

TD 97/D9 - Income tax: what is the purpose of sections 279E and 289A of the Income Tax Assessment Act 1936 ?

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This document has been finalised by TD 1999/6.

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Draft Taxation Determination

Income tax: what is the purpose of sections 279E and 289A of the *Income Tax Assessment Act 1936*?

1. Section 279E of the *Income Tax Assessment Act 1936* (ITAA 1936) enables a complying superannuation fund to claim a deduction for expenses incurred in relation to investments in a pooled superannuation trust (PST) or a life assurance policy. Similarly, section 289A enables a complying approved deposit fund (ADF) to claim a deduction for expenses incurred in relation to investments in a PST or a life assurance policy.
2. Without these provisions, expenses relating to the acquisition, holding or disposing of an investment in a PST would not be deductible because the realisation of an increase in the value of a PST unit is a capital gain that is excluded from assessable income by section 160ZYEB of the ITAA 1936. Expenses relating to investments in life assurance policies would not be deductible because any bonus realised by a complying superannuation fund or a complying ADF is excluded from assessable income by subsection 26AH(7) of the ITAA 1936 and section 282A or 291A of that Act.
3. Sections 279E and 289A provide the mechanism by which the deduction provisions in the ITAA 1936 and the *Income Tax Assessment Act 1997* (ITAA 1997) can apply to the expenditure incurred by a complying superannuation fund or a complying ADF in relation to investments in a PST or life assurance Policy. This is achieved by treating the profit, gain or bonus derived by these funds as income for the purpose of determining deductions.
4. Sections 279E and 289A do not provide for a new class of deductions, nor do they expand the scope of the deduction provisions. Expenditure by a complying superannuation fund or a complying ADF must be allowable under an existing provision of the ITAA 1936 or the ITAA 1997 to be deductible. Sections 279E and 289A simply ensure that, in applying the existing deduction provisions, profits, gains, or bonuses are treated as assessable income.
5. For example, Taxation Ruling TR 93/17 states that investment or administration charges levied by a life assurance company or PST are generally of a capital nature and therefore not deductible (see paragraph 23(d) of TR 93/17). Even though the income of the investments is treated as assessable income when determining deductions, sections 279E and 289A do not change the capital nature of these types of expenses. The restrictions in subsection 51(1) of the ITAA 1936 and section 8-1 of the ITAA 1997 continue to exclude any expenses of a capital nature relating to the acquisition, holding or disposing of an investment in a PST or a life assurance policy. Therefore, those investment or administration charges of a capital nature continue not to be deductible.

6. However, if the investment or administration charges are not of a capital nature and are incurred in deriving exempt income from a life assurance policy or a PST, those expenses are deductible because sections 279E and 289A treat the income as being assessable for the purposes of determining deductions.

7. Sections 279E and 289A were introduced by *Taxation Laws Amendment Act (No 2) 1996* (TLAA) and apply from 1 July 1988. This retrospectivity allows a complying superannuation fund or a complying ADF to seek an amendment to an assessment to claim the deduction not previously allowable. The four-year time limit in subsection 170(3) of the ITAA 1936 does not prevent the Commissioner from amending an assessment to allow the deductions (see section 4 of the TLAA).

Your comments

8. If you wish to comment on this draft Determination, please send your comments by **19 December 1997** to:

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Commissioner of Taxation
19 November 1997

FOI INDEX DETAIL: [Reference No.](#)

[Related Determinations:](#)

[Related Rulings:](#) TR 93/17

[Subject Ref:](#) approved deposit fund; life assurance policy; pooled superannuation trust

[Legislative Ref:](#) ITAA36 26AH(7); ITAA36 51(1); ITAA36 170(3); ITAA36 279E; ITAA36 282A;
ITAA36 289A; ITAA36 291A; ITAA97 8-1; TLAA 4

[Case Ref:](#)

[ATO Ref:](#) NAT 97/6097-1

ISSN 1038 - 8982