

# Tax Deductibility of Financial Advice Fees:

## A Practical Guide to Implementation

May 2025

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Current as at May 2025

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# 1. Background & Context

## 1.1 Purpose

Tax Determination TD 2024/7 *Income Tax: deductions for financial advice fees paid by individuals who are not carrying on an investment business* ([TD 2024/7](#)) was finalised in September 2024.

It is crucial for financial advisers to be aware of and understand the requirements to ensure clients are in a position to appropriately claim financial advice fees.

This guide offers practical guidance for the financial advice and accounting communities to help them determine whether all or part of a financial advice fee is deductible, work out how much can be claimed (apportionment) and ensure clients have the records to substantiate their claims.

Financial advisers, tax agents and support staff should collaborate to assess fee deductibility, ensuring the amounts claimed by clients are defensible. In many cases, professional judgement is required to determine how much of a financial advice fee is deductible.

Technical terms and abbreviations used throughout this guide are defined in the Glossary.

## 1.2 Background

The Australian Taxation Office (ATO) released revised draft guidance regarding the tax deductibility of financial advice fees, TD 2023/D4, in December 2023. The final determination, TD 2024/7, was published on 25 September 2024, and applies to arrangements both before and after this date.

The previous determination, TD 95/60, which addressed the deductibility of investment advice fees, has been withdrawn.

## 1.3 Summary of TD 2024/7

TD 2024/7 outlines the circumstances in which individuals may be entitled to claim deductions for financial advice fees under s 8-1 (general deductions) or s 25-5 (tax-related expenses) of the *Income Tax Assessment Act 1997* (ITAA 1997). It sets out the requirements for claiming such deductions and allows for apportioning in cases where part of a financial advice fee meets the requirements.

In TD 2024/7, the ATO distinguishes Initial Advice Fees from Ongoing Advice Fees.

## Initial Advice Fees

The ATO indicates that fees for initial financial advice are unlikely to be deductible under s 8-1 of ITAA 1997, as it considers this cost to be capital in nature. However, it does state that fees for financial advice provided by a Qualified Tax Relevant Provider (QTRP) are deductible to an individual under s 25-5 of the ITAA 1997, to the extent that the financial advice relates to managing their tax affairs.

## Ongoing Advice Fees

In the ATO's view, ongoing fees may be fully or partially deductible to an individual if incurred in the course of producing Assessable Income (s 8-1), and, as with Initial Advice Fees, ongoing fees may also be fully or partially deductible if they relate to managing the individual's tax affairs (s 25-5).

## Managing Tax Affairs

The ATO's view is that *tax (financial) advice*, defined in s 90-15 of the *Tax Agent Services Act 2009*, falls within the meaning of tax affairs. See Sections 2.1 to 2.3 for further details.

## Apportionment

The use of the phrase *to the extent* in ss 8-1 and 25-5 means that fees may need to be apportioned to determine how much is deductible and a fair and reasonable method must be used. See Section 3.

## Exclusions

Importantly, TD 2024/7 **does not apply** to fees paid from a superannuation fund or to individuals engaged in an investment business. Other exclusions also apply, and some more common scenarios are outlined in Section 2.4.

## 2. Understanding the law

### 2.1 The relevant tax laws

There are two sections of ITAA 1997 that are relevant to the deductibility of financial advice fees. These are summarised as follows:

#### General deductions – Section 8-1

- A taxpayer can deduct any loss or outgoing to the extent that it is incurred in gaining or producing their Assessable Income
- However, a taxpayer cannot deduct a loss or outgoing under this section to the extent that it is a loss or outgoing of:
  - capital, or of a capital nature (though costs incurred could be added to the cost base for the client for CGT purposes), or
  - a private or domestic nature.

#### Tax-related expenses – Section 25-5

- A taxpayer can deduct expenditure they incur to the extent that it is for managing their tax affairs.
- However, a taxpayer can only deduct a fee or commission for financial advice about the operation of a Commonwealth law relating to taxation if that financial advice is provided by a recognised tax adviser (including registered tax agents and QTRPs).

In TD 2024/7 the ATO takes the view that *tax (financial) advice*, defined in s 90-15 of the *Tax Agent Services Act 2009*, falls within the meaning of tax affairs in s 25-5(1)(a).<sup>1</sup>

Therefore, to the extent that financial advice is *tax (financial) advice* provided by a QTRP or registered tax agent, financial advice fees may be tax deductible under s 25-5.

Whether the financial advice meets the definition of *tax (financial) advice* has a critical bearing on whether the fees are deductible and, if so, how much of the fees can be claimed.

#### Fees deductible under both s 8-1 and s 25-5

If an expense is deductible under both ss 8-1 and 25-5, you cannot claim the expense twice. TD 2024/7 clarifies that the most appropriate provision will be the specific deduction, that is, s 25-5.

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<sup>1</sup> Paragraph 36 of TD 2024/7.

## 2.2 What is tax (financial) advice?

The term *tax (financial) advice service* is defined in s 90-15 of the *Tax Agent Services Act 2009* (see legal definition in Appendix 5.1).

In summary, *tax (financial) advice* is advice provided by a financial adviser in the course of providing advice usually given by a financial adviser to the extent that the advice relates to:

- ascertaining and/or advising about the liabilities, obligations or entitlements that arise, or could arise, under a *taxation law*, and
- the client can be reasonably expected to rely on that advice in satisfying their liabilities or obligations, or claiming their entitlements, that arise (or could arise) under a *taxation law*.

The term *taxation law* is defined in s 995-1 of ITAA 1997 (see definition in Appendix 5.1), and broadly includes those acts of which the Commissioner has the general administration (including a part of an act). *Taxation law* therefore includes the following acts:

- *Income Tax Assessment Act 1936*
- *Income Tax Assessment Act 1997*
- *Fringe Benefits Tax Assessment Act 1986*
- *Superannuation Guarantee (Administration) Act 1992*.

The Commissioner also has responsibility for administering certain parts of the *Superannuation Industry (Supervision) Act 1993* (SIS Act), generally only to the extent that the provisions relate to self-managed superannuation funds (SMSFs). The relevant provisions of the SIS Act (and related regulations) include:

- Part 3, including the SIS Regulations payment standards and contribution standards
- Part 6, including the governing rules covenants and death benefit nomination rules
- Part 7, including the sole purpose test
- Part 8, including the in-house assets and arms-length investment rules.

The following financial advice topics will generally include *tax (financial) advice* to varying extents:

- Superannuation-related advice:
  - Super contribution strategies generally, including salary sacrifice arrangements (ITAA 1997)
  - Superannuation pension strategies (to the extent related to SMSFs or ITAA 1997)

- Financial advice on whether life, TPD and income protection insurance policies should be held inside or outside of superannuation (ITAA 1997)
- SMSF establishment and maintenance (ITAA 1997 or SIS Act).
- Gearing strategies
- Estate planning advice, for example, the use of a testamentary trust
- Investment structuring for taxation purposes, including family trust establishment and maintenance
- Debt reduction plans that involve taxation elements (for example, deductible debt).

Note that generally financial advice will not be solely comprised of *tax (financial) advice* or related to managing a client's tax affairs. Full deductibility of financial advice fees will be rare.

Refer to later examples and Appendix 5.2 for practical guidance on common financial advice strategies and deductibility considerations.

## 2.3 Which ITAA 1997 section applies to which financial advice fees?

In TD 2024/7, the ATO differentiates Initial Advice Fees from Ongoing Advice Fees.

### Initial Advice Fees

TD 2024/7 affirms the ATO's previous view that Initial Advice Fees that relate to general financial planning, wealth creation, or setting up investments are considered capital in nature and are not deductible under s 8-1. However, there is a limited range of scenarios where taxpayers can claim a deduction for initial fees under s 8-1, for example, in relation to advice on income protection insurance (see paragraph 24 of TD 2024/7).

TD 2024/7 states that taxpayers may apply s 25-5 (Managing Tax Affairs) to qualify for a deduction on a portion of initial fees. The amount deductible will vary depending on the nature of the advice provided, in particular, what portion of the fee relates to *tax (financial) advice*.

### Ongoing Advice Fees

Deductibility of Ongoing Advice Fees also depends on the nature of the advice. Taxpayers may be able to claim under either s 8-1 or s 25-5 of ITAA 1997.

Section 8-1 applies if the advice fee is incurred in connection with producing Assessable Income, such as managing an existing, Assessable Income-producing investment portfolio or reviewing the performance of Assessable Income-generating assets.

Section 25-5 applies if the Ongoing Advice relates to Managing Tax Affairs, such as certain superannuation-related advice, tax-deductible debt strategies, CGT planning, or analysing tax implications of different structures and investments.

However, any part of the Ongoing Advice Fees that do not relate to Assessable Income-producing activities or Managing Tax Affairs will not be deductible.



## 2.4 Treatment of common types of fees

Guidance on common types of financial advice fees is provided below. As noted earlier, there are scenarios where financial advice fees do not meet the requirements of TD 2024/7 and therefore cannot be claimed by clients.

- Fees paid from superannuation funds cannot be included in the calculation of the deduction, as the expense has not been paid by the individual taxpayer. The payment will generally be deductible to the fund.
- Fees deducted from investment vehicles other than superannuation (e.g. managed investment schemes, wraps, IDPS, MDAs and SMAs etc), although generally governed by a trustee or held by a custodian, may be treated similarly to fees deducted directly from a client's bank account (therefore potentially deductible). However, deductibility depends on the contractual arrangements between the financial adviser, client and investment vehicle. A careful reading of the contractual arrangements is essential.
- Fees must be apportioned to the individual taxpayer (i.e. if fees are charged to a couple, they will need to be apportioned between the members of the couple).
- The TD only applies to individuals who are not carrying on an investment business. It does not apply to financial advice provided to companies, trusts and partnerships.
- Initial fees for financial advice on a regular investment plan are not deductible under s 8-1. However, a review of a regular contribution strategy or a review of existing investments may be deductible under s 8-1.<sup>2</sup>
- If the client is not entitled to claim GST credits, then the GST component of any deductible fees can also be claimed.

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<sup>2</sup> See paragraph 20 of TD 2024/7

# 3. Apportionment

## 3.1 Principles of apportionment

Apportionment is a methodology or means of determining which parts of a financial advice fee are deductible under either s 8-1 or s 25-5. TD 2024/7 states (at paragraph 48):

*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.*

There are important principles for providing evidence of apportionment in the case of both initial and Ongoing Advice Fees.

### Clear records

There should be adequate records to explain the basis of apportionment.

### Use a fair and reasonable basis

The apportionment approach used should be consistent with TD 2024/7 paragraph 47 which states:

*...the fees will need to be apportioned on a fair and reasonable basis. What is fair and reasonable will depend on the facts and circumstances of the case.*

Based on this, a financial adviser may consider the three apportionment methods discussed in Section 3.2 and select one that is appropriate for the financial advice provided and/or basis for determining the fee charged to the client (including the charging methodology, evidence availability and client proposition).

### Collaboration and transparency are key

Financial advisers should work collaboratively with their client's tax agent so that all parties are sufficiently informed of the basis of the apportionment.

However, financial advisers should also recognise that it is **primarily their responsibility to provide the client and/or their tax agent with the necessary details to support a claim for deductibility of financial advice fees**. The tax agent will generally rely on the data provided by the financial adviser.

## 3.2 Approaches to fee apportionment

Ultimately, apportionment is about having a fair and reasonable basis for the proportion of a financial advice fee the client may claim as a tax deduction.

We have set out three alternative methods to calculate the apportionment of financial advice fees:

- a) Activity basis
- b) Strategy basis
- c) Insurance premium basis

This is not an exhaustive list of the possible methods of apportionment – other methods are available. Financial advisers should use an apportionment basis that is fair and reasonable and suits the circumstances of the individual case.

The method chosen will often be based on how the overall financial advice fee was determined to begin with.

For example, those financial advisers who keep accurate timekeeping records (including the nature of work completed) may be inclined to choose the Activity basis to determine the appropriate apportionment. Other financial advisers may find it more practical to use the Strategy basis where their fee is based on the complexity and value added by the strategies recommended. Similarly, other financial advisers may find it more practical to use the Insurance Premium basis.

Financial advisers are best placed to make this determination. However, financial advisers should take a commercial approach, and consider the advantages, costs and limitations of the various apportionment methods.

### a) Activity basis

*Breaking down the fees based on the time spent on tax (financial) advice, and/or products and strategies producing Assessable Income.*

Financial advisers may have accurate records of their timekeeping via a customer relationship management or accounting system, with specificity regarding the breakdown of the work completed for each client. This data could be used to provide an estimate of the time spent for a specific client on s 25-5 (managing the client's tax affairs) activities, s 8-1 (gaining and producing Assessable Income) activities and non-tax related work for that client.

It may also be the case that a financial adviser charges a client based on an itemised hourly rate.

Records for this methodology should be accurate, contemporaneous and robust.

Consider also that some time-based activities that may not be included in a financial advice document may be tax-related, such as investigating tax implications of alternative strategies. The relevant portion of a fee for these activities can be treated as deductible.

### Process

1. All parties within an advice practice and external parties, who have a role in developing the financial advice should track their activity as soon as a client is engaged, capturing in detail the:
  - Task/activity
  - Activity owner
  - Time spent
  - Details of activity (to determine if relating to tax affairs or Assessable Income).
  - Entity relating to (especially if there are various entities).
2. Note the total time spent on all financial advice activities
3. Determine the relevant financial advice fee
4. Identify portions of the financial advice fee that are relating to tax affairs or Assessable Income and apportion the deductible amount of the activity
5. Apply the time for activity to the financial advice fee
6. Calculate total fees relating to Managing Tax Affairs or generating Assessable Income, which will represent the deductible portion.

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### Example – Initial Advice Fees

Rachel charges a client \$5,000 for initial personal advice.<sup>3</sup> Rachel can provide evidence in the hourly breakdown of tasks that, collectively between herself and her paraplanner, 60% of the 12 hrs spent preparing the advice was related to modelling, discussing and documenting tax-related advice. The remaining 40% was spent on other non-tax related work.

Rachel can therefore demonstrate that \$3,000 of the initial advice fee is tax deductible for the client.

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See Appendix 5.3 for further examples.

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<sup>3</sup> None of the fees are paid via superannuation.

## b) Strategy basis

*Allocating the total Initial Advice Fees by linking the fees back to the actual strategies recommended to the client.*

This approach will require applying a financial advice fee to the financial advice strategies, working out which of those strategies are tax-related and at what proportion.

This approach relies (at least to some extent) on the financial adviser's professional judgement. It recognises there will be:

- strategies which are solely tax-related<sup>4</sup>
- strategies which are partially tax-related<sup>4</sup> (e.g. Dollar Cost Averaging, regular investment)
- strategies which are not tax-related<sup>4</sup> (e.g. budgeting, non-tax related estate planning recommendations)
- strategies which are related to producing Assessable Income for the individual,<sup>4</sup> and
- strategies which are not related to producing Assessable Income for the individual (e.g. superannuation and most account-based income strategies).

The Strategy basis is likely to be applicable in a wide range of scenarios.

### Process

1. Determine the recommended strategies
2. Determine who the strategy is for (i.e. client, partner or both)
3. Determine what proportion each strategy is in the context of the total financial advice
4. Determine which strategies are tax-related, based on s 8-1 or s 25-5
5. Determine what portion of the fee for each strategy is subsequently deductible
6. Calculate the total deductible fee.

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<sup>4</sup> Subject to the individual circumstances of the client.

### Example – Initial Advice Fees

A couple with various assets and existing insurance policies want to maximise their superannuation, reduce tax and prepare for retirement. The total Initial Advice Fee is \$7,500.

Recommended Strategy	Proportion of total advice (B)	Deductible under 25-5?	Basis for relating to tax affairs	Deductible portion (C)	Deductible fee (\$7,500 x B x C)
Structuring existing investments	20%	Yes	<ul style="list-style-type: none"> <li>Consider most tax effective investment structure.</li> <li>Impacts of income on tax position</li> </ul>	80%	\$1,200
Salary sacrifice to super	15%	Yes	<ul style="list-style-type: none"> <li>Reduces Assessable Income</li> </ul>	100%	\$1,125
Lump sum non concessional contribution to super	15%	Yes	<ul style="list-style-type: none"> <li>Non-concessional contribution advice involves applying taxation laws</li> </ul>	100%	\$1,125
Rollover super to new SMSF	20%	Yes	<ul style="list-style-type: none"> <li>Setting up SMSF including providing advice on the tax implications.</li> </ul>	80%	\$1,200
Life, TPD (Super) trauma – review	15%	Yes	<ul style="list-style-type: none"> <li>Consideration to tax implications if funds are paid out before age 60 or to a non-dependent beneficiary</li> </ul>	20%	\$225
Income protection - apply	15%	Yes	<ul style="list-style-type: none"> <li>Tax deductible premiums</li> </ul>	100%	\$1,125
<b>Totals</b>	<b>100%</b>				<b>\$6,000</b>

The adviser determines that \$6,000 of the \$7,500 Initial Advice Fee is deductible under s 25-5. This amount needs to be further apportioned between each member of the couple.

See Appendix 5.3 for further examples.

### c) Insurance premium basis

*This approach involves apportioning the Initial Advice Fee based on the total Year 1 premium breakdown.*

TD 2024/7 confirms that the proportion of an initial fee attributable to:

- Income Protection – will be deductible under s 8-1.
- Life/TPD/Trauma cover – will be deductible under s 25-5 to the extent that the fee relates to *tax (financial) advice*.

A financial adviser will generally be able to identify (via the insurance quote) what amount of the first year total premium is attributable to income protection, life, total and permanent disablement and trauma cover.

This premium breakdown may be used as a basis to apportion an initial insurance advice fee. This method may be appropriate when providing insurance advice and charging an Initial Advice Fee.

#### Process

1. Provide the recommendations for the client as usual.
2. Calculate the total premium and the percentage of the total for the underlying product recommendations.
3. Apportion the fee based on these percentages.
4. Estimate the percentage of that component which is deductible (see below).
5. Add up the total deductible amount based on the calculation.

### Example – Initial Advice Fees

A first-year 'bundled' premium amounts to \$4,000. The 'bundle' of cover comprises income protection, super-owned life/TPD and trauma insurance. An Initial Advice Fee of \$1,500.

The breakdown of the total first-year premium (as evidenced by the insurer's quote) into the various insurance policies, together with the tax-deductible proportion of the \$1,500 Initial Advice Fee using the premium basis of apportionment, is as follows:

Insurance	\$ Breakdown of Total Year 1 Premium (per quote)	% Breakdown (A)	Apportionment of \$1,500 fee based on premium split (\$1,500 x A) (B)	Deductible portion (section reference) (C)	Deductible fee (B x C)
Income Protection	\$1,960	49%	\$735	100% (s 8-1)	\$735
Super-owned Life	\$672	17%	\$255	60%* (s 25-5)	\$153
Super-owned TPD	\$616	15%	\$225	60%* (s 25-5)	\$135
Trauma / Crisis	\$752	19%	\$285	Nil	Nil
<b>Totals</b>	<b>\$4,000</b>		<b>\$1,500</b>		<b>\$1,023</b>

\* Estimated based on the adviser's professional judgement.

Super-owned Life/TPD structuring advice will generally involve the application and interpretation of tax and superannuation law, and may include the following tax considerations at inception:

- ownership, including pros and cons of holding cover inside versus outside super
- grossing up for super member/death benefit taxes on life/TPD cover
- super contributions planning to meet annual premiums
- how to optimise tax outcomes related to benefit payments, and
- other relevant taxation law matters.

The adviser considers all elements of the financial advice and uses professional judgment to assess that 60% of super-owned life/TPD advice relates to the application and interpretation of tax laws.

The adviser determines that \$1,023 of the \$1,500 Initial Advice Fee is deductible.

Advisers should maintain adequate records to substantiate the apportionment outcome.

See also example 5.3.3 in Appendix 5.3 as an example of using the Activity basis of apportionment.



## Tips

For **business insurance ('buy/sell') scenarios**, the proportion of Initial Advice relating to *tax (financial) advice* is expected to be modest. This is because when recommending lump sum life and TPD cover for 'buy/sell' equity protection purposes, the contracts are typically self-owned by the business owners outside of the superannuation environment, where insurance claim proceeds are generally received tax free. The level of *tax (financial) advice* involved when recommending 'buy/sell' insurance cover is thus limited. There are potential CGT consequences on disposal of the equity ownership interests when the prescribed trigger event occurs, which may involve *tax (financial) advice*.

For **'key person' business succession planning** scenarios, generally the trading entity will be the legal owner of the life insurance contracts. Typically, a recommendation will be provided in relation to the tax affairs of the trading entity, not to the individual/client in their own right.

### 3.3 Selecting the appropriate method

Ultimately, the method chosen to apportion a financial advice fee will be a matter of professional judgement of the financial adviser (and perhaps their Australian Financial Services Licensee).

Depending on the circumstances, certain methods of apportionment may result in a higher deductible portion for the client than others. However, financial advisers should use the method that is most appropriate, and this may be different from the method that produces the best tax result.

Methodology	Pros	Cons	Likely application
<b>Activity Basis</b>	<ul style="list-style-type: none"> <li>Ease of demonstrating how the fees are deductible</li> </ul>	<ul style="list-style-type: none"> <li>Must retain detailed record to substantiate deductibility</li> <li>Clear delineation of tasks may be challenging</li> </ul>	<ul style="list-style-type: none"> <li>Financial advisers (possibly accountants) who have hourly time records and can calculate fees on an activity basis.</li> </ul>
<b>Strategy basis</b>	<ul style="list-style-type: none"> <li>Clearly delineates tax vs. non-tax related strategies</li> </ul>	<ul style="list-style-type: none"> <li>Substantial time and effort required</li> <li>Professional judgement required</li> </ul>	<ul style="list-style-type: none"> <li>A wide variety of advice scenarios.</li> <li>Appropriate for those who determine advice fees based on strategies.</li> </ul>
<b>Insurance Premium basis</b>	<ul style="list-style-type: none"> <li>Links the calculation to premium breakdown for simplicity</li> </ul>	<ul style="list-style-type: none"> <li>Deductibility driven by insurance policies ultimately being recommended</li> </ul>	<ul style="list-style-type: none"> <li>For insurance advisers looking to charge an initial fee, this basis could reduce cost to the client and therefore improve accessibility of advice</li> </ul>

## 4. Substantiating a claim

As with most claims for deductible expenses, taxpayers must have evidence to substantiate their claims. In practice, clients will be reliant on their financial adviser to provide the necessary documentation to support a claim.

TD 2024/7 states that an itemised invoice, a fee disclosure statement or advice fee consent form from a financial adviser will be sufficient evidence (see paragraph 50 of TD 2024/7, and below).

The invoice, statement or consent form should detail the fees which are considered to be deductible and non-deductible, and include:

1. the name and other details of the financial adviser and Australian Financial Services (AFS) licensee
2. the total amount of the fee
3. an explanation of the financial advice provided
4. the date(s) that the expense was incurred, and
5. the date that the invoice was produced.

See Appendix 5.4 for two sample invoices.

### 4.1 Record keeping

When claiming a deduction for financial advice fees under s 25-5 or s 8-1 of the ITAA 1997, taxpayers must comply with the statutory record-keeping requirements. Accurate documentation ensures that deductions can be substantiated in case of an audit or review by the ATO.

#### Considerations for advisers

##### Keep evidence of the financial advice fee (see also Section 2.4)

- Retain copies of invoices, statements or consent forms showing the date, amount paid, amount to be claimed and description of the financial advice service.
- Ensure the financial adviser's details (name, ABN, and AFS licence where applicable) are correct and included.

### Document the nature of the financial advice

- Maintain on file a copy of the Statement of Advice (SoA), Records of Advice (RoAs), ongoing review reports, or engagement letters to demonstrate the type of financial advice provided.
- Maintain any working papers demonstrating work done on strategies and products that may not have been ultimately recommended, for example, alternative strategy investigations.
- Clearly identify if the financial advice relates to Managing Tax Affairs (s 25-5) or gaining or producing Assessable Income (s 8-1).

### Demonstrate the connection to tax affairs or Assessable Income

- For s 25-5 claims, evidence should show that the financial advice meets the definition of *tax (financial) advice*.
- For s 8-1 claims, records should demonstrate that the financial advice directly relates to gaining or producing Assessable Income for the client.

## Considerations for clients

### Retain records for at least five years

- The law requires taxpayers to keep records for five years from the date of lodgement of the relevant tax return. For CGT records, taxpayers need to retain records for five years after they sell or otherwise dispose of an asset, unless an asset register is maintained (records can be discarded five years after the register is certified).<sup>5</sup>
- Digital copies are acceptable if they are clear, accurate, and easily accessible.

### Ensure compliance with ATO guidelines

- If the ATO reviews the deduction, they may request additional evidence from the financial adviser, such as emails, meeting notes, or correspondence explaining the tax or investment relevance of the financial advice.
- The onus is on the taxpayer 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 (paragraph 48 of TD 2024/7).*

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<sup>5</sup> See <https://www.ato.gov.au/businesses-and-organisations/preparing-lodging-and-paying/record-keeping-for-business/detailed-business-record-keeping-requirements/running-your-business-records/income-tax-return-records-business/stock-and-asset-records/capital-gains-tax-asset-records>

- Claims for financial advice strategies may be disallowed if they do not fit within the requirements for deductibility under s 25-5 or 8-1.

## 4.2 Best practice tips

- If preparing the apportionment estimate prior to the SoA, when a final SoA is presented, advisers should double check whether the apportionment calculation needs refinement, especially if there were changes.
- Advisers should encourage a discussion with the client's accountant, so both parties agree.
- Advisers should retain copies of notes from any discussions with the accountant on file.
- At the end of the financial year, advisers may want to assist the client's accountant in claiming the deduction as part of their normal EOFY activities.

## 5. Appendices

- 5.1 What is tax (financial) advice? (legal definition)
- 5.2 Common financial advice strategies and deductibility considerations
- 5.3 Apportionment examples
- 5.4 Invoice or Fee Summary templates
- 5.5 Sample SoA text
- 5.6 FAQs
- 5.7 Further support resources

## Appendix 5.1 What is tax (financial) advice? (Legal definition)

The term **tax (financial) advice service** is defined in s 90-15 of the *Tax Agent Services Act 2009*:

- (1) A *tax (financial) advice service* is a \*tax agent service...provided by a \*financial services licensee or a \*representative of a financial services licensee in the course of giving advice of a kind usually given by a financial services licensee or a representative of a financial services licensee to the extent that:
  - (a) the service relates to:
    - (i) ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a *\*taxation law*; or
    - (ii) advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; and
  - (b) the service is provided in circumstances where the entity can reasonably be expected to rely on the service for either or both of the following purposes:
    - (i) to satisfy liabilities or obligations that arise, or could arise, under a *taxation law*;
    - (ii) to claim entitlements that arise, or could arise, under a *taxation law*.
- (2) The Board may, by legislative instrument, specify that another service is a *tax (financial) advice service*.
- (3) However, a service is not a *tax (financial) advice service* if:
  - (a) it consists of preparing a return or a statement in the nature of a return; or
  - (b) it is specified in the regulations for the purposes of this paragraph.

**Taxation law** is defined in s 995-1 of ITAA 1997:

- (a) an Act of which the Commissioner has the **general administration** (including a part of an Act to the extent to which the Commissioner has the **general administration** of the Act); or
- (b) legislative instruments made under such an Act (including such a part of an Act); or
- (c) the *Tax Agent Services Act 2009* or regulations made under that Act.

## Appendix 5.2 Common financial advice strategies and deductibility considerations

The table below provides general guidance on whether financial advice in the following financial planning areas falls within *tax (financial) advice* or has a sufficient connection to producing Assessable Income for the client. The deductible portion of a fee must be determined based on the specifics of the actual financial advice provided to particular clients.

Advice area	Comment
Cash flow	The majority of cash flow strategies are unlikely to be tax-related, e.g. bank account structuring, budgeting etc.
Investment	<p>The deductibility of investment advice fees will depend on the nature of the recommendations, for example, advice on the following could be tax-related to the extent it involves <i>tax (financial) advice</i>:</p> <ul style="list-style-type: none"> <li>• Establishing an account based pension (ABP)</li> <li>• Recommendation of investment or education bonds</li> <li>• Establishing a Dollar Cost Averaging Facility</li> <li>• Utilising an ETF</li> <li>• Recommending a regular investment.</li> </ul> <p>To the extent the remaining advice relates to producing Assessable Income, it may be deductible under s 8-1.</p>
Superannuation	<p>Many strategies that relate to superannuation involve <i>tax (financial) advice</i> (including financial advice related to areas of the SIS Act where the ATO has responsibility). The financial advice fee will be deductible to the extent that advice is <i>tax (financial) advice</i>. For example, fees for the following strategy areas could be partially or wholly deductible:</p> <ul style="list-style-type: none"> <li>• Recommending a client salary sacrifices into super</li> <li>• Re-contribution strategies</li> <li>• Co-contribution recommendations</li> <li>• Commencement of a Transition to Retirement (TTR strategy)</li> <li>• Spouse contribution splitting</li> <li>• Concessional / non-concessional contributions.</li> </ul>



Advice area	Comment
Self-managed super funds (SMSF)	<p>As described in Section 2.2 and Appendix 5.1, <i>tax (financial) advice</i> includes advice on the more widely recognised tax laws such as the ITAA 1997, the <i>Income Tax Assessment Act 1936</i> and the <i>Fringe Benefits Tax Assessment Act 1986</i> as well as the areas of the SIS Act over which the Commissioner has general administration responsibility.</p> <p>However, it is important to distinguish financial advice provided to the individual regarding their superannuation interest, from financial advice provided to the fund's trustees. Fees for financial advice in relation to a client's interest in an SMSF may be deductible under s 25-5 if the client pays the fees, and the other criteria in s 25-5 are met.</p> <p><b>Example:</b></p> <p>Amelia would like to contribute some of her ASX listed shares to her SMSF. She seeks advice on the best way of doing so. Her adviser Jack provides advice on the CGT implications of transferring her shares, types of contributions including tax deductibility, the SIS compliance rules that apply to the SMSF, namely how the acquisition of an investment from a related party would affect Amelia's strategy.</p> <p>To the extent the financial advice provided to Amelia includes <i>tax (financial) advice</i>, the fee may be tax deductible.</p> <p>Generally, not all financial advice regarding SMSFs will be tax deductible. For example, financial advice (that is not <i>tax (financial) advice</i>) regarding the SMSF's investment assets may not be tax deductible. A careful assessment of the advice and services provided will be needed to apportion the fee on a fair and reasonable basis. This includes apportioning financial advice fees between relevant individuals and entities. Evidence of the rationale must be prepared and retained to support the calculation.</p> <p><b>Example:</b></p> <p>Joe has \$800,000 in his employer's default superannuation fund. He seeks advice regarding his retirement funding issues. His adviser, Jane, noting Joe's capacity and willingness to run an SMSF, recommends that Joe establish an SMSF. The advice also includes portfolio recommendations for the \$800,000 to be rolled over to the SMSF when established, salary sacrifice arrangements, SMSF trusteeship issues, replacement insurance and possible income stream arrangements upon retirement.</p> <p>Jane charges Joe \$3,600 for the advice and calculates that 80% of the advice is <i>tax (financial) advice</i>.</p>

Advice area	Comment
Aged care advice	<p>Advice fees in relation to a client entering an aged care facility may be deductible if paid by the aged care resident and there is a connection to generating Assessable Income and/or Managing Tax Affairs.</p> <p>Aged Care advice fees may be partially deductible if advice relates to:</p> <ul style="list-style-type: none"> <li>• Whether to retain an investment asset and use the income to fund aged care fees, or sell the asset and use the capital to pay a Refundable Accommodation Deposit (RAD)</li> <li>• Retaining the family home (rented out) to fund aged care fees</li> <li>• The tax consequences of using annuities or Aged Care specific products.</li> </ul>
Centrelink	Fees for Centrelink advice may be partially deductible where the client's Social Security income is taxable.

## Appendix 5.3 Apportionment examples

### a) Activity Basis

#### Example 5.3.1 Initial fees – Activity Basis (s 25-5)

Amy, a financial adviser, is advising Leo, a pre-retiree single client in his 50s who is hoping to retire comfortably. The total Initial Advice Fee is \$5,500, paid by Leo personally.

Date and time taken (hrs:mins)	Task	Details relating to tax affairs	Entity	Fee apportionment based on time (B)	Deductible portion of activity (C)	Deductible fee (\$5,500 x B x C)
12 Aug 26 1:30	Initial meeting (Adviser)	As part of the meeting, a general discussion about tax affairs	Client	12.5%	30%	\$206
13 Aug 26 00:30	Investigate and analyse client's existing investments and circumstances (Admin)	CGT Report, past contribution history, determine available contribution caps, etc	Client	4.2%	50%	\$115
18 Aug 26 1:30	Strategy modelling (Paraplanner)	Options: <ul style="list-style-type: none"> <li>• Salary sacrifice</li> <li>• Personal Investment</li> <li>• Insurance Bond</li> <li>• Super accumulation</li> </ul>	Client	12.5%	75%	\$516
19 Aug 26 2:00	Strategy Development, including cash flow management and estate planning (Adviser)	<ul style="list-style-type: none"> <li>• Salary sacrifice</li> <li>• Rebalance Personal Investment</li> <li>• CGT Analysis</li> </ul> Alternatives: <ul style="list-style-type: none"> <li>• Insurance Bond</li> <li>• Rollover Super</li> </ul>	Client	16.7%	60%	\$551
20 Aug 26 5:30	Write SoA (Paraplanner)	<ul style="list-style-type: none"> <li>• Salary sacrifice</li> <li>• Rebalance personal investment</li> <li>• CGT Analysis</li> </ul>	Client	45.8%	50%	\$1,260
21 Aug 26 1:00	Present SoA (Adviser)	Explain tax implications of advice	Client	8.3%	40%	\$183
<b>Total time 12:00</b>				<b>100%</b>	<b>Total deduction</b>	<b>\$2,831</b>

The adviser assessed that \$2,831 of the total advice fee is tax deductible under s 25-5 based on the activity undertaken to prepare the Initial Advice.

### Example 5.3.2 Ongoing fees – Activity Basis

Jack is advising Alex and Kim, a pre-retiree couple with adult children who wish to maximise their savings to prepare for retirement. They have both super and non-super investments. The total ongoing fee is \$3,500, which is to be paid personally (i.e. the fee is not paid from superannuation).

Date and time taken (hrs:mins)	Task	Details relating to tax affairs * Relating to Tax Affairs ^ Related to producing Assessable Income	Entity	Fee apportionment based on time (B)	Deductible portion of activity (C)	Deductible fee (\$3,500 x B x C)
12 May 26 1:30	Gather current fact find / investment information, including send Reverse Fact Find (Admin)	<ul style="list-style-type: none"> <li>• Call insurance (IP) to confirm existing cover<sup>^</sup></li> <li>• Generate Wealth Platform Report (Non-Super)*</li> <li>• Generate Super Platform Report (Super)*</li> <li>• Obtain client's previous year tax return*</li> </ul>	Client	23%	60%	\$483 Comprised of: <ul style="list-style-type: none"> <li>• \$161 (s 8-1)</li> <li>• \$322 (s 25-5)</li> </ul>
19 May 26 1:10	Review meeting, including discuss changes / previous advice (Adviser)	<ul style="list-style-type: none"> <li>• Discuss possible recommendations<sup>^*</sup></li> <li>• Agreement to proceed</li> </ul>	Client	18%	60%	\$378 <ul style="list-style-type: none"> <li>• \$189 (s 8-1)</li> <li>• \$189 (s 25-5)</li> </ul>
20 May 26 2:30	Prepare RoA (Paraplanner)	<ul style="list-style-type: none"> <li>• Rebalance Personal investments<sup>^</sup></li> <li>• Rebalance super</li> <li>• Hold IP cover <sup>^</sup></li> </ul>	Client	38%	60%	\$798 (s 8-1)
23 May 26 1:20	Implement RoA (Admin)	<ul style="list-style-type: none"> <li>• Rebalance personal investments<sup>^</sup></li> <li>• Rebalance super</li> </ul>	Client	21%	50%	\$368 (s 8-1)
<b>Total time 6:30</b>				<b>100%</b>	<b>Total deduction</b>	<b>\$2,027</b> <ul style="list-style-type: none"> <li>• <b>\$1,516 (s 8-1)</b></li> <li>• <b>\$511 (s 25-5)</b></li> </ul>

The fee apportionment based on time (B) represents the percentage of time spent on that activity relative to the total time. The fee apportionment (C) that the adviser decided upon is based on their professional judgement regarding how much time was spent on tax-related advice.

The adviser assessed that \$2,027 of the Ongoing Advice Fee paid personally is tax deductible based on the activities of preparing the ongoing advice (including a mixture of s 8-1 and s 25-5 deductions, which has been determined by Jack based on the activities completed in preparing the financial advice). This amount needs to be further apportioned between Alex and Kim to determine the deduction that can be claimed by each individual.

### **Example 5.3.3 Initial fees for insurance advice – Activity Basis**

Janice, a financial adviser, recommends her client, Jacqui, acquire a full bundle of cover: life & TPD (super-owned), trauma and income protection.

In this case, the level of research and overall time involved in producing the income protection recommendation is higher than usual because of Jacqui's personal circumstances.

Janice tracks the overall time spent and the portion spent on each type of insurance.

Using the Activity basis, the \$1,500 initial insurance advice fee is apportioned as follows:

Insurance type	Fee apportionment based on time (B)	Advice fee apportionment (\$1,500)	Deductible portion of activity (C)	Deductible fee (\$1,500 x B x C)
Income Protection	40%	\$600	100% (s 8-1)	\$600
Super-owned Life & TPD	40%	\$600	60% (s 25-5)	\$360
Trauma	20%	\$300	0%	Nil
<b>Total</b>	100%	<b>\$1,500</b>	<b>Total deduction</b>	<b>\$960</b>

TD 2024/7 paragraph 24 confirms that financial advice fees relating to income protection insurance are deductible under s 8-1. Therefore, the full amount of the fee apportioned to income protection insurance can be claimed as a deduction by Jacqui. In this case, Janice also determines that 60% of the time spent on life and TPD cover was on *tax (financial) advice*, and, consequently, 60% of the fee apportioned to this advice can also be claimed.

## b) Strategy Basis

### Example 5.3.4 Ongoing Fees – Strategy Basis

Jim is in his late 30s (single) and is seeking advice to maximise his wealth, ensure his investments are structured in an efficient way and review his life insurance cover. The total Ongoing Advice Fee is \$2,500 paid personally.

Recommended strategy	Proportion of total advice (B)	Deductible under s 25-5?	Deductible under s 8-1?	Basis for relating to tax affairs	Deductible portion of activity (C)	Deductible fee (\$ 2,500 x B x C)
Review existing Assessable Income-generating investments (personal)	20%	Yes	Yes	<ul style="list-style-type: none"> <li>Involves advice on the tax treatment of the income generating investments</li> </ul>	70%	\$350
Review salary sacrifice to super	10%	Yes	No	<ul style="list-style-type: none"> <li>Involves providing advice on the tax treatment of salary sacrifice to super</li> <li>Not producing Assessable Income</li> </ul>	100%	\$250
Make another concessional contribution to super up to caps	20%	Yes	No	<ul style="list-style-type: none"> <li>Tax deductible contribution as well as increasing super benefits</li> <li>Not producing Assessable Income</li> </ul>	100%	\$500
Review super portfolio	20%	No	No	<ul style="list-style-type: none"> <li>Not managing individual tax affairs</li> <li>Not producing Assessable Income</li> </ul>	0%	\$0
Life, TPD (in super) Trauma – review	15%	Yes	No	<ul style="list-style-type: none"> <li>Consideration of tax implications if funds are paid out before age 60 when reviewing cover amounts</li> </ul>	20%	\$75
Review Income Protection	15%	Yes	Yes	<ul style="list-style-type: none"> <li>Tax deductible premiums for covering Assessable Income</li> </ul>	100%	\$375
<b>Total</b>	<b>100%</b>				<b>Total deduction</b>	<b>\$1,550</b>

The adviser determines that \$1,550 of the \$2,500 Ongoing Advice Fee is deductible. She further determines that \$825 is deductible under s 25-5 and \$725 is deductible under s 8-1.

### **Example 5.3.5 Ongoing Fees – Strategy basis - simple retirement income client**

Kerry and Kane have met with their adviser for ongoing advice to maximise their retirement income. The total advice fee is \$4,000 p.a.

Recommended strategy	Proportion of total advice (B)	Deductible under s 25-5?	Deductible under s 8-1?	Basis for relating to tax affairs	Deductible portion of activity (C)	Deductible fee (\$4,000 x B x C)
Review existing Assessable Income-generating investments (personal), including recommending a new investment option*	30%	Yes	Yes	Involves providing advice on the tax implications of the income from the investments and any disposals.	80%	\$960
Review existing SMSF account-based pension portfolio and drawdown levels	20%	Yes	No	Involves providing advice on the tax implications of the income from the investments and any disposals.	80%	\$640
Review and maximise Centrelink benefits	30%	Yes	Yes	Structure affairs to maximise Centrelink and DVA entitlement and advise on the tax implications	80%	\$960
Cash flow and budgeting	10%	No	No	N/A	0%	\$0
Basic estate planning	10%	No	No	N/A	0%	\$0
<b>Total</b>	<b>100%</b>				<b>Total deduction</b>	<b>\$2,560</b>

\* At paragraph 28 of TD 2024/7, the ATO states: *Fees for financial advice on a new investment are not deductible under section 8-1.*

The adviser determines that \$2,560 of the \$4,000 Ongoing Advice Fee is deductible. He further determines that \$1,560 is deductible under s 25-5 and the balance (\$1,000) is deductible under s 8-1.

These amounts need to be further apportioned between Kerry and Kane to determine the deductions that may be claimed by each individual.

## Appendix 5.4 Invoice and Fee Summary templates

### Option 1: Simple template

**TAX RECEIPT**  
AFSL Name Ltd  
ABN: XX

**Private & Confidential**

Client name and address details

**Description of services - Paid**

Initial financial planning advice fees for the Statement of Advice presented by [Adviser name]

Total initial advice fee paid	\$7,500
Advice fees paid via superannuation	-\$1,500
<u>Advice not related to tax affairs</u>	<u>-\$1,500</u>
Advice fee related to tax affairs	\$4,500

Estimated deductible portion: Dave Smith	\$2,250
Estimated deductible portion: Sally Smith	\$2,250

Strategy	Who	Summary of why tax related	Estimated deductible portion
<b>Account based pension (ABP) commencement</b>	Dave & Sally	Creates tax free earnings, reduce taxable income, tax free if over 60, no tax on withdrawals and advising on the tax implications of the ABP commencement	\$1,200 (s 25-5)
<b>Salary sacrifice</b>	Dave & Sally	Reduce tax payable by deducting super prior to PAYG including advising on the tax implications of salary sacrificing into superannuation	\$1,500 (s 25-5)
<b>Investment bond</b>	Dave & Sally	Structuring assets to reduce Assessable Income by investing in internally taxed investment bond including advising on the tax implications of investing in the investment bond	\$1,000 (s 25-5)
<b>Non concessional contribution to super</b>	Dave & Sally	Involved advice on the tax implications of contributions to the NCC cap	\$800 (s 25-5)
<b>Total</b>			<b>\$4,500</b>

The above figures include GST.



## Option 2: Detailed template

AFSL / CAR Address  
ABN XX

Authorised Rep of XX  
AFSL No. XX  
ABN XX

### Itemised Addendum to Invoice [Invoice No]

#### Client names

This itemised addendum breaks down the initial financial planning advice fees for invoice number XXXX paid in the 2024/25 Financial Year for Client1 and Client2 for advice provided by [Adviser Name] ([Company Name]), authorised representatives of [Licensee Name], AFS Licence No [Number].

#### Summary Of Fees

Total initial advice fee paid		\$8,800
Advice fees not related to tax affairs		\$2,860
Advice fees paid via superannuation		Nil
Advice fee related to tax affairs		\$5,940
Estimated deductible portion for	Client1 s 25-5 (\$2,720) s 8-1 (\$140)	\$2,860
Estimated deductible portion for	Client2 s 25-5 (\$2,720) s 8-1 (\$360)	\$3,080

The figures above include GST

#### Breakdown and Summary of Advice

Strategy categories	Summary of why advice was related to tax affairs	Weighting of strategy to advice (0-100%)	Proportion deductible	Estimated tax deduction (\$)
Bank acct structures	Use of mortgage offset accounts reduces assessable income and tax obligations. (s 25-5)	5%	20%	88.00
Budgeting	Not related to tax affairs	5%	Nil	-
Financial modelling	Financial modelling that considered and calculated the tax payable now and over time for all strategies (s 25-5)	10%	100%	880.00
Product switches	Not related to tax affairs	5%	Nil	-
Super contributions	Considered existing and proposed superannuation contributions and its impact on taxable income and the taxation of those funds in the superannuation environment in comparison to the personal tax environment (s 25-5)	10%	100%	880.00

Strategy categories	Summary of why advice was related to tax affairs	Weighting of strategy to advice (0-100%)	Proportion deductible	Estimated tax deduction (\$)
Investment (shares, managed funds etc.)	Investment ownership considerations: understanding existing tax situation, considering alternative options and their tax implications specifically around not investing (paying off debt), family trusts, capital gains and taxable income and recommendations for personally held investments with consideration to taxable income (s 8-1 and s 25-5)	20%	80%	1,408.00
Investment & education bond	Investment ownership considerations: understanding existing tax situation, considering alternative options and their tax implications specifically around not investing (paying off debt) family trusts, capital gains and taxable income and recommendations for personally held investments with consideration to taxable income (s 25-5)	20%	80%	1,408.00
Recurring investment	Investment ownership considerations: understanding existing tax situation, considering alternative options and their tax implications specifically around not investing (paying off debt) family trusts, capital gains and taxable income and recommendations for personally held investments with consideration to taxable income (s 25-5)	10%	80%	704.00
Personal insurance	Client2 income protection is tax deductible and makes up approx. half of their total premium (s 8-1). Advice on life/TPB insurance is <i>tax (financial advice)</i> as cover is held inside superannuation fund (s 25-5)	10%	65%	572.00
Estate planning	Not related to tax affairs	5%		-
<b>TOTAL</b>		<b>100%</b>		<b>\$5,940</b>

The figures above include GST.

## Appendix 5.5 Sample SoA text

The following text can be included as part of the Disclosure of Fees section of the SoA.

### Tax deductibility of advice fees

A portion of the fees you personally pay for financial advice may be tax-deductible, depending on the nature of the advice provided. Under s 25-5 of the *Income Tax Assessment Act 1997* (ITAA 1997), fees related to managing your tax affairs, such as considering the tax implications of investment structuring, capital gains tax (CGT) planning, and deductible debt strategies, may be deductible. Additionally, under s 8-1 of ITAA 1997, ongoing fees incurred in producing assessable income may also be deductible.

Please note that any advice fees paid via superannuation or pension products will not be eligible for a tax deduction.

Based on our assessment of the advice we have provided, we have calculated the portion of the advice fees that may be classified as a deductible expense:

Fee	Individual	Eligible advice fee	Deductible portion
Initial advice fee	Client1	[\$X]	[\$X]
Ongoing advice fee	Client1	[\$X]	[\$X]
<b>Total for Client1</b>		<b>[\$X]</b>	<b>[\$X]</b>
Initial advice fee	Client2	[\$X]	[\$X]
Ongoing advice fee	Client2	[\$X]	[\$X]
<b>Total for Client2</b>		<b>[\$X]</b>	<b>[\$X]</b>

The attached invoice provides a detailed breakdown of the apportionment and the basis for this calculation. We have also provided a letter that you can provide to your accountant to assist with your tax lodgement that details our basis for the calculations above.

This guidance is based on our understanding of current tax laws and Australian Taxation Office (ATO) guidance. Your eligibility to claim a deduction will depend on your individual circumstances. We recommend consulting with a registered tax agent to confirm deductibility and ensure compliance with ATO requirements. The ATO may request evidence to support any claim made, so we recommend retaining this document, along with the attached invoice, for your records.

## Appendix 5.6 FAQs

### Why can't clients just claim everything for Initial Advice?

TD 2024/7 allows for the deduction of fees to the extent the financial advice relates to managing a taxpayer's tax affairs (including advice that is *tax (financial) advice*) or is a cost incurred in the course of gaining or producing Assessable Income.

TD 95/60 (now withdrawn) only considered costs incurred in gaining or producing Assessable Income, so initial fees were not determined to be deductible. TD 2024/7 provides greater clarity on the scope and nature of advice fees that are considered tax deductible – including initial fees under s 25-5.

Not all financial advice fees will be fully deductible. Often an advice fee will need to be apportioned into deductible and non-deductible portions.

### Does this TD apply to SMSFs?

TD 2024/7 expressly applies to individual taxpayers who are not carrying on an investment business. Example 4 notes that:

*the component of the fee that relates to advice on the tax implications of establishing the self-managed superannuation fund are deductible under section 25-5.*

Advisers will also need to distinguish between advice provided to the member regarding their interest in the fund and advice or services provided to the fund's trustees.

While outside the scope of TD 2024/7, a similar method of apportionment and documenting fees could be applied for services provided to SMSF trustees. We recommend discussing with the client's SMSF administrator or tax agent.

### How do I deal with couples?

Apportion the fees to the individual taxpayers according to regular guidelines on apportionment.

### What if the tax agent disagrees?

Tax agents must also comply with the frameworks of legislated professional duties and obligations that apply to them. They will require documentation from the financial adviser on the deductibility of advice fees when preparing a client's tax return. By providing the itemised invoice and retaining evidence of the rationale used, the financial adviser will assist the tax agent meet their obligations and act in the best interests of their mutual client.

Proactive and early engagement with the tax agent through collaborative discussions allows both professionals to determine the best approach for the client, meet their professional obligations, and act in the client's best interests.

### Can we promote this?

Yes. QTRPs are most likely giving tax advice every day and now there is a framework to support greater deductibility of the fees for this advice by clients.

## Are fees charged via managed investment schemes, IDPS or wrap accounts included?

Fees deducted from managed investment schemes, wraps, IDPS, MDAs and SMAs etc, although generally governed by a trustee or held by a custodian, may be treated similarly to fees deducted directly from a client's bank account and are potentially deductible. However, deductibility depends on the contractual arrangements between the financial adviser, client and investment vehicle. A careful reading of the contractual arrangements is essential.

## Is there a difference between Ongoing Fee Arrangements and Fixed Term Agreements?

For the purposes of this guidance, clients retained under either an Ongoing Fee Arrangement or a Fixed Term Agreement are treated as ongoing fee clients.

## Can we claim fees charged previously?

The final TD has effect both before and after it was issued in September 2024. There is no restriction on claiming deductions from any point prior to its issuance (other than the applicable statutory period of review).

Advisers, accountants and clients may wish to consider the effort and time required in relation to amending the client's prior year tax return which has been lodged, but this would be a matter for professional judgement and dependent on the client's individual circumstances.

## Where do taxpayers claim s 8-1 and s 25-5 tax deductions on an individual's personal income tax return?

For the 2023/24 income tax return:

- s 8-1 deductions are claimed at item D15 on the supplementary tax return. See: <https://iorder.com.au/publication/Download.aspx?ProdID=2679-6.2024>
- s 25-5 deductions are claimed at item D10. See: <https://iorder.com.au/publication/Download.aspx?ProdID=2541-6.2024>

Instructions on how to complete an individual's tax return can be found here:

<https://iorder.com.au/publication/Download.aspx?ProdID=71050-6.2024>

From time to time, the ATO changes where specific deductions can be claimed on all tax returns. These fields should be checked every year to confirm their accuracy.

## Appendix 5.7 Further support resources

### ATO - Tax Determination TD 2024/7

<https://www.ato.gov.au/law/view/pdf/pbr/td2024-007.pdf>

### ATO - Financial advice fees - Deductions you can claim for fees you pay to a financial adviser

<https://www.ato.gov.au/individuals-and-families/income-deductions-offsets-and-records/deductions-you-can-claim/investments-insurance-and-super/financial-advice-fees>

### ATO - SMSF deductible expenses

<https://www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/self-managed-super-funds-smsf/smsf-administration-and-reporting/smsf-deductible-expenses>

### ATO - Records of capital gains or losses from capital gains tax assets

<https://www.ato.gov.au/businesses-and-organisations/preparing-lodging-and-paying/record-keeping-for-business/detailed-business-record-keeping-requirements/running-your-business-records/income-tax-return-records-business/stock-and-asset-records/capital-gains-tax-asset-records>

### ASIC Information Sheet 268 (INFO 268) – Relevant providers who provide tax (financial) advice services

<https://asic.gov.au/regulatory-resources/financial-services/financial-advice/your-obligations-when-giving-financial-advice/faqs-relevant-providers-who-provide-tax-financial-advice-services/>

### Tax Practitioners Board - TPB(I) 20/2014 What is a tax (financial) advice service?

<https://www.tpb.gov.au/what-tax-financial-advice-service-information-sheet-tpb-i-202014>

# Glossary

<b>ABP</b>	Account Based Pension
<b>Assessable Income</b>	Assessable income is the total income subject to tax, including wages, business earnings, and investment returns, before deductions are applied. It's the basis for calculating tax liability.
<b>ATO</b>	Australian Taxation Office
<b>Initial Advice</b>	Financial advice provided to a client who has not been previously advised by that financial adviser and/or financial advice recommending acquisition of new financial products.
<b>Initial Advice Fees</b>	One-off charge for providing initial financial advice to clients.
<b>ITAA 1997</b>	<i>Income Tax Assessment Act 1997</i>
<b>Managing Tax Affairs</b>	<p>The management, preparation and lodgement of tax-related obligations for an individual or entity. Expenditure includes fees and costs relating to:</p> <ul style="list-style-type: none"> <li>• Preparing and lodging tax returns</li> <li>• Tax advice and planning, including obligations, liabilities, planning strategies and structuring investments for tax efficiency</li> <li>• Dealing with the ATO</li> <li>• Tax compliance and record keeping such as preparing financial statements for tax purposes, costs of managing tax disputes, etc.</li> </ul> <p>Note: QTRPs cannot prepare and lodge tax returns and deal with the ATO on behalf of a taxpayer, and generally do not prepare financial statements.</p>
<b>Ongoing Advice</b>	Provision of continuous or regular financial advice provided by a financial adviser to their clients. This can encompass a range of services, including but not limited to portfolio management, insurance reviews, investment strategy adjustments, superannuation advice, risk management, and the relevant <i>tax (financial) advice</i> implications of these services. The aim is to ensure that the client's financial goals are met over time.
<b>Ongoing Advice Fees</b>	Fees under an ongoing fee arrangement as defined by s 962A of the <i>Corporations Act 2001</i> . This also includes clients on Fixed Term Agreements of an ongoing nature.
<b>Qualified Tax Relevant Provider (QTRP)</b>	A financial adviser who is legally permitted to provide <i>tax (financial) advice services</i> under Part 7.6 of the <i>Corporations Act 2001</i> . The term applies to financial professionals who meet the regulatory requirements to offer tax-related advice in conjunction with financial planning services.
<b>SIS Act</b>	<i>Superannuation Industry (Supervision) Act 1993</i>