


TD 94/D14 - 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?

 This cover sheet is provided for information only. It does not form part of *TD 94/D14 - 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?*

This document has been finalised by TD 94/37.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft 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 has no effect on the partner's rebate for personal superannuation contributions.
2. The amount of rebate for personal superannuation contributions that can be claimed depends on the 'assessable income' of the individual taxpayer. For taxpayers whose assessable income is \$27,000 or more, the maximum rebate reduces by 25 cents for each dollar of additional assessable income and hence no rebate is available where assessable income is \$31,000 or more.
3. Subsection 92(1) of the Act states that the assessable income of a partner in a partnership includes his/her 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) states 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 to mean a deduction allowable under the Act. From the definition of 'taxable income' in subsection 6(1) of the Act 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.

Examples 1:

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

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 \$1,100.

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

17/2/94

FOI INDEX DETAIL: Reference No.

Subject Ref: Superannuation; Rebates; Partnership

Legislative Ref: ITAA 159SZ; ITAA 92 (1) ; ITAA 92(2) ITAA 6(1)

ATO Ref: NOR J36/355/14

ISSN 1038 - 8982