

Class Ruling

Income tax: The deductibility of expenditure incurred on food and drink by shoppers carrying out assignments for Shopper Anonymous (WA) Pty Ltd

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Preamble

*The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and 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 Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax law dealt with in this Ruling is section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997).

Class of persons

3. The class of persons to which this Ruling applies are individuals (shoppers) who are engaged by Shopper Anonymous (WA) Pty Ltd (SAPL) under the Shopper Anonymous Contractor Employment Agreement (the Agreement) who are required to purchase items of food or drink for the purpose of completing mystery shopping assignments for SAPL under the Arrangement described at paragraphs 11 to 25.

Qualifications

4. This Ruling does not deal with the question of whether the shoppers engaged under the Agreement are employees or independent contractors.

5. This Ruling is therefore not to be taken as a determination on the status of the shoppers engaged under the Agreement.
6. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.
7. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described in paragraphs 11 to 25.
8. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:
- this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
 - this Ruling may be withdrawn or modified.
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Date of effect

10. This Ruling applies from 1 July 2002. 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 to 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:
- it is not later withdrawn by notice in the *Gazette*;
 - it is not taken to be withdrawn by an inconsistent later public ruling; or
 - the relevant tax laws are not amended.

Arrangement

11. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents and documented conversations. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- application for Class Ruling dated 18 October 2002;
- letter dated 21 February 2003 from SAPL enclosing a copy of the Agreement, sample instructions given to shoppers for supermarket assignments and agreement between SAPL and its clients; and
- record of telephone conversations between representatives of SAPL and officers of the Australian Taxation Office in November 2002, 29 April 2003, 2 December 2003 and 2 February 2004.

12. SAPL contracts to undertake market research (mystery shopping) for their clients.

13. This Ruling deals only with mystery shopping carried out for those clients who are supermarkets/ food retailers or cinemas.

14. The mystery shopping is to be carried out without the knowledge of the employees of the supermarkets/food retailers or cinemas.

15. The purpose of mystery shopping is to enable SAPL to report back to the supermarkets/food retailers or cinemas on certain areas of their operation. The prepared report deals with the level of customer service provided by the client's staff, the quality of their products and the cleanliness of their premises.

16. SAPL engages shoppers under the Agreement to undertake the mystery shopping.

17. The shoppers are required to carry out their mystery shopping assignments in accordance with instructions from SAPL and to provide written reports within deadlines. The shoppers are required as part of their overall assignment to purchase an item of food or a drink from the client's premises.

18. Shoppers are paid a set fee for each job they complete. The fees vary according to whether the mystery shopping and reporting is carried out for a cinema or a small, medium or large supermarket/food retailer.

19. The shoppers are not provided with any specific funds for the purchase of the required food or drink item.

20. In relation to mystery shopping assignments for supermarkets/food retailers, shoppers are instructed to purchase either:

- a specific item of food from the supermarket/food retailer; or
- any item of food from a specific section of the supermarket.

21. While the shoppers must purchase items of food there is no requirement for the shoppers to taste or consume the items of food in order to report on the quality of the food items.

22. The items of food are subsequently thrown out by the shoppers; they are not consumed by the shoppers and/or their family and friends, or given to any other person.

23. The shoppers are not entitled to a reimbursement or refund from SAPL or the supermarkets/food retailers for their expenditure on items of food that they are required to purchase to carry out their mystery shopping assignments.

24. In relation to a mystery shopping assignment for a cinema, shoppers are required to purchase a drink from the cinema to enable the cinema to measure the selling ability of its staff. The shoppers are required to request a small drink and assess the cinema employee's ability to sell them a larger drink. There is no requirement for the shopper to taste or consume the drink.

25. The drinks are subsequently thrown out by the shoppers; they are not consumed by the shoppers and/or their family and friends, or given to any other person.

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26. The expenditure incurred on food and drinks purchased, but not consumed by them and/or their family and friends or given to any other person, in completing mystery shopping assignments for SAPL is deductible under section 8-1 of the ITAA 1997.

Explanation

27. Section 8-1 of the ITAA 1997 provides that a taxpayer can deduct from their assessable income any loss or outgoing that they incur in gaining or producing that income or necessarily incur in carrying on a business for the purpose gaining or producing assessable income. However, they cannot deduct an amount to the extent that it is capital, private or domestic in nature.

28. Several significant court decisions have established that, for an expense to be an allowable deduction, there must be a sufficient connection between the outgoing and the assessable income such that the expenditure is incidental and relevant to the taxpayer's income-producing activities (*Ronpibon Tin NL and Tongkah Compound NL v Federal Commissioner of Taxation* (1949) 78 CLR 47; (1949) 4 AITR 236; (1949) 8 ATD 431, and it must have the essential character of an outgoing incurred in gaining assessable income (*Lunney & Hayley v. Federal Commissioner of Taxation* (1958) 100 CLR 478; (1958) 7 AITR 166; (1958) 11 ATD 404).

29. In many circumstances expenditure on food and drink is not deductible as the essential character of such expenditure is private or domestic.

30. However, the courts have rejected the view that food and drink are by their very nature private or domestic expenses and, therefore, excluded from deductibility (*Federal Commissioner of Taxation v. Cooper* (1991) 21 ATR 1616; 91 ATC 4396 (*Cooper's Case*)). They have, instead, consistently emphasised the importance of the circumstances/facts of a case in determining whether an expense is incidental and relevant to the taxpayer's income earning activities and whether the expense has the essential character of an income producing expense (*Handley v. Federal Commissioner of Taxation* (1981) 148 CLR 182, *John v. Federal Commissioner of Taxation* (1989) 166 CLR 417; 20 ATR 1 and *Cooper's Case*).

31. Therefore, where a taxpayer's expenditure relates to food and drink, and that expenditure is incidental and relevant to the taxpayer's income earning activities and the expenses have the essential character of an income-producing expense (rather than a private or domestic expense), the taxpayer would be entitled to a deduction for those expenses.

32. The shoppers are engaged by SAPL to carry out and provide reports on mystery shopping assignments in return for set fees. In certain circumstances, the shoppers are required to incur expenditure on items of food or drinks to complete their mystery shopping assignments for SAPL.

33. The circumstances of the activity provide a sufficient connection between the expenses incurred on food or drink by shoppers, such that the expenditure is incidental and relevant to the derivation of assessable fees from completing such assignments and reports.

34. The items of food and drink are thrown away by the shoppers they are not consumed by the shoppers and/or their family and friends or given to any other person. In these circumstances the essential character of the expenditure is not private or domestic in nature. The occasion of the outgoing gives the expenditure the essential character

of an income-producing expense. Therefore, the shopper's expenditure on food and drink is incidental and relevant to their income earning activities and has the essential character of an income producing expense.

35. Accordingly, the shoppers are entitled to deductions under section 8-1 of the ITAA 1997 for the expenditure they incur in purchasing food or drink under the arrangement that is the subject of this Ruling.

Detailed contents list

36. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation

31 March 2004

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20;
TR 97/16

Subject references:

- allowable deductions
- food and drinks

Legislative references:

- ITAA 1997 8-1
- Copyright Act 1968
- TAA 1953 Pt IVAAA

Case references:

- *Ronpibon Tin NL and Tongkah Compound NL v FCT* (1949) 78 CLR 47; (1949) 4 AITR 236; (1949) 8 ATD 431
- *Lunney & Hayley v. FCT* (1958) 100 CLR 478; (1958) 7 AITR 166; (1958) 11 ATD 404
- *Handley v. FCT* (1981) 148 CLR 182
- *John v. FCT* (1989) 166 CLR 417; 20 ATR 1
- *FCT v. Cooper* (1991) 21 ATR 1616; 91 ATC 4396.

ATO references

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