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Deductions for APRA-regulated super funds

Guidance for expenses generally deductible for a super fund.

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Deductions overview for APRA funds

Guidance for APRA-regulated super funds on expense deductions.

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Income tax deduction

Australian Prudential Regulation Authority (APRA)-regulated super funds incur various expenses that may be tax-deductible. Expenses may be deductible under the general deduction provision, or there may be a specific provision of the income tax laws that makes an expense deductible.

This information covers general guidance on deductions, with examples of common expenses and how to apportion them. We include links to relevant legal provisions and advice.

For relevant laws, see:

- Income Tax Assessment Act 1997
- Income Tax Assessment Act 1936
- Superannuation Industry (Supervision) Act 1993

Tax deductible expenses

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

- accounting and audit fees, and actuarial costs incurred in complying with super 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 aren't deductible where they're incurred in gaining non-assessable income. 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 relating to tax matters, except when they're capital expenses
- 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 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
- 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 5 years
- the cost of depreciating capital assets held by the trustee of a super fund and used in gaining or producing the fund's assessable income.

For more information, see:

- Capital allowances

- Expenses you can claim
- Taxation Ruling TR 93/17 *Income tax: income tax deductions available to superannuation funds.*

When the trustee can claim

Generally, 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.

For more information, see Taxation Ruling TR 97/7 *Income tax: section 8–1 – meaning of 'incurred' – timing of deductions*.

Keeping records

Funds must keep records, in English, in writing or electronically. The records must be in a form we can access and understand. Generally, funds must keep all relevant records for at least 5 years. This period may be longer in certain circumstances.

For more information, see:

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

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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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Determining capital expenses

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 expense. The factors you need to consider 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 provisions. 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 isn't deductible under the general deduction provision. If an expense is intended to provide 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.

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

A public offer super fund isn't, under its existing trust deed, able to offer a product that meets the requirements of a MySuper product as listed under super law. The super fund incurs legal expenses in amending its trust deed so it can offer a MySuper product to its members.

The ability to offer a new type of product is capital in nature, as it's 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 5-year period may be available.

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

Example 2: legal expense incurred in amending a trust deed, deductible under the general deduction provision

A public offer super fund has a product that meets the requirements listed in super law of a MySuper product. The super fund applies to the Australian Prudential Regulation Authority (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 isn't 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, 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 the deed applies with reference to the rules provided under super law regarding the charging and allocating of certain fees to members of the fund.

The changes to the trust deed don't alter the structure or organisation of the fund, and don't 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, the legal expenses will need to be apportioned.

SuperStream expenses

The SuperStream standard provides a consistent, reliable electronic method of transacting linked data and payments for super. It improves the efficiency of the super system, has faster processing of rollovers and contributions, and reduce the number of lost accounts and unclaimed super money.

Example: 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 system. To ensure it complies with the data elements required for the SuperStream data and payment standards 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 wouldn't 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 because of implementing the SuperStream reforms. A typical expense that's 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 aren't deductible under the general deduction provisions. However, if the costs meet the parameters of business-related capital expenditure (or blackhole expenditure) they may be deductible over a 5-year period.

Merger-related expenses

The expenses incurred by merging super funds are typically capital in nature. They aren't deductible under the general deduction provisions. 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 5-year period.

Business-related capital expenditure (blackhole expenditure)

The following rules apply to business-related capital expenditure.

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 5 years, starting in the year the expense is incurred.

The deduction is available for a range of business-related capital expenditure. This is provided 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's 'in relation to' a business to the extent the business is for a 'taxable purpose' and:

- is currently carried on by them
- was formerly carried on by them or by another entity
- 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 5 years, must be apportioned.

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's 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's directed at making a profit
- size, scale and permanency of the activity.

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

For more information, see Taxation Ruling:

- 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*.

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Apportionment for APRA funds

Guidance for when expenses need to be apportioned for APRA funds.

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Apportioning expenses

An expense may need to be apportioned where it's deductible under the general deduction provisions, 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 or the proportionate method) 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.' This may impact on the apportionment of expenses incurred by funds offering income stream products that aren't 'retirement phase super income stream benefits' (for example, transition to retirement income streams).

For more information, see:

- Innovative retirement income stream products

- Transition to retirement income streams

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: 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's, $500 is fully deductible as it's incurred in gaining or producing assessable income and $1,500 isn't deductible as it's incurred in gaining or producing non-assessable income.

Indifferent expenses

Where the expense can't be divided, as it's 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 the expense relates to assessable income.

The following are 2 income-based approaches for apportioning investment expenses and apportioning general administrative expenses. Depending on the particular facts and circumstances, there might be other methods that may be fair and reasonable in certain circumstances.

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: using a section 295–390 *Income Tax Assessment Act 1997* (ITAA 1997) actuarial certificate to apportion investment expenses

A 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.

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 isn't 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]

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

The term 'non-assessable contributions' refers to contributions that aren't part of the super fund's assessable income – for example, personal contributions which a tax deduction hasn't been claimed and roll-over super benefits.

TR 93/17 provides further information and explains the basis for including non-assessable contributions in the formula. It provides an example where the use of the above formula by a super fund may be considered fair and reasonable. It also provides an example of where the use of the above formula by a super fund doesn't provide a fair and reasonable assessment. This example involves a merger of 2 super funds where the merged fund received significant and extraordinary income amounts resulting from 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 (for example, expenses in managing tax affairs), 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 don't 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
- 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). If the expenditure relates to the whole of the business carried on by the super fund, but part of the business is carried on deriving exempt

income or non-assessable non-exempt income, then to that extent the expenditure will not be deductible.

For more information, see Taxation Ruling TR 93/17 *Income tax: income tax deductions available to superannuation funds*.

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Expenses you can claim as an APRA fund

Types of expenses which may be deductible under the general deduction provision for APRA funds.

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Operating expenses

Typical operating expenses that an Australian Prudential Regulation Authority (APRA)-regulated super fund may incur are deductible under the general deduction provisions. They're not deductible if they relate to gaining of non-assessable income or are capital in nature.

Typical operating expenses

Trustee support or general management expenses

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

Administrative expenses

- Costs incurred in collecting contributions (for example, contributions processing)
- 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 (for example, annual statements, product disclosure statements)
- Website maintenance

Complying with super law obligations

- Record-keeping requirements
- Reporting to APRA
- Accounting, actuarial or legal advice on complying with obligations under the super laws
- 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*
- Staff training on changes to the fund's administration systems resulting from super law changes

Investment advice expenses

The exact nature of the investment advice expense is critical when determining deductibility under the general deduction provisions.

If the investment advice is part of the process of creating a new income-earning structure, it's 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 5-year period.

Where the investment advice is part of the process of earning gross income from investments, it's of a revenue nature. In addition, if there's 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.

For more information, see **Business-related capital expenditure (blackhole expenditure)**.

Tax-related expenses

A specific deduction is allowable for an expense (that isn't 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 the obligation relates to the entity's tax affairs.

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 (for example, to determine the amount of tax-exempt income or exempt current pension income).

Generally, you can't deduct capital expenditure under the tax-related expenses specific deduction provision. However, for this purpose expenditure isn't capital expenditure merely because the tax affairs concerned relate to matters of a capital nature. 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 don't 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 *Income tax: income tax deductions available to superannuation funds*, the super supervisory levy payable by APRA-regulated super funds is deductible as a tax-related expense.

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

Financial assistance levy

The financial assistance levy payable by APRA-regulated super funds is deductible. The levy doesn't need to be apportioned where a super fund is gaining assessable and non-assessable income.

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

Death, 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.

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)
- 2 legally qualified medical practitioners have certified, because of the ill-health, it's 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.

A trustee is prohibited from providing insured benefits that aren't 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 doesn't apply to members who joined a fund before 1 July 2014 cand were already covered for that insured benefit prior to that date, or to benefits provided under an approved arrangement. 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 deduction paid by the trustee of a complying super fund doesn't 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 aren't whole-of-life or endowment policies, you can claim:

- the part of a premium 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 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's specified in the policy as being for a distinct part of the policy that would've been a whole-of-life policy if it had been a separate policy
  - 10% of the part of an insurance policy premium that's specified in the policy as being for a distinct part of the policy that would've been an endowment policy if it had been a separate policy.

Insurance premium proportions deductible under ITAA 1997

For insurance premium proportions deductible under item 6 of the table in subsection 295–465(1) of the *Income Tax Assessment Act 1997* (ITAA 1997), funds can deduct for Total and permanent disability (TPD) insurance cover:

- TPD any occupation cover* 100%
  - with one or more of the following inclusions
    - activities or daily living
    - cognitive loss
    - loss of limb
    - domestic (home) duties.
- TPD own occupation cover** 67%
  - with one or more of the following inclusions
    - activities of daily living
    - cognitive loss
    - loss of limb
    - domestic (home) duties.
- TPD own occupation cover bundled with death (life) cover 80%
  - with one or more of the following inclusions
    - activities of daily living
    - cognitive loss
    - loss of limb

- domestic (home) duties.

*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.

**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.

For more information, see:

- 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*.

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