TR 96/D2 - Income tax: work-related expenses: deductibility of expenses on compulsory uniform shoes, socks and stockings

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Draft Taxation Ruling
Income tax: work-related expenses: deductibility of expenses on compulsory uniform shoes, socks and stockings

other Rulings on this topic

IT 2096; IT 2115; IT 2641; TR 95/8; TR 95/9; TR 95/10; TR 95/11; TR 95/12; TR 95/13; TR 95/14; TR 95/15; TR 95/16; TR 95/17; TR 95/18; TR 95/19; TR 95/20; TR 95/21; TR 95/22; TR 96/D3; TR 96/D4; TD 93/101; TD 93/109; TD 93/121; TD 93/154

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What this Ruling is about

Class of person/arrangement

1. This Ruling sets out our views on the deductibility, under subsection 51(1) of the *Income Tax Assessment Act 1936* (the Act), of expenses incurred in respect of shoes, socks and stockings worn as part of a compulsory uniform, following the decision of the Federal Court of Australia in *Mansfield v. FC of T* 96 ATC 4001; [(1996) 31 ATR 367 - not yet reported] (*Mansfield's* case).

2. *Mansfield's* case also dealt with expenditure on rehydrating moisturiser and rehydrating hair conditioner, and with cosmetics and personal grooming expenses. These matters are the subject of Draft Taxation Rulings TR 96/D3 and TR 96/D4 respectively.

Date of effect

3. This Ruling applies to years 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 a 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).

Ruling

4. The decision in *Mansfield's* case follows the long standing view that, as a general rule, items of clothing are private in nature and not deductible, whether or not the taxpayer uses them for work. In most cases expenditure on shoes, socks, stockings and other conventional clothing will not be deductible.

5. This general rule is not, however, of universal application and it is possible in special circumstances for there to be a sufficient connection between the expenditure on clothing and the income earning activities of a taxpayer. For this to occur it is not sufficient that the expenditure is a prerequisite to the derivation of assessable income. It must be relevant and incidental to the actual activities which gain the assessable income.

6. Expenditure on shoes, socks and stockings may give rise to a deduction where they form an integral part of a distinctive compulsory uniform, the components of which are set out by the employer in a written uniform policy document or guidelines. The employer's uniform policy guidelines should stipulate the characteristics of the shoes, socks and stockings that qualify them as being a distinctive part of the compulsory uniform, e.g., colour, style, type, etc. The wearing of the uniform must also be strictly and consistently enforced with breaches of the uniform policy giving rise to disciplinary action. These latter factors reflect the fact that image is of critical importance to the particular employer.

7. In order to constitute a uniform the items of clothing, when worn together, must be distinctive and unique to a particular employer so as to identify clearly the wearer as an employee of that employer. It is not enough that employees may be required by their employer to wear clothing of a particular colour, brand or style at work.

8. The decision in *Mansfield's* case does not extend to shoes, socks or stockings which are worn as part of a non-compulsory uniform or as part of a set of clothes reserved solely for the occasion of work. The 'Approved Occupational Clothing Guidelines' that relate to section 51AL of the Act specifically preclude these items from being registered as part of a non-compulsory uniform. The cost of these items is therefore not an allowable deduction under subsection 51(1) of the Act.

Explanations

General principles

9. Expenditure on compulsory uniform shoes, socks and stockings falls for consideration under subsection 51(1) of the Act. In so far as it is relevant for present purposes, subsection 51(1) provides as follows:

> '... outgoings to the extent to which they are incurred in gaining or producing the assessable income ... shall be allowable deductions, except to the extent to which they are ... outgoings of ... a private or domestic nature ...'

10. For expenditure by an employee to be deductible under the first limb of subsection 51(1) of the Act, the High Court of Australia has indicated that the expenditure must have the essential character of an outgoing incurred in gaining assessable income or, in other words, of an income-producing expense (*Lunney v. FC of T* (1958) 100 CLR 478 at 497-498). There must be a nexus between the outgoing and the assessable income so that the outgoing is incidental and relevant to the gaining of the assessable income (*Ronpibon Tin NL v. FC of T* (1949) 78 CLR 47). Consequently, it is necessary to determine the connection between the particular outgoing and the operations by which the taxpayer more directly gains or produces his or her assessable income (*Charles Moore & Co (WA) Pty Ltd v. FC of T* (1956) 95 CLR 344 at 349-350; *FC of T v. Cooper* 91 ATC 4396 at 4403; (1991) 21 ATR 1616 at 1624; *Roads and Traffic Authority of NSW v. FC of T* 93 ATC 4508 at 4521; (1993) 26 ATR 76 at 91). Whether such a connection exists is a question of fact to be determined by reference to all the facts of the particular case. In most cases, a sufficient connection will not exist between expenditure on shoes, socks and stockings and the derivation of income by an employee taxpayer, and the expenditure will be private in nature.

11. Nothing in the decision in *Mansfield's* case changes the principles set out in paragraph 10 above. The decision in *Mansfield's* case is simply an example of a situation where, on the particular facts of the case, the Court found, not without some doubt, that a sufficient connection did exist such that the expenditure was work-related and not private in nature.

12. In reaching his decision in *Mansfield's* case, Mr Justice Hill stated (ATC at 4008):

> 'The mere fact that a particular form of clothing is required to be used in an occupation or profession will not necessarily lead to the conclusion that expenditure on that form of clothing was deductible.

> It can be said that generally expenditure on ordinary articles of apparel will not be deductible, notwithstanding that such expenditure is necessary to ensure a suitable appearance in a particular job or profession. An employed solicitor may be required to dress in an appropriate way by his or her employer, but that fact alone would not bring about the result that the expenditure was deductible.'

Deduction allowable

13. The Federal Court in *Mansfield's* case considered the deductibility of expenses incurred by a flight attendant on shoes and stockings worn as part of a compulsory distinctive uniform. Evidence in this case indicated that image was of critical importance to the employer and flight attendants were checked for adherence to the rules for uniform and grooming when they signed on for a shift.

14. There were also annual performance reviews, including monthly assessments, of compliance with the uniform and grooming requirements. A flight attendant who was not well groomed or who did not comply with the uniform requirements would be counselled. Continued non-compliance could curtail prospects for promotion or lead to dismissal.

15. Mr Justice Hill found that the shoes and stockings formed an integral part of the compulsory uniform which was significantly important to the image of the particular airline. Evidence was presented in this case which supported the strict uniform regime enforced by Mrs Mansfield's employer, and that neither the cabin shoes nor the shoes with high heels were ever used by the taxpayer other than when she was in uniform. Mr Justice Hill stated (ATC at 4003):

> 'There was on issue to flight attendants, around the year of income, a publication entitled "Dressing for Success" which referred to the minimum standards required by the airline to be maintained by a flight attendant throughout his or her flying career. It said, *inter alia*:
>
> " ... acceptable appearance in uniform is your responsibility. Failure to maintain standards may result in termination of your employment."
>
> The booklet set out in some detail what was acceptable and what was not acceptable in matters of grooming.'

16. When ruling on the deductibility of hosiery, Mr Justice Hill accepted Mrs Mansfield's evidence that, when not working as a flight

attendant, she did not wear support hosiery. He concluded (ATC at 4009):

> 'Not without some doubt I take the view that the connection with employment is to be found in the fact that the pantyhose is part of the uniform which Mrs Mansfield is required to wear. It does not cease to be part of the uniform merely because a choice is given of two colours. As part of the uniform, so important to the image of an airline, it finds a differentiation from ordinary clothing, so that the necessary relationship is to be found between the expenditure on the pantyhose and Mrs Mansfield's occupation as a flight attendant, and likewise the essential character of the expenditure is not to be seen as private. In other words, the expenditure can be properly seen as work-related expenditure.'

17. When ruling on the deductibility of cabin shoes Mr Justice Hill stated (ATC at 4008):

> 'The shoes in the present case were required to be worn as part of the uniform. It is true that there was nothing to distinguish the shoes from shoes which a flight attendant might purchase for domestic purposes other than, on the evidence of the present case, colour. But there are other features besides the requirement that the shoes match the remaining parts of a flight attendant's uniform which assist the taxpayer here. There is the additional feature that the cabin pressure requires the shoes to be a half size too large for ordinary use. ... It is these features that lead, in my view, to the conclusion that the occasion of the outgoing on shoes, that is to say cabin shoes, should be seen as being found in the duties which Mrs Mansfield performed as a flight attendant in the year of income. It is unnecessary, therefore, for me to decide what the result may have been if her claim had been not merely to deduct expenditure on cabin shoes but also expenditure on blue high heeled shoes which could be worn to and from work as well as in the cabin and which, presumably, were not a half size too large for normal usage.'

18. Mr Justice Hill allowed a deduction for cabin shoes which were oversized and formed part of Mrs Mansfield's uniform and did not rule on the deductibility of uniform shoes not worn in the cabin. However, it is our view that reasoning similar to that used by Mr Justice Hill to allow a deduction for stockings as part of a compulsory uniform, would have relevance to shoes worn as part of a compulsory uniform which is critical to the image of the employer.

19. Shoes, socks and stockings are essentially of a private nature and, even when worn at the request of the employer, their cost will only be deductible in limited circumstances. To qualify for deduction,

the items must firstly form an integral part of a distinctive compulsory uniform.

20. A uniform is a set of clothing that is distinctive and unique to a particular employing organisation and is not freely available for use by the general public. A uniform should be sufficiently distinctive so that the casual observer can identify the particular employer. In *Mansfield's* case, Mr Justice Hill stated (ATC at 4008):

> 'A uniform is not merely a set of clothes reserved for the occasion of work.'

21. In addition, the employer's uniform guidelines should stipulate the characteristics of the shoes, socks and stockings that qualify them as being an integral part of the compulsory uniform, e.g., colour, style, type, etc. The wearing of the uniform must also be strictly and consistently enforced, with breaches of the uniform policy giving rise to disciplinary action.

22. In our view, it is only in similarly strict regimes for compulsory uniforms that expenditure on these items is likely to be regarded as work-related rather than private in nature.

Deduction not allowable

23. In *Mansfield's* case there was a range of other features besides the requirement that the shoes match the remaining parts of the uniform. These included the fact that the taxpayer's work conditions caused her stockings to be snagged and her shoes to be scuffed. It is not clear how much weight is to be given to these additional features but it is unlikely that they would be sufficient to make the expenditure deductible but for the finding that they formed an integral part of a compulsory uniform and the fact that the cabin shoes could only be worn at work (because the cabin pressure caused the taxpayer's feet to swell, requiring her to purchase her cabin shoes half a size too big).

24. Similarly, Mr Justice Hill considered that the support function of the hosiery was not sufficient to turn what was essentially a private expense into a deductible expense (see ATC at 4009). The determinative factor that made the cost of the stockings a work-related expense was that they were a distinctive part of the compulsory uniform, critical to the image of the airline.

25. A deduction is not allowable for the cost of shoes, short socks or stockings worn as part of a non-compulsory uniform. The 'Approved Occupational Clothing Guidelines', relevant to section 51AL, specifically preclude these items from being registered as part of a non-compulsory uniform. Consequently, expenditure on such items is ineligible for deduction under subsection 51(1) of the Act.

Examples

Example 1

26. Joe, a flight attendant with an international airline, is required to wear black executive length socks as part of his compulsory uniform. His employer carries out regular checks of its employees to ensure that they meet strict grooming and uniform standards. Failure to comply with the compulsory uniform requirements could result in disciplinary action or even lead to dismissal. Joe is given an allowance to meet these expenses.

27. A deduction is allowable for the cost of Joe's black executive length socks worn as an integral part of his compulsory uniform which is critical to the image of the airline.

Example 2

28. Julia wears blue stockings when working as a hairdresser. She does not wear the stockings at any other time. The uniform guidelines of Julia's employer state that stockings must be worn, but do not specify any particular colour, style, etc. The wearing of the uniform, clearly identifying Julia as a hairdresser who works at that salon, is strictly enforced by her employer.

29. A deduction is not allowable for the cost of Julia's stockings that she wears at work. The employer's written policy does not provide that stockings with specified characteristics form an integral part of the uniform. The fact that the stockings are worn only at work will not be sufficient to change the private nature of the expense to a work-related expense.

Example 3

30. Kim is a sales assistant in a department store. Her employer imposes a strict dress code which allows employees no choice of colour in the garments they wear - shirts and blouses must be white; trousers, slacks, skirts, socks and shoes must be black; stockings must be flesh coloured. There are no distinguishing features on the garments that identify the wearer as an employee of the store.

31. Even though the clothing is compulsory, Kim would not be entitled to a deduction for the cost of her work clothing, stockings or shoes, as they do not constitute a uniform. The black and white clothing is not considered to be distinctive and unique to a particular

organisation. It is a set of clothes that is freely available for use by the general public.

Example 4

32. Tom is employed as a bus driver and his employer provides him with a brown shirt with the name of the Company printed on the shirt. He is required to wear this shirt at all times when he is at work. His employer expects Tom to be well presented but does not stipulate what colour or style of clothing or footwear must be worn with the shirt.

33. Tom's trousers, socks, shoes, etc., are items of ordinary clothing and do not form part of a uniform. He would not be entitled to a deduction for their cost as it is private expenditure.

Example 5

34. Mustafa is a solicitor employed by XY and Z. His employer requires him to wear a good quality, dark coloured, tailored business suit, long sleeved single coloured cotton shirt, a tie, black leather shoes and black socks. XY and Z considers that Mustafa should be dressed immaculately at all times as the firm's image is of particular importance. In recognition of this requirement, XY and Z pays Mustafa a clothing allowance of $2,000 per annum. Mustafa expended the allowance purchasing the clothing and footwear prescribed by XY and Z. He only wears the clothing and footwear for work purposes.

35. A deduction is not allowable for the cost of Mustafa's clothing. It is considered that the clothing and footwear prescribed by XY and Z do not constitute a uniform. The items of apparel are not distinctive in the sense that, by wearing them, Mustafa can be recognised as an employee of XY and Z (or as a solicitor, for that matter). The fact that Mustafa is paid an allowance does not confer deductibility on the expenditure.

Example 6

36. Sandra is an officer in the Royal Australian Air Force (RAAF). As part of her compulsory Service Dress uniform, she wears grey-mist stockings and service black leather court shoes. Failure by Sandra to comply with the RAAF Uniform Directive and Orders of Dress could result in disciplinary action from her Commanding Officer. Neither

the grey-mist stockings nor the service black leather court shoes are used by Sandra other than when she is in uniform.

37. A deduction is allowable for the cost of Sandra's grey-mist stockings and service black leather court shoes worn as an integral part of her compulsory Service Dress uniform specified in the RAAF Uniform Directive.

38. Similar principles might apply to police forces provided they have a strict compulsory uniform regime.

Example 7

39. Charles is an Able Seaman in the Royal Australian Navy (RAN) posted to HMAS Platypus. As part of his compulsory Ceremonial Dress uniform, the RAN Uniform Instructions require Charles to wear black socks and black leather service shoes. The RAN Uniform Instructions apply to all ranks of the RAN. Commanding Officers and Executive Officers ensure that the standards of dress are maintained and observed. The wearing of non-approved clothing with the uniform is prohibited. Items of uniform are not to be worn as part of civilian attire. Failure by Charles to comply with the RAN Uniform Instructions could result in disciplinary action from his Commanding Officer.

40. A deduction is allowable for the cost of Charles' black socks and black leather service shoes worn as an integral part of his compulsory Ceremonial Dress uniform specified under RAN Uniform Instructions.

Alternative views

41. The view has been expressed that the cost of purchasing stockings, socks or shoes used for work would be allowable to taxpayers generally. It is our view that the decision in *Mansfield's* case does not support this proposition. Further, section 51AL of the Act specifically precludes a deduction for such items where they are part of a non-compulsory uniform.

Your comments

42. If you wish to comment on this Draft Ruling, please send your comments by: 22 March 1996

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- Charles Moore & Co (WA) Pty Ltd v. FC of T (1956) 95 CLR 344
- FC of T v. Cooper 91 ATC 4396; (1991) 21 ATR 1616
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- Mansfield v. FC of T 96 ATC 4001; (1996) 31 ATR 367
- Roads and Traffic Authority of NSW v. FC of T 93 ATC 4508; (1993) 26 ATR 76
- Ronpibon Tin NL v. FC of T (1949) 78 CLR 47