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Dear Danijela,

Draft Taxation Determination TD 2023/D4

Income tax: deductions for fees paid for financial advice by individuals who are not carrying on a business

We refer to the Draft Taxation Determination TD 2023/D4 released on 13 December 2023 (**Draft Determination**) for public comment. We also note that the previous Taxation Determination TD 95/60 originally released on 6 December 1995 (**TD 95/60W**) has been withdrawn.

The Chartered Accountants Australia and New Zealand, CPA Australia, Financial Advice Association of Australia and Institute of Public Accountants (collectively, the **Professional Associations**) welcome the decision by the Australian Taxation Office (**ATO**) to release new guidance on deductions for fees paid for financial advice by individuals.

Overall, we are unanimous in our view that the Draft Determination represents a significant improvement to TD 95/60W and better reflects some of the changes that have occurred in the financial advice profession since 1995. Further, it is acknowledged that in publishing the Draft Determination, the ATO has had regard to our previous feedback provided on a confidential basis. Specifically, the Draft Determination:

- uses examples that are more closely aligned to ‘real world’ scenarios whereby individuals seek out and receive financial advice; and
- seeks to address the regulatory link between financial advice and tax advice, including by recognising the key concepts ‘tax (financial) advice’ and ‘qualified tax relevant provider’.

Notwithstanding the above, we respectfully submit that further work should be undertaken by the ATO to refine the Draft Determination prior to the issue of a final determination.

Our comments have been ordered as follows:

1. The case for tax deductibility of financial advice fees as part of an initial advice arrangement;
2. Apportionment principles and evidentiary requirements;
3. Date of application; and

4. Other comments.

1. The case for tax deductibility of financial advice fees as part of an initial advice arrangement

The Draft Determination does not reflect the case for tax deductibility of financial advice as part of initial advice arrangements.

Whilst acknowledging the statutory limitations in applying the principles of section 8-1 and section 25-5 of the ITAA 1997 to an individual's circumstances, the Draft Determination states that it is not intended to represent a change in the Commissioner's view on the deductibility of financial advice fees¹.

Relevantly, the Commissioner's prevailing view remains that a fee for financial advice in connection with a proposed investment prior to acquisition of the asset is both:

- not incurred in gaining or producing assessable income²; and
- capital or capital in nature³.

This is the case, notwithstanding the clear shift from an example in TD 95/60W where a fee is paid to draw up an **investment plan** to Example 1 in the Draft Determination where a fee is paid for **personal advice**.

Prior to recent regulatory reform, an investment plan in 1995 did not necessarily require consideration of an individual's objectives, financial situation or needs. It follows that an investment plan could have been delivered in circumstances where an individual has a lump sum of money available to invest. Practically, this means it was less likely that an adviser was required to consider an individual's pre-existing income producing assets. If that was the case, there could be little nexus between that person's existing income, liabilities, financial assets and the new investments acquired in accordance with the plan. This made the essential character of that investment plan *structural* in nature.

By contrast, in 2024 all financial advice requires consideration of an individual's financial situation and needs, with relevant strategies delivered to meet their goals and objectives. Practically, this requires consideration or advice regarding an individual's pre-existing income producing assets. In this instance there is a clear nexus between that person's existing income, liabilities, financial assets and the new investments acquired in accordance with the advice. This makes the advice *incremental* in nature.

Given financial advice is most often provided to working or older Australians with existing investment portfolios, looking to provide for their families or retirement, it is considered that the vast majority of financial advice requires specific consideration of pre-existing income producing assets. Given this, the Commissioner should consider specific examples where advice requires either consideration about pre-existing income producing assets or specific advice on such assets. In this context, the Draft Determination should reflect the case for tax deductibility of financial advice fees as part of an initial advice arrangement.

To the extent that the Commissioner maintains his preferred view, we consider that the alternative view should be included in the compendium to the final determination. In this regard, the Commissioner should further explain how he reached his preferred view in the specific context of the changes that have occurred in the financial advice profession since 1995.

Our more detailed comments follow:

¹ Refer paragraph 4 of the Draft Determination.

² Refer paragraph 18 of the Draft Determination.

³ Refer paragraph 22 of the Draft Determination.

Sufficient connection in time

For both TD 95/60W and the Draft Determination, the Commissioner supports his view that the fee is not incurred in gaining or producing assessable income by citing the decision of the Full High Court in *FCT v Maddalena* (1971) 2 ATR 541, and the discussion of that case by Hill J in *FCT v Cooper* (1991) 21 ATR 1616⁴.

In *Maddalena*, the taxpayer was a professional footballer who incurred travel and legal expenses in order to seek and obtain a contract with a new professional football club. The Full High Court held that travel expenses incurred to obtain employment do not form an outgoing incurred in the course of earning wages payable in employment and therefore were not deductible. In essence, there was an insufficient connection in time between the expenses incurred to obtain employment and the wages payable in employment.

For the purposes of the Draft Determination, we submit that *Maddalena* should be contrasted with the more contemporaneous decision in *Spriggs v FCT; Riddell v FCT* (2009) 72 ATR 148 which could not have been considered when the Commissioner initially came to the position in TD 95/60W, but can be considered now.

In *Spriggs*, the taxpayers were also professional footballers, who incurred expenses for the services of a sports management company that negotiated both employment contracts with professional football clubs and related business contracts. This time the Full High Court held that management company expenses incurred in negotiating employment contracts were deductible. In distinguishing *Maddalena*, the Court relied on the fact that the employment contracts specifically anticipated other income from the related business contracts.

Whilst *Spriggs* is an important precedent that limits the influence of *Maddalena* in denying deductions for expenses incurred to obtain employment, it is the sufficient connection in time between expenses incurred and business income that is most relevant for financial advisers. Put simply, it is considered that a similar connection in time exists where an individual incurs expenses for the services of a financial adviser with regards to pre-existing financial assets as well as the specific anticipation of investment income.

It is well accepted that expenditure can satisfy the positive limbs of section 8-1 even though it is incurred in a period prior to any expected resultant income. This position was confirmed by the ATO in *TR 2004/4: Income tax: deductions for interest incurred prior to the commencement of, or following the cessation of, relevant income earning activities (TR 2004/4)*. TR 2004/4 references *Ronpibon Tin NL and Tongkah Compound NL v. FC of T (1949) 78 CLR 47* at 56 per Latham CJ, Rich, Dixon, McTiernan and Webb JJ:

‘The words ‘such income’ [in subsection 51(1)] mean ‘income of that description or kind’ and perhaps they should be understood to refer not to the assessable income of the accounting period but to assessable income generally. If they were so interpreted, they would cover a case where the business had not yet produced ... assessable income.’

This proposition was supported by a High Court majority in *Steele v. FC of T (1999) 41 ATR 139 (Steele)* which confirmed that costs incurred in relation to future income-producing activities are not automatically considered capital in nature, and therefore non-deductible, merely because the income producing activities have not yet commenced. If the nature of the activities are relevant and incidental to the income-producing activities, then they may be deductible even if the income earning activities have not commenced.

Accordingly, the activities undertaken by a financial adviser, such as providing personal advice, is both incidental and relevant to gaining or producing assessable income in the same way as the interest income was considered so in *Steele*. The fee is not preliminary in nature, as was the case for the cost of the feasibility study in *Softwood Pulp and Paper Ltd v FCT (1976) 7 ATR 101*.

⁴ Refer paragraph 3 of TD 95/60W and paragraph 18 of the Draft Determination.

Capital or capital in nature

In the Draft Determination, the Commissioner supports his view that the fee is capital or capital in nature as it is incidental to the cost of acquiring the investment by citing the Full High Court decision in *Sun Newspapers v FCT (1938) 61 CLR 337*.

Applying the principles of *Sun Newspapers*, the Commissioner infers that a fee for initial advice on continuing and proposed investments could be said to be “one off” and “expected to have an enduring or lasting benefit”. It is arguable that the investment plan considered in TD 95/60W, as a standalone item, could be said to be a one off or expected to have an enduring benefit.

However, in many cases initial advice is not in fact a one off, but rather the commencement of an ongoing advice arrangement or the commencement of a new ongoing arrangement with a different adviser. In this regard, it would not be the initial advice which gives rise to an enduring benefit but the start of a continuing relationship between an individual and their adviser. This principle is reflected in Example 2 where continued advice on the suitability and performance of investments is provided. In this context, the initial advice is no longer enduring, but subject to the continued relationship between the individual and their financial adviser.

The apportionment principles and evidentiary requirements

Paragraphs 36 to 40 of the Draft Determination deal with the issue of apportionment. Paragraph 40 provides:

“40. It is up to the individual to provide evidence of a fair and reasonable method of apportionment. If sufficient evidence is not available to support the apportionment methodology used, no deduction will be allowable.”

Paragraphs 41 to 42 of the Draft Determination deal with evidentiary requirements. Paragraph 42 provides:

42. An itemised invoice (including for example, a fee disclosure statement or an advice fee consent form) from a financial adviser which details the following will be sufficient written evidence to be entitled to claim a deduction:

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

A financial adviser may decide to charge a fixed fee for advice, based on the complexity of a case and the number of strategies to be considered. It follows that it should be possible for a financial adviser to itemise an invoice in one of several ways to support appropriate apportionment:

- to specify hours spent on individual tasks, including which of those tasks may be deductible;
- to specify the strategies implemented in the advice, including which of those strategies relate to tax and therefore may be deductible;
- to specify the assets involved in the advice, including where the fees are deductible.

Whilst each of examples 1 to 4 reiterate the need to apportion a fee⁵, none of the examples provide specific guidance on how a fee can be apportioned. We consider the Commissioner should consider updating at least one example to provide an indication of how charging by the financial adviser is apportioned in preparing and delivering each specific component of the advice.

⁵ Paragraph 48, 52, 59, 67 of the Draft Determination.

Date of application

As the focus of the draft TD is deductions for fees paid for financial advice by individuals, we submit that the position in TD 2023/D4 should apply for income years beginning on or after 1 July 2023 rather than from the date of withdrawal of TD 95/60. This will ensure that individuals preparing their income tax returns who have received financial advice during the income year will only be required to apply the updated view in TD 2023/D4 without considering the superseded view in TD 95/60W. In a financial advice context, splitting and apportioning fees during a year between what was pre 13 December 2023 and what was post would be extremely complicated for both clients and financial advisers. We would also argue that the extent to which a fee was deductible under 25-5 ITAA 1997 was a right that existed prior to the release of the draft TD.

Other comments

In addition to the comments above, further comments regarding other aspects of the Draft Determination are set out below:

General

Paragraph 1

We agree that the scope of the ruling is restricted to when an individual may be entitled to a deduction under section 8-1 ITAA 1997 or section 25-5 ITAA 1997, however it should be noted for completeness that we anticipate that both tax agents preparing returns for individuals and financial advisers issuing itemised invoices will rely on the ruling for their purposes.

Paragraph 6

The concepts of tax (financial) advice service and qualified tax relevant provider (**QTRP**) should be further explained.

It would also be helpful to explain where an individual could go to confirm that their financial adviser is in fact a QTRP. Since 1 February 2023, the Financial Advisers Register has publicly displayed whether a relevant provider can provide tax (financial) advice services via the Financial Advisers Register on the moneysmart.gov.au platform: <https://moneysmart.gov.au/financial-advice/financial-advisers-register>.

Examples

Examples generally

The last sentence in each example specifies that the total of the fee needs to be apportioned into components on a fair and reasonable basis. As these comments pertain to the whole of each example, it would be helpful if they were addressed in a standalone section with additional principle level guidance provided (see comments in table below).

Example 1 and 2

In Example 1 and 2, there is currently no mention of any pre-existing investments held by Min-Ji. The status of pre-existing investments was addressed in paragraph 7 of TD 95/60W.

We consider it would be helpful if Examples 1 and 2 were slightly expanded such that Claudio also reviews Min-Ji's existing investments in the context of her financial objectives, situation and needs and retains investments appropriate to such objectives, etc.

Our understanding of the ATO's view is the continuing fee for that which relates to ongoing advice on the suitability and performance of investments is deductible under section 8-1 of the ITAA 1997 remains deductible under section 8-1.

Example 2

For the continuing arrangement, where the component of the fee that relates to ongoing advice on the suitability and performance of investments is deductible under section 8-1 of the ITAA 1997, it would be helpful to confirm this is the case where the fee is simply:

- Deducted directly from the financial product (noting the example does not relate to a fee deducted from a superannuation fund which is specifically excluded from the scope of the ruling);
- Calculated as a percentage of the value of the investment.

In both these cases, the essential character of the advice remains the same, it is just the payment method or calculation of the fee that may be different.

Our more detailed comments regarding each example are provided below:

Example 1 – initial advice arrangement

Paragraph	Comment, consider updating as follows:	Explanation
<p>43. Claudio is a financial adviser authorised to provide personal advice to retail clients of a financial services company which holds a financial service licence. Claudio is a recognised tax adviser for the purposes of section 25-5.</p>	<p>43. Claudio is a financial adviser authorised to provide personal advice to retail clients of<u>by</u> a financial services company which holds a financial service licence. Claudio is a recognised tax adviser for the purposes of section 25-5, <u>as he is registered with ASIC as a qualified tax relevant provider.</u></p>	<p>As outlined above, the concept of QTRP should be further explained.</p>
<p>44. Claudio meets with a new client Min-Ji, an Australian resident who earns salary, has savings in an interest-bearing account and who is a member of a superannuation fund. Min-Ji is seeking financial advice from Claudio to enable her to increase her regular income by generating higher investment returns.</p>	<p>44. Claudio meets with a new client Min-Ji, an Australian resident who earns salary, has savings in an interest-bearing account and who is a member of a superannuation fund. Min-Ji is seeking financial advice from Claudio to enable her to increase her regular income by generating higher investment returns. <u>The advice provided by Claudio is expected to be relevant to this objective.</u></p>	<p>Clarification only.</p>
<p>45. Claudio and Min-Ji agree that Claudio will provide the financial advice for a fee. Claudio makes relevant enquiries through the completing of a fact-finding process to determine Min-Ji’s needs and objectives.</p>	<p>45. Claudio and Min-Ji agree that Claudio will provide the financial advice for a <u>fixed fee</u>. <u>Claudio estimates his fee based on his experience in delivering similar advice to other individuals and the nature of the services to be provided.</u> Claudio makes relevant enquiries through the completing of a fact-finding process to determine Min-Ji’s needs and objectives.</p>	<p>Update to specify the basis for the fee.</p>
<p>46. Claudio assesses Min-Ji’s financial situation by considering her assets and liabilities, income, risk profile and tax profile. Claudio recommends that Min-Ji invest her savings in a managed investment scheme which provides a periodic return. In providing this advice, Claudio interprets and applies</p>	<p>46. Claudio assesses Min-Ji’s financial situation by considering her assets and liabilities, income, risk profile and tax profile. Claudio recommends that Min-Ji <u>retains some savings in an existing high interest account and</u> invest <u>a portion of</u> her savings in a managed investment scheme which provides a</p>	<p>Update to make it clear Claudio has both considered and provided advice in relation to pre-existing income producing assets.</p>

Paragraph	Comment, consider updating as follows:	Explanation
<p>the tax laws to Min-Ji's circumstances and provides advice about liabilities, obligations and entitlements when acquiring, holding and disposing of the investment. It is reasonable to expect that Min-Ji will rely on the advice provided by Claudio.</p>	<p>periodic return. In providing this advice, Claudio interprets and applies the tax laws to Min-Ji's circumstances and provides advice about liabilities, obligations and entitlements when acquiring, holding and disposing of the investment. It is reasonable to expect that Min-Ji will rely on the advice provided by Claudio.</p>	
<p>47. To the extent that Claudio charges Min-Ji for his work in recommending the investment and acquiring the units in the fund on her behalf, this is not deductible under section 8-1 because it is a fee incurred as part of putting the income-earning investment in place and does not have a sufficient connection with earning income from the investment. Further, it is considered to be capital or of a capital nature and may be included in the cost base of the investment for capital gains tax purposes.</p>	<p>Current ATO view:</p> <p>47. To the extent that Claudio charges Min-Ji for his work in recommending the investment and acquiring the units in the fund on her behalf, this is not deductible under section 8-1 because it is a fee incurred as part of putting the income-earning investment in place and does not have a sufficient connection with earning income from the investment. Further, it is considered to be capital or of a capital nature and may be included in the cost base of the investment for capital gains tax purposes.</p> <p><u>Alternative view:</u></p> <p><u>47. To the extent that Claudio charges Min-Ji for his work in both recommending she retain pre-existing investments and the new investment in the fund, this is deductible under section 8-1 because there is a sufficient connection between the fee and earning income from the investments. Further, it is not capital or of a capital nature as the fee is not incidental to the cost of acquiring a new investment.</u></p>	<p>Update to reflect the case for tax deductibility, as per detailed comments above.</p>
<p>48. Min-Ji will be able to claim a deduction under section 25-5 in relation to the tax (financial) advice</p>	<p>48. Min-Ji will <u>also</u> be able to claim a deduction under section 25-5 in relation to the tax (financial)</p>	<p>As per above, apportionment sentence should be stand-alone paragraph.</p>

Paragraph	Comment, consider updating as follows:	Explanation
<p>provided by Claudio. This is because the advice was provided by a recognised tax adviser and was in relation to managing Min-Ji's tax affairs. The tax (financial) advice in this situation is the advice relating to the taxation implications of the investment in the specific fund nominated. As the advice is provided for multiple purposes, Min-Ji needs to apportion the total amount of the fee between the different components of the advice on a fair and reasonable basis.</p>	<p>advice provided by Claudio. This is because the advice was provided by a recognised tax adviser and was in relation to managing Min-Ji's tax affairs. The tax (financial) advice in this situation is the advice relating to the taxation implications of the investment in the specific fund nominated. As the advice is provided for multiple purposes, Min-Ji needs to apportion the total amount of the fee between the different components of the advice on a fair and reasonable basis.</p>	
N/A	<p><u>48A.</u> As the advice is provided for multiple purposes, Min-Ji needs to apportion the total amount of the fee between the different components of the advice on a fair and reasonable basis. <u>Claudio issues Min-Ji an itemised invoice. In doing so, he proportions the fixed fee into components such as personal advice regarding both existing and new investments and time spent preparing his tax (financial) advice.</u></p>	Update to reflect apportionment and evidentiary requirements.

Example 2 – continuing arrangement

Paragraph	Comment	
<p>49. After Min-Ji acquires the investment in the managed fund, she agrees to enter into an ongoing arrangement where Claudio will continue to provide her with advice on the suitability and performance of her investment for a fee. Claudio also agrees to provide Min-Ji with budgeting advice to enable her to increase her savings.</p>	<p>49. After Min-Ji acquires the investment in the managed fund, she agrees to enter into an ongoing arrangement where Claudio will continue to provide her with advice on the suitability and performance of her investment for <u>an annual fixed fee. Min-Ji agrees for her fee to be deducted from her fund balance.</u> Claudio also agrees to provide Min-Ji with budgeting advice to enable her to</p>	Update to specify the basis for the fee.

Paragraph	Comment	
	increase her savings. <u>This fee will be charged to Min-Ji directly.</u>	
50. From time to time, Claudio suggests that Min-Ji change her mix of investments in the managed fund in order to achieve her original goals and objectives. When Min-Ji agrees with these changes, Claudio actions Min-Ji's request to modify the risk profile of her investment in the managed investment scheme. This does not result in Min-Ji acquiring or disposing of her interest in the managed fund.	50. From time to time, Claudio suggests that Min-Ji change her mix of investments within the managed fund in order to achieve her original goals and objectives. When Min-Ji agrees with these changes, Claudio actions Min-Ji's request to modify the risk profile of her investment <u>by changing between underlying options within the managed fund platform.</u> <u>This does not result in Min-Ji acquiring or disposing of her interest in the managed fund.</u>	Update to reflect that where Min-Ji's risk profile has changed, the investment allocations within the managed fund would also need to change.
51. In this case, the component of Claudio's fee that relates to the ongoing advice on the suitability of Min-Ji's investments is deductible under section 8-1. This is because the expenditure is incurred in the course of gaining or producing assessable income from the managed investment scheme. In this case there is a sufficient connection between the fee for the ongoing advice and the investment in the scheme which produces Min-Ji's assessable income.	51. In this case, the component of Claudio's fee that relates to the ongoing advice on the suitability of Min-Ji's investments is deductible under section 8-1. This is because the expenditure is incurred in the course of gaining or producing assessable income from the managed investment scheme. In this case there is a sufficient connection between the fee for the ongoing advice and the investment in the scheme which produces Min-Ji's assessable income.	N/A
52. The fee for the advice provided on the budgeting matters is not deductible under section 8-1 as it is not incurred in gaining or producing Min-Ji's assessable income. It is considered to be a private or domestic expense. The fee is also not deductible under section 25-5 as it is not a fee incurred in managing Min-Ji's tax affairs. As the advice is provided for multiple purposes, Min-Ji needs to apportion the total amount of the fee between the different components of the advice on a fair and reasonable basis.	52. The fee for the advice provided on the budgeting matters is not deductible under section 8-1 as it is not incurred in gaining or producing Min-Ji's assessable income. It is considered to be a private or domestic expense. The fee is also not deductible under section 25-5 as it is not a fee incurred in managing Min-Ji's tax affairs. <u>As the advice is provided for multiple purposes, Min-Ji needs to apportion the total amount of the fee between the different components of the advice on a fair and reasonable basis.</u>	As per above, apportionment sentence should be stand-alone paragraph.

Paragraph	Comment	
N/A	52A . As the advice is provided for multiple purposes, Min-Ji needs to apportion the total amount of the fee between the different components of the advice on a fair and reasonable basis. Claudio issues Min-Ji an itemised invoice. In doing so, he proportions the annual fixed fee into components such as preparing personal advice regarding suitability and performance of her investment and time spent preparing advice on budgeting matters.	Update to reflect apportionment and evidentiary requirements.

Example 3 – advice in relation to insurance policies

Paragraph	Comment, consider updating as follows:	Explanation
53. Lara is a financial adviser and authorised to provide a comprehensive range of personal advice to retail clients as a representative of a company which holds a financial services licence. Lara is a recognised tax adviser for the purposes of section 25-5.	53. Lara is a financial adviser and authorised to provide a comprehensive range of personal advice to retail clients as a representative of a company which holds a financial services licence. Lara is a recognised tax adviser for the purposes of section 25-5, as she is registered with ASIC as a qualified tax relevant provider .	As outlined above, the concept of QTRP should be further explained.
54. Lara meets with Ollie who is seeking advice on his insurance needs to protect his lifestyle and family. Ollie already has income protection insurance but now would like advice from Lara about any other insurance policies that he should take out.	54. Lara meets with Ollie who is seeking advice on his insurance needs to protect his lifestyle and family. Ollie already has income protection insurance but now would like advice from Lara to review his income protection cover and about any other insurance policies that he should take out.	Note only: Practically speaking, a financial adviser in this scenario would consider and advise on any pre-existing insurance policies.
55. Lara makes relevant enquiries about Ollie's personal circumstances. Lara assesses Ollie's financial situation by considering his assets and	55. Lara makes relevant enquiries about Ollie's personal circumstances. Lara assesses Ollie's financial situation by considering his assets and	Note only: In this instance, it is assumed the reference to 'life insurance' is the more general

Paragraph	Comment, consider updating as follows:	Explanation
<p>liabilities, income, risk profile and tax profile. In doing so, Lara considers the costs and benefits of holding life insurance policies both inside and outside of superannuation before making any recommendations.</p>	<p>liabilities, income, risk profile and tax profile. In doing so, Lara considers the costs and benefits of holding <u>a package of</u> life insurance policies both inside and outside of superannuation before making any recommendations.</p>	<p>term encompassing death, total and permanent disability, trauma and income protection.</p>
<p>56. Lara provides advice to Ollie about how much insurance cover Ollie needs to protect his lifestyle and family. Lara advises Ollie about the tax implications of making payments for life, total and permanent disability and trauma insurance policies. She also advises Ollie about the income tax treatment of any lump sum payments received under the policies. It is reasonable to assume that Ollie will rely on Lara's advice for tax purposes.</p>	<p>56. Lara provides advice to Ollie about how much insurance cover Ollie needs to protect his lifestyle and family. Lara advises Ollie about the tax implications of making payments for <u>income protection</u>, life <u>(death)</u>, total and permanent disability and trauma insurance policies. She also advises Ollie about the income tax treatment of any <u>periodic or</u> lump sum benefit payments received under the policies. It is reasonable to assume that Ollie will rely on Lara's advice for tax purposes.</p>	<p>Update to make it clear Lara has both considered and provided advice in relation to the pre-existing income protection insurance policy.</p>
<p>57. Lara advises Ollie to apply for a number of policies provided by an insurance company and that these policies should be held outside of the superannuation system. Lara charges Ollie a fee for providing this advice.</p>	<p>57. Lara advises Ollie to apply for a number of policies provided by an insurance company and that these policies should be held outside of the superannuation system. Lara charges Ollie a <u>fixed fee</u> for providing this advice. <u>The fee is separate from any commission Lara may receive from the insurance company.</u></p>	<p>It is important to clarify that a financial adviser recommending risk products may charge a fee for their work in determining relevant cover and identifying policies as well as advising on the tax implications.</p> <p>Separately, that adviser may also be paid a commission by the insurance company as a percentage of the premium paid by the individual (both initial and ongoing). In the case of income protection insurance, the premium remains deductible to the individual, notwithstanding some of that premium may be indirectly paid to the adviser by way of commission.</p>
<p>58. The component of the fee that relates to the provision of advice on the life, total and permanent disability and trauma insurance policies will not be</p>	<p>58. <u>The component of the fee that relates to the provision of advice on income protection insurance policies will be deductible under section 8-1. This is</u></p>	<p>This is relevant for the fee for work in determining relevant cover and identifying policies and advising on tax, not the commission.</p>

Paragraph	Comment, consider updating as follows:	Explanation
deductible under section 8-1. This is because the expenditure is considered to be capital or of a capital nature.	<u>because there is a sufficient connection between the fee and any periodic payments received under the policy.</u> The component of the fee that relates to the provision of advice on the life (<u>death</u>), total and permanent disability and trauma insurance policies will not be deductible under section 8-1. This is because the expenditure is considered to be capital or of a capital nature.	
59. Ollie will be able to claim a deduction under section 25-5 in relation to the tax (financial) advice provided by Lara. This is because the advice was provided in relation to managing Ollie's tax affairs and it was provided by a recognised tax adviser. In this situation, the tax (financial) advice is the advice relating to the taxation implications of the insurance policies he has chosen to take out. As the advice is provided for multiple purposes, Ollie needs to apportion the total amount of the fee between the different components of the advice on a fair and reasonable basis.	59. Ollie will be able to claim a deduction under section 25-5 in relation to the tax (financial) advice provided by Lara. This is because the advice was provided in relation to managing Ollie's tax affairs and it was provided by a recognised tax adviser. In this situation, the tax (financial) advice is the advice relating to the taxation implications of the insurance policies he has chosen to take out. As the advice is provided for multiple purposes, Ollie needs to apportion the total amount of the fee between the different components of the advice on a fair and reasonable basis.	As per above, apportionment sentence should be stand-alone paragraph.
N/A	<u>59A.</u> As the advice is provided for multiple purposes, Ollie needs to apportion the total amount of the fee between the different components of the advice on a fair and reasonable basis. <u>Lara issues Ollie an itemised invoice. In doing so, she proportions the fixed fee into components including the tax advice on treatment of premiums and potential benefit payments under each policy.</u>	Update to reflect apportionment and evidentiary requirements.

Example 4 – superannuation, welfare benefits and estate planning

Paragraph	Comment, consider updating as follows:	Explanation
<p>60. Nate is a financial adviser authorised to provide a comprehensive range of personal advice to retail clients as a representative of a company which holds a financial services licence. Nate is also a recognised tax adviser for the purposes of section 25-5.</p>	<p>60. Nate is a financial adviser authorised to provide a comprehensive range of personal advice services to retail clients as a representative of a company which holds a financial services licence. Nate is also a recognised tax adviser for the purposes of section 25-5 as he is registered with ASIC as a qualified tax relevant provider.</p>	<p>As outlined above, the concept of QTRP should be further explained.</p>
<p>61. Nate meets Juanita who is seeking advice on maximising her income in retirement and transferring wealth to her children when appropriate. Juanita is employed as a teacher earning \$115,000 per annum and she has \$450,000 in superannuation.</p>	<p>61. Nate meets Juanita who is seeking advice on maximising her income in retirement, taking greater control of her superannuation assets and transferring wealth to her children when appropriate. Juanita is employed as a teacher earning \$115,000 per annum and she has \$750,000 in superannuation.</p>	<p>Clarification to illustrate stronger justification for the recommendation of an SMSF.</p>
<p>62. Nate agrees to provide Juanita with advice for a fee. Nate makes relevant enquiries through the completion of a thorough fact-finding process to ascertain Juanita's needs and objectives. Nate assesses Juanita's financial situation by considering her assets, liabilities, income, risk profile and tax profile.</p>	<p>62. Nate agrees to provide Juanita with advice for a fixed fee. Nate estimates his fee based on his experience in delivering similar advice to other individuals. Nate makes relevant enquiries through the completion of a thorough fact-finding process to ascertain Juanita's needs and objectives. Nate assesses Juanita's financial situation by considering her assets, liabilities, income, risk profile and tax profile.</p>	<p>Update to specify the basis for the fee.</p>
<p>63. Nate then delivers comprehensive financial advice which outlines how Juanita can establish a self-managed superannuation fund, increase contributions to the new superannuation fund by entering into a salary sacrifice arrangement with her employer and suggests that she will need to</p>	<p>63. Nate then delivers comprehensive financial advice which outlines how to Juanita can and recommends she establish a self-managed superannuation fund, increase contributions to the new superannuation fund by entering into a salary sacrifice arrangement with her employer and</p>	<p>Clarification required as the financial adviser would often recommend the self-managed superannuation fund, but not provide advice or otherwise work on the establishment of the fund. This work would typically be completed by the individual, their lawyer or an accountant.</p>

Paragraph	Comment, consider updating as follows:	Explanation
<p>arrange for her solicitor to update her will and power of attorney.</p>	<p>suggests that she will need to arrange for her solicitor to update her will and power of attorney. <u>Nate also proposes a set of appropriate investments for the SMSF to align with Juanita's objectives.</u></p>	
<p>64. In particular, Nate:</p> <ul style="list-style-type: none"> • interprets and applies the income tax laws to Juanita's circumstances • gives advice about liabilities, obligations and entitlements and tax implications resulting from the establishment of a self-managed superannuation fund • provides advice on the tax implications of entering into a salary sacrifice arrangement with Juanita's employer. 	<p>64. In particular, Nate:</p> <ul style="list-style-type: none"> • interprets and applies the income tax laws to Juanita's circumstances • gives advice about liabilities, obligations and entitlements and tax implications resulting from the establishment of a self-managed superannuation fund • provides advice on the tax implications of entering into a salary sacrifice arrangement with Juanita's employer. 	N/A
<p>65. The component of the fee that relates to the establishment of the self-managed superannuation fund will not be deductible under section 8-1 as it is capital or of a capital nature. However, the component of the fee that relates to advising on the tax implications of establishing the self-managed superannuation fund will be deductible under section 25-5.</p>	<p>65. The component of the fee that relates to the establishment of the self-managed superannuation fund will not be deductible under section 8-1 as it is capital or of a capital nature. However, the <u>The component of the fee that relates to advising on the tax implications of establishing the self-managed superannuation fund will be deductible under section 25-5.</u></p>	Again, clarification required as financial adviser (unless they are also a tax agent) would not undertake work on the establishment of the fund. This work would typically be completed by the individual, their lawyer or an accountant.
<p>66. The component of the fee that relates to advice on the salary sacrifice arrangement will be deductible under section 8-1. However this would not include the amount deducted under section 25-5 in relation to the tax (financial) advice provided.</p>	<p>66. The component of the fee that relates to advice on the salary sacrifice arrangement will be deductible under section 8-1. However this would not include the amount deducted under section 25-5 in relation to the tax (financial) advice provided.</p>	N/A
<p>67. The component of the fee that relates to providing advice on interpreting and applying the income tax laws to Juanita's circumstances (including entering into the salary sacrifice</p>	<p>67. The component of the fee that relates to providing advice on interpreting and applying the income tax laws to Juanita's circumstances (including entering into the salary sacrifice</p>	As per above, apportionment sentence should be stand-alone paragraph.

Paragraph	Comment, consider updating as follows:	Explanation
<p>arrangement) will be deductible under section 25-5. This is because the advice is in relation to managing Juanita's tax affairs and it was provided by a recognised tax adviser. As the advice is provided for multiple purposes, Juanita needs to apportion the total amount of the fee between the different components of the advice on a fair and reasonable basis.</p>	<p>arrangement) will be deductible under section 25-5. This is because the advice is in relation to managing Juanita's tax affairs and it was provided by a recognised tax adviser. As the advice is provided for multiple purposes, Juanita needs to apportion the total amount of the fee between the different components of the advice on a fair and reasonable basis.</p>	
<p>N/A</p>	<p><u>67A.</u> As the advice is provided for multiple purposes, Juanita needs to apportion the total amount of the fee between the different components of the advice on a fair and reasonable basis. <u>Nate issues Juanita an itemised invoice. In doing so, he proportions the fixed fee into components on the basis of the proportion of strategies that relate to preparing his tax (financial) advice.</u></p>	<p>Update to reflect apportionment and evidentiary requirements.</p>

* * * * *

Thank you once again for the opportunity to consult on these matters.

Sincerely,



Tony Negline
Superannuation &
Financial Services Leader
Chartered Accountants
ANZ



Ram Subramanian
Interim Head of Policy &
Advocacy
CPA Australia



Sarah Abood
CEO
Financial Advice
Association Australia



Tony Greco
General Manager
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