

TD 1999/6 - Income tax: what is the purpose of sections 279E and 289A of the Income Tax Assessment Act 1936 (ITAA 1936)?

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! This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

! This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

Taxation Determination

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

Preamble

*This Determination is a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding.*

Date of effect

This Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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. 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) and section 282A or 291A.
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 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 provide that in applying the existing deduction provisions profits, gains or bonuses will be treated as assessable income.

5. Sections 279E and 289A do not change the character of expenses. For example, paragraph 23(d) of 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. If the investment or administration charges are of a capital nature then they will not be deductible, even though the profits, gains or bonuses of the investments will be treated as assessable income. On the other hand, 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 will be deductible.

6. **The restrictions in subsection 51(1) of the ITAA 1936 and section 8-1 of the ITAA 1997 will 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.**

7. Sections 279E and 289A were introduced by the *Taxation Laws Amendment Act (No 2) 1996* (TLAA) and apply from 1 July 1988. This 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) does not prevent the Commissioner from amending an assessment to allow the deductions (see section 4 of the TLAA).

Commissioner of Taxation

5 May 1999

Previous draft:

TD 97/D9

Related Rulings/Determinations:

TR 93/17

Subject references:

approved deposit funds; complying ADFs; complying superannuation funds; deductions and expenses; life assurance expenses; life assurance policies; pooled superannuation trusts; superannuation fund expenses

Legislative references:

ITAA36 26AH(7); ITAA36 51(1); ITAA36 160ZYEB; ITAA36 170(3); ITAA36 279E; ITAA36 282A; ITAA36 289A; ITAA36 291A; ITAA97 8-1; TLAA(2)96 4

Case references:

ATO references:

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