

TR 2003/16 - Income tax: deductibility of protective items

 This cover sheet is provided for information only. It does not form part of *TR 2003/16 - Income tax: deductibility of protective items*



Taxation Ruling

Income tax: deductibility of protective items

Contents	Para
What this Ruling is about	1
Date of effect	5
Previous Rulings	6
Ruling	7
Explanation	15
Examples	42
Definitions	56
Alternative views	57
Detailed contents list	59

Preamble

*The number, subject heading, **What this Ruling is about** (including **Class of person/arrangement** section), **Date of effect**, and **Ruling** parts of this document are a 'public ruling' for the purposes of **Part IVAAA of the Taxation Administration Act 1953** and are legally binding on the Commissioner. The remainder of the document is administratively binding on the Commissioner of Taxation. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.*

What this Ruling is about

Class of person/arrangement

1. This Ruling applies to you if you claim work-related expenses.
2. The Ruling sets the Commissioner's views on the deductibility, under the *Income Tax Assessment Act 1997* (ITAA 1997), of expenses incurred in protecting yourself from the risk of illness or injury in the course of carrying out your income earning activities, following the decision in *Morris & Ors v. FC of T* (2002) 50 ATR 104; 2002 ATC 4404; [2002] FCA 616 (the *Morris Case*).
3. In this Ruling the term 'protective items' means things that, according to their design, properties and practical application, protect you against illness or injury.
4. This Ruling does not deal with the following matters in relation to the deductibility of protective items:
 - substantiation rules – the requirement to substantiate certain work expenses is dealt with in other rulings, in particular Taxation Rulings TR 98/5 and TR 95/18;
 - payment or reimbursement of an expense you incur where the payment or reimbursement constitutes a fringe benefit – this matter is dealt with in the various occupational rulings (see for example, Taxation Ruling TR 95/18);

TR 2003/16

- protective clothing, such as overalls and aprons, when worn to prevent damage or soiling of your ordinary clothing rather than to protect you against illness or injury – this matter is dealt with in Taxation Ruling TR 97/12; and
- vaccinations against diseases – this matter is dealt with in other Taxation Rulings.

Date of effect

5. This Ruling applies to years of income commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Previous Rulings

6. This Ruling replaces the following Taxation Rulings and Determinations (all of which were withdrawn on 11 June 2003):

- Taxation Ruling TR 96/17;
- Taxation Ruling TR 97/12 (in relation to clothing and footwear when used for protection against illness or injury);
- Taxation Determination TD 92/157;
- Taxation Determination TD 93/244; and
- Taxation Determination TD 94/48.

Ruling

7. You can deduct expenditure on a protective item you use to protect you from the risk of illness or injury if:

- you incurred the expense;
- there is a sufficient connection between the expenditure and earning your assessable income so that the outgoing is incidental and relevant to the gaining of assessable income; and
- the expenditure has the essential character of an outgoing incurred in gaining your assessable income.

8. Expenditure on a protective item will have a sufficient connection with the earning of your assessable income where:

- you are exposed to the risk of illness or injury in the course of carrying out your income earning activities;
- the risk is not remote or negligible;
- the protective item is of a kind that provides protection from that risk and would reasonably be expected to be used in the circumstances; and
- you use the item in the course of carrying out your income earning activities.

9. You cannot claim a deduction for expenditure that is of a private or domestic nature. Such expenditure does not have the essential character of an outgoing incurred in gaining your assessable income, even if there is a connection between that expenditure and your income earning activities. This applies particularly to conventional clothing. When you use conventional clothing to protect you while at work, your expenditure on the clothing in most cases will still be of a private or domestic nature because the essential character of the expenditure is that of meeting personal requirements of modesty, decency and warmth. Exceptions to this general rule are outlined in the following paragraphs.

10. Although a protective item may be of a kind normally associated with private or domestic use, the nature of your use of that item will in some instances give your expenditure on it the essential character of an outgoing incurred in gaining assessable income. This is a question of fact and depends on the degree to which your work place poses a risk of illness or injury and the degree to which the item protects you against that risk.

11. The following are indicators of the degree of risk and of protection against that risk referred to in paragraph 10:

- you are required to work in an environment which could be harmful if adequate safety precautions are not taken;
For example – do you work in extreme weather conditions?
- the use of the item in the work place makes it unsuitable for private or personal use;
For example - does your protective work clothing become so soiled in protecting you at work that it is unsuitable to wear to and from work?
- expenditure on the item is additional to your normal private or domestic expenditure on such items;

For example – do you need to wear additional protective clothing at work to guard against risk or injury from extreme weather or other potentially unsafe conditions?

- the item is qualitatively different to items of a comparable nature used privately or domestically;

For example - is the item made to cope with more rigorous work conditions?

- you use the item principally for income producing activities;

For example - do you use the item only at work or, if there is some private or domestic use, is this use only incidental to its main use at work?

- it is a requirement of your employer, work-related safety laws or an industrial agreement for you to use protective items;

For example – does your industrial award provide for payment of an allowance for you to purchase protective items for use at work?

- the use of the item adds to your workplace productivity; and

For example – does your use of the protective item enable you to work for more sustained periods?

- any other feature of your use of the item for protective purposes which may further indicate your expenditure on that item has the essential character of an outgoing incurred in gaining your assessable income.

12. It will usually be the case that more than one of the above indicators will exist for expenditure on a protective item normally associated with private or domestic use to have the essential character of an outgoing incurred in earning assessable income.

13. You must apportion the expenditure on protective items which you also use partly for private or domestic purposes or to earn exempt income. You can only claim a deduction for the portion of the expenditure attributable to earning your assessable income.

14. Where expenditure for protective items is of a capital nature and an immediate deduction for the whole amount is not permitted under the general deduction provisions, the expenditure will be deductible, generally over time, in accordance with the applicable capital allowance provisions.

Explanation

Deductibility of protective items

15. The tests for deductibility of losses or outgoings are in section 8-1 of the ITAA 1997, which provides:

8-1 General Deductions

- (1) You can **deduct** from your assessable income any loss or outgoing to the extent that:
 - (a) it is incurred in gaining or producing your assessable income; or
 - (b) it is necessarily incurred in carrying on a business for the purpose of gaining or producing your assessable income.
- (2) However, you cannot deduct a loss or outgoing under this section to the extent that:
 - (a) it is a loss or outgoing of capital, or of a capital nature;
 - (b) it is a loss or outgoing of a private or domestic nature;
 - (c) it is incurred in relation to gaining or producing your exempt income; or
 - (d) a provision of this Act prevents you from deducting it.
- (3) A loss or outgoing that you can deduct under this section is called a **general deduction**.

16. Expenditure on protective items falls for consideration under paragraph 8-1(1)(a) - the 'first positive limb'. This limb applies to all taxpayers, including employees and those carrying on a business.

17. The courts have established that for a loss or outgoing to be deductible under paragraph 8-1(1)(a):

- it must have the essential character of a loss or outgoing incurred in gaining your assessable income or, in other words, of an income producing expense: *Lunney v. FC of T*; *Hayley v. FC of T* (1958) 100 CLR 478; (1958) 11 ATD 404;
- there must be a sufficient connection between the loss or outgoing and the activities by which you gain your assessable income – so that the outgoing is incidental and relevant to the gaining of your assessable income: *Ronpibon Tin NL v. FC of T* (1949) 78 CLR 47; (1949) 8 ATD 431; *Charles Moore & Co (WA) Pty Ltd v. FC of T* (1956) 95 CLR 344; (1956) 11 ATD 147; 6 AITR

379; *FC of T v. Hatchett* (1971) 125 CLR 494; 71 ATC 4184; (1971) 2 ATR 557; and

- it must not be expenditure that is private or domestic in nature or that produces exempt income: *FC of T v. Cooper* (1991) 29 FCR 177; 91 ATC 4396; (1991) 21 ATR 1616 (the *Cooper Case*); *Mansfield v. FC of T* (1996) 31 ATR 367; 96 ATC 4001 (the *Mansfield Case*) and the *Morris Case*.

Deductibility of expenditure of a capital nature on protective items

18. You cannot claim under section 8-1 a deduction for expenditure if it is an outgoing of a capital nature. Expenditure may be of a capital nature if, amongst other things, it brings into existence an asset or advantage of an enduring benefit for the income earning activities: *British Insulated and Helsby Cables Ltd v. Atherton* (1926) AC 205.

19. Most work-related protective items (such as hats, clothing and sunglasses) are used more or less continuously in the course of income producing activities. In addition, they are often subject to particularly harsh wear and tear because of their protective use. As a result, they need to be replaced reasonably frequently and are of little enduring benefit. In these circumstances, where you use such items in the course of gaining your assessable income, the expenditure will be treated as being of a revenue and not of a capital nature.

20. If expenditure on a protective item that you use in the course of earning your assessable income is of a capital nature (for example, an X-ray technician's expenditure on a lead apron) you can still deduct an amount in relation to the item. The capital allowance provisions of Division 40 provide a deduction for the decline in value of the item. Under Subdivision 40-B, a deduction is worked out over the effective life of the item. Under Subdivision 40-E a deduction is worked out at a rate of 37.5% using a pooling mechanism or, if the item costs no more than \$300 and certain other conditions are met, an immediate deduction is available. The simplified tax system also provides a deduction if those provisions apply. Subdivision 328-D provides an immediate deduction for items costing less than \$1,000 or a deduction at a rate of 30% using a pooling mechanism.

You incurred the expense

21. You must have personally incurred the expense. If, for example, your employer or another person, such as a head contractor by whom you are engaged, paid for the protective items which you

use, you would not be able to claim a deduction because you did not incur the expense.

Sufficient connection between expenditure and income earning activities

22. You need to show that there is a sufficient connection between your expenditure on the protective items and your income earning activities for the expense to be deductible. That connection must be a real connection rather than just a perceived one: *Martin v. FC of T* (1984) 84 ATC 4513; 15 ATR 808, *FC of T v. Smith* (1981) 147 CLR 578; (1981) 11 ATR 538; 81 ATC 4114. The connection must be more than just remote or minor, and also more than merely peripheral to your income earning activities.

23. It does not necessarily follow that there is a sufficient connection between your expenditure on a protective item and your income earning activities just because you use or wear the item while at work. Whether or not there is a sufficient connection will depend upon the facts of the case, including the nature and scope of the income producing activities and the nature and character of the expenditure: the *Morris Case*.

24. In the *Morris Case*, Goldberg J found that the fact that a protective item enables a taxpayer to be more productive in their work output is a further indicator of a sufficient connection between expenditure on protective items and income earning activities. However, it does not automatically follow that a deduction is allowable for expenditure on a protective item where its use results in increased productivity. Nor is it a requirement that the use of the protective item produce this outcome for a deduction to be allowable: the *Morris Case*.

25. In determining whether there is a sufficient connection between your use of protective items and your income earning activities, it does not matter whether the risk of illness or injury against which you need to take protection is posed by an artificial environment, such as a machine in a factory, or an element of the natural environment, such as the sun: the *Morris Case*.

26. For examples which focus on determining whether there is a connection between expenditure on protective items and income earning activities, see paragraphs 43 to 45.

Expenditure of a private or domestic nature on protective items

27. The High Court in *John v. FC of T* (1989) 166 CLR 417 at 431; (1989) 20 ATR 1 at 6, 89 ATC 4101 at 4105 said that it is possible to incur an expense in gaining or producing assessable

TR 2003/16

Example 5	48
Example 6	49
Example 7	50
Example 8	51
Example 9	52
Example 10	53
Example 11	54
Example 12	55
Definitions	56
Alternative views	57
Detailed contents list	59

Commissioner of Taxation

17 December 2003

Previous draft:

Previously issued as TR 2003/D4.

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR 95/18;
 TR 96/17; TR 97/12; TR 97/16;
 TR 98/5; TD 92/157; TD 93/244;
 TD 94/48;

Subject references:

- allowable deduction
- protective clothing
- protective clothing expenses
- protective equipment
- protective items

Legislative references:

- ITAA 1997 8-1
- ITAA 1997 8-1(1)(a)
- ITAA 1997 8-1(2)(b)
- ITAA 1997 Subdiv 40-B
- ITAA 1997 Subdiv 40-E
- ITAA 1997 Div 40
- ITAA 1997 40-25(2)
- ITAA 1997 Subdiv 328-D
- TAA 1953 Pt IVA

Case references:

- AAT Case 4353 (1988); 19 ATR 3504
- British Insulated and Helsby Cables Ltd v. Atherton [1926] AC 205
- Case A45 69 ATC 270; Case 24 15 CTBR (NS) 161;
- Case 107 12 CTBR (NS) 622
- Case R80 (1966) 16 TBRD 388
- Case T103 86 ATC 1182
- Case V79 88 ATC 550
- Charles Moore & Co (WA Pty Ltd v. FC of T (1956) 95 CLR 344; (1956) 11 ATD 147; 6 AITR 379
- FC of T v. Cooper (1991) 29 FCR 177; 91 ATC 4396; (1991) 21 ATR 1616
- FC of T v. Edwards 28 ATR 87; 94 ATC 4255;
- FCT v. Forsyth (1981) 148 CLR 203; (1981) 11 ATR 657
- FC of T v. Hatchett (1971) 125 CLR 494; 71 ATC 4184; (1971) 2 ATR 557
- FC of T v. Smith (1981) 147 CLR 578; (1981) 11 ATR 538; 81 ATC 4114
- Handley v. FCT (1981) 148 CLR 182; (1981) 11 ATR 644; 81 ATC 4165
- John v. FCT (1989) 166 CLR 417; (1989) 20 ATR 1; 89 ATC 4101

- Lunney v. FC of T; Hayley v. FC of T (1958) 100 CLR 478; (1958) 11 ATD 404
- Mansfield v. FC of T (1996) 31 ATR 367; 96 ATC 4001
- Martin v. FC of T (1984) 15 ATR 808; 84 ATC 4513

- Morris & Ors v. FC of T (2002) 50 ATR 104; 2002 ATC 4404; [2002] FCA 616
- Ronpibon Tin NL v. FC of T (1949) 78 CLR 47; (1949) 8 ATD 431

ATO references

NO: 2002/012359
ISSN: 0139-0731