



Taxation Determination

Income tax: Do allowable deductions in respect of tax agents' fees and superannuation contributions relate exclusively to assessable income, for the purposes of the 'other taxable income' calculations in sections 23AF and 23AG of the *Income Tax Assessment Act 1936*?

Preamble

*This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.*

Date of Effect

This Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. Yes, tax agents' fees and deductible superannuation contributions will be treated as relating exclusively to assessable income, in terms of paragraph (d) of the definition of 'other taxable income' in subsections 23AF(17A) and 23AG(3). Such expenditure will therefore be deductible in full in calculating the taxpayer's 'other taxable income'.

2. The ATO's approach in the past, as expressed in TD 95/36, has been to apportion deductions for tax agents' fees and allowable superannuation contributions. This was done on the basis that such expenses do not relate exclusively to the production of either assessable income or exempt foreign income. This meant in practice that the deductions were allowed only in part, under paragraph (e) of the relevant definitions of 'other taxable income', in a similar manner to the approach used for 'apportionable deductions' in paragraph (f). This approach was seen to accord with the policy objectives behind the provisions.

3. However, this approach was criticised in the decision of the AAT in Case 67/96 96 ATC 598; AAT Case 11,375 (1996) 34 ATR 1034. That case concerned the allowance of foreign tax credits against foreign (assessable) income. The tribunal there considered whether accountants' fees and superannuation deductions should be apportioned in accordance with paragraph (c) of the definition of 'net foreign income', as contained in subsection 160AF(8). That paragraph uses wording of similar effect to that of paragraph (e) of the definition of 'other taxable income' in

subsections 23AF(17A) and 23AG(3). They found that there was nothing in the wording of paragraph (c) that 'requires or even allows' a mathematical calculation such as that provided for 'apportionable deductions'. The tribunal also commented that the apportionment method provided by Taxation Determination TD 95/36, with respect to these same type of deductions under subsections 23AF(17A) and 23AG(3), was wrong.

4. In light of this decision the ATO accepts that the wording of paragraph (e) of the definition of 'other taxable income' in subsections 23AF(17A) and 23AG(3) does not permit apportionment of these items. Deductible tax agents' fees and superannuation contributions also clearly do not fall within the present definition of 'apportionable deductions' as contained in subsection 6(1) of the *Income Tax Assessment Act 1936* (with the result that paragraphs 23AF(17A)(f) and 23AG(3)(f) cannot apply). These deductions will therefore be treated as relating exclusively to assessable income in the context of the present 'other taxable income' definitions, and therefore deductible in full under paragraphs 23AF(17A)(d) and 23AG(3)(d).

5. This Determination replaces Taxation Determination TD 95/36, which is now withdrawn.

Commissioner of Taxation

12 April 2000

Previous draft:

Previously issued as Draft TD 1998/D15

Subject references:

- apportionable deductions;
- deductible superannuation contributions;
- exempt foreign earnings;
- tax agents' fees;

Legislative references:

ITAA 6(1); ITAA 23AF; ITAA 23AF(17A); ITAA 23AF(17A)(d), (e) & (f); ITAA 23AG; ITAA 23AG(3); ITAA 23AG(3)(d), (e) & (f).

Case references:

Case 67/96 96 ATC 598; *AAT Case 11,375* (1996) 34 ATR 1034.

ATO references:

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