



# ***PCG 2025/D1 - Fees for personal financial advice paid from member accounts by superannuation funds - apportioning the deduction and pay as you go withholding obligations***

 This cover sheet is provided for information only. It does not form part of *PCG 2025/D1 - Fees for personal financial advice paid from member accounts by superannuation funds - apportioning the deduction and pay as you go withholding obligations*

 For information about the status of this draft Guideline, see item 4166 on our [Advice under development program](#).



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## **Draft Practical Compliance Guideline**

# **Fees for personal financial advice paid from member accounts by superannuation funds – apportioning the deduction and pay as you go withholding obligations**

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### **📌 Relying on this draft Guideline**

This Practical Compliance Guideline is a draft for consultation purposes only. When the final Guideline issues, it will have the following preamble:

*This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this Guideline in good faith, the Commissioner will administer the law in accordance with this approach.*

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### **What this draft Guideline is about**

1. Legislative amendments to the *Superannuation Industry (Supervision) Act 1993* (SISA) and the *Income Tax Assessment Act 1997* (ITAA 1997)<sup>1</sup> were enacted to clarify the legal basis for the payment by a superannuation fund of financial advice fees<sup>2</sup> which are

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<sup>1</sup> See the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024*.

<sup>2</sup> A reference to financial advice fees in this draft Guideline is a reference to the payment of a fee by a superannuation fund to a financial adviser for advice that is personal advice provided by the adviser to a member of the fund within the definition in section 766B of the *Corporations Act 2001*. Funds may also charge a fee for general advice, as defined in that section, against members' accounts. This draft Guideline does not apply to the payment of advice fees that are for general advice provided to a member.

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paid from or charged to members' superannuation interests (members' accounts), and the associated income tax consequences.

2. All legislative references in this draft Guideline<sup>3</sup> are to the ITAA 1997, unless otherwise indicated.
3. This Guideline outlines:
  - a methodology a trustee of a superannuation fund<sup>4</sup> (fund) other than a self-managed superannuation fund<sup>5</sup> (SMSF) can use to determine the extent to which payments of financial advice fees satisfy paragraph (d) of table item 5 of subsection 295-490(1) (Part 1 of this Guideline), and
  - our compliance approach in relation to a fund's pay as you go (PAYG) withholding obligations for financial advice fees paid in the income years *prior to* 1 July 2019 (Part 2 of this Guideline). (Paragraph 307-10(e) (which excludes such amounts from being a superannuation benefit) applies from 1 July 2019.)
4. Funds may choose whether to use the methodology outlined in Part 1 of this Guideline. However, by following the methodology in this Guideline, you can be confident that we will not have cause to apply compliance resources to review whether you satisfy the requirement in paragraph (d) of table item 5 of subsection 295-490(1), other than to verify compliance with this Guideline.
5. This Guideline does not apply to the other requirements, in paragraphs (a), (b) or (c) of table item 5 of subsection 295-490(1), which must also be satisfied for a payment of a financial advice fee to be deductible under that item. It is our expectation that funds would have a documented governance framework and assurance practices in place that are adequate in meeting their income tax obligations for the deduction of financial advice fees, for the purposes of satisfying paragraphs (a), (b) and (c) of table item 5 of subsection 295-490(1). This may be considered along with other relevant documentation when we engage with funds as part of our compliance programs.
6. This Guideline does not consider the goods and services tax treatment of the payment of a financial advice fee.
7. This Guideline also does not consider how funds should fulfil their obligations under the SISA in relation to a financial advice fee.

### Who this Guideline applies to

8. You may rely on this Guideline to determine the extent to which payments of financial advice fees satisfy paragraph (d) of table item 5 of subsection 295-490(1) for an income year, for financial advice fees paid from, or charged to, members' accounts (under Part 1 of this Guideline), if you:
  - are a complying or non-complying fund, *other than an SMSF*, and
  - use the *account-based method* outlined in paragraph 25 of this Guideline and meet the method requirements in paragraphs 26 to 28 of this Guideline.

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<sup>3</sup> For readability, all further references to 'this Guideline' refer to the Guideline as it will read when finalised. Note that this Guideline will not take effect until finalised.

<sup>4</sup> 'Superannuation fund' is defined in subsection 995-1(1) as having the meaning given by section 10 of the SISA, which is a fund that is an indefinitely continuing fund and is a provident, benefit, superannuation or retirement fund; or a public sector superannuation scheme.

<sup>5</sup> 'Self-managed' superannuation fund has the meaning given by sections 17A and 17B of the SISA.

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9. The methodology in Part 1 of this Guideline is not available to SMSFs. SMSFs have a limited number of members. Where a trustee of an SMSF pays a financial advice fee at the request, or with the consent, of a member, it is expected that the trustee will review each piece of personal advice provided to the member to determine the extent to which the financial advice fee is deductible.

10. All superannuation funds, *including SMSFs*, may rely on this Guideline in relation to our compliance approach (under Part 2 of this Guideline) to funds' PAYG withholding obligations for income years prior to the 2019–20 income year.

### **Date of effect**

11. When finalised:

- Part 1 of this Guideline is proposed to apply for the 2019–20<sup>6</sup> income year and later income years.
- Part 2 of this Guideline is proposed to apply for the 2018–19 income year and earlier income years. It will not apply to later income years.

### **Background**

#### ***Deductibility of financial advice fees and apportionment***

12. Under table item 5 of subsection 295-490(1), a fund<sup>7</sup> can claim a deduction for an amount paid by the fund to the extent:

- the amount is for a cost incurred because of the provision of personal advice<sup>8</sup> to a member of the fund about the member's interest in the fund (regardless of whether that cost was incurred by the fund, the member or another entity) (paragraph (a))
- the amount is paid at the request, or with the consent, of the member (paragraph (b))
- the fund has a copy of the written request or consent (paragraph (c)), and
- the amount is not incurred in relation to gaining or producing the fund's exempt income or non-assessable non-exempt income (paragraph (d)).

13. Some larger funds have the compliance challenge of assessing whether and to what extent each financial advice fee paid satisfies these conditions.

14. In particular, funds need to determine whether a financial advice fee is wholly incurred in relation to gaining or producing the fund's assessable income in accordance with paragraph (d) of table item 5 of subsection 295-490(1). If not, funds would be required to apportion those fees using an appropriate method to ensure that a deduction is not claimed to the extent that the financial advice fees were incurred in relation to deriving the fund's exempt income or non-assessable non-exempt income.

15. The apportionment requirement in paragraph (d) of table item 5 of subsection 295-490(1) mirrors the requirements for general deductions under paragraph 8-1(1)(a) and paragraph 8-1(2)(c). Accordingly, the apportionment principles set out in Taxation Ruling

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<sup>6</sup> This aligns with the application of Division 2 of Part 1 of Schedule 1 to the *Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024* which applies from 1 July 2019.

<sup>7</sup> Table item 5 of subsection 295-490(1) applies to both complying superannuation funds and non-complying superannuation funds.

<sup>8</sup> As defined in section 766B of the *Corporations Act 2001*.

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TR 93/17 *Income tax: income tax deductions available to superannuation funds* apply to the deduction of financial advice fees. Consistent with paragraph 7A in TR 93/17, financial advice fees for personal advice that are distinct and severable outlays should be apportioned according to the distinct and severable method outlined at subparagraph 7(1) of TR 93/17.

16. We recognise that funds may incur significant compliance costs and an administrative burden in determining an appropriate approach to apportioning financial advice fees for personal advice. These costs may be disproportionate to the amount of the deduction funds are seeking to claim.

17. Part 1 of this Guideline sets out a practical compliance approach funds may use to determine the extent to which payments of financial advice fees paid from, or charged to, members' accounts satisfy paragraph (d) of table item 5 of subsection 295-490(1).

### ***Historical pay as you go withholding obligations***

18. Under the PAYG withholding regime, funds may be required to withhold amounts from payments to members that are superannuation benefits.<sup>9</sup>

19. Under paragraph 307-10(e), the payment of a financial advice fee is excluded from the definition of a superannuation benefit if it:

- is paid by the fund at the member's direction or request, and
- relates directly to personal advice provided to the member in relation to their interest in the fund.

20. The exclusion only applies from the 2019–20 income year onwards. This means, for income years prior to the 2019–20 income year, funds may have had an obligation to withhold from the payment of certain financial advice fees paid on behalf of the member (depending on the nature of the underlying arrangements between the parties). There is no time limit for us to impose a penalty for failing to withhold.

21. Part 2 of this Guideline sets out our compliance approach to the PAYG withholding obligations of funds for financial advice fees that satisfy the criteria in paragraph 307-10(e) but were paid prior to the 2019–20 income year.

## **Part 1 – Apportioning your deduction using the account-based method**

### ***Practical compliance approach***

22. We will not have cause to apply compliance resources to review the apportionment of your deduction for financial advice fees for the purposes of paragraph (d) of table item 5 of subsection 295-490(1) if you:

- are a complying or non-complying superannuation fund that is not an SMSF, and
- use the *account-based method* outlined in paragraph 25 of this Guideline and meet the method requirements in paragraphs 26 to 28 of this Guideline.

23. If you are found not to have satisfied the requirements in paragraph 22 of this Guideline, you will not be able to rely on Part 1 of this Guideline to determine the extent to

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<sup>9</sup> Section 12-85 of Schedule 1 to the *Taxation Administration Act 1953* requires funds to withhold amounts from superannuation lump sums, which are superannuation benefits (as defined in section 307-5) that are not superannuation income stream benefits (see section 307-65). Section 12-80 of Schedule 1 to the *Taxation Administration Act 1953* requires funds to withhold amounts from superannuation income stream benefits.

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which payments of financial advice fees satisfy paragraph (d) of table item 5 of subsection 295-490(1) for that income year.

### ***The account-based method***

24. The account-based method is a simplified method for determining the extent to which payments of financial advice fees paid from, or charged to, members' accounts satisfy paragraph (d) of table item 5 of subsection 295-490(1), based on the type of member's superannuation interest the financial advice fee has been paid from or charged to.

25. Under the account-based method:

- A financial advice fee that is paid from, or charged to, a member's accumulation phase account<sup>10</sup> can be regarded as being incurred in relation to gaining or producing the fund's assessable income.
- A financial advice fee that is paid from, or charged to, a member's retirement phase account<sup>11</sup> is regarded as being incurred in relation to gaining or producing the fund's exempt income or non-assessable non-exempt income, and cannot be included in calculating your deduction.

26. To be clear, the account-based method is only a method for determining the extent to which payments of financial advice fees satisfy paragraph (d) of table item 5 of subsection 295-490(1). The account-based method is not relevant for determining whether you satisfy the remaining requirements in paragraphs (a), (b) and (c) of table item 5 of subsection 295-490(1).

27. If you choose to apply the account-based method for an income year, it must be applied to all financial advice fees paid in that income year.<sup>12</sup> However, you can change your choice from year to year.

28. You cannot claim a deduction for any of these financial advice fees under any other provision of the income tax Acts<sup>13</sup>, including section 8-1.

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### ***Example – using the account-based method***

29. *A large complying superannuation fund records each payment of a financial advice fee for personal advice in its general ledger based on the type of superannuation account the fee is charged to.*

30. *Based on its general ledger account balances at the end of the income year, the total financial advice fees paid by the fund for the year are:*

- *\$5.5 million – accumulation phase accounts*

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<sup>10</sup> A reference to an accumulation phase account in this Guideline means a superannuation interest that is *not* in the retirement phase as defined in subsection 995-1(1). This means, for the purposes of this Guideline, an accumulation phase account includes a transition to retirement income stream (as defined in subregulation 6.01(2) of the *Superannuation Industry (Supervision) Regulations 1994*) that is not in retirement phase – see subsection 307-80(3).

<sup>11</sup> A reference to a retirement phase account in this Guideline is a reference to a retirement phase superannuation interest. A superannuation interest is in the retirement phase at a time if it supports a superannuation income stream that is in retirement phase at that time (refer to the definition of retirement phase in subsection 995-1(1)).

<sup>12</sup> As indicated earlier in this Guideline, a reference to financial advice fees in this Guideline does not include general advice fees as defined in section 766B of the *Corporations Act 2001*.

<sup>13</sup> A reference to the income tax Acts is a reference to the *Income Tax Assessment Act 1936* and the ITAA 1997.

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- *\$8.65 million – retirement phase accounts.*

31. *The fund uses the account-based method to determine the extent to which payments of financial advice fees paid from, or charged to, members' accounts satisfy paragraph (d) of table item 5 of subsection 295-490(1). Accordingly, the fund does not include any of the \$8.65 million of financial advice fees charged to retirement phase accounts in its deduction.*

32. *The fund must then separately determine how much of the \$5.5 million of financial advice fees charged to accumulation phase accounts satisfy paragraphs (a), (b) and (c) of table item 5 of subsection 295-490(1).*

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## **Part 2 – Historical pay as you go withholding obligations**

### ***Practical compliance approach***

33. Paragraph 307-10(e) clarifies that the payment of a financial advice fee is excluded from the definition of a superannuation benefit where the fee is paid at the direction or request of the member and relates to personal advice provided to the member about their interest in the fund. This clarification applies from the 2019–20 income year onwards.

34. As a result, there may be situations where financial advice fees meeting these criteria, paid by a fund from their members' superannuation interests in the 2018–19 and earlier income years, do not benefit from this clarification. Depending on the nature of the arrangements in place in those years, there may be some circumstances where payments of financial advice fees gave rise to an obligation to withhold under the PAYG withholding regime at the time the fee was paid. There is no time limit for us to impose a penalty for failing to withhold.

35. Given the time that has elapsed and the limited retrospective application of paragraph 307-10(e), we will not have cause to apply compliance resources to specifically identify whether any payments of financial advice fees in the 2018–19 and earlier income years should be characterised as superannuation benefits and consequently whether the fund has correctly withheld from payments of financial advice fees in the 2018–19 and earlier income years.

36. Where a failure to withhold from these payments is otherwise identified (for example, as the result of a voluntary disclosure made by a fund), we will generally remit any penalty for failure to withhold unless we have information which suggests it is inappropriate to do so.<sup>14</sup>

37. This transitional PAYG withholding compliance approach applies to all funds, including SMSFs.

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**Commissioner of Taxation**

15 January 2025

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<sup>14</sup> Law Administration Practice Statement PS LA 2007/22 *Remission of penalties for failure to withhold* sets out our approach with respect to remission of the penalty for a failure to withhold.

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## Your comments

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38. You are invited to comment on this draft Guideline including the proposed dates of effect. Please forward your comments to the contact officer by the due date.

39. A compendium of comments is prepared when finalising this Guideline, and an edited version (names and identifying information removed) may be published to the Legal database on ato.gov.au.

40. Please advise if you do not want your comments included in the edited version of the compendium.

**Due date:** 14 February 2025  
**Contact officer:** Jay Gao  
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**Phone:** 02 9374 5168



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## References

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*Legislative references:*

- ITAA 1997 8-1
- ITAA 1997 8-1(1)(a)
- ITAA 1997 8-1(2)(c)
- ITAA 1997 295-490(1)
- ITAA 1997 307-5
- ITAA 1997 307-10(e)
- ITAA 1997 307-65
- ITAA 1997 307-80(3)
- ITAA 1997 995-1(1)
- SISA 1993 10
- SISA 1993 17A
- SISA 1993 17B

- SISR 1994 6.01(2)
- TAA 1953 Sch 1 12-80
- TAA 1953 Sch 1 12-85
- Treasury Laws Amendment  
(Delivering Better Financial  
Outcomes and Other Measures)  
Act 2024 Sch 1 Pt 1 Div 2
- Corporations Act 2001 766B

*Other references:*

- PS LA 2007/22
- TR 93/17

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ATO references

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