; *Fletcher & Ors v. FC of T* 91 ATC 4950 at 4957; (1991) 22 ATR 613 at 621'.

Paragraph 26 therefore implies that only expenses deductible under section 8-1 of the ITAA need to be apportioned.

Industry view / suggested treatment

In our view, only expenses deductible under section 8-1 of the ITAA 1997 require apportionment.

Technical reference

TR 93/17

Impact on clients

Differing views exist in the industry, ie, some practitioners routinely apportion all deductible expenses of the superannuation fund (including those specifically deductible under sections other than section 8-1), whilst others only apportion those deductible under section 8-1 and claim others (ie, deductible under other sections) in full.

Many funds are therefore either claiming too high / too low a deduction.

Priority of issue where ATO view is required

High

ATO initial response

Taxation Ruling TR 93/17 sets out the ATO view on income tax deductions available to superannuation funds. The member's question gives cause to review the currency of the ruling as well its scope. Consideration is in course for a broader review of TR93/17 including the aspects



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raised by the member's question and the application of the formula. Members will be advised of progress at the next meeting.

Meeting discussion

The chair asked if there were any comments on the initial ATO view. A member suggested that consideration should be given in the re-write to expanding the scope of the ruling to cover additional items, for example if insurance premiums are incurred for a member who is in pension phase is it necessary to consider whether that is an expense incurred in earning the fund's exempt income. The chair acknowledged that the scope of the ruling would be reviewed as part of the re-write.

Sections within 6. Technical questions raised by members

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