


TD 94/91 - Income tax: who is allowed a deduction under subsection 69(1) of the Income Tax Assessment Act 1936 for expenditure in respect of a tax related matter of a trust?

 This cover sheet is provided for information only. It does not form part of *TD 94/91 - Income tax: who is allowed a deduction under subsection 69(1) of the Income Tax Assessment Act 1936 for expenditure in respect of a tax related matter of a trust?*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, 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 a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: who is allowed a deduction under subsection 69(1) of the *Income Tax Assessment Act 1936* for expenditure in respect of a tax related matter of a trust?

1. Section 69 provides a deduction for a taxpayer who incurs expenditure to the extent that it is in respect of either:

- (a) the management or administration of the taxpayer's income tax affairs; or
- (b) compliance with an obligation imposed on the taxpayer by a law of the Commonwealth insofar as the obligation relates to another taxpayer's income tax affairs.

2. A 'taxpayer', as defined in subsection 6(1), means a person deriving income or deriving profits or gains of a capital nature. For a trust estate, it is the trustee who conducts the affairs of the trust and in whose name the income is derived and expenses are incurred: see also the definition of 'net income' in subsection 95(1). It is the trustee of the trust therefore who is a 'taxpayer' for the purposes of subsection 69(1) in relation to the trust.

3. If a trustee of a trust incurs expenditure in respect of the management or administration of the income affairs of the trust or in compliance with an obligation under a Commonwealth law imposed on the trustee in respect of another taxpayer, a deduction is allowed for this expenditure in the tax return of the trust.

4. If a beneficiary of a trust or a director of a company which is a trustee of a trust, incurs expenditure on the management or administration of the income tax affairs of the trust, he or she is not allowed a deduction for this expenditure in his or her own income tax return. This is because the expenditure is in respect of a tax related matter of the trustee of the trust and is only an allowable deduction in the tax return of the trust.

5. However any taxpayer who incurs expenditure in respect of compliance with an obligation imposed by a Commonwealth law insofar as the obligation relates to the income tax affairs of a trust, is allowed a deduction for this expenditure. Even though such expenditure is related to the tax affairs of the trust the taxpayer who incurs this expenditure under that obligation is the 'taxpayer' for the purposes of subsection 69(1) and is allowed a deduction, in his or her tax return.

6. Further, if an allowable deduction for expenditure in respect of a tax related matter of the trust has been allowed or is allowable to the trustee of the trust, and any part of that expenditure has been paid for the trustee by another taxpayer, then under subsection 69(8), the assessable income of the trust must include any amount so paid.

Example 1:

B is the trustee of the B family trust. As trustee B pays a registered tax agent to prepare the tax return of the trust. A deduction is allowed for this expense in the tax return of the trust.

Example 2:

A family trust has a company as its trustee, of which A is a director. A pays for a registered tax agent to prepare the trust return. A is not allowed a deduction in his tax return for this expense under subsection 69(1) but the trust is allowed the deduction provided the trust includes in its assessable income the amounts so paid by the director.

Example 3:

A director of a corporate trustee incurs expenditure in complying with an obligation under the Income Tax Assessment Act to provide information relating to the income tax affairs of a beneficiary of the trust. A deduction is allowed to the trustee in the tax return of the trust for this expense.

Example 4:

A beneficiary of a trust incurs expenditure in complying with an obligation under the Income Tax Assessment Act to provide information relating to the income tax affairs of a trustee of a trust. A deduction is allowed to the beneficiary.

Commissioner of Taxation

1/12/94

FOI INDEX DETAIL: Reference No. I 1217985

Previously issued as Draft TD 94/D29

Related Determinations:

Related Rulings:

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

Legislative Ref: ITAA 69; ITAA 69(1); ITAA 69(8); ITAA 95(1)

Case Ref:

ATO Ref: UMG0077/TDUMG94/4; NAT 94/8502-3

ISSN 1038 - 8982