

Expenses of management of investment companies

Part 04-06-11

This document should be read in conjunction with section 83 of the Taxes Consolidation Act 1997.

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1. Introduction

This manual sets out the tax treatment of expenses of management of investment companies.

Section 83 of the Taxes Consolidation Act 1997 permits an "**investment company**" (see paragraph 2 below) resident in the State to deduct, in computing its total corporation tax profits for any accounting period, any sums disbursed as **expenses of management** (including commissions) for that period (except any such expenses as are deductible for the purposes of Case V of Schedule D), less the amount of any income derived from sources not charged to tax, other than franked investment income. The deduction for management expenses should be inclusive of any Value Added Tax (VAT) payable on such expenses provided that:

- (a) the VAT has not been relieved as "input tax", and
- (b) the expenses are not themselves disallowable (see below).

Certain expenses which would not be allowable as deductions are also not allowable as management expenses, e.g. business entertainment expenses prohibited under section 840 TCA 1997.

The amount of any allowances falling to be made to an investment company for any accounting period under section 109 TCA 1997 (relief for payments in respect of redundancy) or section 774 (certain approved occupational pension schemes exemptions and reliefs) are to be added to the company's expenses of management in that accounting period [Section 83(4)]

The deduction of management expenses gives no entitlement to repayments of income tax borne on income included in corporation tax profits. Any necessary repayment or set-off of income tax is made by virtue of section 24(2) TCA 1997.

Section 83 TCA 1997, with certain modifications, is applied to life assurance companies by section 707.

Any excess of the deductible management expenses, together with any charges on income paid in the accounting period wholly and exclusively for the purposes of the company's business, over the profits from which they are deductible is to be carried forward and treated as an expense of management of the next accounting period [Section 83(3)].

An excess of management expenses over profits may be offset by way of group relief in accordance with section 420(3) TCA 1997. The claimant company need not be an investment company. Group relief in respect of management expenses is not allowable in the case of a life assurance business in accordance with section 420(5).

2. Investment Company

"Investment company" means any company whose business consists wholly or mainly of the making of investments and the principal part of whose income is derived from the making of investments, but includes any savings bank or other bank for savings [Section 83(1).]

"Making" in this context means making and holding (see dicta of Rowlatt J., in *C.I.R V Tyre Investment Trust Ltd.*, 12 T.C. at p.656).

3. Expenses of Management

"Expenses of Management" are not defined in Section 83 but in considering whether a deduction is allowable the following instructions should be followed:

- (a) A payment which is deductible against total profits as a charge on income should not be included in the management expenses. Interest paid by an investment company which is a charge on income within the meaning of section 243(1) and (4), should, in strictness, be dealt with under that section. For convenience, however, it may be included as expenses of management instead of being dealt with specifically as a separate deduction against total profits under section 243.
- (b) There is no statutory provision for the inclusion of capital allowances in expenses of management. However, in practice, annual, but not initial, allowances may be allowed in relation to machinery or plant used for the purposes of the management of the business (so far as not allowed as deductions in computing income).
- (c) Any cost of professional advice in relation to the Planning Acts in respect of land held as an investment should be regarded as capital outlay and inadmissible.
- (d) The costs of changing investments (brokerages, commissions and stamp duties) are not admissible as expenses of management (*Capital and National Trust Ltd. Colder, 1949, 31 T.C. 265*, and *Sun Life Assurance Society V Davidson, 1957, 37 T.C.330*).
- (e) In practice, no objection should normally be raised to the inclusion in management expenses of expenses which a company incurs year by year on such matters as the keeping of its share register, the printing of annual accounts and the holding of shareholders' annual general meetings. Allowance may also be made for the annual cost (but not the initial charges) of a Stock Exchange quotation and for the fees paid to newspapers for the inclusion of the company's shares in the newspaper's report of Stock Exchange prices.
- (f) Annual fees paid to trustees for debenture holders or mortgagees may be allowed as management expenses.

(g) As regards

- (i) redundancy payments, and
- (ii) contributions to approved occupational pension schemes,
see above.

(h) Commitment fees incurred by an investment company are to be regarded as part of the cost of raising capital and not as an expense of management deductible under section 1 on the reasoning at page 416 in *London County Freehold and Leasehold Properties Ltd. v Sweet, 1942, 24 T.C. 412.*

(i) The expenditure on maintenance, repairs, etc., of premises owned and occupied by the company may be included in the claim. Such expenditure may, for this purpose, be regarded as including the cost of valuation of property for fire insurance purposes, but not the cost of valuations made in connection with changes of ownership, company reconstruction, etc.

(j) The principles governing the admissibility of directors' remuneration are the same whether the directors' remuneration is claimed as an expense of management or as a trading expense. The remuneration is admissible to the extent that it is reasonable, having regard to the services rendered or the duties performed (*L.G. Berry Investments Ltd. v Attwooll 1964, 41 T.C. 547*).

In practice, no objection need be raised to a claim to include as expenses of management directors' remuneration not exceeding 10 per cent of the company's gross income (including franked investment income) of the accounting period. In the case of a property rental company which is regarded as an investment company for the purposes of Section 83 TCA 1997, where the directors of the company devote a substantial part of their time to the management of a company's properties and there is not a separate management charge, payments which do not exceed 15% of gross rents will not be questioned.

4. Example

The following example illustrates the proposed treatment of directors' remuneration in respect of an investment company, where the company's income includes rental income and where it is established that the directors devote a substantial part of their time to the management of the company's properties:

Gross rents	€200,000
Other income (gross)	€ <u>40,000</u>
Total	€240,000

Admissible directors' remuneration is calculated as follows:

Gross rents €200,000 x 15% €30,000

Other income €40,000 x 10% € 4,000

Total **€34,000**

A deduction of €34,000 will be regarded as admissible.

- (i) Expenses incurred by an investment company in evaluating an investment opportunity are not allowable as management expenses. Such expenses are regarded as capital in nature - refer to decision in *Hibernian Insurance Company Ltd. V MacUimis ITC 1997* and Tax Instruction 4.6.15.
- (ii) In the case of Life Assurance Companies please refer to the Notes for Guidance on section 707 TCA 1997.
- (iii) Interest incurred by an investment company on borrowings relating to capital acquisitions is to be regarded as part of the cost of raising capital and is not deductible as an expense of management.