TR 97/12 - Income tax and fringe benefits tax: work related expenses: deductibility of expenses on clothing, uniform and footwear

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Taxation Ruling
Income tax and fringe benefits tax: work related expenses: deductibility of expenses on clothing, uniform and footwear

other Rulings on this topic

IT 54; IT 2198; IT 2409; TD 93/111; TD 93/114; TD 94/48; TD 1999/62; TD 1999/63; TR 94/22; TR 95/8; TR 95/9; TR 95/10; TR 95/11; TR 95/12; TR 95/13; TR 95/14; TR 95/15; TR 95/16; TR 95/17; TR 95/18; TR 95/19; TR 95/20; TR 95/22; TR 96/16; TR 98/5; TR 98/6; TR 2003/16

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This Ruling, 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 Ruling is a public ruling and how it is binding on the Commissioner.*

[*Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.*]

What this Ruling is about

1. This Ruling deals with the circumstances where work related clothing, uniform and footwear expenses, including associated maintenance costs, are allowable as deductions under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997).

2. It also discusses any fringe benefits tax liability on employers under the *Fringe Benefits Tax Assessment Act 1986* ('the FBTAA') for providing support to employees in connection with clothing, uniform and footwear.

Class of person/arrangement

3. This Ruling applies to individuals who are employees or in receipt of withholding payments covered by subsection 34-5(3) of the ITAA 1997 and who incur work related clothing, uniform or footwear expenses, and to employers who provide benefits to employees in connection with clothing, uniform and footwear.

Date of effect

4. 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 a 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).

Note: The Partial Withdrawal to this Ruling that issued on 11 June 2003 applies with effect from 11 June 2003.

Previous Rulings

5. Taxation Rulings IT 300, IT 2096, and Taxation Determinations TD 93/101, TD 93/109, TD 93/121, and TD 93/154 are now withdrawn.

Ruling

6. To be deductible, expenditure on clothing, uniforms and footwear must satisfy the deductibility tests contained in section 8-1 of the ITAA 1997 and not be excluded from deductibility by Division 34 of the ITAA 1997 or section 51AH of the *Income Tax Assessment Act 1936* (ITAA 1936). The expenditure is only deductible where there is a sufficient connection between the clothing and the activities productive of assessable income such that its essential character is work related and not private or domestic in nature. While this depends on all the facts, this Ruling provides broad principles to help in determining this question in any given case.

7. Costs of buying, renting, laundering, dry cleaning, repairing and replacing clothing are private in nature except where the expense is directly attributable to the income earning activities of the taxpayer.

Deductibility of work related expenses

8. In short, a deduction is allowable if an expense:

(a) is incurred;

(b) meets the deductibility tests;

(c) satisfies the substantiation rules which apply to employees; and

(d) is not excluded from deductibility under section 51AH of the ITAA 1936 or Division 34 of the ITAA 1997 (see paragraph 37).

(a) Expense must be incurred

9. The expense must be incurred by the taxpayer to be deductible.

(b) Expense must meet deductibility tests

10. Expenditure is deductible under section 8-1 of the ITAA 1997 where there is a sufficient connection between the expense and the income earning activities, such that its essential character is work related and not private or domestic in nature.

11. A deduction is not allowable if the expense is:

(a) capital in nature (e.g., initial purchase of judges' ceremonial robes);

(b) private or domestic in nature; or

(c) incurred in earning tax exempt income (e.g., on uniform maintenance related to membership of the Army Reserve).

12. Generally, the costs of living, such as the purchase of conventional clothing, food, drink and shelter are private or domestic in nature and therefore not deductible.

13. If an expense is incurred partly for work purposes and partly for private purposes, then only the work related portion is an allowable deduction.

14. The mere fact that an employee incurs expenses at the direction of his or her employer does not mean that a deduction is necessarily allowable. Also, a deduction is not allowable by the mere fact that the taxpayer will not be able to engage in the activity from which his or her income is derived unless the expenditure is incurred.

Clothing allowance

15. The receipt of an allowance does not automatically mean that the expenditure is deductible. However, allowances received for

clothing, uniform and related expenditure are fully assessable under section 6-5 or section 15-2 of the ITAA 1997: see *Mansfield v. FC of T* 96 ATC 4001 at 4006; (1996) 31 ATR 367 at 372 (*Mansfield's* case).

Reimbursements of clothing, uniform and footwear expenses

16. Under section 51AH of the ITAA 1936, where all or part of the expenditure is reimbursed, and the reimbursement constitutes a fringe benefit under the FBTAA, or would constitute a fringe benefit if it was not an exempt benefit, the amount reimbursed is not an allowable deduction.

(c) Expense satisfies the substantiation rules

17. The income tax law requires substantiation of certain work related expenses, including clothing.

18. A deduction is not allowable if the substantiation rules are not met, although if evidence is provided the Commissioner's discretion may be exercised in some circumstances (Division 900 of the ITAA 1997).

Conventional clothing

19. Expenditure on conventional clothing is often not an allowable deduction under section 8-1 of the ITAA 1997. This is because there is not usually a sufficient connection between expenditure on clothing and the income earning activities of the taxpayer.

20. Whether such a connection exists, and the essential character of the expense, are matters to be determined by reference to all the circumstances of the particular case.

21. The mere fact that a taxpayer's employer requires or expects the taxpayer to wear a particular type or style of conventional clothing does not make the cost of that clothing deductible: see *FC* of *T v. Cooper* (1991) 29 FCR 177 at 185, 201-202; 91 ATC 4396 at 4402, 4414-4415; (1991) 21 ATR 1616 at 1623, 1637-1638 (*Cooper's* case) and *Mansfield's* case ATC at 4008; ATR at 374.

22. Similarly, the fact that a taxpayer may perceive that it is important to his/her success in his/her occupation or profession to

wear a particular type or style of conventional clothing does not make the cost of that clothing deductible: see, for example, *Case 16/93* 93 ATC 208 at 214; *AAT Case 8658* (1993) 25 ATR 1115 at 1121-1122.

23. However, there may be cases where there exists a connection between the expenditure on the clothes and the income producing activities of the taxpayer. *FC of T v. Edwards* (1994) 49 FCR 318; 94 ATC 4255; (1994) 28 ATR 87 (*Edwards*' case) provides an example. In that case, as well as the circumstances outlined in paragraphs 21 and 22 above, there were other factors present, such as the need for additional clothing and for frequent changes of clothing while the taxpayer was performing her duties.

24. Further information about conventional clothing is contained in the **Explanations** section at paragraphs 51 to 65.

Occupation specific clothing

25. A deduction is allowable for the cost of occupation specific clothing under section 8-1 of the ITAA 1997 because the distinctive characteristics of the clothing provide the nexus between the expenditure and the work activity. An example is a chef's traditional uniform consisting of a chef's hat, chef's chequered pants and a chef's white jacket.

26. Further information about occupation specific clothing is contained in the **Explanations** section at paragraphs 66 to 69.

Protective clothing and footwear

27. [Deleted]

28. [Deleted]

29. Further information about protective clothing and footwear is contained in the **Explanations** section at paragraphs 70 to 78.

Compulsory uniform

30. A deduction is allowable for the cost of a compulsory and distinctive uniform under section 8-1 of the ITAA 1997.

31. The essential character of an employee's expenditure on clothing items including shoes, socks, stockings and accessories which form an

integral part of a compulsory and distinctive uniform is expenditure directly related to the income producing activities of the employee. It is the compulsory and distinctive characteristics which provide the nexus between the expenditure on the uniform and the work activity.

32. A compulsory uniform must be prescribed by the employer in an expressed policy which 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 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 of the uniform generally should be strictly and consistently enforced.

33. In our view, it is only in these strict regimes for compulsory and distinctive uniforms that expenditure on these items is likely to be regarded as work related rather than private in nature.

34. Further information about compulsory uniform is contained in the **Explanations** section at paragraphs 79 to 86.

Single items of compulsory clothing

35. Where employees are required, as a strict condition of their employment, to wear at work single items of distinctive clothing, a deduction is allowable for the costs of this item of clothing under section 8-1 of the ITAA 1997. Further information about single items of compulsory clothing is contained in the **Explanations** section at paragraph 87 and 88.

Non-compulsory uniform

36. Expenditure in relation to a non-compulsory uniform as defined in Division 34 of the ITAA 1997 is only deductible if it satisfies the requirements of that Division.

37. Division 34 of the ITAA 1997 requires that the design of the uniform has been entered on the Register of Approved Occupational Clothing ('the Register').

38. The characteristics of a non-compulsory uniform under Division 34 of the ITAA 1997 are:

(a) the wearer has to be an employee, or recipient of a withholding payment covered by subsection 34-5(3) of the ITAA 1997;

(b) the uniform has to identify the wearer distinctively as associated with the employer;

(c) it is not compulsory to wear the uniform, or, if compulsory, the wearing of the uniform is not consistently enforced; and

(d) the uniform design has been entered on the Register.

39. The definition of non-compulsory uniform in section 34-15 of the ITAA 1997 refers to a set of one or more items of clothing (or accessories). Expenditure on single items of non-compulsory clothing, or accessories which come within the definition of non-compulsory uniform in section 34-15 of the ITAA 1997, but which are not registered, is not deductible under section 8-1 of the ITAA 1997. Where items of clothing cannot be included on the Register on the basis that they do not come within that definition, the deductibility of expenditure on those items depends on the tests contained in section 8-1 of the ITAA 1997.

40. Further information about non-compulsory uniform is contained in the **Explanations** section at paragraphs 89 to 93.

Deductions for decline in value of articles of clothing

41. Where the initial outlay on long-lasting clothing is substantial (e.g., judges' ceremonial robes) such outlays are, on balance, considered to be a capital expense and the decline in value of the clothing can be deducted under Division 40 of the ITAA 1997 (see the **Explanations** section at paragraphs 99 and 100).

Fringe benefits tax

42. The provision of financial or property support by an employer to enable employees to acquire clothing, accessories and footwear gives rise to a fringe benefit under the FBTAA.

43. However, the **'otherwise deductible rule'** in either sections 24 or 44 of the FBTAA operates to reduce the taxable value of a fringe benefit by the notional amount of any tax deduction that would have been available to the employee in respect of the particular item acquired.

44. Any financial or property support provided by the employer for deductible items does not attract fringe benefits tax. The taxable value of the benefit in this case is nil because of the 'otherwise deductible rule'. However, where expenditure on clothing is not deductible, the taxable value of the fringe benefit corresponds to the value of support provided by the employer.

Explanations

45. The tests for deductibility of work related expenses are contained in section 8-1 of the ITAA 1997 in the following terms:

(1) You can deduct from your assessable income any loss or outgoing to the extent that:

(a) it is incurred in gaining or producing your assessable income; or

(b) it is necessarily incurred in carrying on a business for the purpose of gaining or producing your assessable income.

(2) However, you cannot deduct a loss or outgoing under this section to the extent that:

(a) it is a loss or outgoing of capital, or of a capital nature; or

(b) it is a loss or outgoing of a private or domestic nature;

46. A number of court decisions have determined that, for an expense to satisfy the tests in section 8-1 of the ITAA 1997:

(a) it must have the **essential character** of an outgoing incurred in gaining assessable income or, in other words, of an income-producing expense (*Lunney v. FC of T*;

Hayley v. FC of T (1958) 100 CLR 478; (1958) ALR 225, (1958) 11 ATD 404);

(b) there must be a **nexus** between the outgoing and the assessable income so that the outgoing is **incidental and relevant** to the gaining of assessable income (*Ronpibon Tin NL v. FC of T* (1949) 78 CLR 47; (1949) 8 ATD 431);

(c) it is necessary to determine the **connection** between the particular outgoing and the operations or activities by which the taxpayer most directly gains or produces his or her assessable income (*Charles Moore & Co (WA) Pty Ltd v. FC of T* (1956) 95 CLR 344; (1956) 11 ATD 147; (1956) 6 AITR 379; *Cooper's* case; *Roads and Traffic Authority of New South Wales v. FC of T* (1993) 43 FCR 223; 93 ATC 4508; (1993) 26 ATR 76; *FC of T v. Hatchett* (1971) 125 CLR 494; 71 ATC 4184; (1971) 2 ATR 557); and

(d) its essential character must not be of a capital, private or domestic nature (per Lockhart J in *Cooper's* case FCR at 181-182; ATC at 4400; ATR at 1620; and *Mansfield's* case).

47. It is not sufficient that the expenditure is a prerequisite to the derivation of assessable income. The expenditure must be relevant and incidental to the actual activities which gain assessable income.

48. The fact that the expense is incurred at the employer's direction does not convert the essential character of that expenditure from a private to a work related expense. In *Cooper's* case, Hill J said (FCR at 200; ATC at 4414; ATR at 1636) that:

> '... the fact that the employee is required, as a term of his employment, to incur a particular expenditure does not convert expenditure that is not incurred in the course of the income-producing operations into a deductible outgoing.'

49. Similarly, in *Mansfield's* case, Hill J said (ATC at 4008; ATR at 375) that:

> 'The mere fact that a particular form of clothing is required to be used in an occupation or profession will not necessarily lead to the conclusion that expenditure on that form of clothing was deductible.

> It can be said that generally expenditure on ordinary articles of apparel will not be deductible, notwithstanding that such expenditure is necessary to ensure a suitable appearance in a particular job or profession. An employed solicitor may be required to dress in an appropriate way by his or her employer, but that fact alone would not bring about the result that the expenditure was deductible.'

50. Also, it is not sufficient that the taxpayer will not be able to engage in the activity from which his income is derived unless the expenditure is incurred: *Cooper's* case ATC per Lockhart J at 4402 and Hill J at 4415; FCR at 184 and 201; ATR at 1622 and 1637.

Conventional clothing

51. For expenditure on clothing generally, the decision of the Full Federal Court in *Edwards*' case contains the following cautionary statement (FCR at 323; ATC at 4259; ATR at 91):

> 'It should be noted that the decision does not establish that the cost of all clothing acquired and worn at work will, because of that circumstance alone, become deductible as an outgoing incurred in deriving assessable income.'

52. Generally, expenditure on conventional clothing is not deductible. However, this is not a universal proposition and in special circumstances there may be a sufficient connection between the income earning activities and expenditure on conventional clothing (see *Edwards*' case).

53. In *Case T47* (1968) 18 TBRD 242; 14 CTBR (NS) *Case 56*, J F McCaffrey (Member) stated the rationale why conventional clothing is usually private in nature (TBRD at 243; CTBR at 307):

> 'In order to live normally in our society, it is requisite that individual members thereof be clothed, whether or not they go out to work. In general, expenditure thereon is properly characterised as a personal or living expense ...'

See also *Case R55* 84 ATC 411 at 416; *Case U80* 87 ATC 470 at 472 where a shop assistant was denied a deduction for the cost of black clothes. In *Case 16/93* 93 ATC 208; *AAT Case 8658* (1993) 25 ATR 1115 a fashion editor was denied a deduction for clothes, dry cleaning and grooming expenses. In *Case 72/96* 96 ATC 640; *AAT*

Case 11455 (1996) 34 ATR 1098, a television newsreader was denied deductions for ordinary clothes, jewellery and grooming expenses.

54. While Tribunal decisions prior to *Edwards'* and *Mansfield's* cases must now be read in the light of these decisions, they are illustrative of the factors that are relevant to the question whether a sufficient connection exists between the expenditure on clothing and the income earning activities such that the essential character of the expense is work related rather than private in nature. For example, the Tribunal in *Case U95* 87 ATC 575 at 580 said:

> 'There is no one test which will satisfy all facts, but clearly on the decided cases, relevant considerations include:
>
> (1) Express or implied requirements of the employer or business concerning clothing;
>
> (2) The extent to which the clothing is distinctive or unique to the nature of the employment or business having regard to particular, special or accepted work clothing requirements, including its availability to be worn by members of the general public;
>
> (3) The extent to which the clothing is used solely for work;
>
> (4) The extent to which the clothing is unsuitable for any activity other than work;
>
> and no doubt other factors may become relevant depending on particular facts or circumstances of a given case.'

55. Some of the tests formulated by the Boards of Review include the 'abnormal expenditure' test (see *Case A45* 69 ATC 270; 15 CTBR (NS) *Case 24* (*Case A45*)); the 'necessary and peculiar test' (see *Case H61* (1957) 8 TBRD 287; 7 CTBR (NS) *Case 54*; *Case G81* 75 ATC 572; 20 CTBR (NS) *Case 50*; *Case H2* 76 ATC 7; 20 CTBR (NS) *Case 56*); or the 'abnormal wear and tear' test (see *Case T47* (1968) 18 TBRD 242; 14 CTBR (NS) *Case 56*; *Case G81* 75 ATC 572; 20 CTBR (NS) *Case 50*; *Case H33* 76 ATC 285; 20 CTBR (NS) *Case 87*; *Case M28* 80 ATC 187; 24 CTBR (NS) *Case 3*). However, as has been pointed out by the courts on many occasions, **in the end one must always return to the words of** section 8-1 of the ITAA 1997.

56. According to the Full Federal Court in *Edwards*' case FCR at 323; ATC at 4259; ATR at 91:

> 'The decision [of the AAT in *Case 31/93* 93 ATC 359; *AAT Case 8858* (1993) 26 ATR 1181, and Gummow J in *FC of T v. Edwards* 93 ATC 5162; (1993) 27 ATR 293] turns on its own special facts.' (citations added)

57. These facts included the following circumstances:

(a) the taxpayer gained her income by attending the Governor's wife as her personal secretary;

(b) the extensive wardrobe of high quality clothes was necessary to perform properly her activities;

(c) she was expected to dress in a manner compatible with the Governor's wife and in an appropriate way for each occasion;

(d) she changed her clothing, sometimes two or three times a day, in the course of performing her income-producing activities;

(e) the quantity and quality clothing was in excess of her normal every day requirements; and

(f) she only infrequently used the wardrobe for private purposes.

58. It was found that together these factors established a sufficient connection between the expenditure on additional clothing and the activities by which the taxpayer earned her income. The essential character of the expenditure was held to be the gaining or producing of assessable income.

59. *Edwards'* case is important in emphasising that the proper construction of section 8-1 of the ITAA 1997 does not result in a universal proposition that expenditure on additional clothing of a conventional kind worn in a conventional way can, by itself, never attract deductibility under the ITAA: see Full Federal Court FCR at 323; ATC at 4259; ATR at 91. However, the facts in *Edwards'* case were special, and it is likely that there will be few situations that are analogous to Ms Edwards' circumstances. For example, in *Case 48/94* 94 ATC 422; *AAT Case 9679* (1994) 29 ATR 1077 (*Case 48/94*), the taxpayer, a self-employed professional presenter and speaker, submitted that her circumstances were comparable to those of Ms Edwards. The taxpayer gave evidence that she maintained a separate wardrobe to meet her work requirements and that she used this wardrobe exclusively in relation to her work. Sometimes, a client

would request that she should dress in a specific manner when performing a presentation. Her image was of vital importance in both securing and performing her duties, and her clothes were an aspect of her image.

60. Senior Member Barbour, in disallowing the deduction for the cost of the clothing, said (ATC at 427; ATR 1083) that:

> 'While the A list clothes [those used exclusively for work] assisted in creating an image compatible with the applicant's perceptions of her clients' and audiences' expectations, her activities productive of income did not turn upon her wearing A list clothes, however important the applicant may have perceived these clothes to be in her presentation activities. There is not the requisite nexus between her income earning activities and the A list clothing expenses.'

61. He went on to say (ATC at 427-428; ATR at 1083-1084) that:

> '... the expense is not a business expense is also indicated by the very conventionality of the clothing. The applicant did not buy specific clothes for specific presentations (as an entertainer might) or have clothes that were specific and suited only for her employment or business (as a nurse might). The applicant chose to wear her A list clothes for business only, but this does not then enable the expense in purchasing those clothes to be treated as a business expense. Nor did she wear several changes of clothes while performing her duties, such that this expense for additional clothing was purely for the purpose of gaining or producing income, and hence properly regarded as a business expense, despite its conventionality (as in *Edwards*).'

62. **Example:** As part of her work as an undercover police officer, Jill is required to play a 'role' which requires the wearing of clothing that she would not otherwise wear and which is necessary and peculiar to her 'role'. Jill wears other clothing to and from work and does not wear the clothing used in her 'role' for private purposes. Jill's expenditure on clothing worn in her undercover activities, which are additional to her normal needs, has a direct connection with her income-producing activities as a police officer and is deductible.

63. **Example:** Beata is a marriage celebrant who claims expenditure on dress suits, accessories, shoes and stockings. She contends that the wardrobe of hats and garments, including shoes and stockings, ranging from the highly formal to the informal, is far more

extensive than she would ordinarily acquire. Even if the additional clothing is worn solely for the purpose of performing her duties as a marriage celebrant, the facts would be analogous to *Case 48/94*, where the expenditure was held to be private in nature. In particular, her activities productive of income do not turn upon her wearing the additional clothes, nor are the clothes specific and suited only to her income earning activities. Despite having an extensive wardrobe, Beata's duties do not involve multiple daily changes of clothing and the expenditure remains purely private in nature: see *Case V68* 88 ATC 508, but compare *Case V143* 88 ATC 899; *AAT Case 4608* (1988) 19 ATR 3872. Similarly, the expenditure incurred on shoes and stockings is private in nature and is not deductible.

64. **Example:** Warren is a sports teacher. He claims deductions for the cost of purchasing track suits, T-shirts, shorts and socks. These are conventional clothes which do not form part of a uniform, do not protect Warren and are not distinctive of Warren's particular occupation or employer. Expenditure on clothing of this type is generally private in nature and is not deductible.

65. **Example:** Jim is a public servant. He wears trousers and a shirt to work, and keeps a suit handy in case he is needed to advise the Minister at Parliament House. A deduction is not allowable for the cost of his suit because the expenditure is private in nature: see *Case A45*; *Mallalieu v. Drummond* [1983] 2 AC 861 (the solicitor's black clothes case); *Case U80* 87 ATC 470; and *Case K2* 78 ATC 13; 22 CTBR (NS) *Case 21*.

Occupation specific clothing

66. Occupation specific clothing distinctively identifies the wearer as a person associated with a particular profession, trade, vocation, occupation or calling. It is this distinctive nature of the clothing that provides the nexus between the expenditure and the income earning activities such that the essential character of the expense is work related and not of a private nature.

67. Examples of clothing that are considered by this Office to be occupation specific are a cleric's ceremonial robes, a barrister's robes, a chef's chequered trousers and a nurse's traditional uniform (i.e., consisting of a cap, cardigan, white dress normally with short sleeves, action back, zip front, front pockets, front pleat and non-slip nursing shoes).

68. Nevertheless, clothing which could be worn in a number of occupations is not occupation specific clothing. For example, a white coat worn with white trousers may designate a health worker but does not differentiate, for example, between a pharmacist or a laboratory technician. However, the cost of these items may be an allowable deduction under section 8-1 of the ITAA 1997 if they are protective (see paragraphs 27 and 28).

69. **Example:** Norm is a chef who wears a chef's traditional uniform, i.e., chef's hat, chef's chequered pants and a chef's white jacket. A deduction is allowable under section 8-1 of the ITAA 1997 for the cost of the uniform because the clothing is considered peculiar, incidental and relevant to the gaining of assessable income from his specific occupation as a chef.

Protective clothing and footwear

70. [Deleted]

71. [Deleted]

72. [Deleted]

73. [Deleted]

74. [Deleted]

75. [Deleted]

76. [Deleted]

77. [Deleted]

78. [Deleted]

Compulsory uniform

79. Expenditure on a compulsory and distinctive uniform is deductible because the necessary connection exists between the expenditure and the occupation such that the essential character of the expense is work related and unique. Compulsion is not the determinant for deductibility, but where it applies to clothing that is a distinctive uniform, a deduction is allowable without Division 34 of the ITAA 1997 operating to deny deductibility (see paragraph 89 for non-compulsory uniforms. To constitute a distinctive uniform it is not enough that there is a requirement to wear clothing of a particular

colour or style at work. The uniform needs to be sufficiently distinctive so that the casual observer can clearly identify the employee as working for the particular employer, or identify the products or services provided by the employer.

80. A uniform is a collection of inter-related items of clothing and accessories that is distinctive to a particular organisation. In *Case R55* 84 ATC 411 at 416; 27 CTBR (NS) *Case 109* at 874, the Tribunal said that:

> '... conventional clothing of a particular colour or style does not necessarily, because of those factors alone, assume the character of a uniform. Likewise, ordinary clothing is not converted into a uniform by the simple process of asserting that it fills that role or by the wearing of a name plate, etc. attached to clothing.'

Further information about compulsory uniform is contained in Taxation Determination TD 1999/62.

81. In *Mansfield's* case, Hill J stated (ATC at 4008; ATR at 375) that:

> 'A uniform is not merely a set of clothes reserved for the occasion of work. Rather it is the fact that the uniform has a distinctive characteristic which provides the nexus between the expenditure on the uniform and the work activity ...'

82. His Honour noted that the mere fact that a particular expenditure or a particular form of clothing may be required by the employer is not determinative of its deductibility, nor is the existence of an award or allowance, nor that the expenditure is a prerequisite to the derivation of assessable income. It must be relevant and incidental to the actual activities which gain the assessable income.

83. To be compulsory, generally the wearing of the uniform must be strictly and consistently enforced. In these circumstances the uniform is relevant and incidental to the actual activities which gain the assessable income.

84. A uniform only includes shoes, socks, stockings and accessories where the employer's express uniform guidelines stipulate the characteristics which qualify each item as an integral part of the compulsory uniform, e.g., colour, style, type. As an integral part of a compulsory uniform such items can be differentiated from ordinary clothing.

85. In *Case U95* at 580 , the Tribunal held that a deduction for clothing, including shoes and stockings, claimed by a shop assistant was disallowed because there was:

> '... nothing distinctive or unique about the combination of clothing which would identify the wearer as a [name of employer] shop assistant or even a shop assistant from another department store. The colour combination of the clothing would be included in the range of acceptable street dress unassociated with business or employment, as well as a combination of colours sometimes worn by female drink or food waiting staff.'

86. In *Mansfield's* case, a flight attendant was allowed a deduction for stockings and shoes which were required to be worn as part of a compulsory and distinctive uniform, the wearing of which was strictly enforced by the airline.

Single items of compulsory clothing

87. In situations where employees are required to wear single items of compulsory and distinctive clothing, expenditure incurred on that clothing is an allowable deduction under section 8-1 of the ITAA 1997 where:

(a) the employer stipulates the nature of the clothing;

(b) the clothing is distinctive or unique to the nature of the employment or business and identifies the wearer with a particular organisation or body of persons. Generally, the clothing is distinctive or unique where the clothing has a clearly visible logo or emblem of the employing organisation permanently affixed and that clothing is not available to the general public;

(c) the employer strictly and consistently enforces the compulsory nature of the item; and

(d) the clothing is used solely for work (otherwise the claim may need to be apportioned between private use and work use).

88. **Example:** Ronald is a service station attendant who wears on duty a green monogrammed shirt supplied by his employer. His other clothing worn at work is conventional clothing. It is compulsory for him to wear the shirt at work. The shirt is not available for use by, or

for sale to, the public. Ronald can claim a deduction for his costs of laundering and maintaining the shirt.

Non-compulsory uniform

89. Subsection 34-15(1) of the ITAA 1997 defines a uniform as one or more items of clothing (including accessories) which, when considered as a set, distinctively identify you as a person associated (directly or indirectly) with:

(a) your employer, or

(b) a group consisting of your employer and one or more of your employer's associates.

Under subsection 34-15(2), a uniform is non-compulsory unless your employer enforces a policy that requires you and other employees (except temporary or relief employees) who do the same type of work as you:

(a) to wear the uniform when working; and

(b) not to substitute an item of clothing not included in the uniform when working.

90. A deduction is not allowable for a non-compulsory uniform expense incurred after 31 August 1993 by an employee or a recipient of withholding payments covered by subsection 34-5(3) of the ITAA 1997, except where the clothing designs have been entered on the Register of Approved Occupational Clothing Subdivision 34-C of the ITAA 1997 and the tests in section 8-1 of the ITAA 1997 are met.

91. Only those costs incurred after the date of registration can be claimed as an allowable deduction.

92. An application for entry of a clothing design on the Register must be made by an employer to AusIndustry. Clothing which may be registered includes accessories such as belts, ties, scarves and hats. Underwear, short socks, stockings or shoes cannot be registered.

93. The Industry Secretary will not approve a clothing design unless the clothing meets the criteria set out in the Approved Occupational Clothing Guidelines. The current Guidelines are available on the Comlaw website www.comlaw.gov.au.

Laundry and maintenance

94. In *Case U95* the Tribunal commented at 579:

> 'The purchase and wearing of clothing as well as its cleaning and maintenance is therefore a necessary and personal expense which would normally be classified as being an expense of a private and domestic nature.
>
> There are occasions, however, when because of the relationship between expenditure on clothing and the gaining and producing of income, the private and domestic character of that expenditure is converted instead to an employment or business character.'

95. It is noted that Gummow J in *FC of T v. Edwards* ATC at 5169; ATR at 301 questioned whether the essential character of the dry cleaning costs in that case was sufficiently relevant to the revenue earning activity of the taxpayer. Nevertheless, on balance, it is considered that generally a deduction is allowable for the cost of cleaning and maintaining clothing and footwear provided the clothing is used for income producing purposes and the laundry, dry cleaning or maintenance expense is occasioned by the performance of those duties: see *Case R80* at 390-391 cited in *Case V79* at 553-554.

Substantiation rules

96. To be an allowable deduction, the expenditure on clothing must also satisfy the substantiation provisions of Division 900 of the ITAA 1997.

97. To claim a deduction, an employee must have written evidence of the work expense (including clothing, laundry and cleaning) where the total work expenses exceed $300.

98. An exception relates to laundry expenses where a maximum of $150 may be claimed without written evidence, provided it is incurred, even where work expenses total more than $300. The Commissioner accepts that a reasonable estimate of laundry costs may be used provided the claim for laundry costs does not exceed $150.

Capital exclusion

99. Generally, the initial purchase cost of clothing is not a capital expense. This is because the benefit of the expenditure will usually not endure beyond several years.

100. An exception to this general rule could be found, for example, with the costs of judges' robes or barristers' silk robes (*Case 625* (1946) 14 SAfTC 528). In such a case, the initial purchase cost of the robe itself is significant and the average life of the robe has been estimated at between five and ten years. Accordingly, deductions for the decline in value of the clothing may be made under Division 40 of the ITAA 1997.

Alternative views

101. It has been suggested that the cost of all clothing acquired and worn at work is deductible. However, it is clear from the Full Federal Court in *Edwards*' case FCR at 322; ATC at 4259; ATR at 90 that this circumstance alone is not sufficient.

102. Similarly, it has been suggested that the cost of purchasing stockings, socks and shoes used solely at work is deductible to taxpayers generally. However, in *Mansfield's* case Hill J noted that the shoes were worn as part of the uniform, and that they were too large for ordinary use and subject to regular scuffing. As for the stockings, Hill J took the view, not without some doubt, that the connection with employment was to be found in the fact that the pantyhose were part of a compulsory and distinctive uniform that was strictly enforced. It was this feature that differentiated the hosiery from ordinary clothing.

103. The view has been expressed that expenditure incurred on additional conventional clothing worn at work is an allowable deduction. Reliance is placed on Board of Review and Tribunal decisions that refer to 'the abnormal expenditure on conventional clothing' test, e.g., *Case A45*, and on the reference to additional expenditure in *Edwards*' case. However, it is clear that 'such a test cannot replace either a statutory expression or judicially expressed statements of principle in relation to such an expression': *Case V79* ATC at 552; ATR at 3507. Even in *FC of T v. Edwards* ATC at 5168; ATR at 299, Gummow J observed:

> 'Thus in the present case, in its reasons the AAT referred to the application in the past by it of two "tests" as a guide for determining whether expenditure on clothing is allowable under sub-s. 51(1). The first was the "necessary and peculiar" test (e.g. uniforms required by the employer) and the second the "abnormal expenditure on conventional clothing" test (e.g. the wardrobe of a mannequin). However, as the AAT went on to point out, these "tests" have fallen into disfavour before it and the position which now applies is that such "secondary" criteria tend only to obscure the application of s. 51. That, of course, throws one back to the search, among other things, for the "essential character" of the outgoing.'

104. In *Edwards'* case, the Court pointed to the significance of the fact that the amount claimed for expenditure was for 'additional clothing' over and above the taxpayer's personal requirements of modesty, decency and warmth. Weight was also given to the fact that there were additional changes of clothes in the working day over and above the first set of clothes, and that the clothing was qualitatively different from that which she wore in ordinary life. The Full Federal Court noted at FCR 323; ATC 4259; ATR 91: 'the decision turns on its own special facts'. As Hill J pointed out in *Mansfield's* case, *Edwards*' case is at one end of the deductibility spectrum of what might be deductible in contrast with the distinctive and compulsory uniforms which are at the other end.

105. No doubt the additional nature of the clothing is a relevant factor to be taken into account. However, as was explained by Hill J in *Mansfield's* case at ATC 4007; ATR 374, to seize upon the reference to 'additional clothing' in *Edwards'* case as serving the private purposes of modesty, decency and warmth is to elevate a proposition of fact to a proposition of law.

106. As is illustrated in *Case 48/94*, the 'additional clothing' factor will not be sufficient where the income earning activities do not turn upon the wearing of the additional clothes and where they are not specific and suited only for the income earning activity.

107. In this Ruling, a view is sometimes taken that a particular expense is not likely to be regarded as deductible because it is not sufficiently connected to the income earning activities and that its essential character is private in nature. As noted by Wilcox J in *Cooper's* case at ATC 4404-4405; FCR 187-188; ATR 1625-1626 in addressing this issue:

> 'Everything depends upon the ambit of the facts selected for inclusion in the description of essential character ...
>
> ... The whole of the relevant circumstances must be looked at in order to determine whether the expenditure was incurred in gaining assessable income.'

This cautionary note is relevant when considering the **Examples** contained in this Ruling.

Cross references to previous Rulings for examples used in this Ruling

108. *Paragraph 62 example*: see paragraph 69 of TR 95/13 and paragraph 28 of TR 94/22.

Paragraph 63 example: new example with reference to *Cases 48/94*, *V68* and *V143*.

Paragraph 64 example: new example that reflects paragraph 2 of TD 93/109.

Paragraph 65 example: see paragraph 30 of TR 94/22.

Paragraph 69 example: new example to show the effect of paragraph 70 of TR 95/15.

Paragraph 88 example: see paragraphs 32 and 33 of TR 95/15.

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