TD 93/22 - Income tax: is a professional sportsperson who is required to take out private health insurance entitled to a deduction for related contributions under subsection 51(1)?

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This Determination, to the extent that it is capable of being a 'public ruling' in terms of PartáIVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: is a professional sportsperson who is required to take out private health insurance entitled to a deduction for related contributions under subsection 51(1)?

1. No. The contributions paid to a private health fund by a sportsperson are not deductible under subsection 51(1) of the *Income Tax Assessment Act 1936* because:

(a) the expense is of a private nature;

(b) the expense is not sufficiently connected to the sporting activity that produces that income; and

(c) the expense is a precondition to earning income. Lockhart J said in *FC of T v Cooper* 91 ATC 4396, (1991) 21 ATR 1616, "the deductibility of... [an expense]... depends upon determining the essential character of the expenditure itself and not upon the fact that, unless it is incurred, the taxpayer will not be able to engage in the activity from which his income is derived."

2. A deduction is not allowable whether or not the expense of private health insurance is a condition of employment.

Example

A professional footballer enters into a playing contract with a first grade rugby league club. A clause of the contract requires the player to take out private health insurance. The player is not allowed a deduction for contributions made to the health insurance fund.

Commissioner of Taxation
11/2/93

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