# *TD 93/D163 - Income tax: employment agreement: are costs associated with an employment agreement deductible under subsection 51(1) of the Income Tax Assessment Act 1936 (ITAA) to an employee in an existing employment relationship where either: the agreement is renewed after its term is concluded; or the conditions are changed?*

This cover sheet is provided for information only. It does not form part of *TD 93/D163 - Income tax: employment agreement: are costs associated with an employment agreement deductible under subsection 51(1) of the Income Tax Assessment Act 1936 (ITAA) to an employee in an existing employment relationship where either: the agreement is renewed after its term is concluded; or the conditions are changed?*

This document has been finalised by TD 93/163.

**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 an employment agreement deductible under subsection 51(1) of the *Income Tax Assessment Act 1936* (ITAA) to an employee in an existing employment relationship where either:
## . the agreement is renewed after its term is concluded; or
## . the conditions are changed?

1. Yes. The legislation governing an employment agreement provides for a contract to be of a fixed term. A renewal of an agreement at the conclusion of a term or a change in the conditions (be it a variation, a renegotiation of an existing agreement or a promotion) with the same employer is, unlike the initial contract, not an expense of a capital nature and is therefore deductible under subsection 51(1) of the ITAA.

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, not exceeding five years.

4. 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.

*Example 1:*
*Mary has been employed by Joe since 1984. In March 1993 they arrange for an employment agreement to be drawn up to comply with the new legislation. Mary takes her contract to her lawyer, who checks it. Her lawyer sends her an account for $350 for services rendered.*

*Mary is entitled to this deduction as the expense was incurred in the gaining of assessable income in the same job.*

*Example 2:*
*Tom was employed under an employment agreement with Jane. The agreement provided for a tool allowance of $900 per year. After two years Jane discovered that competitors in the trade only allowed for a tool allowance of $ 200 per year. She discussed the issue with Tom. Following the discussion they varied the agreement . Tom was assisted by his lawyer who sent him an account for $250 for services rendered.*

*Tom is entitled to a deduction. The expense was incurred in varying an existing right under the employment agreement with his present employer*

*Example 3:*
*Charles was employed under an employment agreement with Joe. A better job became vacant and Joe offered that job to Charles. During the discussions about the promotion a new employment agreement was drawn up and Charles consulted his lawyer who sent him an account for $700 for services rendered.*

*Charles is entitled to a deduction. Charles did not find a new job, he merely obtained a promotion in his present job.*

**Commissioner of Taxation**
24/6/93

FOI INDEX DETAIL: Reference No.
Related Determinations: TD 93/D161, TD 93/D162, TD 93/D164, TD 93/D165
Related Rulings:
Subject Ref: employment agreement
Legislative Ref: ITAA 51(1)
Case Ref:
ATO Ref: MOR

ISSN 1038 - 8982