

TD 93/163 - Income tax: employment agreement: are costs associated with an employment agreement deductible under subsection 51(1) of the Income Tax Assessment Act 1936 (ITAA) to an employee in an existing employment relationship where either: * the agreement is extended after its term is concluded; or * the conditions are changed; or * the agreement is renewed following the expiry of the fixed term of the original agreement?

 This cover sheet is provided for information only. It does not form part of *TD 93/163 - Income tax: employment agreement: are costs associated with an employment agreement deductible under subsection 51(1) of the Income Tax Assessment Act 1936 (ITAA) to an employee in an existing employment relationship where either: * the agreement is extended after its term is concluded; or * the conditions are changed; or * the agreement is renewed following the expiry of the fixed term of the original agreement?*

 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 an employment agreement deductible under subsection 51(1) of the *Income Tax Assessment Act 1936* (ITAA) to an employee in an existing employment relationship where either:

- . the agreement is extended after its term is concluded; or**
- . the conditions are changed; or**
- . the agreement is renewed following the expiry of the fixed term of the original agreement?**

1. In the case of an extension or a change in the conditions, yes. The legislation governing an employment agreement provides for a contract to be of a fixed term. It is expected that agreements have a clause for an extension at the conclusion of the term. Expenses relating such an extension of an agreement at the conclusion of a term or a change in the conditions (be it a variation, a renegotiation of an existing agreement or a promotion) with the same employer are, unlike expenses relating to the initial contract, not of a capital nature and are deductible under subsection 51(1) of the ITAA.

2. However, expenses incurred in relation to the renewal of a fixed term contract is renewed to allow for another term, are not deductible. In this case the contract does not have a clause for an extension, but the employee signs a new agreement. The situation is the same as in the case of an employee negotiating a new agreement with another employer.

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, not exceeding five years.

5. Costs may be incurred by both the employer and the employee and include:
- . representation (which could be a union, 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.

Example 1:

Mary has been employed by Joe since 1984. In March 1993 they arrange for an employment agreement to be drawn up to comply with the new legislation. Mary takes her contract to her lawyer, who checks it. Her lawyer sends her an account for \$350 for services rendered.

Mary is entitled to this deduction as the expense was incurred in the gaining of assessable income in the same job.

Example 2:

Tom was employed under an employment agreement with Jane. The agreement provided for a tool allowance of \$900 per year. After two years Jane discovered that competitors in the trade only allowed for a tool allowance of \$ 200 per year. She discussed the issue with Tom. Following the discussion they varied the agreement. Tom was assisted by his lawyer who sent him an account for \$250 for services rendered.

Tom is entitled to a deduction. The expense was incurred in varying an existing right under the employment agreement with his present employer.

Example 3:

Charles was employed under an employment agreement with Joe. Another job became available and Joe offered that job to Charles. During the discussions about the change a new employment agreement was drawn up and Charles consulted his lawyer who sent him an account for \$700 for services rendered.

Charles is entitled to a deduction. Charles did not find a new job, he merely obtained a change in employment with his current employer.

Example 4:

Andrea obtained a two year contract with Geoffrey to complete a specific project. After two years another project became available and Geoffrey offered the job to Andrea. They negotiated another contract for a further 18 months and Andrea consulted her lawyer who sent her an account for \$350 for services rendered.

Andrea is not entitled to the deduction. She had completed her two year contract with Geoffrey and the contract for the other project is another initial contract and therefore the expense is not deductible.

Commissioner of Taxation

19/8/93

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