TD 1999/62 - Income tax: what are the criteria to be considered in deciding whether clothing items constitute a compulsory corporate uniform/wardrobe for the purposes of paragraph 30 of Taxation Ruling TR 97/12?

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Taxation Determination

Income tax: what are the criteria to be considered in deciding whether clothing items constitute a compulsory corporate uniform/wardrobe for the purposes of paragraph 30 of Taxation Ruling TR 97/12?

Preamble

This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the ***Taxation Administration Act 1953*** *and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding on the Commissioner.*

Date of effect

This Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. This Determination sets out the criteria to be considered in deciding whether clothing items constitute (wholly or in part) a compulsory corporate uniform/wardrobe. The cost of acquiring and maintaining a compulsory corporate uniform/wardrobe is an allowable deduction under section 8-1 of the *Income Tax Assessment Act 1997* (see Taxation Ruling TR 97/12 – 'Income tax and fringe benefits tax: work related expenses: deductibility of expenses on clothing, uniform and footwear').

2. A compulsory uniform/wardrobe must be prescribed by the employer in an expressed policy that makes it a requirement for a particular class of employees to wear that uniform while at work, and which identifies the relevant employer. The employer's compulsory uniform/wardrobe policy guidelines should stipulate the characteristics of the colour, style and type of the clothing and accessories that qualify them as being a distinctive part of the compulsory uniform/wardrobe. Also, the wearing generally of the uniform/wardrobe should be strictly and consistently enforced. To be a compulsory corporate uniform/wardrobe, the clothing must be unique, distinctive and peculiar to the particular organisation, with a timeless quality unaffected by short term changes in fashion.

3. Whether clothing constitutes a compulsory corporate uniform/wardrobe is a question of fact and impression that can only be determined on a case by case basis in the light of all the circumstances. The following criteria (failure to satisfy one or more of which does not necessarily mean the clothing is not a compulsory corporate uniform/wardrobe) should be considered:

(a) Objective

A compulsory corporate uniform/wardrobe should be designed to enhance the public image of an employing organisation and to act as a form of indirect advertising. The uniform/wardrobe should also be intended to secure a commitment from employees to the corporate culture of the organisation, be a means of easily identifying employees and of avoiding their fashion excesses.

(b) Understanding on how the wardrobe is to be worn

At the time of purchasing a compulsory corporate uniform/wardrobe there should exist a general understanding among employees that such items are only to be worn while on official duty, including travel to and from work. They must also understand that the wardrobe should generally be worn as an entirety rather than as individual pieces. The constant wearing of corporate uniform/wardrobe items in conjunction with ordinary clothing may lead to the conclusion that the items are simply a collection of ordinary clothing items. However, the collection of clothing items does not lose its essential character as a corporate uniform/wardrobe simply because individual items within the wardrobe or uniform are occasionally worn with non-uniform garments while not on official duty.

(c) Fabric

(i) The word 'fabric' is used in the sense of material type, i.e., what the material is made of, e.g., cotton, silk, a mixture of cotton and polyester, etc. There should only be a limited range of fabrics used in the uniform/wardrobe because the greater the range of fabrics used the more likely it is the wardrobe loses its distinctive and unique look. A range of 5 or 6 fabrics is generally not considered excessive. These fabrics should be readily identifiable as belonging to the compulsory corporate uniform/wardrobe of the particular organisation. This may be satisfied by ensuring that the fabric is unique or, at the very least, only in limited use by the general public. Simply having a distinctive and unique lining to a jacket, etc., is not sufficient because the lining is not generally visible and does not serve to identify the item as part of a corporate uniform/wardrobe.

(ii) Plain fabrics are generally not in themselves considered to be sufficiently unique and distinctive so as to render them easily identifiable. It is, therefore, necessary for plain fabrics to have some distinguishing feature either woven, printed or embroidered into them. However, individual items should be considered in the context of the overall look of the uniform/wardrobe.

(d) Colours

The total number of colours or shades used in the uniform/wardrobe should be limited. The use of a large number of colours may make it difficult to say that the wardrobe is distinctive or unique, particularly when taken into account with the number of fabrics and styles used. Colours should be in distinctive shades or combinations. For example, if an organisation has corporate colours, then it may be appropriate to limit the number of colours to those corporate colours plus one or two additional colours.

(e) Style

There should be a limited number of styles available both in respect of individual items of apparel (e.g., women's blouses) and in respect of the uniform/wardrobe as a whole. The greater the number of styles possible, the more likely it is that the uniform/wardrobe is viewed simply as a collection of conventional clothing.

(f) Corporate identifiers

These are features that readily identify a particular organisation and include such things as logos, initials or insignias on buttons, pockets, etc. Identifiers are not compulsory but they add to the distinctive and unique nature of the uniform/wardrobe, particularly when incorporated into items that, in and of themselves, are not distinctive or unique, e.g., a plain white shirt. The identifier should be in a contrasting colour or shade and be of sufficient size to be plainly visible to the casual observer.

(g) Durability

(i) In order to be distinctive and unique, a compulsory corporate uniform/wardrobe should be durable, in the sense that the overall concept or look of the wardrobe should be intended to last for a number of years. Rapid changes in style, colour or fabric can detract from the uniform/wardrobe's ability to be easily recognised as a corporate uniform/wardrobe and, therefore, also detract from its distinctive and unique character. Where these rapid changes do occur, the uniform/wardrobe might in reality be nothing more than a collection of items of ordinary clothing. For example, substantial changes to the uniform/wardrobe on a yearly basis to take into account changing fashions may result in employees wearing a vast array of different clothing composed of items from both the current and previous years' collections. In this situation, it would be difficult to say that there is a distinctive and unique compulsory corporate uniform/wardrobe. Consequently, fabrics, styles and colours should not be adversely affected by altering fashion trends. As a general rule, the overall look or concept of a corporate uniform/wardrobe should be designed to last between three to five years, although it is accepted that individual items of clothing within that uniform/wardrobe may wear out in a shorter period. However, regard should always be had to the type of industry involved. For example, a period of less than three years may be acceptable in some parts of the retail fashion industry.

(ii) It is also accepted that, in the initial stages of establishing a compulsory corporate uniform/wardrobe, changes may be necessary as items prove unsuitable. For example, experience may show that particular fabrics are not long lasting or popular with staff. If these changes do not result in substantial changes in the uniform/wardrobe as originally designed, they do not alter the tax deductible status of the wardrobe. Summer and winter variations in a corporate uniform/wardrobe need not be introduced at the same time if they clearly form part of the overall uniform/wardrobe package.

(h) Range

(i) It is necessary to take into account the total number of possible variations in fabrics, colours and styles in order to determine whether the uniform/wardrobe, as a whole, has a cohesive identity or whether the uniform/wardrobe should simply be considered a collection of conventional clothing items. For example, suit combinations (e.g., men's and women's suits) that are designed and intended to be worn as a whole must be considered in their entirety, rather than as individual items. If the suit combination is distinctive and unique, it is irrelevant that one or more of the individual items can be characterised as ordinary clothing or that the items may be worn with non-uniform items. However, if the suit combination is essentially conventional, it is not sufficient simply for one or two items within the combination to have a corporate identifier or colour.

(ii) It is accepted that, where an organisation operates over a wide geographic and climatic area, it may be necessary to vary the uniform/wardrobe so as to take into account variations in climate. For example, fabrics suitable for the climate in northern Queensland may not be suitable for Tasmania.

(i) Accessories

Expenditure on accessory items, such as handbags, shoes and trenchcoats, that do not bear any distinguishable features, such as a corporate identifier, is considered to be of a private nature. Accessories such as ties, handkerchiefs and hair ribbons that are made of the same unique fabrics as the other items in the compulsory corporate uniform/wardrobe, or have clearly visible distinguishing features such as a corporate logo, form a deductible part of the uniform/wardrobe. The cost of belts that have a clearly visible logo embossed or engraved on to them is also deductible.

4. The explanation of the criteria in paragraph 3 is based, in part, on Case *R55* 84 ATC 411 at 416-419; 27 CTBR (NS) 867 at 874-877.

5. A substantial change to a compulsory corporate wardrobe (e.g., a complete change in the style, colours or fabrics) would require the above criteria to be fully addressed for the whole wardrobe. A minor change (e.g., replacement of one or two items of clothing of an older or no longer desired style within a corporate wardrobe, or the addition of one or two new accessories) would not ordinarily be regarded as a substantial change and would not require the whole wardrobe to be reassessed.

Previous Rulings

6. Taxation Ruling IT 2641 is now withdrawn (it is replaced by this TD and Taxation Ruling TR 97/12).

Commissioner of Taxation
10 November 1999

Previous draft:
Not previously released in draft form

Subject references:
corporate and compulsory clothing expenses

Legislative references:
ITAA 1997 8-1

Case references
Case R55 84 ATC 411; 27 CTBR (NS) 867

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