TR 96/D3 - Income tax: work-related expenses: deductibility of expenses on rehydrating moisturiser and rehydrating hair conditioner

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Draft Taxation Ruling
Income tax: work-related expenses: deductibility of expenses on rehydrating moisturiser and rehydrating hair conditioner

other Rulings on this topic

TD 93/244; TR 95/19; TR 95/20; TR 96/D2; TR 96/D4

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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 rehydrating moisturiser and rehydrating hair conditioner, 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. This Ruling does not cover expenditure on shoes, socks and stockings worn as part of a compulsory uniform which is the subject of a separate Taxation Ruling (see Draft Taxation Ruling TR 96/D2). Similarly, this Ruling does not cover expenditure on cosmetics and personal grooming expenses as that is also the subject of a separate Taxation Ruling (see Draft Taxation Ruling TR 96/D4).

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. As a general rule, expenditure on moisturisers and hair conditioners or other personal care products is private in nature and not 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 personal care products such as moisturiser and the income earning activities of a taxpayer. For example, in *Mansfield's* case the Court held that a deduction was allowable to the extent that the taxpayer used rehydrating moisturiser and rehydrating hair conditioner both to combat the abnormal drying of her skin and hair when working in the pressurised environment of an aircraft and to maintain a well groomed and well presented image which was of critical importance to the employer.

6. The *Mansfield* decision would extend to other airline employees who work under similar conditions, and might have implications for employees in other industries. The decision in *Mansfield* is predicated on harsh working conditions and a requirement that the taxpayer be well groomed. Questions of fact and degree will be involved in determining the outcome in other working environments, and it would be desirable for the Courts, in an appropriate case, to provide further guidance on what are the determinative factors.

7. Where a deduction is allowable for moisturising products, only the amount actually spent on such items for work purposes can be claimed as a deduction. That is, only the proportion of the total expenditure on these products that relates specifically to the income earning activities will be an allowable deduction.

8. A deduction would not be allowable for the cost of these items for those taxpayers who travel on work in an aircraft as passengers.

9. The decision in *Mansfield's* case was given in the context of an abnormal and unique working environment and it does not necessarily extend to items that provide protection from the natural environment. On balance, it is our view that a deduction would not generally be allowable to taxpayers for expenditure on sunscreen, sunglasses, hats, raincoats, umbrellas, etc.

Explanations

General principles

10. Expenditure on moisturisers and hair conditioners 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 ...'

11. The High Court has indicated that, for expenditure by an employee to be deductible under the first limb of subsection 51(1) of the Act, 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 moisturisers and hair conditioners and the derivation of income by the employee.

12. Nothing in the decision in *Mansfield's* case changes the principles set out in paragraph 11 above. The decision in *Mansfield's* case is simply an example of a situation where, on the particular facts of the case, Mr Justice Hill found that a sufficient connection did exist such that the expenditure was work-related and not private in nature.

Deduction allowable

13. The Federal Court in *Mansfield's* case considered the deductibility of expenses incurred by a flight attendant on rehydrating moisturiser and rehydrating hair conditioner. Evidence in that case highlighted the abnormal and unique working environment of the pressurised airline cabin, where constant exposure to the extremely

low humidity had a drying effect on the skin and hair of the taxpayer. This led Mr Justice Hill to conclude that (ATC at 4007):

> '... expenditure for moisturiser, the necessity for which was brought about by the harsh conditions of employment which Mrs Mansfield was called upon to endure, is incidental and relevant to her occupation as a flight attendant. It has the necessary connection with her activities in the cabin itself. It is these activities which are directly relevant to her gaining and producing assessable income by way of salary.'

14. Mrs Mansfield's employer placed great importance on the presentation and grooming of its flight attendants. Written evidence was provided that set out in some detail what was acceptable and what was not acceptable in matters of grooming. It was, for example, not acceptable for a flight attendant to fly with dry or cracked skin, blemishes or cold sores that could not be concealed. The relevant award also conferred an entitlement to sick leave if an employee was unable to work because of cosmetic problems.

15. In *Mansfield's* case expenses incurred on grooming were recognised in the award under which Mrs Mansfield worked, by the provision of an allowance. Grooming was also recognised in the training courses undertaken by Mrs Mansfield and in the daily, monthly and annual assessments made by the employer. However, the requirement to be well groomed and the receipt of an allowance to cover expenses were not sufficient to make the deduction allowable. Mr Justice Hill stated (ATC at 4007 and 4008):

> '... the mere fact that a particular expenditure may be required to be made by the employer, while relevant will not be determinative of deductibility. The additional feature present in the present case is the fact that the occasion of the expenditure is to be found in Mrs Mansfield's working in the cabin, that is to say, in the dehydration brought about by pressurisation of the cabin at altitude.'

16. The 'additional feature' to the grooming requirements of the employer, which showed the relationship between the expenditure on rehydrating moisturiser and rehydrating hair conditioner and the income earning activity, was the effect on Mrs Mansfield of her abnormal and unique working environment, i.e., the detrimental effects on her skin and hair of dehydration brought about by constant exposure to the low humidity of the pressurised airline cabin.

17. Mr Justice Hill went further and confirmed that expenditure on moisturiser solely for grooming needs and the cost of make-up and hairdressing were not deductible on the facts of that case. Mr Justice Hill said (ATC at 4008):

> 'Even if makeup as such is required by the airline as an incident of the employment, I am presently of the view that makeup retains an essential personal characteristic which excludes it from deductibility.'

and (ATC at 4009):

> 'Expenditure on hairdressing is of a private nature. There is no additional feature which shows any relationship between the expenditure on the one hand and Mrs Mansfield's employment as a flight attendant. The expenditure does not have the character of employment-related expenditure and in my view is not deductible.'

Apportionment

18. Where a deduction is allowable for rehydrating moisturiser and rehydrating hair conditioner, only the amount actually spent on such items for work purposes is deductible: see *Mansfield's* case.

19. What represents the appropriate apportionment of such items of expenditure is essentially a question of fact in each case: see *Fletcher & Ors v. FC of T* 91 ATC 4950; (1991) 22 ATR 613, relying on *Ronpibon Tin NL v. FC of T* (1949) 78 CLR 47.

20. A fair and reasonable basis of apportionment of the expenses on rehydrating moisturiser and rehydrating hair conditioner between work use and private use should be applied. A claim for this expenditure will be subject to the requirements of the substantiation provisions.

Deduction not allowable

21. A deduction is not allowable for the cost of rehydrating moisturiser and rehydrating hair conditioner for taxpayers who travel on work in an aircraft as passengers. It is considered that as passengers are not employed to work in the aircraft and are not constantly exposed to the very low humidity, there would be insufficient connection with their work for the expense to be deductible.

22. The decision in *Mansfield's* case does not deal with items that provide protection from the natural environment, e.g., sunscreen, sunglasses, hats, raincoats, umbrellas, etc. Whilst there is no Court authority relating to these items, the Board of Review in *Case Q11* 83 ATC 41; (1983) 26 CTBR (NS) *Case 75* found that expenditure on sunscreen lotion by a self employed lawn mowing contractor was not deductible. Dr Beck, with whom the other Members of the Board agreed, said (ATC at 43; CTBR at 525):

> '... protecting himself from skin damage is acting in a private capacity and the expenditure is thus of a private nature and excluded by sec. 51.'

23. Subject to further guidance from the Courts on this matter, we consider it appropriate to follow the Board's approach that expenditure on such items will not usually be deductible (see Taxation Determination TD 93/244).

24. Note that, notwithstanding the view we have expressed in paragraph 23 above, we would support the litigation of appropriate cases as part of the Test Case Program for Tax Law Clarification.

Examples

Example 1

25. George, a traffic police officer, purchases a rehydrating moisturiser which contains a sun protection factor, for use when standing out in the sun directing traffic. He wishes to claim a deduction for the cost of this moisturiser.

26. It is unlikely that George's working conditions would be described as harsh, abnormal or unique as was the case in *Mansfield*, given the range of factors that were taken into account in that case, including the requirement that Mrs Mansfield be well groomed and presented at all times. Further, as George is merely protecting himself from the natural environment, the cost of the moisturiser is likely to be characterised as private and not deductible.

Example 2

27. Joan works in an air conditioned building and applies moisturiser to her face and hands before commencing her duties at work. She purchases a special rehydrating moisturiser for use while she is at work.

28. Joan would not be entitled to a deduction for the cost of the moisturiser as it is of a private nature.

Example 3

29. Sam is employed by an international airline and works at the check-in counter at the airport. It is important to Sam's employer that he is well groomed at all times whilst at the check-in counter. Sam uses a rehydrating moisturiser as he finds the air conditioned

environment in the terminal causes his skin to become dry and cracked.

30. The requirement to be well groomed does not, of itself, alter the private nature of the expense, and in Sam's case, the working environment is not likely to be characterised as harsh or abnormal such as to provide the necessary nexus between the expenditure on moisturiser and the income earning activities.

Example 4

31. Sarah is a flight attendant who works approximately 200 days a year, although only 150 days are spent on duties performed in the aircraft. The remaining 50 days are spent either performing duties at the airline terminal, attending training sessions or on promotional and other duties as required by her employer. Sarah purchases a rehydrating hair conditioner specifically to combat the drying effects on her hair caused by both having her hair permed and the pressurised airline cabin. She had her hair permed to ensure her hair looks neat and tidy, as good grooming is a necessary requirement of her job and is strictly enforced by her employer.

32. Sarah is only allowed a deduction for the proportion of the cost of rehydrating hair conditioner attributable to combating the effects of dehydration to her hair, caused by her work in the aircraft. The fact that she perms her hair to satisfy the grooming requirements of her employer will not alter this decision. Sarah should have written evidence to show the total cost of the hair conditioner. The total expenses should then be apportioned. A reasonable basis for calculating her claim could centre around the proportion of total days worked that were spent in pressurised aircraft. Sarah would need supporting documentation.

Alternative views

33. The view has been widely expressed that the decision in *Mansfield's* case supports a deduction for the cost of sunscreen, sunhats and other items that provide protection from the natural environment. The Commissioner's view, which is supported by the Board of Review decision in *Case Q11*, is at paragraphs 22 and 23 above.

34. It might also be argued that the existence of harsh working conditions is not a pre-requisite for deductibility of personal care products provided there is a requirement to be well groomed, and the expenditure is incurred as a result of the working environment. While

questions of fact and degree are involved, both *Mansfield's* case and *Case Q11* suggest that something out of the ordinary is usually necessary for the essential character of the expenditure to be seen as work-related rather than private in nature.

35. Alternatively, it might be argued that the existence of harsh working conditions would, in themselves, be sufficient to entitle a taxpayer to a deduction for items such as moisturiser. However, it is noted that in *Mansfield* the use of rehydrating moisturiser was also linked to an image factor (i.e., the employer requirement that the taxpayer be well groomed).

36. As Mr Justice Hill pointed out in *Mansfield*, the characterisation of an expense as either private or work-related involves questions of fact and degree. Subject to further judicial guidance on the matter, we consider that the expenditure referred to in paragraphs 33, 34 and 35 above currently falls towards the private end of the spectrum. However, we would welcome the opportunity to clarify further the law on these matters through the Courts and we would actively support the litigation of appropriate cases.

Your comments

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

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case references
- 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
- Fletcher & Ors v. FC of T 91 ATC 4950; (1991) 22 ATR 613
- Lunney v. FC of T (1958) 100 CLR 478
- 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
- Case Q11 83 ATC 41; (1983) 26 CTBR (NS) Case 75