TD 93/D23 - Income tax: is a police officer, who is required to maintain an adequate level of physical fitness in order to undertake police duties, entitled to claim a deduction for fitness related expenditure?

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This document has been finalised by TD 93/114.

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: is a police officer, who is required to maintain an adequate level of physical fitness in order to undertake police duties, entitled to claim a deduction for fitness related expenditure?

1. Where police duties do not require an officer to undertake regular strenuous physical activity, expenses of keeping fit are not deductible under subsection 51(1) of the *Income Tax Assessment Act 1936*. This type of expense does not have the essential character of being incurred in the course of gaining or producing assessable income.

2. An employer's requirement that an employee incur expenditure which is not related to income-producing activities does not convert that expenditure into a deductible outgoing (per Hill J in *F.C. of T. v Cooper,* (1991) 91 ATC 4396 at page 4414, (1991) 21 ATR 1616 at page 1636). Therefore, whilst Police Regulations may require an officer to remain in a physically fit condition, this does not mean expenditure related to keeping fit is allowable as an income tax deduction.

3. However, there may be circumstances where such expenditure by a police officer is an essential element of gaining income. This could occur in those occupations within the police force where strenuous physical activity by an officer is an essential and regular element of performing that officer's duties. It is considered a police academy physical training instructor may be in this category.

4. Those expenses which may be claimed in the above circumstances include gym fees and depreciation of gym equipment. No deduction is available in respect of expenditure on any items of conventional clothing which may be used in the course of keeping fit. This would include such things as tracksuits, running/aerobic shoes, socks, T-shirts or shorts.

Example 1

A general duties police officer regularly plays squash to ensure he maintains a high level of fitness as he may be called upon to undertake strenuous activities at any time in the line of duty. The officer claims his squash fees as a deduction. As the officer's ordinary duties do not require regular strenuous physical activity, no deduction is available to the officer for squash fees or any related expenses.

Example 2

A police academy PT instructor regularly attends a commercially operated gymnasium to ensure he is in peak condition to perform his duties. The officer claims gym fees, special aerobic shoes and a tracksuit. As the officer's ordinary duties require regular strenuous physical activity, a deduction would be available for the gym fees, but not for the tracksuit or aerobic shoes due to their conventional nature.

Commissioner of Taxation
04/02/93

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