TD 93/D164 - Income tax: employment agreement: are costs incurred in settling disputes arising out of employment agreements deductible under subsection 51(1) of the Income Tax Assessment Act 1936 (ITAA) to the employer and to the employee?

This cover sheet is provided for information only. It does not form part of *TD 93/D164 - Income tax: employment agreement: are costs incurred in settling disputes arising out of employment agreements deductible under subsection 51(1) of the Income Tax Assessment Act 1936 (ITAA) to the employer and to the employee?*

This document has been finalised by TD 93/164.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: employment agreement: are costs incurred in settling disputes arising out of employment agreements deductible under subsection 51(1) of the *Income Tax Assessment Act 1936* (ITAA) to the employer and to the employee?

1. Yes. Costs incurred in the settling of disputes arising out of employment agreements are allowable deductions under subsection 51(1) of the ITAA.

2. Under the Employee Relations Act (Vic) 1992 relationships between employers and employees are governed by employment agreements. Existing award conditions are to be phased out.

3. An employment agreement is a written, legal and binding confirmation of the employer/employee relationship. The agreement covers rates of pay, working conditions, leave entitlements and many other special provisions. Agreements are for a fixed term, not exceeding five years.

4. Costs may be incurred by both the employer and the employee and include:
- representation (which could be a union, an accountant, a lawyer or any other representative) during negotiation;
- costs associated with the drawing up of the agreement;
- lodgement fees; and
- costs associated with settlement of disputes.

Example:
Fred was employed under an employment agreement with Julie. The agreement provided for a tool allowance of $750 per year. After two years Julie discovered that the trade only allowed for a tool allowance of $100 per year. She refused to pay Fred more than $100 in future. Fred disagreed and took his complaint to the appropriate tribunal for arbitration.

Fred was represented by his lawyer who sent him an account for $250 for services rendered. Fred is entitled to claim the payment as a deduction. It was an expense incurred in protecting an existing right under the Employment Agreement. It is not an expense of a private or of a capital nature.

Julie was represented by her accountant, who charged her $350 for services rendered. Julie can claim the payment as as a deduction because it is an expense incurred in the carrying on of a business.

Commissioner of Taxation
24/6/93

FOI INDEX DETAIL: Reference No.
Related Determinations: TD 93/D161, TD 93/D162, TD 93/D163, TD 93/D165
Related Rulings:
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