



HETHERINGTON JOHNSTON

# Trust administration and legal costs

Legal, accounting and administration expenses are fully deductible if incurred in connection with:

- The preparation, stamping and registration of any lease of trust property used in the derivation of gross income
- The renewal or assignment of any such lease
- The preparation of any Deed of Acknowledgement of Debt
- Remuneration paid to trustees that is attributable to the derivation of gross income
- Remuneration in relation to tax advice
- Remuneration to trustees in relation to reviewing financial statements
- Attendances in relation to finance documentation (where finance costs are deductible)

## Trustees' remuneration

When the capital of the trust is made up of mainly business and farming assets, and the trustees conduct business with those assets, the trustees' activities are accepted as relating to the derivation of gross income and not protection of the capital. Therefore, in these circumstances, the whole of the trustees' remuneration is permitted as a deduction for tax purposes.

Note that remuneration is only payable when permitted in accordance with the terms of the trust.

Legal and administration expenses are not deductible if incurred in connection with:

- The cost of drawing up a Trust Deed
- The capital administration
- The distribution of income to beneficiaries
- The appointment of new beneficiaries
- The cost of settling any dispute related to beneficiaries
- Costs associated with a gifting programme

## Gifting

Deeds of Reduction in Debt and Gift Statements are prepared at the request of individuals who have previously advanced funds to the family trust, (the donors). It is the donors who provide instructions to their solicitor to complete such deeds and for these reasons, any related legal and administration expenses are not tax deductible to the family trust.

The donor would have to show that the gifting, and legal fees incurred as a result, are part of their own business or income earning process, before being able to claim a deduction.

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## \$10,000 threshold

From the 2009 income year onwards, on condition that the trust's total legal expenses for the income year are equal to or less than \$10,000:

- Trusts can deduct business-related legal expenditure, irrespective of whether those legal expenses are capital or revenue in nature
- A deduction is available for legal expenses incurred in acquiring a capital asset that is used to derive taxable income

For more information on this, please see the [Inland Revenue website](#).

From the 2010 income year onwards:

- Legal fees for buying and selling a property can be deducted, on condition that the trust's total legal expenses for the income year, including the fees associated with buying and selling a property, are equal to or less than \$10,000

For more information on this, please see the [Inland Revenue website](#).

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## Our recommendation

There will always be exceptions to the general rules as listed above.

As always, we suggest you contact us for specific advice at [team@hj.co.nz](mailto:team@hj.co.nz) or by phoning [04 566 3302](tel:045663302)