

TD 93/161 - Income tax: employment agreement: are costs associated with employment agreements deductible under subsection 51(1) of the Income Tax Assessment Act 1936 (ITAA) to the employer?

 This cover sheet is provided for information only. It does not form part of *TD 93/161 - Income tax: employment agreement: are costs associated with employment agreements deductible under subsection 51(1) of the Income Tax Assessment Act 1936 (ITAA) to the employer?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *19 August 1993*



This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, 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 a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: employment agreement: are costs associated with employment agreements deductible under subsection 51(1) of the *Income Tax Assessment Act 1936* (ITAA) to the employer?

1. Yes. Costs incurred by an employer in hiring staff are an expense in the carrying on of an existing business and such costs are deductible under subsection 51(1). These costs include costs associated with the hiring of new employees, as well as the renewal and variations of employment agreements with existing employees.
2. Where the hiring of staff is part of the setting up of a new business, the cost of employment agreements are of a capital nature and are not deductible.
3. 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.
4. 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, which cannot exceed five years.
5. There are two types of agreements, individual agreements and collective agreements. An individual agreement is between one employee and the employer. A collective agreement is between a group of workers and the employer. Collective agreements are required to be lodged with the Employee Relations Commission of Victoria, whereas individual agreements do not have to be.
6. Costs incurred may include:
 - . representation (which could be an employer organisation, an accountant, a lawyer or any other representative) during negotiation;
 - . costs associated with the drawing up of the agreement;
 - . lodgment fees; and
 - . costs associated with settlement of disputes.

Commissioner of Taxation

19/8/93

FOI INDEX DETAIL: Reference No. I 1215902

Previously issued as Draft TD 93/D161

Related Determinations: TD 93/162, TD 93/163, TD 93/164, TD 93/165

Related Rulings:

Subject Ref: employment agreement

Legislative Ref: ITAA 51(1)

Case Ref:

ATO Ref: MBN AC MS 1492 CPX 17

ISSN 1038 - 8982