



TD 94/37 - Income tax: how does the receipt of a share of the net income or loss from a partnership affect the calculation of the rebate for personal superannuation contributions under section 159SZ of the Income Tax Assessment Act 1936 ?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *5 May 1994*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, 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 a 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).

Taxation Determination

Income tax: how does the receipt of a share of the net income or loss from a partnership affect the calculation of the rebate for personal superannuation contributions under section 159SZ of the *Income Tax Assessment Act 1936*?

1. Depending on how much income a partner has received from other sources, the receipt of a share of the net income from a partnership may reduce the partner's rebate for personal superannuation contributions. On the other hand, entitlement to a share of the loss incurred by a partnership cannot be taken into account in calculating the partner's rebate for personal superannuation contributions.
2. The amount of rebate for personal superannuation contributions that can be claimed under section 159SZ depends in part on the 'assessable income' of the individual taxpayer. For taxpayers whose assessable income is \$27,000 or more, the maximum rebate (\$100) reduces for each dollar of assessable income over \$27,000; no rebate is available where assessable income is \$31,000 or more. (The maximum rebate is also limited to 10% of the superannuation contributions made by the taxpayer during the year).
3. Subsection 92(1) provides that the assessable income of a partner in a partnership includes the partner's share of the net income of the partnership. This share of the net income of the partnership therefore increases the partner's assessable income and must be taken into account in calculating the rebate for personal superannuation contributions.
4. Subsection 92(2) provides that where a partnership loss is incurred, a partner's share of the loss is an allowable deduction to the partner. 'Allowable deduction' is defined in subsection 6(1) to mean a deduction allowable under the Act. From the definition of 'taxable income' in that subsection it is clear that 'allowable deductions' are amounts that are deducted from assessable income after that assessable income has been finally determined.
5. Because entitlement to a share of the loss incurred by a partnership does not reduce a partner's assessable income, but rather is deducted after the assessable income has finally been determined, it cannot be taken into account in calculating the rebate for personal superannuation contributions.
6. It should be noted that the extended definition of 'partnership' in subsection 6(1) means that the receipt of a share of the net income, or entitlement to a loss, from jointly-owned investments

(such as rental properties) affects the calculation of the rebate in the same way as other partnership distributions.

Example 1:

For the year ended 30 June 1993 Joe Smith received a share of \$5,000 in the net income of the Smith family partnership. In the same year Joe earned wages of \$25,000 from a source outside the partnership and made a personal superannuation contribution of \$1,000.

If Joe had not received the distribution of income from the partnership, his assessable income would have been \$25,000 and he would have been entitled to a rebate of \$100 for his personal superannuation contribution (10% of his contribution of \$1,000). Taking into account the income from the partnership, however, Joe's assessable income is \$30,000 and the rebate is reduced to \$25, i.e. 10% of [$\$1,000 - 0.25(\$30,000 - \$27,000)$].

Example 2:

For the year ended 30 June 1993 Mary Brown's income consisted of wages of \$28,000 and she was entitled to a share of \$3,000 in a loss incurred by the ABC Partnership. During the year Mary made a personal superannuation contribution of \$1,000.

Mary's assessable income is \$28,000; it is not affected by her share of the loss incurred by the ABC Partnership. She is entitled to a rebate of \$75 for her personal superannuation contribution, i.e. 10% of [$\$1,000 - 0.25(\$28,000 - \$27,000)$]. (The maximum rebate is calculated on \$1,000 contribution.)

Commissioner of Taxation

5/5/94

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