

TD 93/29A1 - Addendum - Income tax: if an employee incurs legal expenses recovering wages paid by a dishonoured cheque, are these legal expenses an allowable deduction under subsection 51(1) of the Income Tax Assessment Act 1936?

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Addendum

Taxation Determination

Income tax: if an employee incurs legal expenses recovering wages paid by a dishonoured cheque, are these legal expenses an allowable deduction under subsection 51(1) of the *Income Tax Assessment Act 1936*?

This Addendum amends Taxation Determination TD 93/29 to clarify that it is the essential character of the advantage sought in undertaking legal proceedings that is determinative of whether an amount paid for legal expenses is on revenue or capital account.

TD 93/29 is amended as follows:

1. Title

Omit 'subsection 51(1) of the *Income Tax Assessment Act 1936*'; substitute 'section 8-1 of the *Income Tax Assessment Act 1997*'.

2. Paragraph 3

Omit 'subsection 51(1)'; substitute 'section 8-1 of the *Income Tax Assessment Act 1997*'.

3. Paragraph 5

Omit the paragraph; substitute:

5. However, if the legal action goes beyond a claim for a revenue item such as wages, and constitutes an action for breach of the contract of employment where the essential character of the advantage sought relates to an enduring advantage that is of a capital nature, the legal costs would not be deductible. For example, legal expense relating to an action for damages for wrongful dismissal are not deductible.

4. Paragraph 6

After the paragraph; insert:

6A. A deduction for legal expenses by an employee depends on the particular facts of any case. To be deductible the occasion of the expenditure must be found in what is productive in the gaining of assessable income by the employee. If expenses are incurred to dispute the receipt of income contractually owed under an employment contract, then the expenses are on revenue account and allowable as a deduction.

5. Legislative references

Omit 'ITAA 51'; substitute 'ITAA 1997 8-1'.

This Addendum applies on and from 11 August 2010.

Commissioner of Taxation

11 August 2010

ATO references

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