


# ***PCG 2025/1EC - Compendium***

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## Public advice and guidance compendium – PCG 2025/1

### ❗ Relying on this Compendium

This Compendium of comments provides responses to comments received on Draft Practical Compliance Guideline PCG 2025/D1 *Fees for personal financial advice paid from member accounts by superannuation funds – apportioning the deduction and pay as you go withholding obligations*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

### Summary of issues raised and responses

All legislative references in this Compendium are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Issue number	Issue raised	ATO response
1	<p><b>Transitional compliance approaches requested – Part 1 of the Guideline</b></p> <p>Clarification is sought that the ATO will not apply compliance resources to specifically identify the deductibility of adviser fee payments under table item 5 of subsection 295-490(1) for the 2019–20 to 2024–25 income years.</p> <p>A 6-month transition period is proposed after the finalisation of the draft Guideline to ensure the necessary systems and program adjustments can be effectively implemented.</p>	<p>Part 1 of the Guideline outlines a methodology (account-based method) that a superannuation fund (fund) may use to determine the extent to which payments of financial advice fees satisfy paragraph (d) of table item 5 of subsection 295-490(1). Applying this method is a choice that funds can make (see paragraph 4 of the Guideline). The choice can be changed from year to year (see paragraph 27 of the Guideline).</p> <p>The date of effect for Part 1 of the Guideline is 1 July 2019, which is when the new deduction, enacted by the legislative amendments, commenced. This means funds have the flexibility to choose whether to use the account-based method and, if desired, the method can be applied retrospectively from as early as 1 July 2019 (depending on a fund's amendment period) or prospectively.</p> <p>For these reasons, a transitional compliance approach for Part 1 of the Guideline is not necessary.</p> <p>As noted in paragraph 5 of the Guideline, the Guideline does not apply to the other requirements, in paragraphs (a), (b) or (c) of table item 5 of subsection 295-490(1), which must also be satisfied for a payment of a</p>

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		financial advice fee to be deductible under that item. It is our expectation that funds would have a documented governance framework and assurance practices in place that are adequate in meeting their income tax obligations for the deduction of financial advice fees, for the purposes of satisfying those paragraphs (and paragraph (d), if another method is applied other than that outlined in the Guideline). This may be considered along with other relevant documentation when we engage with funds as part of our compliance programs.
2	<p><b>Clarification of the nature of financial advice fees – how they are paid and the exclusion of general advice – footnote 2</b></p> <p>Footnote 2 of the draft Guideline should be amended to provide further clarification of the nature of financial advice payments.</p> <p>The draft Guideline is dealing with matters relating to the deduction claimable by the superannuation fund for ‘an amount paid by’ the superannuation fund that satisfies the conditions in subsection 295-490(1). That may be an amount paid directly by the superannuation fund ‘to a financial adviser’ or it may be an amount paid by the fund ‘to’ the member or ‘to’ another entity as reimbursement for a qualifying amount paid by the member or other entity to the financial adviser.</p> <p>As the purpose of this footnote seems to be just to confirm the nature of the qualifying ‘financial advice fees’, to avoid any confusion regarding the payment that is deductible for income tax purposes, it is suggested that the words ‘by a superannuation fund’ be removed from the footnote.</p> <p>Further, footnote 2 of the draft Guideline outlines that ‘Funds may also charge a fee for general advice, as defined in that section, against members’ accounts’.</p> <p>We do not believe that this is technically correct. While it is possible to collectively charge members for the cost of</p>	<p>In the final Guideline, footnote 2 has been modified to address these issues by inserting:</p> <ul style="list-style-type: none"> <li>the phrase ‘, member or another entity’ after ‘a financial adviser’, and</li> <li>the words ‘indirectly (through member fees)’ before ‘charge a fee for general advice’.</li> </ul>

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	<p>personal financial advice as part of the member fee (that is, section 99F of the <i>Superannuation Industry (Supervision) Act 1993</i>) and for the cost of the provision of general advice to be incorporated within a member fee, it is not possible to directly charge members for general advice. It might be appropriate to add the words 'indirectly as part of a membership fee' prior to 'charge'.</p>	
3	<p><b>Clarification of the amount and timing of the fund's deduction</b></p> <p>The final Guideline should include a footnote after 'amount paid by the fund' in the second line of paragraph 12 of the draft Guideline to clarify the distinction between internal transactions of the superannuation funds and payments to external parties.</p> <p>The following footnote has been suggested to ensure that the fund trustees and their service providers are clear on this distinction:</p> <p style="padding-left: 40px;">For the sake of clarity, table item 5 of subsection 295-490(1) deals with deduction for income tax purposes for the amount paid by the fund to a relevant external party, being either a third-party financial adviser directly, or the member or another entity as reimbursement for relevant financial advice fees previously paid by the member or other party to the financial adviser. The subsection does not apply to amounts 'deducted' from the member account at the time this occurs – it applies only in respect of the amount paid by the fund to the external party at the time that payment is made by the fund.</p>	<p>In the final Guideline, footnote 7 has been inserted to address this issue.</p>
4	<p><b>Characterisation of financial advice fees paid prior to 1 July 2019 – Part 2 of the Guideline</b></p> <p>The ATO should consider exercising the Commissioner's remedial power to provide certainty that financial advice fees</p>	<p>To the extent that the concerns relate to possible breaches of a fund's pay as you go withholding obligations, we consider the practical compliance approach set out in Part 2 of the Guideline addresses the compliance concerns raised.</p>

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	<p>paid prior to the 2019–20 income year are not treated as superannuation benefits.</p> <p>There remains an ongoing concern that the ATO's interpretation suggests trustees may have breached pay as you go withholding obligations for financial advice fees paid prior to 1 July 2019.</p> <p>Applying the Commissioner's remedial power would ensure that financial advice fees paid prior to the 2020 income year are not treated as superannuation benefits, reducing complexity and avoiding unintended compliance concerns.</p>	<p>To the extent that there are broader concerns that the legislative amendments still leave uncertainty in relation to whether fees paid prior to 1 July 2019 would be regarded as 'superannuation benefits', we consider that any income tax related concerns should already be addressed by the Guideline or a fund or member's generally limited amendment period of up to 4 years.</p>
5	<p><b>Clarification of approach when a member transitions from accumulation to retirement phase during an income year</b></p> <p>The ATO should consider providing additional guidance on the treatment of financial advice fees for members who transition from accumulation to retirement phase within an income year, ensuring that funds can confidently apply the compliance approach without unintended risk.</p> <p>It is noted that members of superannuation funds who have met a condition of release and have commenced a retirement phase product, may continue to work and as a result also maintain an accumulation phase product.</p> <p>While fees charged to their retirement phase product would not be deductible, fees charged to their accumulation phase product should be deductible.</p>	<p>Part 1 of the Guideline sets out a methodology for the purposes of determining the extent to which payments of financial advice fees satisfy paragraph (d) of table item 5 of subsection 295-490(1). Under the account-based method, a financial advice fee that is paid from, or charged to, a member's accumulation phase account can be regarded as being incurred in relation to gaining or producing the fund's assessable income (refer to paragraph 25 of the Guideline).</p> <p>'How' the fund will demonstrate that the fee has been paid from or charged to an accumulation phase account (versus a retirement phase account) is a question of how the superannuation fund can substantiate that this methodology has been adopted. Substantiation of the requirements of table item 5 of subsection 295-490(1) falls outside the scope of this Guideline.</p>
6	<p><b>Substantiation requirements in relation to paragraphs (a), (b) and (c) of table item 5 of subsection 295-490(1)</b></p> <p>The ATO should consider providing further guidance in the final Guideline on how superannuation funds might also satisfy the requirements contained in paragraphs (a), (b) and (c) of table item 5 of subsection 295-490(1).</p>	<p>Part 1 of the Guideline does not apply to the requirements in paragraphs (a), (b) or (c) of table item 5 of subsection 295-490(1).</p> <p>The requirements in paragraphs (a), (b) and (c) of table item 5 of subsection 295-490(1), and how a fund can satisfy those requirements, are matters involving broader substantiation of the deduction. Substantiation falls outside the scope of this Guideline. However, as noted in paragraph 5 of the</p>

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		Guideline, it is expected that funds would have a documented governance framework and assurance practices in place that are adequate in meeting their income tax obligations for the deduction of financial advice fees, for the purposes of satisfying those paragraphs.
7	<b>Accounts based approach</b> We welcome and support the proposed 'account-based' approach outlined in the draft Guideline. We also welcome the ATO's expectation that large funds should have adequate governance frameworks and assurance activities in place to determine their income tax obligations in this regard, in place of specific requirements under paragraphs (a), (b) and (c) of table item 5 of subsection 295-490(1). We support the choice to apply this approach in any year, the ability to change that choice in later years and the fact that this choice must apply to all advice fees paid in that year. That is a practical position to have taken.	We have noted this submission.