TD 93/D161 - Income tax: employment agreement: are costs associated with employment agreements deductible under subsection 51(1) of the Income Tax Assessment Act 1936 (ITAA) to the employer?

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This document has been finalised by TD 93/161.

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Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: employment agreement: are costs associated with employment agreements deductible under subsection 51(1) of the *Income Tax Assessment Act 1936* (ITAA) to the employer?

1. Yes. Costs incurred by an employer in hiring staff is an expense in the carrying on of a business and such costs are deductible under subsection 51(1). These costs include costs associated with the hiring of new employees, as well as the renewal and variations of employment agreements with existing employees.

2. Under the Employee Relations Act (Vic) 1992, relationships between employers and employees are governed by employment agreements. Existing award conditions are to be phased out.

3. An employment agreement is a written, legal and binding confirmation of the employer/employee relationship. The agreement covers rates of pay, working conditions, leave entitlements and many other special provisions. Agreements are for a fixed term, which cannot exceed five years.

4. There are two types of agreements, individual agreements and collective agreements. An individual agreement is between one employee and the employer. A collective agreement is between a group of workers and the employer. Collective agreements are required to be lodged with the Employee Relations Commission of Victoria, whereas individual agreements do not have to be.

5. Costs may be incurred by both the employer and the employee and include:
- representation (which could be a union, an accountant, a lawyer or any other representative) during negotiation;
- costs associated with the drawing up of the agreement;
- lodgement fees; and
- costs associated with settlement of disputes.

Commissioner of Taxation
24/6/93

FOI INDEX DETAIL: Reference No.
Related Determinations: TD 93/D162, TD 93/D163, TD 93/D164, TD 93/D165
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