


***TD 93/D138 - Income tax: is a taxpayer allowed a deduction under subsection 51(1) for management fees, in an income year, if those management fees are calculated as a percentage of the taxpayer's net profits of that same income year?***

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## Draft Taxation Determination

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**Income tax: is a taxpayer allowed a deduction under subsection 51(1) for management fees, in an income year, if those management fees are calculated as a percentage of the taxpayer's net profits of that same income year?**

1. No. A contract or agreement, which provides for management services to the taxpayer in an income year, and states the fee be calculated as a percentage of net profit of that same income year, only authorises the taxpayer to make the payment when due. The taxpayer will only become liable for the management fees when the net profit of the year of income can be determined.
2. The taxpayer's net profit can only be determined after the end of the financial period (*Galland v FC of T* 86 ATC 4885; (1987) 18 ATR 33). Until then, the management fee is only an expected liability of that income year. This applies even though the management fee is authorised by the contract or agreement. A liability which is only expected or likely to occur is not an allowable deduction in the income year (*FC of T v James Flood Pty Ltd* (1953) 88 CLR 492; 5 AITR 579).
3. A deduction for management fees calculated as a percentage of an income year's net profit will be allowed in the following income year, ie allowed as deduction in the income year in which the previous income year's net profit is determined.
4. On the other hand, if a condition of the contract or agreement specifically provides for an advance of the management fees, and an advance is made during the income year by the taxpayer, then the amount advanced is incurred for the purposes of subsection 51(1) of the *Income Tax Assessment Act 1936*.

**Commissioner of Taxation**

3/6/93

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: accruals; advances; consultancy fees; deductibility; management fees; prepayments; provisions;

Legislative Ref: ITAA 51

Case Ref: *James Flood Pty Ltd v F.C.T.*-(1953) 88CLR492 5 AITR 579

*Galland v F.C.T.*-1986ATC4885; (1987) 18 ATR 33

ATO Ref: UMG0020

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ISSN 1038 - 8982