

TD 93/175 - Income tax: is expenditure incurred by an employee in applying for a promotion deductible under subsection 51(1) of the Income Tax Assessment Act 1936 ?

 This cover sheet is provided for information only. It does not form part of *TD 93/175 - Income tax: is expenditure incurred by an employee in applying for a promotion deductible under subsection 51(1) of the Income Tax Assessment Act 1936 ?*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA 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 expenditure incurred by an employee in applying for a promotion deductible under subsection 51(1) of the *Income Tax Assessment Act 1936*?

1. Generally yes. If the expenditure (not being expenditure of a capital, private or domestic nature) will objectively lead to, or will be likely to lead to, an increase in the employee's assessable income without effecting a change in the employee's current income-earning activities, it will be deductible under subsection 51(1).

2. However, if the expenditure is incurred in applying for a promotion which will involve a change in the employee's current income-earning activities, it will not be deductible. This proposition is supported by the decisions in *Case Z1 92 ATC 101*; 22 ATR 3549 and *FC of T v Maddalena* 71 ATC 4161; 2 ATR 541.

3. We consider that if the promotion will result in the opening up of a new income-producing activity for the employee, the expenditure is not deductible. It is not deductible because it is incurred in getting the job, not in doing the job, and as such, "it would come at a point too soon to be properly regarded as incurred in gaining assessable income." *FC of T v Maddalena* 71 ATC 4161 at 4163; 2 ATR 541 at 549 per Menzies J.

4. *Dobbs v Commissioner of Inland Revenue* 74 ATC 6001, a decision of the Supreme Court of New Zealand, held that legal expenses incurred by a public servant in respect of a successful appeal which resulted in a promotion were deductible. This decision supports the proposition that expenditure incurred by an employee in applying for a promotion is an allowable deduction under subsection 51(1), and has since been approved by the Administrative Appeals Tribunal decision in *Inglis & Anor v FC of T* 87 ATC 2037 at 2047; 2048.

Example 1

A school teacher applies for three Deputy Principal positions during an income year which requires the following expenditure to be incurred :

Typing of Applications

\$ 60

Motor Vehicle travel to Interviews (as distinct from travel

between the teacher's home and the school at which he/she currently teaches which is not deductible; see TD 93/113)

\$ 480

Accommodation

\$ 152

The expenditure is deductible under subsection 51(1) because it will objectively lead to, or will be likely to lead to, an increase in the taxpayer's assessable income without causing a change in his/her current income-producing activities.

Example 2

Following a recommendation from a senior colleague, an employee purchases several new suits/outfits in an attempt to enhance his/her personal "image" for the purposes of obtaining a promotion, including the purchase of a new suit/outfit for the interview itself. The employee is successful in obtaining the promotion. Although it may be concluded that the expenditure has a nexus to the employee's assessable income, the expenditure is nevertheless of a private nature, and consequently, is not deductible under subsection 51(1).

Example 3

After completing a law degree through part-time study, a clerk who is employed in a non-legal area of the public service applies for a position as a solicitor with another government department. Expenditure similar to that which is contained in Example 1 is incurred as a result of the successful application.

We consider that the expenditure is not deductible under subsection 51(1) because it is incurred in opening up a new income-earning activity for the taxpayer, and consequently, "...would come at a point too soon to be properly regarded as incurred in gaining assessable income."

Commissioner of Taxation

2/9/93

FOI INDEX DETAIL: Reference No. I 1216059

Previously issued as Draft TD 93/D128

Related Determinations: TD 93/113

Related Rulings:

Subject Ref: Expenditure; Application for promotion; Deductibility

Legislative Ref: ITAA 51(1)

Case Ref: Case Z1 92 ATC 101; FC of T v Maddalena 71 ATC 4161; Dobbs v Commissioner of Inland Revenue 74 ATC 6001; Inglis & Anor v FC of T 87 ATC 2037.

ATO Ref: ALB 920159

ISSN 1038 - 8982