

# ***TR 2002/7 - Income tax: deductibility of payments to strike funds***

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## Taxation Ruling

### Income tax: deductibility of payments to strike funds

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#### ***Preamble***

*The number, subject heading, Class of person/Arrangement, Date of effect and Ruling parts of this document are a 'public ruling' for the purposes of Part IVAAA of the Taxation Administration Act 1953 and are legally binding on the Commissioner. The remainder of the document is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

## What this Ruling is about

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### **Class of person/arrangement**

1. This Ruling applies to the class of persons who make payments to strike funds and contingency strike funds. This Ruling applies to the class of arrangement in which the above class of persons make payments to strike funds and contingency strike funds.
2. The Ruling examines:
  - (i) if such payments are deductible under section 25-55 of the *Income Tax Assessment Act 1997* ('ITAA 1997');
  - (ii) if the payments are deductible under section 8-1 of the ITAA 1997; and
  - (iii) whether refunds of contributions are regarded as income according to ordinary concepts.
3. For the purposes of this Ruling:
  - A strike fund is a fund established by a union or other employee group for industrial purposes to provide financial support to members of a union or group who are presently affected by industrial actions.
  - A contingency strike fund is a fund established by a union or other employee group for industrial purposes with the objective of providing financial support to members of a union or other employee group who may in the future be financially affected by industrial action.

4. Taxation Ruling TR 2002/8 considers whether payments from strike funds to workers participating in industrial action are assessable income of the recipients.

## Date of effect

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5. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling 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 issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

## Ruling

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### Section 25-55: membership of an association

6. The payment of a levy to a strike fund is a specific purpose contribution to be applied for a specific purpose. As such, the payment is not paid for membership of an association and therefore is not an allowable deduction under section 25-55 of the 1997 Act.

### Section 8-1: incurred in gaining or producing assessable income

7. We understand the usual practice is for strike funds to provide financial support to members who are in financial hardship during the period of industrial action. The payment of a levy to a strike fund in this situation will not be incurred in gaining or producing the contributor's assessable income. As such, the contribution will not be an allowable deduction.<sup>1</sup>

8. A payment of a levy to a strike fund will only be incurred in gaining or producing the contributor's assessable income where the strike fund is used to maintain or improve the contributor's pay.<sup>2</sup>

### Contingency strike funds

9. The payment of a levy to a contingency strike fund will not be an allowable deduction to the contributor where the aim of the fund is

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<sup>1</sup> A one-off payment from a strike fund to a member who is in financial hardship during industrial action is not assessable income. See Taxation Ruling TR 2002/8.

<sup>2</sup> We have been advised by a leading trade union that strike funds are not established for this purpose

to provide financial support to members who will be facing financial hardship during later industrial action. Such a payment is not incurred in gaining or producing the contributor's assessable income.

### **Refunded contributions**

10. A refund of surplus contributions from the strike fund to the contributor will not be assessable income in the hands of the contributor. The refund is not income according to ordinary concepts, nor is it received by the contributor in relation to any activity that can be considered to be income producing eg in respect of employment, the provision of services, or a business.

## **Explanations**

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### **Forms of industrial action**

11. Industrial action initiated by unions and other employee groups can take a range of forms such as:

- strike action, i.e., the refusal to work by a class of, or all, employees of an employer or industry, etc.;
- the imposition of work bans such as a refusal to do certain types of work or to deal with particular persons or organisations; or
- 'work to rule' actions where bans are imposed on overtime or non-standard activities.

12. Industrial action may be primary, in that it is initiated against an employer by its employees. Secondary industrial action involves employees imposing bans, etc., directed against an associate of their employer (such as a supplier) in connection with action against the employer.

13. Alternatively, industrial action may be initiated by unions or employee groups in other industries or by employees of other employers in the same industry, directed at supporting a dispute involving employees of a particular employer.

### **Operation of strike funds**

14. Strike funds are usually established on a temporary basis to provide support to members who are in financial hardship in relation to current industrial action. The decision to establish a strike fund and offer assistance to members will usually not be made by the union or employee group until it is quite clear that the industrial action is likely

to continue for some period of time. When the fund is established, a special levy is usually placed on members not involved in the industrial action.

15. The strike fund is invariably wound up when the dispute has been resolved however, if further industrial action is anticipated, the fund may continue for a further period.

### **Application of section 25-55**

16. Subsection 25-55 of the ITAA 1997 provides that payments made for membership of a trade, business or professional association qualify as an allowable deduction. Subsection 25-55 limits the amount of the deduction allowable under the section to \$42.

17. Section 25-55 of the ITAA 1997 does not override the operation of section 8-1 of the ITAA 1997 but extends the circumstances in which membership payments to associations may be deductible (8 CTBR *Case 34*; 70 ATC 38 *Case B8* and 70 ATC 326 *Case B68*).

18. The relevant definition of “membership” in the *Macquarie Dictionary* is:

‘the state of being a member, as of a society’.

‘Member’ is defined as:

‘each of the persons composing a society, party, community or other body’.

‘Association’ is defined as:

‘an organisation of people with a common purpose and having a formal structure’.

19. Subscriptions to a union qualify as payments for membership of a trade or professional association (see Taxation Ruling TR 2000/7). However, contributions to a strike fund by union members and other employee groups cannot be considered to be made for membership of a trade or professional association even if the contributions are compulsory. A trade association is an organised body of persons with rules governing the membership and objectives of the association, designed to advance the interests of the members of that trade. Payments to strike funds are specific purpose contributions to be applied for a specific purpose and are not paid for membership of an association.

**Application of Section 8-1**

20. In order for payments to strike funds to be deductible, the payment must be sufficiently connected with the operations which directly gain or produce the contributor's assessable income.<sup>3</sup>

21. The usual practice is for strike funds to provide assistance to members who are in financial hardship during the period of industrial action. The decision to establish a strike fund and offer assistance to members will usually not be made by the union or employee group until it is quite clear that the industrial action is likely to continue for some period of time.

22. A member has no entitlement to receive a payment from the fund, nor expectation of receiving regular, fixed payments from the fund. Similarly, eligibility to receive the payment is purely discretionary and is subject to the individual member satisfying financial hardship criteria. Consequently, the payment of a levy to strike fund will not be deductible to the contributor as it lacks the necessary connection with the operations which directly gain or produce the contributor's assessable income. Clearly, in these situations the payment cannot be expected to produce assessable income to the contributor.

23. A payment of a levy to a strike fund will also not be deductible where the funds are used to represent the political beliefs of its members or to seek to influence public opinion on matters unrelated to the derivation of the contributor's assessable income. On the other hand, if the operation of the strike fund relates to maintaining or improving the contributor's pay, the contribution will be deductible to the contributor.<sup>4</sup>

**Contingency strike funds**

24. The above mentioned principles apply to determine if a deduction is allowable where the contribution relates to a strike fund providing support in respect to a current industrial dispute. Where the strike fund is a contingency strike fund, the necessary connection to earning assessable income will not be met where the purpose of the contingency strike fund is to provide support to those employees who might be facing financial hardship during later industrial action.

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<sup>3</sup> Refer to *Ronpibon Tin N.L. and Tongkah Compound v. FC of T* (1949) 78 CLR 47; *Amalgamated Zinc (De Bavay's) Ltd v. FC of T* (1935) 54 CLR 295; *Lunney v. FC of T* (1958) 100 CLR 478; *FC of T v. DP Smith* 81 ATC 4114 at 4117; *Commissioner of Taxation v. Payne* 46 ATR 228 at 230; 2001 ATC 4027 at 4029.

<sup>4</sup> We have been advised by a leading trade union that strike funds are not established for this purpose.

**Refunded contributions**

25. Whether an amount is ordinary income depends upon a close examination of all relevant factors. Relevant factors include:

- whether the payment is the product of any employment, services rendered, any business or investment activity;
- the quality or character of the payment in the hands of the recipient;
- the form of the receipt, that is, whether it is received as a lump sum or periodically; and
- the motive of the person making the payment. Motive, however, is rarely decisive as in many cases a mixture of motives may exist.

26. A refund of surplus contributions from a strike fund to the contributor is not the product of any income producing activity by the contributor. It is more in the nature of a 'windfall gain' and, as such, is not ordinary income in the hands of the contributor. If the payment included a return on investment of the whole or part of the original contribution, it is likely that at least part of the payment would be ordinary income.

**Cross references of provisions**

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27. A reference in this ruling to sections 6-5 and section 8-1 of the 1997 Act is to be taken as including a reference to subsection 25(1) and subsection 51(1) of the ITAA 1936 respectively. Section 25-55 of the ITAA 1997 expresses the same ideas as section 73 of the ITAA 1936.

**Examples**

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28. Ian, an employee of a large manufacturing company, provides \$100 to a strike fund which has been established by his union one week after the start of industrial action. The strike fund will provide funds to members who are in financial difficulty as a result of having been stood down by the employer.

29. There is no entitlement or right to receive a payment from the strike fund; the payment is purely discretionary and is subject to the individual member satisfying financial hardship criteria. Likewise,

there is no expectation that the stood down members will receive regular, fixed amounts from the strike fund.

30. Ian cannot claim a deduction for the payment to the strike fund, as the payment will not maintain or improve his pay.

## **Detailed contents list**

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31. Below is a detailed contents list for this Ruling:

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**Commissioner of Taxation**

24 April 2002

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*Previous draft:*

Previously released in draft form as  
TR 2001/D10

*Related Rulings/Determinations:*  
TR 2000/7; TR 2002/8; TR 92/1;  
TR 92/20; TR 97/16

*Subject references:*  
- allowable deduction  
- strike funds

*Legislative references:*  
- ITAA 1936 25(1)  
- ITAA 1936 51(1)  
- ITAA 1936 73  
- ITAA 1997 6-5  
- ITAA 1997 8-1  
- ITAA 1997 25-55

*Case references:*

- Amalgamated Zinc (De Bavay's) Ltd  
v. FC of T (1935) 54 CLR 295
- Commissioner of Taxation v. Payne  
2001 ATC 4027; 46 ATR 228
- F C of T v. Australian Music Traders  
Association 90 ATC 4536; (1990) 21  
ATR 471
- FC of T v. DP Smith 81 ATC 4114
- Lunney v. FC of T; Hayley v. FC of  
T (1958) 100 CLR 478; 11 ATD 404
- Ronpibon Tin NL v. FC of T (1949)  
78 CLR 47; 8 ATD 431
- 8 CTBR Case 34; Case B8 70 ATC  
38; Case B68 70 ATC 326

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ATO references:

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