Australian Government
Australian Taxation Office

Eligibility of super funds and investor-directed portfolio services investment platforms to claim reduced input tax credits on adviser fees

Our commitment to you

If you rely on this document, you have the protections that apply to Guidance - see How our advice and guidance protects you. To the extent that this document outlines a compliance approach, and you apply that approach in good faith to your own circumstances, the Commissioner will act in accordance with that approach.

Purpose

The purpose of this document is to notify superannuation funds and investor-directed portfolio services (IDPS) investment platforms (collectively referred to as Funds) of certain matters relevant to claims for reduced input tax credits (RITCs) in respect of adviser services fees.

With changes to the regulatory environment and increased scrutiny of adviser fee arrangements[1], there has been a move towards greater transparency of arrangements involving the payment by Funds of fees for adviser services.

Having recently reviewed some examples of current arrangements, the Commissioner now has a better understanding of the relevant contractual arrangements, including:

- who is liable for the adviser services fees
- the services provided by the advisers
- what the fees are paid for, and
- the circumstances under which Funds make a payment of adviser services fees.

Under arrangements of the kind set out in this document, the Commissioner's view is that Funds are not eligible to claim RITCs for the adviser services fees, as Funds are not the recipient of a supply for which the fees are consideration. This view is consistent with the Commissioner's existing guidance in Goods and Services Tax Ruling GSTR 2006/9 *Goods and services tax: supplies*, including in relation to tripartite agreements.

[1] In particular, following the Final Report of the Royal Commission into Misconduct in the Banking, Insurance and Financial Services Industry (Kenneth Hayne AC QC (2019) *Royal Commission into Misconduct in the Banking, Insurance and Financial Services Industry: Final Report*, Australian Government) and the Quality of Advice Review (Michelle Levy (2022) *Quality of Advice Review – Final Report*, Department of Treasury).

We recommend that Funds:

- review their arrangements for the payment of adviser fees to ensure RITCs are not being claimed when there is no entitlement, and
- consider the application of the compliance approach set out in this document to past periods.

This document is focused on arrangements where a member or investor engages a financial adviser to provide them with personal advice. It does not consider arrangements where Funds engage an adviser to provide non-ongoing, simple advice to its members, where a fee is collectively charged to all members (referred to as intra-fund advice).

Recently reviewed arrangements

Broadly, the arrangements we have recently considered have the following features:

- An individual (or other entity) engages an adviser to provide them with personal financial advice, under an agreement between the member and the adviser. The advice relates to the individual's interest (or prospective interest) in the Fund.
- The individual completes a request that authorises the Fund to pay the adviser services fees to the adviser, by deducting the amount from the individual's interest or the assets held for them in the Fund. The fees may be for initial or one-off financial advice or ongoing adviser services provided to the individual in respect of their interest in the Fund.
- If the Fund does not pay the fees (whether at its discretion, because the conditions for payment are not met, or there are insufficient funds or assets held for the individual), the individual remains liable to pay the adviser.
- While the adviser may also provide other services to the investor such as providing instructions to the Fund on the individual's behalf or accessing information and reporting on the individual's investment in the Fund, the adviser is not involved in executing any of the underlying transactions.
- The adviser may be required to be registered with the Fund and agree to certain terms and conditions, including self-assessment about the subject matter of the advice, in order to receive payment from the Fund.

Under such an arrangement, there is only a supply of financial advice by the adviser to the individual. While some tripartite arrangements may result in the one set of acts giving rise to 2 supplies to 2 different entities[2], it is the Commissioner's view that the provision of advice or other services by the adviser in these kinds of arrangements does not result in a second supply to the Fund. The adviser is not under an obligation to the Fund to provide advice to the individual and nor is the advice provided in satisfaction of any obligation owed by the Fund to the individual. The Commissioner considers the arrangement between the adviser and the Fund is best described as an administrative arrangement to provide payment.[3]

To the extent that the adviser may make some supply to the Fund under a pre-existing framework or agreement relating to the payment of those adviser fees (for example, under the terms of registration with the Fund), the payment of the adviser fees by the Fund is not consideration for that supply. As such, the Fund is not the recipient of a supply for which the adviser services fees are consideration. The

[2] Paragraphs 217 and 221B of GSTR 2006/9.
[3] Paragraphs 221B and 221F of GSTR 2006/9.

adviser services fees are only consideration for the financial advice (and related services) supplied by the adviser to the member.

Accordingly, the Fund is not eligible to claim RITCs for GST paid on the adviser services fees on the basis that the Fund is not making a creditable acquisition of the adviser services or of any other supply for which the fee is consideration.

ATO expectations – what Funds should do

Entitlement to RITCs will depend on a Fund's particular facts and circumstances. From our observations, the arrangements described in this document are common across the industry.

Funds should review their current contractual arrangements given many arrangements have evolved due to changing regulatory requirements and the move towards greater transparency between advisers, members and Funds. If a Fund has received a private ruling in the past, they should check whether the scheme of that ruling accurately reflects their current contractual arrangements.

After Funds have reviewed their circumstances, if a Fund is unsure whether they are entitled to RITCs based on current facts and circumstances, we encourage them to seek advice or request a private ruling from us for their specific circumstances.

Compliance approach

The Commissioner recognises that, through past binding private advice, the ATO may have contributed to some Funds considering they were entitled to claim RITCs for adviser services in the circumstances described in this document. In accordance with Law Administration Practice Statement PS LA 2011/27 *Determining whether the ATO's views of the law should be applied prospectively only*, the ATO is taking a prospective compliance approach to this issue.

We will therefore not devote compliance resources to review RITC claims for adviser services fees paid under arrangements of the kind described for tax periods that end before 1 July 2024.

However, this compliance approach does not apply to a Fund if:

- they change their prior treatment by now seeking to claim RITCs for past or future tax periods in relation to these arrangements
- there is evidence of avoidance, fraud or evasion, or
- they otherwise take inappropriate advantage of the prospective compliance approach.

If a Fund asks us to issue or amend assessments, or seeks our view (for example, in a private ruling) on their eligibility to claim RITCs for adviser services fees, we will do so in line with the Commissioner's views of how the law applies to their arrangements, including as set out in this document.

Commissioner of Taxation
13 December 2023

Amendment history

1 February 2024

Part	Amendment
Compliance approach	Extended to 1 July 2024.

References:

Related Rulings/Determinations:

GSTR 2006/9

Other references:

PS LA 2011/27

Kenneth Hayne AC QC (2019) *Royal Commission into Misconduct in the Banking, Insurance and Financial Services Industry: Final Report*, Australian Government.

Michelle Levy (2022) *Quality of Advice Review - Final Report*, Department of Treasury.

File reference:

1-109TOUZ5