Deductions for APRA-regulated super funds

Guidance for expenses generally deductible for a super fund.

Last updated 31 August 2017

APRA-regulated superannuation funds incur various expenses that may be tax-deductible. The deductibility of expenses incurred by a super fund is determined under the general deduction provision[1] (general deduction) or a specific deduction provision[2] (specific deduction) of the income tax laws.

The following information provides general guidance on deductions, and examples of common expenses and how to apportion them. It includes links to relevant legal provisions and advice. Footnotes provide details on the relevant sections of the *Income Tax Assessment Act 1997*, sections of *Superannuation Industry (Supervision) Act 1993*, ATO ID 2012/47, TR 2010/1, and TR 2004/2.

See also:

- Income Tax Assessment Act 1997
- Superannuation Industry (Supervision) Act 1993

Section 8–1 of the *Income Tax Assessment Act 1997*

1

Division 25 of the *Income Tax Assessment Act 1997* contains some specific deduction provisions

2

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Deductions overview for APRA funds

Guidance for funds on expense deductions.

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The following expenses are generally deductible to a super fund, except where they are capital expenses:

- accounting and audit fees, and actuarial costs incurred in complying with superannuation laws
- legal expenses not capital in nature
- ongoing management fees or retainers incurred in ‘servicing’ an investment portfolio
- operating expenses
- trust deed amendments not capital in nature
- fees for trustee services not capital in nature

Expenses are not deductible where they are incurred in gaining non-assessable income[3]. If incurred partly in gaining assessable income and partly in gaining non-assessable income, these expenses must be apportioned.

Specific deductions

A deduction is available to a complying super fund that pays:

- tax-related expenses such as accounting, audit fees and actuarial costs that relate to tax matters except when they are capital expenses
- the super supervisory levy as a tax-related expense
- death, total and permanent disability, terminal illness and income protection insurance premiums. The deduction is determined according to proportions specified under super law
- an anti-detriment payment where the dependants[4] will receive some benefit. This deduction will no longer be available for lump sum death benefits where the member died on or after 1 July 2017
- the financial assistance levy that is payable by APRA-regulated super funds and is fully deductible to a complying or non-complying super fund.

A deduction may be available for:

- certain business-related capital expenditure (or blackhole expenditure) over a period of five years[5].
- the cost of depreciating capital assets[6] held by the trustee of a super fund and used in gaining or producing the fund's assessable

income.

See also:

- TR 93/17 *Income tax: income tax deductions available to superannuation funds*
- Capital allowances
- Expenses you can claim

When the trustee can claim

As a general rule, the trustee can claim the super fund's expenses in the year the trustee incurs them. However, the costs of capital items (such as plant and equipment) and business-related capital expenditure may be claimed over a number of years.

See also:

- TR 97/7 *Income tax: section 8–1 – meaning of 'incurred' – timing of deductions*
- Capital allowances
- Business-related capital expenditure

Keeping records

Funds must keep records, in English – in writing or electronically. The records must be in a form that we can access and understand. Generally, funds must keep all relevant records for at least five years. This period may be longer in certain circumstances.

See also:

- Record keeping requirements
- TR 96/7 *Income tax: record keeping – section 262A – general principles*
- TR 2005/9 *Income tax: record keeping – electronic records*

Find out about:

- Capital expenses
- Apportionment

- Expenses you can claim

Non-assessable includes exempt income and non-assessable non-exempt income

3

Includes a spouse, former spouse or child of the deceased member

4

Section 40–880 of the *Income Tax Assessment Act 1997*

5

Subdivision 40–B of the *Income Tax Assessment Act 1997*

6

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Capital expenses for APRA funds

Understand how to determine whether an expense is capital or capital in nature.

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The extent to which an expense of a super fund may be considered an outgoing of capital or capital in nature is determined by looking at all the circumstances of the case. The factors you need to consider in determining whether a particular expense is capital or capital in nature depend on whether the expense is:

- incurred in establishing, altering, replacing or enlarging the business structure of the entity
- lasting and recurring in nature
- providing or bringing into existence a lasting or recurring asset or advantage (from the super fund's perspective).

An expense incurred in establishing, replacing or enlarging an income producing entity is capital in nature. It is not deductible under the general deduction provision[7]. For example, the costs of establishing a super fund are capital in nature.

An expense incurred in altering the organisation or structure of the entity producing the income is capital in nature. This is not deductible under the general deduction provision. If an expense provides an enduring advantage by establishing or expanding the income yielding structure, or it creates or preserves a capital asset (particularly a one-off expense), this indicates the expense is capital in nature. See Example 1.

On the other hand, an expense incurred in making changes to the internal organisation or day-to-day running of the entity is not considered to be capital in nature. This is provided the changes do not result in an advantage of a lasting character. See Example 2 and Example 3.

Certain business-related capital expenditure (or blackhole expenditure) may be deductible over a period of five years[8].

A deduction may be available for the cost of depreciating capital assets[9] held by the trustee of a super fund. This is for when their use is in gaining or producing the fund's assessable income.

See also:

- Capital allowances
- TR 2011/6 *Income tax: business related capital expenditure – section 40–880 of the Income Tax Assessment Act 1997 core issues*

Trust deed amendments

Example 1: Legal expense incurred in amending a trust deed which is capital in nature

A public offer super fund is not, under its existing trust deed, able to offer a product that meets the requirements of a MySuper product as listed under super law[10]. The super fund incurs legal expenses in amending its trust deed so that it is able to offer a MySuper product to its members.

The ability to offer a new type of product is capital in nature, as it is an advantage of a lasting character and the change to the trust deed is structural in nature. The legal expenses incurred by the fund in amending the trust deed are therefore capital in nature, and not deductible under the general deduction provision.

However, if the super fund is carrying on a business, a deduction over a five-year period may be available[11].

Example 2: Legal expense incurred in amending a trust deed which is deductible under the general deduction provision

A public offer super fund has a product that meets the requirements listed in super law[12] of a MySuper product. The super fund applies to APRA for authority to offer the product as a MySuper product, and APRA authorises the product.

The super fund incurs legal expenses in making minor amendments to the trust deed to refer to the product as a MySuper product that meets the requirements in super law. The change to the trust deed is not structural in nature, nor capital or capital in nature. If the fund is gaining or producing only assessable income, the legal expenses in making the amendments to the trust deed are deductible. If the fund is gaining or producing assessable and non-assessable income, then the legal expenses will need to be apportioned.

Example 3: Legal expense incurred in amending a trust deed which is deductible under the general deduction provision

An APRA-regulated super fund gains or produces assessable income. The fund incurs legal expenses in amending its trust deed so that the deed applies with reference to the rules[13] provided under super law regarding the charging and allocating of certain fees to members of the fund.

The changes to the trust deed do not alter the structure or organisation of the fund, and do not result in an advantage of an enduring character. The legal expenses are deductible to the fund. If the fund is gaining or producing assessable and non-assessable income, then the legal expenses will need to be apportioned.

SuperStream expenses

The SuperStream standard is part of the government's Super Reform package. It provides a consistent, reliable electronic method of transacting linked data and payments for super. The goal is to improve the efficiency of the super system, have faster processing of rollovers and contributions, and reduce the number of lost accounts and unclaimed super money.

Example 4: SuperStream expense incurred by a super fund with internal administration – capital in nature

An APRA-regulated super fund that gains or produces assessable income has an internal administration[14] system. To ensure it complies with the data elements required for the SuperStream Data and Payment Standards under super law[15], the fund conducts a significant upgrade to its systems. The fund then replaces its backend registry system with a more modern platform. The expense incurred by the fund in this systems upgrade results in an advantage of an enduring nature and is capital in nature.

If the fund had simply conducted a data mapping exercise and updated codes in its existing computer systems, these changes would be maintenance in nature. They would not involve the creation or acquisition of a capital asset. In this case, the expenses incurred by the super fund in conducting the update are deductible under the general deduction provision. Where the fund also derives non-assessable income, the expense will need to be apportioned.

The fund would be expected to incur both revenue and capital expenditure as a result of implementing the SuperStream reforms. A typical expense that is revenue in nature would be training staff to use the new system, as the expense is incurred in the day-to-day running of a super fund.

Establishment costs

The costs of establishing a super fund, including the costs of preparing the trust deed, are typically capital in nature. They are not deductible under the general deduction provision[16]. However, if the costs meet the parameters of business-related capital expenditure[17] (or blackhole expenditure) they may be deductible over a five-year period.

Merger-related expenses

The expenses incurred by merging super funds are typically capital in nature. They are not deductible under the general deduction provision [18]. This is because these costs are incurred in altering, or proposing to alter, the structures of both merged entities. Examples of these expenses include financial due diligence, legal and financial advice about the merger.

If the merger-related expenses meet the parameters of business-related capital expenditure (or blackhole expenditure), they may be deductible over a five year period[19].

Business-related capital expenditure (blackhole expenditure)

The following rules apply to business-related capital expenditure incurred after 30 June 2005.

A specific deduction may be available to trustees of APRA-regulated super funds (the taxpayer) for a range of business-related capital expenses (referred to as 'blackhole expenditure'). These expenses are deductible over a period of five years[20] starting in the year the expense is incurred.

The deduction is available for a range of business-related capital expenditure. This is provided that no other provision either takes the expenditure into account or denies a deduction.

Subject to specified limitations and exceptions, a taxpayer may be able to deduct capital expenditure they incur if it is 'in relation to' a business to the extent the business is for a 'taxable purpose'[21] and:

- is currently carried on by them, or
- was formerly carried on by them or by another entity, or
- is proposed to be carried on by them or by another entity.

For capital expenditure to be 'in relation to' a business, there must be a sufficient and relevant connection between the expenditure and the business.

If a super fund derives both assessable and non-assessable income, the deduction for the business-related capital expense, spread over five years, must be apportioned[22].

When is a fund carrying on a business?

The activities of some APRA-regulated super funds in dealing in shares and other investments may amount to the carrying on of a business. We assess the super fund's investment activities against relevant factors to see whether they amount to the carrying on of a business.

These indicators include:

- whether the activity has a significant commercial purpose or character
- if there is a purpose of profit
- repetition and regularity of the activity

- if the activity is planned, organised and carried on in a businesslike manner such that it is directed at making a profit
- size, scale and permanency of the activity.

Whether APRA-regulated super funds satisfy the above indicators to be considered to be carrying on a business for tax law purposes will depend on their particular circumstances.

See also:

- TR 93/17 *Income tax: income tax deductions available to superannuation funds*
- TR 97/11 *Income tax: am I carrying on a business of primary production?*
- TR 2011/6 *Income tax: business related capital expenditure – section 40–880 of the Income Tax Assessment Act 1997 core issues*

Section 8–1 of the *Income Tax Assessment Act 1997*

7

Section 40–880 of the *Income Tax Assessment Act 1997*

8

Subdivision 40–B of the *Income Tax Assessment Act 1997*

9

Section 29TC of the *Superannuation Industry (Supervision) Act 1993*

10

Section 40–880 of the *Income Tax Assessment Act 1997*

11

Section 29TC of the *Superannuation Industry (Supervision) Act 1993*

12

The rules contained in Part 11A of the *Superannuation Industry (Supervision) Act 1993*. The rules apply from 1 July 2013.

13

Internal administration is defined as where the fund administration tasks are carried out directly by the trustee or people employed by them.

14

Section 34K of the *Superannuation Industry (Supervision) Act 1993* and the Superannuation Data and Payment Standards 2012 (legislative instrument).

15

Section 8–1 of the *Income Tax Assessment Act 1997*.

16

Section 40–880 of the *Income Tax Assessment Act 1997*.

17

Section 8–1 of the *Income Tax Assessment Act 1997*.

18

Section 40–880 of the *Income Tax Assessment Act 1997*.

19

Section 40–880 of the *Income Tax Assessment Act 1997*.

20

The definition of 'taxable purpose' is provided by subsection 40–25(7) of the *Income Tax Assessment Act 1997* and covers various purposes, including the purpose of producing assessable income. The test is applied at the time the expenditure is incurred.

21

Subsection 40–880(3) of the *Income Tax Assessment Act 1997*.

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Apportionment for APRA funds

Guidance for when expenses need to be apportioned.

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An expense may need to be apportioned where it is deductible under the general deduction provision[23] and the super fund has both accumulation and pension members. These expenses may need to be apportioned because income derived from assets supporting most retirement income streams paid to pension members is exempt from tax.

From 1 July 2017, the income tax exemption (under the segregated method[24] or the proportionate method[25] is no longer available for all types of super income streams. Instead, exemption will be limited to income earned from assets held to support 'retirement phase super income stream benefits'[26]. This may impact on the apportionment of expenses incurred by funds offering income stream products that are not 'retirement phase super income stream benefits' (eg transition to retirement income streams).

See also:

- Transition to retirement income streams
- Innovative retirement income stream products

Distinct and severable expenses

Where the expense incurred can be divided into a distinct and severable part devoted to gaining or producing assessable income, this is the portion a super fund should claim as a deduction under the general deduction provision.

Example 5: Distinct and severable expense

The trustee of a complying super fund incurs the custodian's fee of $2,000 in respect of specific assets. The fund determines that $1,500 of the fee is for custodial functions for segregated current pension assets producing tax exempt (or non-assessable) income, and $500 relates to other assets producing assessable income.

The fund should apportion the fee according to those distinct and severable parts – that is, $500 is fully deductible as it is incurred in gaining or producing assessable income and $1,500 is not deductible as it is incurred in gaining or producing non-assessable income.

Indifferent expenses

Where the expense cannot be divided, as it is incurred in producing the super fund's assessable and non-assessable income indifferently, you need to apportion the expense.

A super fund needs to adopt a method of apportioning its indifferent expenses that delivers a fair and reasonable result to reflect the extent to which the expense relates to assessable income.

The following are two income-based approaches for apportioning investment expenses and general administrative expenses. Depending on the particular facts and circumstances there might be other methods that may be fair and reasonable in certain circumstances.

Find out about:

- Apportioning investment expenses
- Apportioning general administrative expenses

Apportioning investment expenses

Taxation Ruling TR 93/17 *Income Tax: income tax deductions available to superannuation funds* suggests the following method for apportioning investment expenses:

- Expenditure × (Assessable investment income ÷ Total investment income)

Example 6: Using a section 295–390 ITAA 1997 actuarial certificate to apportion investment expenses

ABC super fund holds unsegregated assets and is required to obtain an actuarial certificate to determine the proportion of its income that is tax-exempt (or its exempt current pension income).

The super fund's pension liabilities total $150 million and the total super liabilities are equal to $1 billion. The actuary determines the proportion of income that is tax exempt to be 15%.

The deductible proportion is calculated as 85% (1 – tax-exempt proportion of 15%). The deductible proportion of 85% of the fund's investment expenses of $3 million provides a deductible amount of $2.55 million.

See also:

- TR 93/17 *Income tax: income tax deductions available to superannuation funds*

Apportioning general administrative expenses

Some of the typical general administrative expenses incurred by a super fund include processing contributions and rollovers, and running a call centre for members.

Where an expense is not distinct and severable, TR 93/17 suggests the following method for apportioning general administrative expenses:

General administrative expenses × [(Assessable income + non-assessable contributions) ÷ Total income]

Assessable income includes assessable contributions.

Total income means assessable income (includes assessable contributions) plus non-assessable contributions plus exempt income and non-assessable non-exempt income.

The term 'non-assessable contributions' refers to contributions that are not part of the super fund's assessable income – e.g. personal contributions for which a tax deduction has not been claimed and roll-over super benefits[27]. TR 93/17 provides further information and explains the basis for including non-assessable contributions in the formula. Example 1 of TR 93/17 provides an example of where the use of the above formula by a super fund may be considered fair and reasonable.

Example 2 of TR 93/17 provides an example of where the use of the above formula by a super fund does not provide a fair and reasonable assessment. This example involves a merger of two super funds where the merged fund received significant and extraordinary income amounts as a result of the merger. The addition of these amounts into the standard formula resulted in a distortion of the amount that could be claimed as a deduction.

Specific deduction provisions and apportionment

If an expense is deductible under a specific deduction provision (e.g. expenses in managing tax affairs[28]), then the wording of that provision will indicate whether (or not) the expense must be apportioned and the basis for so doing. This could occur where an expense needs to be apportioned because the fund earns both assessable and non-assessable income, or for some other basis.

The following list contains some super fund expenses deductible under specific deduction provisions. These do not need to be apportioned between assessable and non-assessable income.

- Tax-related expenses (subject to exclusions such as if a capital expense)
- Super supervisory levy
- Death, total and permanent disability, terminal illness and income protection insurance premiums in the proportions as specified in super law[29]
- An anti-detriment payment to the extent to which dependants[30] will benefit. The deduction is calculated according to the formula in super law[31]. This deduction will no longer be available for lump sum death benefits where the member died on or after 1 July 2017
- Financial assistance levy

An example of a specific deduction provision that indicates when apportionment is required is the deduction available to business-related capital expenditure (or blackhole expenditure[32]). If the expenditure relates to the whole of the business carried on by the super fund, but part of the business is carried on to derive exempt income or non-assessable non-exempt income, then to that extent the expenditure will not be deductible.

See also:

- TR 93/17 *Income tax: income tax deductions available to superannuation funds*

Section 8–1 of the *Income Tax Assessment Act 1997*.

23

Section 295–385 of the *Income Tax Assessment Act 1997*.

24

Section 295–390 of the *Income Tax Assessment Act 1997*.

25

Sections 307–75 and 307–80 of the *Income Tax Assessment Act 1997*.

26

ATO ID 2012/47 *Income Tax Complying Superannuation Fund: roll over superannuation benefit treated as assessable income when applying deduction provisions – meaning of contribution*. See also TR 2010/1 *Income Tax: superannuation contributions*.

27

Section 25–5 of the *Income Tax Assessment Act 1997*.

28

Table in subsection 295–465(1) of the *Income Tax Assessment Act 1997*.

29

Includes a spouse, former spouse or child of the deceased member at the time of death or payment.

30

Subsection 295–485(3) of the *Income Tax Assessment Act 1997*.

31

Subsection 40–880(3) of the *Income Tax Assessment Act 1997*.

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Expenses you can claim as an APRA fund

Types of expenses which may be deductible.

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The following types of expenses that an APRA-regulated super fund may incur are usually deductible under the general deduction provision.

- Operating expenses
- Investment advice expenses
- Tax-related expenses
- Superannuation supervisory levy
- Financial assistance levy
- Death, total and permanent disability, terminal illness and income protection insurance premiums
- Anti-detriment payment

Operating expenses

Typical operating expenses that an APRA-regulated super fund may incur are deductible under the general deduction provision[33]. They are not deductible if they relate to gaining of non-assessable income or are capital in nature.

Typical operating expenses

Trustee support / general management expenses

- Trustee remuneration
- Premiums for trustee indemnity insurance policies
- Membership subscriptions to super associations (eg the Association of Superannuation Funds of Australia)

Administrative expenses

- Costs incurred in collecting contributions (eg contributions processing[34])
- Benefit processing
- Member contact centre
- Intra-fund advice
- Insurance administration, for example, processing death and total permanent disability claims

Marketing and business development

- Advertising and sponsorship
- Printing costs
- Member regular communication (annual statements, product disclosure statements)
- Website maintenance[35]

Complying with super law obligations

- Record-keeping requirements
- Reporting to APRA
- Accounting, actuarial or legal advice on complying with obligations under the super laws[36]
- Obtaining an actuarial certificate for defined benefit pension purposes

- Complying with anti-money laundering and counter-terrorism financing rules
- Audit costs incurred in complying with APRA Prudential Standard SPS 310 Audit and Related Matters[37]
- Staff training on changes to the fund's administration systems as a result of super law changes

Investment advice expenses

The exact nature of the investment advice expense is critical when determining deductibility under the general deduction provision[38].

If the investment advice is part of the process of creating a new income-earning structure, it is a capital expense. For example, the super fund incurs an expense in obtaining investment advice on developing a new investment option. However, if the expense meets the parameters of business-related capital expenditure (or blackhole expenditure) it may be deductible over a five-year period.

Where the investment advice is part of the process of earning gross income from investments, it is of a revenue nature. In addition, if there is no change in the objects or aims of an existing investment strategy, the investment advice expenses incurred form part of the income earning process and are considered deductible.

Examples of deductible investment advice expenses incurred by the trustee of the super fund include:

- ongoing management fees or retainers paid to investment advisers
- costs of servicing and managing an investment portfolio
- the cost of advice obtained by the fund in managing its investment strategy to change the mix of investments, whether by the original or a new investment adviser – provided it does not amount to a new financial plan.

If the investment-related advice covers other matters, or relates in part to investments that do not produce assessable income, only a proportion of the fee is deductible.

See also:

- Business-related capital expenditure (blackhole expenditure)

Tax-related expenses

A specific deduction is allowable for an expense (that is not a capital expense) incurred in managing tax affairs or complying with a Commonwealth law obligation imposed on the trustee of a super fund. This is to the extent that the obligation relates to the entity's tax affairs [39].

Examples of deductible tax-related expenses incurred in managing a super fund's income tax affairs and complying with income tax laws include:

- preparation and lodgment of the fund's income tax return
- actuarial costs incurred in satisfying income tax obligations (e.g. to determine the amount of tax-exempt income, or exempt current pension income).

As a general rule you cannot deduct capital expenditure under the tax-related expenses specific deduction provision. However, for this purpose expenditure is not capital expenditure merely because the tax affairs concerned relate to matters of a capital nature[40]. For example, the trustee of a super fund can deduct expenditure it incurs in applying for a private ruling on whether it can depreciate an item of property.

Tax-related expenses do not need to be apportioned on account of the super fund deriving non-assessable income.

Super supervisory levy

As noted at paragraph 5(a) of Taxation Ruling TR 93/17, the super supervisory levy payable by APRA-regulated super funds is deductible as a tax-related expense[41].

However, the late payment penalties for the super supervisory levy are not deductible[42].

See also:

- TR 93/17 *Income tax: income tax deductions available to superannuation funds*

Financial assistance levy

The financial assistance levy payable by APRA-regulated super funds is deductible[43]. The levy does not need to be apportioned where a super fund is gaining assessable and non-assessable income.

The levy helps fund the Commonwealth Government's program providing financial assistance to APRA-regulated super funds that have suffered loss through theft or fraud.

Death, total and permanent disability, terminal illness and income protection insurance premiums

A specific deduction for insurance premiums is available to the trustee of a complying super fund. This is for premiums paid for insurance policies that are for current or contingent liabilities to provide death or disability benefits[44].

A deduction is available for the insurance premiums to provide for:

- super death benefits
- terminal medical condition benefits
- disability super benefits
- benefits provided due to temporary inability to engage in gainful employment for a specified period.

A disability super benefit means:

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

From 1 July 2014, a trustee is prohibited from providing insured benefits that are not consistent with the conditions of release in the *Superannuation Industry (Supervision) Regulations 1994* (SISR) for death, terminal medical condition, permanent incapacity and temporary incapacity.

The prohibition does not apply to the continued provision of insured benefits to members who joined a fund before 1 July 2014 and were covered in respect of that insured benefit before 1 July 2014, or to the provision of benefits under an approval that has been granted. This may require certain amendments to be made to the fund rules, or the rules may be taken to be amended (see regulation 4.07D of the SISR).

Amount you can claim

The proportion of an insurance premium a super fund may deduct depends on the type of insurance policy. The types of insurance policies are:

- other than whole-of-life or endowment
- whole-of-life and endowment.

The deduction paid by the trustee of a complying super fund does not need to be apportioned on account of the fund deriving non-assessable income.

Insurance policies other than whole-of-life or endowment

For insurance policies that are not whole-of-life or endowment policies, you can claim:

- the part of a premium that is specified in an insurance policy as being wholly for the liability to provide certain death, terminal medical condition or disability benefits for fund members
- the proportion of the premium specified in Table 1 below as being attributable to the liability to provide death or disability super benefits for fund members
- for a policy that is not a whole-of-life or endowment policy
  - 30% of the part of an insurance policy premium that is specified in the policy as being for a distinct part of the policy that would have been a whole-of-life policy if it had been a separate policy
  - 10% of the part of an insurance policy premium that is specified in the policy as being for a distinct part of the policy that would have been an endowment policy if it had been a separate policy.

Table 1: Insurance premium proportions deductible under item 6 of the table in subsection 295–465(1) of the ITAA 1997

For insurance that provides…	a fund can deduct…
Total and permanent disability (TPD) any occupation cover (see note 1)	100%
TPD any occupation cover with one or more of the following inclusions: • activities or daily living • cognitive loss • loss of limb • domestic (home) duties	100%
TPD own occupation cover (see note 2)	67%
TPD own occupation cover with one or more of the following inclusions: • activities of daily living • cognitive loss • loss of limb • domestic (home) duties	67%
TPD own occupation cover bundled with death (life) cover	80%
TPD own occupation cover bundled with death (life) cover, with one or more of the following inclusions: • activities of daily living • cognitive loss • loss of limb • domestic (home) duties	80%

Note 1: TPD any occupation means insurance against the member suffering an illness or injury that is likely to result in the member's permanent inability to work in a job for which the member is reasonably qualified by education, training or

experience.Note 2: TPD own occupation means insurance against the member suffering an illness or injury that is likely to result in the member's permanent inability to work in the member's own occupation (other than in a substantially reduced capacity).

Whole-of-life and endowment insurance policies

For whole-of-life and endowment insurance policies, you can claim:

- 30% of the premium for a whole-of-life policy if all the individuals whose lives are insured are members of the fund
- 10% of the premium for an endowment policy if all the individuals whose lives are insured are members of the fund.

See also:

- ATO ID 2009/100 *Complying superannuation fund: deductibility of premiums on 'whole of life policy' – subsection 295–465(1) of the ITAA 1997*
- 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*

Anti-detriment payment

The anti-detriment deduction will no longer be available for lump sum death benefits where the member died on or after 1 July 2017. A transition period will apply for two years to allow for delays in the payment of a lump sum death benefit where a member has died before 1 July 2017. However, from 1 July 2019, the anti-detriment deduction will no longer be available for all lump sum death benefits paid after this time, even where the member died before 1 July 2017.

See also:

- Remove the anti-detriment provision in respect of death benefits from super

A specific deduction that pays an anti-detriment payment[45] following the death of a member is available to the trustee of a complying super fund. However, as not all APRA-regulated funds provide an anti-detriment payment, whether the fund will provide the payment depends on the rules of the fund. An anti-detriment payment is an additional lump sum payment that can be made from a complying super fund on the death of a member to a:

- trustee of the deceased estate
- spouse or former spouse of the deceased
- child (including an adult child) of the deceased.

The deduction in respect of an anti-detriment payment is not available where the death benefit is paid as an income stream.

The payment increases the deceased member's lump sum death benefit to negate the effect of tax on contributions paid while the member's benefit was accumulating in the fund.

A complying super fund which pays this increased amount may claim the deduction (calculated using the formula below) from its assessable income in the year in which the lump sum death benefit is paid. The amount the complying super fund can deduct using the formula in the tax law[46] is calculated as:

- Tax saving amount ÷ low tax component rate

Tax saving amount is the amount by which the lump sum death benefit is increased or is not reduced, so that the amount of the lump sum is the amount the fund could have paid if no tax were payable on assessable income included in contributions made to the fund.

Low tax component rate is the rate of tax imposed on the low tax component of the fund's taxable income for the year (i.e. 15%)[47].

The records of some APRA-regulated super funds do not track the effect of fund tax on the accounts of individual members. In order to determine the effect of fund tax on the accounts of individual members, the fund would have to reconstruct those accounts from its records over the membership period. ATO ID 2010/5 *Complying superannuation fund: deduction for increased amount of superannuation lump sum death benefit* provides an alternative method that may be used in these circumstances.

If the lump sum payment is made through the estate of the deceased member, the amount of the deduction available depends on the extent to which a spouse, former spouse or child of the deceased is expected to benefit from the estate.

To ensure this claim is made correctly, trustees must claim the deduction in the income year in which the lump sum death benefit is paid. The lump sum death benefit should be paid as soon as practicable following the death of the member.

The deduction in respect of an anti-detriment payment does not need to be apportioned on account of the super fund deriving non-assessable income.

See also:

- ATO ID 2010/5 *Complying superannuation fund: deduction for increased amount of superannuation lump sum death benefit*
- Remove the anti-detriment provision in respect of death benefits from super
- Actuaries Institute Professional Standard 405 – Cost of death and disability benefits in super funds – 1 July 2016

The following ATO Interpretative Decisions (ID) provide guidance on some of the issues regarding the calculation of the deduction:

- ATO ID 2007/219 *Deduction for increased amount of superannuation lump sum death benefit* – the ATO accepts an alternative method to calculate an approximate tax saving amount so as to give effect to the intention of section 295–485 of the ITAA 1997
- ATO ID 2008/111 *Complying superannuation fund: deduction for increased amount of superannuation lump sum death benefit – earnings foregone* – in calculating the 'tax saving amount' for the purposes of paragraph 295–485(1)(b) of the ITAA 1997, a fund trustee can take into account the earnings that would have accrued if no tax had been imposed on contributions included in assessable income under Subdivision 295–C of the ITAA 1997 or under former section 274 of the ITAA 1936
- ATO ID 2008/112 *Complying superannuation fund: deduction for increased amount of superannuation lump sum death benefit – expenses in relation to contributions* – in calculating the 'tax saving amount' for the purposes of paragraph 295–485(1)(b) of ITAA 1997, a fund trustee is not required to take into account expenses that are deductible against the assessable income of the fund
- ATO ID 2010/5 *Complying superannuation fund: deduction for increased amount of superannuation lump sum death benefit* – alternative method of calculation accepted by the ATO

- ATO ID 2012/10 *Income Tax: anti detriment payments paid by a complying superannuation fund to a trustee of a deceased estate* – anti-detriment payments paid by a complying super fund to a trustee of a deceased estate

Section 8–1 of the *Income Tax Assessment Act 1997*.

33

These costs are fully deductible under the general deduction provision (section 8–1) because section 295–95 of the *Income Tax Assessment Act1997* provides that 'all contributions' are considered assessable income for the purpose of the deduction provisions in the income tax Acts. Therefore, any distinct and severable costs incurred in obtaining contributions will be fully deductible.

34

Taxation Ruling TR 2016/3 *Income tax: deductibility of expenditure on a commercial website* sets out the Commissioner's views on the deductibility of expenditure incurred in acquiring, developing, maintaining or modifying a website for use in carrying on a business, including expenditure relating to domain names.

35

Superannuation law includes obligations under the *Financial Sector (Collection of Data) Act2001* and the Corporations Law. See 'regulatory provision' in section 38A of the *Superannuation Industry (Supervision) Act and Regulations 1993*.

36

If financial accounts or records prepared in complying with income tax obligations are subsequently used for other purposes (eg complying with super law obligations), the expenses associated with the preparation of those financial accounts or records are still fully deductible under section 25–5 of the *Income Tax Assessment Act 1997* (see Taxation Ruling TR 2004/2 *Income tax: whether expenses incurred obtaining valuations for consolidation are deductible under section8-1 of the Income Tax Assessment Act 1997*).

37

Section 8–1 of the *Income Tax Assessment Act 1997*.

38

Section 25–5 of the *Income Tax Assessment Act1997*.

[39]

Subsection 25–5(4) of the *Income Tax Assessment Act 1997.*

[40]

Section 25–5 of the *Income Tax Assessment Act 1997.*

[41]

Section 26-5 of the *Income Tax Assessment Act1997.*

[42]

Table item 3 in subsection 295–490(1) of the *Income Tax Assessment Act1997.*

[43]

Section 295–465 of the *Income Tax Assessment Act 1997.*

[44]

Section 295-485 of the *Income Tax Assessment Act 1997.*

[45]

Subsection 295–485(3) of the *Income Tax Assessment Act 1997.*

[46]

Section 26 of the *Income Tax Rates Act 1986*.

[47]

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