MLC TechConnect

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Deductibility of financial planning fees

Clients may be eligible to claim a tax deduction for adviser fees. The following article provides guidance on the concepts relating to deductibility of advice fees paid by individuals who do not carry on an investment business.

General principles

To be deductible, the fee must relate to:

- advice in managing the individual's tax affairs[1], or
- producing the client's assessable income[2] and is incurred directly by the client or indirectly via deductions from their personal investment.

Where the fee does not entirely relate to the above, the deduction must be apportioned in a fair and reasonable basis.

This article discusses and applies the concepts in the recently finalised ATO Taxation Determination 2024/7 which applies to individuals who do not carry on an investment business.

You should confirm with your licensee about the deductibility of any particular adviser fee and how to communicate deductibility with your client. You may also need to engage the client's registered tax agent.

1 s25-5 Income Tax Assessment Act 1997
2 S8-1 Income Tax Assessment Act 1997

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Fees for advice in managing tax affairs

Financial advice fees provided by a registered tax agent or recognised tax adviser may be deductible to the extent that the advice relates to helping the client to manage their tax affairs[3], such as advice fees relating to salary sacrifice arrangements and the tax implications of making deductible super contributions. Factual information about financial products that do not include applying or interpreting taxation laws to the client's personal circumstances are not deductible.

3 This includes tax (financial) advice as defined in s90-15 of the Tax Agent Services Act 2009

Fees that relate to producing assessable income

Where the fee is incurred in gaining or producing assessable income, it is generally deductible. A fee may be deductible even if assessable income is not produced in the financial year it was incurred or expected to be earned but not earned.

Where assessable income is not earned in the financial year, the fee must have sufficient connection to advice or services to directly gain or produce the individual's assessable income. The following will be considered to determine whether sufficient connection exists:

- Whether the expense was entirely preliminary to the gaining or producing of assessable income.
- The time between incurring the fee and the start of the income-producing activity. A longer period may indicate that the expense may not have been incurred for the purpose of gaining or producing of assessable income.

Fees of a capital expense

Fees that are incurred too early to be an expense incurred in producing assessable income are not deductible. Fees that do not relate to producing the client's assessable income may be treated as a capital expense and added to the asset's cost base.

Who can claim a deduction?

Only fees paid by the client are personally deductible. Confusion can arise where some fees are paid from managed funds by the investment provider.

How are the fees paid?

Fees charged to a managed fund are generally paid by:

- redeeming a portion of the investment to pay the fees directly, or
- paying fees within the units, which reduces the unit price.

If the fee was paid through a redemption of units, it can be argued that the fee was notionally paid by the client themselves (the client may also have CGT to pay on the redeemed units).

If the fee was paid by reducing the unit price, it is incurred by the provider. Whilst no deduction can be claimed by the client, the unit price reduces by the fee incurred and as a result will reduce the assessable capital gain when the client eventually redeems the units.

Example – Fee incurred by individual

Blanca owns 100,000 units (each worth $1) in the Mystery Unit Trust. An adviser fee of $1,000 is paid from the Unit Trust to her adviser, Scott, for ongoing investment advice.

This fee is created by selling down 1,000 of Blanca's units. This adviser fee is deductible to Blanca. Any capital gain (after any 50% CGT discount) on the sale of the units is included in her assessable income.

Example – Fee incurred by the provider

Sigmund owns 100,000 units (each worth $1) in the Parsnip Unit Trust. A fee of $1,000 is paid from the unit trust by reducing the value of each unit by 1c. This fee is not deductible to Sigmund as it is the trust that has incurred the expense.

Fees paid by the individual

The following table outlines the general deductibility of fees paid by the client to the adviser.

Type of fee	Deductible to client?	Further comments
Upfront adviser fees	No	Capital in nature
Adviser fees for a major portfolio overhaul	No	Capital in nature
Ongoing adviser fees	Yes	Provided the fees are incurred in producing assessable income for the client
Adviser fees on super	No	Do not produce assessable income for client
Adviser fees on internally taxed investments	No	Do not produce assessable income for client

Initial advice fees

Initial advice fees to produce a Statement of Advice are not deductible to the client to the extent the adviser provides preliminary advice to acquire an investment portfolio, as this relates to the setting up of the income earning activity (eg acquisition of investments).

Fees are also not deductible where the client already holds an investment portfolio and a new financial adviser makes recommendations and advises on the income earning structure after considering the client’s situation. Such fees are viewed by the ATO to have been incurred too early to be expenses incurred in producing assessable income and there is no sufficient connection between the fee and the income-producing investments. The expense will be capital in nature and may be added to the investment’s cost base to reduce assessable capital gains upon sale.

Adviser fees for a major portfolio overhaul

Fees incurred to implement a new investment strategy that may alter or overhaul a client’s portfolio, or substantially review a client’s position (such as if they have a permanent disability), may be viewed as being capital in nature, even if many of the investments are already in place before the review. Such fees add to the cost base for CGT purposes.

Ongoing adviser fees

Ongoing adviser fees for maintaining an investment portfolio are deductible as these relate to producing the client’s assessable income. That said, ongoing fees relating to assets that do not produce assessable income for the client (such as super accumulation interests) are not deductible to the client. Advice on investing additional funds is also not tax deductible.

Insurance product fees

The deductibility of advice fees for advice on insurance products depends on whether the premiums are deductible. Fees for advice on income protection insurance are deductible provided the premiums are also deductible. However, fees for financial advice on other types of insurance products (eg life, TPD and trauma insurance) are not generally deductible, because the fees are not incurred in gaining or producing assessable income.

Apportionment of deductions

It may be necessary to determine what proportion of fees paid by a client relate to advice on producing assessable income and managing tax affairs are deductible. The ATO’s view in TD 2024/7 is that the deductible amount should be apportioned on a fair and reasonable basis. The client should retain evidence of the method of apportionment, otherwise the fee cannot be deducted.

A financial adviser can provide an itemised invoice, a fee disclosure statement or an advice fee consent form with the:

- name of the financial adviser
- expense amount
- explanation of the advice provided
- date the expense was incurred, and
- date of invoice.

Example – Apportionment of deduction

Claude is a qualified financial adviser and recognised tax adviser. Claude meets with a new client Minnie, who is an Australian resident and works as a lawyer. Her assets include a bank account, term deposits, a share portfolio and superannuation. Minnie seeks advice on her financial circumstances, her pre-existing investments and how she can increase her regular income. Claude conducts a thorough fact-finding process to determine her needs and objectives, evaluates her financial circumstances, considering her assets and liabilities, income, risk profile and marginal tax rate. Minnie's share portfolio pays dividends bi-annually.

Claude recommends that Minnie diversify her investment portfolio by keeping her share portfolio and investing any new savings in managed funds that provide regular distributions. Claude advises on the tax implications of the investments for Minnie, including her tax liabilities, obligations and entitlements when acquiring, holding and disposing of the managed fund units. Minnie can reasonably be expected to rely on Claude's advice.

To the extent that Claudio charges Minnie for reviewing her financial situation, including retaining her pre-existing investments and investing in managed funds, this portion of the fee is non-deductible. This portion of the fee is a capital expense as is incurred in relation to the income-earning structure and acquiring income-earning investments.

Minnie can claim a deduction for the portion of the fee that relates to tax (financial) advice provided by Claude, a recognised tax adviser. The tax (financial) advice in Minnie's situation relates to advice on the taxation implications of Minnie's investments which will help her manage her tax affairs.

As Claude's advice is provided for multiple purposes, Minnie must apportion the total amount of the fee between deductible and non-deductible components on a fair and reasonable basis.

Fees paid by providers

The table below outlines the general deductibility of fees paid directly from the investment, followed by an explanation.

Type of fee	Deductible to client?	Further comments
Fees in super account	No	Not producing assessable income for client
Ongoing adviser fees paid from pension	No	Incurred by provider, not client
Managed fund entry fees / deferred entry fees	No	Capital in nature
Management fees on managed funds	No[1]	Incurred by provider, not client
Adviser fees paid from wrap or managed fund (non-super)	Yes[2]	Incurred in producing assessable income

1 Assuming management fees are not paid by selling down units.
2 Assuming fees are paid either by selling down units or from cash account of wrap.

Fees paid internally by super provider

Some fees paid internally by the super provider are deductible to the trustee(s) where it relates to producing investment income for the super fund. The expense is passed on to the member's account in a fair and reasonable manner. Ongoing adviser fees paid by the client relating to investments that relate to accumulation super accounts are not deductible to the client as these do not produce the client's assessable income.

Adviser fees on internally taxed investments

Much like super, fees paid directly to an adviser by a client that relate to ongoing investment advice on internally taxed investments are not tax deductible to the client. This is because the life insurance companies and providers are the entities for which these investments produce assessable income, not the clients. Internally taxed investments include:

- investment bonds,
- whole of life policies, and
- endowment warrants.

Managed investments and wraps (non-super)

To determine who has incurred fees charged on managed investments and wraps (non-super) it is necessary to check the PDS or contact the provider.

In most cases, entry fees (and subsequently exit fees resulting from low entry fee products) are not deductible as the ATO views these as capital in nature. Being capital in nature, these fees are added to the cost base for CGT purposes depending on the type of asset.

Generally, management fees (such as management expense ratios or MERs) incurred through a managed fund are not deductible to a client and reduces the unit price, resulting in the units having a lower capital value (potentially reducing CGT on sale).

Some adviser fees may be deductible where incurred through an investment platform (such as an adviser service fee through a managed fund). Deductibility of the fee depends on how the fee was paid, eg paid via redemption of units or reduction in unit price (see 'How are the fees paid?' on page 2 for more information).

Adviser fees paid from the cash account of a wrap account are treated as being paid by the client directly and hence may be deductible.

Contact details

Disclaimer and important information

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