


# ***TD 94/D29 - Income tax: who can claim a deduction, under subsection 69(1), for the tax related expense of a trust?***

 This cover sheet is provided for information only. It does not form part of *TD 94/D29 - Income tax: who can claim a deduction, under subsection 69(1), for the tax related expense of a trust?*

This document has been finalised by TD 94/91.

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: who can claim a deduction, under subsection 69(1), for the tax related expense of a trust?**

1. Only the trustee is entitled to claim the expense as a deduction in the trust's tax return.
2. Under subsection 69(1),
  - such expenditure must be in respect of a tax related matter of *the taxpayer*; and
  - can only be claimed as a deduction by *that taxpayer*;
3. It is the trust's tax related matter on which expenditure has been incurred; as the trustee is the taxpayer for the purposes of subsection 69, only the trustee is entitled to claim a deduction, in the trust's tax return, for the expenditure on the tax related matter.
4. In the instances of a beneficiary or a director of a trustee company, it is not their tax related matter on which expenditure has been incurred; it follows that neither the beneficiary nor the director is entitled to claim, in his/her/its own tax return, a deduction for that expense.

*Example 1:*

*B is the trustee for the B family trust. He pays a registered tax agent to prepare the returns for the trust. B may claim a deduction for this expense in the trust's tax return.*

*Example 2:*

*A family trust has a company as its trustee, of which A is a director. A pays a registered tax agent to prepare the trust return. A is not entitled to a deduction for this expense under subsection 69(1) as he is not the trustee.*

*Example 3:*

*B Pty Ltd is a beneficiary of a trust. B Pty Ltd pays a registered tax agent for the preparation of a letter of objection to the trust assessment the Commissioner has issued. B Pty Ltd is not entitled to a deduction for the expenditure under subsection 69(1) as it is not the trustee.*

---

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: tax related expenses; trusts; trustees; trustee company; directors

Legislative Ref: ITAA 69

Case Ref:

ATO Ref: UMG77

---

ISSN 1038 - 8982