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Draft Taxation Determination

Income tax: are the costs of subscriptions to share market information services and investment journals deductible under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997)?

Preamble

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVAAA of the ***Taxation Administration Act 1953****. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. A deduction is allowable for the costs of subscriptions to share market information services and investment journals to the extent that the expenditure is incidental and relevant to gaining or producing assessable dividends and interest from a portfolio of shares or bonds (whether or not a business is carried on) and is not a capital cost of putting the income earning investment in place. A deduction is not allowable to the extent that an expense is capital, private or domestic in nature.

2. The extent to which the costs of subscriptions to share market information services and investment journals is incidental and relevant to producing assessable income and not of a capital, private or domestic nature is one of fact depending on the particular circumstances of each individual case.

Explanation

3. A share market information service provides subscribers with information and analysis on the stock listed on Australian and foreign stock exchanges. The services are usually provided via the internet and extend to, but are not limited to news articles, publications, share prices, company documents, overseas market information and broker research and analysis. For an additional fee or fees, subscribers may be able to access software which provides share price charting and technical analysis. This Determination does not consider the deductibility of fees in relation to such software.

4. An investment journal is a publication specifically aimed at the personal or professional investor market. The journal will generally provide a range of investment advice including guidance on financial planning, life assurance, fund management, taxation, pensions, mortgages, the share market and real estate.

5. Section 8-1 of the ITAA 1997 relevantly provides that:

(1) You can deduct from your assessable income any loss or outgoing to the extent that:

(a) it is incurred in gaining or producing your assessable income;…

(2) However, you cannot deduct a loss or outgoing under this section to the extent that:

(a) it is a loss or outgoing of capital, or of a capital nature;…

6. Where a share market information service or investment journal is used to monitor an investment portfolio with the aim of maximising dividends or interest, the cost of subscriptions to that service or journal will be incurred in gaining or producing assessable income.

7. A share investor is more likely to be able to show that there is a sufficient nexus between the expense and the investment income where they are actively involved in managing an investment portfolio.

8. However, if there is a gross disproportion between the amount of the outgoing and the amount of assessable income derived, enquiry will be invited as to whether the outgoing is directed to another object or objects. In discussing the circumstances where the relevant assessable income is less than the amount of the outgoing, the Full High Court said in *Fletcher v. Federal Commissioner of Taxation* (1991) 173 CLR 1; 91 ATC 4950; (1991) 22 ATR 613 (at CLR 18-19, ATC 4958, ATR 623):

> '…the disproportion between the detriment of the outgoing and the benefit of the income may give rise to a need to resolve the problem of characterisation of the outgoing for the purposes of the sub-section by a weighing of the various aspects of the whole set of circumstances, including direct and indirect objects and advantages which the taxpayer sought in making the outgoing. Where that is so, it is a 'common sense' or 'practical' weighing of all the factors which must provide the ultimate answer. If, upon consideration of all those factors, it appears that, notwithstanding the disproportion between outgoing and income, the whole outgoing is properly to be characterised as genuinely and not colourably incurred in gaining or producing assessable income, the entire outgoing will fall within the first limb of s 51(1) unless it is either somehow excluded by the exception of 'outgoings of capital, or of a capital, private or domestic nature' or 'incurred in relation to the gaining or production of exempt income'. If, however, that consideration reveals that the disproportion between outgoing and relevant assessable income is essentially to be explained by reference to the independent pursuit of some other objective and that part only of the outgoing can be characterised by reference to the actual or expected production of assessable income, apportionment of the outgoing between the pursuit of assessable income and the pursuit of that other objective will be necessary.'

9. The cost of a subscription to a publication or an internet information service which is primarily aimed at providing information of a kind which is of no or little relevance to the taxpayer's investments is unlikely to be incurred in gaining assessable income from those investments, for example, a daily newspaper or a weekly current affairs journal.

10. Where a taxpayer subscribes to a share market information service or investment journal with a view to setting up an investment portfolio or commencing share trading activities, the expenditure is incidental and relevant to outlaying the price of acquiring the investment (e.g. shares) or the setting up of the business. Consequently, the expenditure is

incurred at a point too soon for a deduction to be allowed (*Federal Commissioner of Taxation v. Maddalena* 71 ATC 4161; (1971) 2 ATR 541). Furthermore, the expenditure will be capital or capital in nature and precluded from deductibility by paragraph 8-1(2)(a) of the ITAA 1997.

11. If the investment portfolio is managed with the aim solely of generating capital gains that are included in the investor's assessable income under section 102-5 of the ITAA 1997, the cost of subscriptions is not an allowable deduction by virtue of section 51AAA of the *Income Tax Assessment Act 1936* (ITAA 1936). Nor are the costs included as an incidental cost in the cost base under section 110-35 of the ITAA 1997 or reduced cost base under section 110-55 of the ITAA 1997 of the relevant asset (the investment) for capital gains tax purposes.

Example 1

Norma holds a large and diverse investment portfolio but is not carrying on a business of share trading. The majority of Norma's investments yield income in the form of dividends or unit trust distributions but she has also in the past made some capital gains. She manages her investment portfolio by monitoring trends in relation to her investments and ensuring that her investments are yielding the best income return.

Whilst Norma buys and sells investments through a share broker, she makes the investment decisions herself, often after a discussion with her broker.

Norma subscribes to a share market information service. The service provides information that is used to monitor her investment portfolio, primarily to maximise dividend and trust distribution yields. Norma is entitled to a deduction for the cost of share market information subscriptions as the expenditure is incidental and relevant to the management of her investments and incurred for the purpose of producing assessable dividends and trust distributions. Her use of the share market information service is not related to the derivation of capital gains.

Example 2

Several years ago, Wasim purchased three parcels of shares in listed companies X, Y and Z. All companies yield assessable dividends. In total the dividend yield exceeds $2,000 per year. In the past year, he has sold half of his shares in X, purchased further shares in Y and made an initial investment in a managed fund. He actively manages his investments by closely monitoring the dividend yields of the shares he holds, in addition to monitoring the rise and fall of share prices in general.

Wasim purchases two monthly investment journals for an annual total subscription of $300.00. These journals provide information and analysis on the investment market. He uses the information provided in the journals to keep abreast of the status of his investments.

As the investment journals are used by Wasim to monitor his current investment portfolio and are not used in generating capital gains, the expenditure on the journals has sufficient nexus with his investment income. Therefore he is entitled to a deduction for the cost of purchasing both investment journals.

Example 3

Jill has held a small parcel of shares in two Blue Chip companies for a number of years. The value of her share portfolio is about $5,000. She receives bi-annual dividends from both companies of approximately $200 in total.

Jill is nearing retirement and expects to receive a lump sum of $50,000 of which she intends to invest 10%. Jill decided to subscribe to an online investment service costing $500 per annum.

In these circumstances it would be reasonable to conclude that the outgoing is primarily for the purpose of making investments after her retirement and therefore a capital expense. However, an appropriate proportion of the expenditure may be deductible as being related to current investments. In this case, $50 may be an appropriate deduction.

If Jill did not have any shares at the time she subscribed to the internet service, she would not be entitled to a deduction as the cost of subscription to the online investment service relates to the acquisition of an investment and therefore is capital in nature.

Date of Effect

12. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Your comments

13. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

Due date:	**20 November 2003**
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Commissioner of Taxation
22 October 2003

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

IT 39; TR 92/20; TD 95/60

Subject references:

- deductions & expenses
- dividend Income
- internet
- investment advice fees
- journals
- shares

Legislative references:

- ITAA 1936 51AAA
- ITAA 1936 51(1)
- ITAA 1997 8-1
- ITAA 1997 8-1(2)(a)
- ITAA 1997 102-5
- ITAA 1997 110-35
- ITAA 1997 110-55
- TAA 1953 Part IVAAA

Case references:

- *F C of T v Maddalena* 71 ATC 4161; (1971) 2 ATR 541
- *Fletcher v. F C of T;* (1991) 173 CLR 1; 91 ATC 4950; (1991) 22 ATR 613

ATO references

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