


TD 94/D17 - Income tax: is a taxpayer who is an employee and receives an overtime meal allowance pursuant to an industrial instrument, required to substantiate a claim for overtime meal expenses, if the claim exceeds the amount of the allowance received during the year of income?

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Draft Taxation Determination

Income tax: is a taxpayer who is an employee and receives an overtime meal allowance pursuant to an industrial instrument, required to substantiate a claim for overtime meal expenses, if the claim exceeds the amount of the allowance received during the year of income?

1. Yes. If the claim exceeds the allowance received, sections 82KZ and 82KZA specify that the deduction is not allowable unless documentary evidence of the expense has been obtained and retained by the taxpayer. Broadly, documentary evidence of an expense is a receipt, invoice or similar document that sets out particulars (as specified in section 82KU) sufficient to prove the amount of the deduction claimed and the nature of the expense. Section 82KZA states that documentary evidence of the expense must be retained for a period of three years and six months from the date of lodgement of the return.

2. We accept that in these circumstances a taxpayer is entitled to a deduction under subsection 51(1) for overtime meal expenses. Subsection 51AE(4) provides that a deduction is not allowable under subsection 51(1) in respect of losses or outgoings to the extent to which they are in respect of the provision of entertainment. However, paragraph 51AE(5)(j) precludes the application of subsection 51AE(4) to an employee for the cost of overtime meal expenses if the employee 'receives an allowance pursuant to the provisions of an industrial instrument for the purposes of enabling the taxpayer to purchase food and drink in connection with overtime worked by the taxpayer'.

3. An 'industrial instrument' is defined in subsection 51AE(1) as 'a law of the Commonwealth or of a State or Territory or an award, order, determination or industrial agreement in force under any such law'.

4. Section 82KZA relates to the substantiation of expenses incurred by taxpayers, and provides:

'Where a taxpayer fails to retain for the retention period in relation to an expense incurred by the taxpayer -

(a) in the case of any other expense - documentary evidence of the expense;

a deduction is not allowable, and shall be deemed never to have been allowable, under this Act in respect of the expense.'

5. Subsection 82KZ(4) provides that section 82KZA does not apply if the claim for overtime meal expenses does not exceed the allowance received and the Commissioner considers that the amount of the allowance is reasonable. Taxation Ruling TR 93/22 indicates that for the 1993-94 income year, the Commissioner consider that overtime meal allowances no greater than \$15 per meal are reasonable. This amount has applied since 1 August 1991.

Example 1:

Mary received overtime meal allowances totalling \$500 during the 1992-93 income year, and included this amount in her assessable income. She estimated that she spent \$1,000 during the year on overtime meal expenses and claimed a deduction for this amount. Mary did not retain documentary evidence of her meal expenses and therefore is not entitled to a deduction for overtime meal expenses.

Example 2:

Phil received overtime meal allowances totalling \$600 during the 1992-93 income year and included this amount as both an item of income and a deduction in his tax return. The allowance was calculated at \$12 per meal for 50 meals. The cost of the overtime meal expenses is an allowable deduction providing Phil establishes that he incurred the expenditure on overtime meals. Phil is not required to substantiate the claim because the cost of the meals was not greater than \$15.

Commissioner of Taxation

24/2/94

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings: IT 2326, IT 2595, IT 2644, IT 2686, TR 93/22.

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