IT 2331 - Income tax : deductions allowable to members of parliament

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Generated on: 18 November 2026, 08:48:23 PM

TAXATION RULING NO. IT 2331

INCOME TAX : DEDUCTIONS ALLOWABLE TO MEMBERS OF PARLIAMENT

F.O.I. EMBARGO: May be released

REF H.O. REF: 86/4429-2 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1209573	MEMBERS OF PARLIAMENT	51(1)
	ALLOWABLE DEDUCTIONS	51AE
	SUBSTANTIATION RULES	82KT-82KZB
	ENTERTAINMENT EXPENSES	74

PREAMBLE Questions have recently been raised in this Office regarding the deductibility for income tax purposes of kinds of expenditures that are typically incurred by elected Members of the State and Federal Parliaments in the course of carrying out their parliamentary duties including the representation of their respective constituencies.

2. The questions have been raised against the background of recently enacted Commonwealth legislation which generally precludes the allowance of deductions for entertainment expenses incurred after 19 September 1985 and, with effect from 1 July 1986, permits deductions to be claimed for employment-related expenses only if the claim can be substantiated by receipts or other specific records. Expenditures met by Members of Parliament out of electorate allowances are subject to the new statutory requirements.

RULING Substantiation Rules

3. The documentary evidence that will ordinarily be required to substantiate claims for expenses made in 1986-87 and subsequent income tax returns is a receipt, invoice or similar document which should generally be obtained when the expense is incurred.

4. Substantiation documents are not required to be submitted with income tax returns but must be retained for 3 1/2 years from the date of lodgment of the returns and be produced if requested.

5. Where a person is required by the Taxation Office to produce documentary evidence in relation to expenses incurred, he or she will also be required to provide a schedule (in an approved form which would be supplied with the request) detailing the items of expenditure and identifying them to the relevant receipts, etc.

6. The substantiation requirements extend to deductions

claimed in relation to motor vehicle expenses and are essentially the same whether the car is owned or leased. Car expenses to which substantiation of claims applies would include running costs such as registration, insurance, petrol, oil, service charges, lease charges, interest on car finance, repairs and depreciation. In the case of depreciation the substantiation rules are applied to establish the cost of the vehicle.

7. Members of Parliament who wish to claim car expenses in relation to their representative duties, and to do so on the basis of actual expenditures and actual business use, will be required to maintain daily log books or similar records in which details of business trips are recorded.

8. The substantiation requirements for car expense claims can be reduced by the adoption of one or other of the alternative bases of deduction that have been provided under the new rules. Two alternatives to claiming deductions based on actual costs and actual business use are provided for vehicles that travel more than 5000 kilometres on business during the year. Under each of these the requirement to maintain a log book is dispensed with. The first is to claim a deduction equal to one-third of total running expenses. The second is to claim a deduction equal to 12% of the cost price of the car or, if the car is leased, of the market value of the car at the commencement of the lease.

9. For vehicles that travel less than 5000 business kilometres in a year there will be an option to claim a deduction calculated at a standard rate per business kilometre. Rates for this purpose are proposed to be prescribed by regulation. The basis on which the proposed regulation would be submitted was announced by the Federal Treasurer in a press release issued on 30 June 1986. Where this basis is used it will not be necessary to substantiate running costs, etc, nor to maintain a log book.

10. Under the substantiation rules there are particular diary keeping requirements to be met where claims are made for costs of overseas travel and extended travel within Australia. These are described later in this ruling. However, claims for expenses against reasonable travelling allowances for employment-related travel within Australia do not require to be substantiated under the new rules. The current rates of travelling allowances provided to State and Federal Members of Parliament for travel in the course of their duties could be expected to be accepted as reasonable for these purposes. Taxation Ruling No. IT 2327 provides detailed guidelines as to the rates of travelling allowances that would be regarded as reasonable for these purposes.

11. Where an otherwise deductible expense item is met out of petty cash, the general substantiation rules requiring documentation by receipts, etc., recognise that there can be circumstances where it is not reasonably practicable to obtain a receipt. An example would be where modest cash handouts are given by Members to needy callers. For such items, the substantiation rules would be satisfied if the expense is entered up promptly in a petty cash diary or similar record.

Entertainment Expenses

12. Income tax returns for the 1985-86 income year and subsequent years will be affected by amendments to the income tax law enacted in 1985 which generally preclude the allowance of income tax deductions for entertainment expenses incurred after 19 September 1985.

13. As a consequence of this change in the law, entertainment allowances and other allowances that are paid substantially to cover entertainment expenses are required to be subject to PAYE deductions. Electorate allowances paid to Members of Parliament do not fall within this requirement because they are intended to meet a wide variety of expenditures and, as a general rule, are not regarded as being given substantially to cover entertainment expenses.

14. Electorate allowances remain assessable income that must be brought to account in annual returns. Should a Member of Parliament wish to provide against an end of year tax liability due to a shortfall in the amount of deductions available to claim against his or her electorate allowance because of the non-deductibility of entertainment expenses or the new substantiation rules, the Member may arrange with the paying authority for an appropriate increase in PAYE deductions during the 1986-87 income year from his or her parliamentary salary.

15. There are some exceptions to the general non-deductibility of entertainment expenses.

16. The cost of meals taken by Members when travelling away from home on Parliamentary business will not ordinarily be affected by the denial of deductions for entertainment expenses. Deductions are not available, however, for the cost of meals provided to visitors or guests in parliamentary dining rooms or for refreshments or food for visitors to members' offices. The cost of providing morning and afternoon teas, however, is allowable.

17. Expenses incurred in entertaining members of the public who are sick, disabled, poor or otherwise disadvantaged are excepted from the scope of the general prohibition on deductions for entertainment expenses. Donations to bodies, committees, etc., for the purpose of enabling those bodies to provide entertainment, whether for fund raising purposes or otherwise, are not allowable as deductions (unless for entertainment of disadvantaged groups as described).

Allowable Deductions

18. It is recognised that Members of Parliament are required to incur a wide variety of expenditures in representing their electorates and in carrying out their parliamentary responsibilities. The requirement is not sufficient of itself to obtain tax deductibility for the expenditure. Members of Parliament also incur expenditures in their private and personal

capacities. In the first instance it is necessary to separate the two.

19. The sorts of expenditure which will be eligible for income tax deduction are those which can fairly be said to have been brought about by the duties which attach to a Member of Parliament, ie. by the activities which a Member of Parliament is ordinarily expected to undertake. The expression "eligible for income tax deduction" has been used above for a purpose. It has been used in a cautionary sense to indicate that not all expenditure arising out of the official duties may be allowed as an income tax deduction. In the context of a Member of Parliament there are some expenditures which may be said to have been occasioned by the normal activities of a Member of Parliament but which are not income tax deductible because of specific provisions in the income tax law. Entertainment expenditure is an example. Expenditures of a capital, private or domestic nature are other examples.

20. It is against this background that the following comments are given in relation to types of expenditure typically incurred by a Member of Parliament. It must be emphasised, however, that the question of whether particular expenditure incurred by a Member is an allowable income tax deduction can only be answered in the light of the particular circumstances involved.

(a) Functions (other than entertainments) in the electorate - cost of tickets, donations, purchases at fetes, raffle tickets, cost of prizes presented.

Generally allowable other than purchases at fetes. There does not seem to be any greater need for Members of Parliament to purchase goods at fetes than there is with other persons - the costs are of a private nature.

(b) Donations to appeals and organisations including churches and political parties.

Gifts of $2 and upwards to funds, institutions, etc. approved for the purposes of paragraph 78(1)(a) of the Income Tax Assessment Act are specifically allowable as income tax deductions. Gifts to bodies within the electorate, eg. girl guides, scouts, sporting clubs, church organisations, are allowable as income tax deductions. Contributions to political parties are allowable as income tax deductions to the extent of a Member's ordinary membership subscription and other levies which must be paid to retain membership of the party ie. compulsory levies. Donations to political parties are not an allowable income tax deduction for the general body of taxpayers and it does not automatically follow that, because a taxpayer is a Member of Parliament, he or she is to be treated differently from the general body of taxpayers. Whether a donation by a Member of Parliament to a political party, ie. over and above the amounts which have been

referred to earlier, is an allowable deduction is a matter which must be decided in individual cases in the light of the reason for the donation.

(c) Expenses associated with being Patron of organisations.

Allowable.

(d) Presentations - school speech days, sporting club trophies, senior citizens awards, etc.

Allowable.

(e) Gifts - flowers to elderly citizens, marriages, anniversaries, birthdays, funerals, books to schools, sporting equipment.

Allowable.

(f) Telephone(s) - rental, cost of overseas calls, cost of calls on second home phone, costs of telephone in holiday home.

Allowable to the extent of official use. It is understood, however, that some telephone charges are reimbursed. It would only be expenditure over and above any reimbursement which would qualify for deduction.

(g) Subscriptions to newspapers, magazines, periodicals.

A proportion of the cost of daily and local newspapers purchased by a Member of Parliament, generally 50%, is allowable as an income tax deduction. The cost of other newspapers and magazines and periodicals relevant to the duties would be allowable. If there is any reimbursement for the cost of newspapers income tax deduction would be restricted to expenditure over and above the amount of reimbursement.

(h) Subscriptions to organisations, eg. membership of sporting and social clubs, political party, parliamentary groups (eg. Commonwealth Parliamentary Association, International Parliamentary Union, Amnesty International, etc).

Annual subscriptions to sporting and social clubs are specifically precluded from income tax deduction by section 51AB. Subscriptions to professional associations are deductible. As indicated earlier, annual membership fees of and compulsory levies to political parties are allowable. Subscriptions to parliamentary bodies and community organisations are allowable.

(i) Depreciation of equipment (or cost of capital additions) - personal tape recorder, home typewriter, home computer, radio, office TV, home TV, dictaphone, PA

equipment, loud hailer, software.

Allowable to the extent that the various items are used for official purposes.

(j) Depreciation of professional library (or cost of additions).

Allowable.

(k) Depreciation of home office facilities (furniture, fixtures, carpet, drapes, curtains) and proportion of costs for home electricity or gas or oil for lighting and heating of home office.

Allowable provided that the Member has a room set aside in the home for use exclusively in connection with his or her official duties.

(l) Child minding - necessary to enable attendance at electorate or Party functions.

Not allowable. This is private or domestic expenditure.

(m) Additional full-time, part-time or casual secretarial assistance.

Allowable to the extent that the expenditure is not reimbursed.

(n) Accommodation and meals in Canberra, the seat of the relevant State Parliament or elsewhere when travelling on parliamentary or party business not covered by travelling allowance.

Allowable where the expenditure is in connection with parliamentary business. Where the expenditure is on party business it will depend upon the nature of the business. The cost of attending parliamentary party meetings, annual party conventions, etc., would be allowable. On the other hand, if the expenditure related to internal party matters, eg. party administration, disputes, etc., it would not be allowable.

(o) Accommodation and meals while travelling throughout the electorate.

Allowable.

(p) Spouse - cost of representing a Member at functions, cost of accommodation in Canberra or the seat of the State Parliament for official functions, costs when accompanying Member on parliamentary, electoral or party activities.

Costs incurred in a Member's spouse representing the

Member at functions or accompanying the Member on parliamentary, electoral or party activities are not generally allowable. There may be occasions where a Member, as a result of illness or parliamentary requirements may not be able to attend a function to which he or she has accepted an invitation and the spouse attends on the Member's behalf. Costs incurred in the spouse attending functions (other than entertainments) in these circumstances would be allowable. It is understood that spouses of Federal Parliamentarians are entitled to reimbursement for costs of travel to and from Canberra to attend a number of official functions. To the extent that similar practices are applicable to State Members the same view would be taken.

(q) Clothing - special clothing related to parliamentary and electoral duties of the Member and spouse.

Not allowable. This is private or domestic expenditure.

(r) Meals, accommodation, travel and incidental costs associated with inspections, meetings, interviews and other appointments in the electorate or elsewhere.

Generally allowable. The cost of meals would be allowable where a member was required to stay away from home overnight.

(s) Overseas travel - personal component of the cost of fares, accommodation, meals and transport - when the trip is sponsored - when the trip is personal but directed towards overseas study - the costs involved in the spouse accompanying the member.

Income tax deductions for the cost of overseas travel will be allowable where a Member can demonstrate a direct relationship between the travel and the pursuit of his or her official duties. A deduction is not allowable for any costs that are reimbursed. To substantiate a claim for any unreimbursed amount a Member must record in a diary specified particulars of each activity undertaken as well as obtaining all required documentary evidence. Where a Member is accompanied by a spouse an income tax deduction is not allowable for travelling expenses of the spouse.

In relation to reimbursed travelling expenses it should be noted that the employer department will be required, for fringe benefits tax purposes, to obtain from Members documentary evidence of the expenses, relevant diary entries and a declaration setting out details of the expenditure.

(t) Wages to spouse.

It is understood that Members may be entitled to the

services of an electorate secretary at no cost to themselves. Normally there would not be any need to employ a spouse. However, there may be isolated instances where wages to a Member's spouse would be allowable, eg. while the Members electorate secretary is on annual leave and no replacement is supplied or if a spouse is a qualified research officer and is employed in that capacity.

Allowable.

(u) Miscellaneous expenditure, eg. cost of maintaining a private residence, haircuts, dry cleaning, domestic help, etc.

Not Allowable. These are private expenditures.

(v) Referendum campaign expenses.

Allowable to the extent that the expenditure is not reimbursed.

(x) Election expenses or expenses in contesting an election.

Expenses incurred by a taxpayer in contesting elections are specifically deductible under section 74.

COMMISSIONER OF TAXATION
30 June 1986