TR 2000/D1 - Income tax: subscriptions, joining fees, levies and contributions paid to associations by individuals

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Draft Taxation Ruling

Income tax: subscriptions, joining fees, levies and contributions paid to associations by individuals

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Preamble

Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office. DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings that represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

What this Ruling is about

Class of person/arrangement

1. This Ruling considers the deductibility under sections 8-1 and 25-55 of the *Income Tax Assessment Act 1997* ('the Act') of subscriptions, joining fees, levies and contributions paid by:

(a) individuals to trade, business and professional associations (not being amounts for goods or services rendered as a separate charge by an association); and

(b) pensioners and self-funded retirees to representative associations.

NOTE: Sections 8-1 and 25-55 of the Act, to which this Ruling refers, express – with one exception – the same ideas as subsections 51(1) and 73(3), respectively, of the *Income Tax Assessment Act 1936* ('the 1936 Act'). The exception is that section 25-55 of the Act refers to a **payment** for membership of a trade, business or professional association, whereas subsection 73(3) of the 1936 Act refers to a **periodic subscription** paid for membership of a trade, business or professional association. As a result of this change, a joining fee paid for membership of a trade, business or professional association could be considered for deductibility under section 25-55 of the Act, but would not have been deductible under subsection 73(3) of the 1936 Act as it is not a periodic subscription.

2. This Ruling does not discuss subscriptions, joining fees, levies and contributions paid to political parties. These are dealt with in Division 30 of the Act.

3. This ruling does not discuss the substantiation requirements in Division 900 of the Act. The inability to substantiate a deduction may render a deduction not allowable.

4. Life membership subscriptions are considered in Taxation Determination TD 1999/45.

Ruling

Joining fees

5. Joining fees are not an allowable deduction under section 8-1 of the Act. Where joining fees are paid to a trade, business or professional association a deduction (up to a maximum of $42 in an income year for payments in respect of each association to which a tax payer belongs) is allowable under section 25-55 of the Act.

Periodic subscriptions paid for membership of a trade, business or professional association

6. Periodic subscriptions paid by a person for membership of a trade, business or professional association are deductible under section 8-1 of the Act where the principal activities of the trade, business or professional association are relevant to the gaining or producing of assessable income by the member, or the carrying on of a business by the member for the purpose of gaining or producing assessable income. Therefore, where the principal activities of the association are negotiating and administering employment agreements, and/or providing professional development services, the subscription would be an allowable deduction, provided that the member is earning assessable income from the relevant trade, business or profession.

7. Where the principal activities of the association relate to lobbying politicians or influencing public opinion on matters not related to the derivation of the members' current assessable income earning activities (e.g., activities around environmental issues), a deduction would not be allowable under section 8-1 of the Act.

8. A deduction is not allowable under section 8-1 of the Act for subscriptions paid to an association where the person is retired from (or does not otherwise earn assessable income from) the particular trade, business or profession. Furthermore, a deduction under section 8-1 of the Act is not allowable to the extent to which the subscription relates to a person's activities which produce exempt income.

9. Where a payment made to an association cannot satisfy the requirements of section 8-1 of the Act, a deduction would be allowable to the person (up to a maximum amount of $42 in an income year for payments in respect of each association to which a tax payer belongs) under section 25-55 of the Act if the payment is made for membership of a trade, business or professional association.

Levies and other contributions

10. The payment of a special levy or contribution by a person to a trade, business or professional association is an allowable deduction under section 8-1 of the Act where the purpose for which it is made is clearly linked to the activities by which the assessable income of the person is derived.

11. Where members of a trade, business or professional association are entitled to income tax deductions under section 8-1 of the Act for membership subscriptions to the association, they would also be entitled to an allowable deduction under section 8-1 of the Act for any levy or additional subscription paid to enable the association to acquire or construct new premises to conduct its activities, to refurbish existing premises, or to acquire plant and equipment to better enable it to carry on its activities.

12. The following levies and contributions are not allowable deductions under section 8-1 of the Act:

(a) payments to, or to assist, a political party;

(b) payments to provide overseas relief;

(c) payments to assist families of employees suffering financial difficulties as a result of employees being on strike or having been laid off by their employers; and

(d) payments by salaried elected trade union officials into a general fund for the election of union officials.

Furthermore, these types of levies and contributions are not deductible under section 25-55 of the Act because they are not payments for membership of a trade, business or professional association.

Periodic subscriptions paid by pensioners and self-funded retirees

13. Periodic subscriptions paid by pensioners and self-funded retirees for membership of associations which have purposes related to the person's current assessable income earning activities are deductible under section 8-1 of the Act (e.g., the association may provide advice on taxation or how to maximise the return on investments). However, if the association is established primarily to represent the political belief of its members, or influence public

opinion on matters not related to the derivation of the member's assessable income, a deduction would not be allowable under section 8-1 of the Act.

14. Where a payment made by a pensioner or self-funded retiree to an association cannot satisfy the requirements of section 8-1 of the Act (e.g., the person may be a retired professional who still belongs to the professional association), a deduction would be allowable (up to a maximum amount of $42 in an income year for payments made to any one association) under section 25-55 of the Act if the payment is made for membership of a trade, business or professional association.

15. A pensioner or retiree association is not a 'trade, business or professional association' as it is not an association principally for people in a trade, business or profession. Therefore, section 25-55 of the Act does not allow deductions for subscriptions to pensioner and retiree associations.

Date of effect

16. This Ruling applies to years commencing both before and after its date of issue, subject to the modification in paragraph 17 below. 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).

17. To the extent that paragraph 15 of this Ruling is inconsistent with Example 2 contained in Taxation Determination TD 94/67, paragraph 15 applies to subscriptions paid to pensioner and retiree associations from the date of issue of this Ruling.

18. Taxation Determination TD 94/67 dealt with the question of whether pensioners and self-funded retirees were entitled to a deduction under subsection 51(1) of the 1936 Act for the cost of subscriptions paid to representative associations. The Taxation Determination stated that a deduction would be allowable under subsection 51(1) of the 1936 Act for subscriptions paid to a representative association whose activities can be shown to be incidental and relevant to the gaining of the member's assessable income. In addition, it commented that where a deduction under subsection 51(1) of the 1936 Act is not available, a deduction should be considered under subsection 73(3). However the Taxation Determination did not state whether such a deduction would be allowable. Paragraph 15 of this Ruling now clarifies that a deduction for a subscription paid to a pensioner or retiree association would not be allowable under section 25-55 of the Act (which, in this context, expresses the same ideas as subsection 73(3) of the 1936 Act).

19. It is recognised that, prior to the date of this Ruling, some taxpayers may have relied on Example 2 in Taxation Determination TD 94/67 to claim deductions of up to $42 under subsection 73(3) of the 1936 Act for subscriptions paid to pensioner and retiree associations whose activities were not related to the derivation of the taxpayer's assessable income. Those taxpayers will remain entitled to those deductions.

Previous Rulings

20. This Ruling consolidates principles set out in current rulings and provides guidance on the interaction between sections 8-1 and 25-55 of the Act. Taxation Rulings IT 299, IT 327, IT 2062, IT 2184, IT 2416, TD 93/155 and TD 94/67 will be withdrawn when this Ruling issues in final form.

Explanations

Joining fees

21. A joining fee is an additional amount levied by some associations on new members. Its purpose is sometimes stated (e.g., to cover the additional administration expenses associated with inducting a new member, or it is a contribution towards the infrastructure costs met by past members). Regardless of its purpose, a joining fee is a once and for all payment which provides the new members with the enduring benefit of membership of the association and as such is a capital expense. Paragraph 8-1(2)(a) of the Act denies a deduction for capital expenses.

22. Section 25-55 of the Act allows a deduction to a person for the costs of membership of a trade, business or professional association to the extent that they are not deductible under section 8-1 of the Act. The only proviso that exists in section 25-55 of the Act is that the amount is restricted to $42 in respect of each association to which a tax payer belongs in an income year. Therefore, as joining fees are a cost of membership, a deduction (up to a maximum of $42 in an income year for payments made to any one association) is allowable for joining fees under section 25-55 of the Act.

23. Where the periodic membership fee is not an allowable deduction under section 8-1 of the Act (e.g., the person may be a student who is yet to earn assessable income relating to the association's activities), the joining fee and the periodic membership fee for each particular association must be combined in determining the allowable deduction under section 25-55 of the Act.

Periodic subscriptions paid for membership of a trade, business or professional association

24. Deductions claimed for periodic subscriptions should first be considered under section 8-1 of the Act. If section 8-1 of the Act does not apply then section 25-55 of the Act should be considered.

25. Broadly the test for deductibility under section 8-1 of the Act is whether the payment by a person to the association falls within the description of an outgoing which is incidental and relevant to the derivation of the member's assessable income. The question of whether a periodic subscription paid to any organisation qualifies for deduction under section 8-1 of the Act is a matter for determination in the light of the particular facts. Strictly speaking, it would be necessary to have regard to the objects and activities of the organisation to ascertain the principal purpose for which the outgoing was incurred.

26. The Taxation Board of Review in *Case B68*, 70 ATC 326; (1970) 16 CTBR (NS) *Case 14*, considered the deductibility of a subscription paid by a commercial airline pilot to the Australian Federation of Air Pilots. Although the Federation had power under its constitution to pursue certain other objects, its activities in the main were directed towards protecting the interests of its members, the publication of a professional journal and the negotiation of short term contracts relating to salary and conditions of all services.

27. J D Davies (Member) stated (ATC at p. 331; CTBR at p. 90):

> 'In my opinion, the subscription to the Federation was paid by the taxpayer to secure advantages in his chosen vocation, the occupation by which he earned his assessable income. I think that the amount claimed is properly regarded as expenditure incurred in gaining or producing the taxpayer's assessable income, expenditure not of a private nature.'

28. A.M. Donovan (Chairman), after making reference to *F.C. of v. Gordon* 43 CLR 456 cites that case (ATC at p. 329; CTBR at p. 86-87) as:

> 'sufficient authority for the view that subscriptions paid by the taxpayer to the Federation are deductible under sec. 51. That case was decided in favour of the taxpayer by *Dixon J.* at first instance and unanimously by the Full Court upon appeal. The approach which it requires is succinctly described by *Rich J.* At p. 468, where he observed –
>
> > "The judgment under appeal lays emphasis on the fact that it is the disbursement by the taxpayer which has to be considered and not that of the Association, although

> the manner in which the Association expended its funds is relevant because it showed or tended to show the purposes for which the taxpayer laid out his money in paying his subscription." '

29. Most trade unions and associations of employees have as their principal objective the gaining of higher salaries and improved working conditions for members. As such, there would be the required connection with the derivation of assessable income where the subscription is relevant to the member's current employment, unless the employment results in the receipt of exempt income.

30. Periodic subscriptions paid by employees to professional associations which are concerned with providing a specialised service to members practising in a particular profession would qualify for deduction under section 8-1 of the Act where the member is deriving assessable income from employment as a professional in his particular field. Although such associations may not be directly concerned with obtaining increased earnings for members, access to information disseminated and other assistance provided by a professional association play just as necessary a part in enabling an employee to keep abreast of current developments in his or her particular field as the type of expenditure considered by the High Court in *FC of T v. Finn* (1961) 106 CLR 60. For example, an accountant employed by a bank would be eligible for deductions under section 8-1 of the Act for periodic subscriptions paid to a bank officers' association and for annual subscriptions paid to a society of accountants.

31. However, a deduction is not allowable under section 8-1 of the Act for subscriptions paid to an association where the person is retired from (or does not otherwise earn assessable income from) the particular trade, business or profession. Similarly, where an association is established primarily to represent the political beliefs of its members, or influence public opinion on matters not related to the derivation of the members' assessable income, a deduction would not be allowable under section 8-1 of the Act as there is insufficient connection between the incurring of the expense and the receipt of assessable income.

32. Furthermore, a deduction would not be available under section 8-1 of the Act for a subscription to the extent to which the subscription relates to a person's activities which produce exempt income. Section 8-1 of the Act specifically excludes a deduction for a loss or outgoing to the extent that it is incurred in relation to gaining or producing exempt income.

33. A payment made by a person for membership of a trade, business or a professional association may not satisfy the requirements of section 8-1 of the Act because, for example, the payment is made by a retired person, or a payment is related to the derivation of exempt

income, or is obviously unrelated to the derivation of the member's assessable income. Under such circumstances, the payment can be considered for deductibility under section 25-55 of the Act.

34. Section 25-55 allows a maximum tax deduction of $42 in an income year for payments made in respect of each association to which a tax payer belongs, to be claimed where the payment is made for membership of a trade, business or professional association. Where a subscription, levy or contribution does not constitute a payment for membership of an appropriate association, the payment would not be allowed as a deduction under section 25-55 of the Act.

35. The $42 limit applies for subscriptions to any one association. Therefore, if an individual is a member of more than one association, they can claim up to $42 in an income year for membership subscriptions to each association.

Example 1

36. Bob, a factory worker, is a member of the Australian Blue Collar Workers Union. The principal object of this union is to protect, foster and promote the welfare of its members. The union's primary concerns lie in the areas of conditions of service and employment. In particular, they participate in wage negotiations on Bob's behalf.

37. Bob's annual subscriptions to the union are allowable to him as income tax deductions under section 8-1 of the Act because the activities of the union are mainly concerned with the management of working conditions for its members and this is relevant to Bob's assessable income from his employment.

Example 2

38. Jenny, a self-employed accountant, pays subscriptions to the Australian Accountants' Federation. The association keeps its members informed of the latest developments in the fields of accounting and accounting practice, promotes accountants, and represents accountants at various business and government forums in which accountants have a vested interest. The cost of membership of the association would therefore be deductible to Jenny under section 8-1 of the Act because keeping up-to-date in her profession is relevant to the derivation of her assessable income as a self-employed accountant.

Example 3

39. Tim, an instrument maker who mends gauges, belongs to the Horologist's Society. The Society's members are primarily

watchmakers and repairers. The Society is both a trade and a professional association. Tim's hobby is the restoration of pocket watches. The Society provides him with useful contacts in relation to his hobby. Tim is not entitled to a deduction under section 8-1 of the Act for his subscriptions to the Society as the activities of the Society are not relevant to his income earning activities. However, Tim can claim a deduction under section 25-55 of the Act of up to $42 in an income year for membership subscriptions paid to the association.

Example 4

40. Kevin is a retired plastic surgeon. He has retained his membership of the Australian Medical Association and the Australian Society of Plastic Surgeons. As he is no longer deriving assessable income from plastic surgery, Kevin cannot claim a deduction for his subscriptions under section 8-1 of the Act. However, as he is paying for membership of professional associations, a deduction is allowable under section 25-55 of the Act. Kevin can claim a deduction of up to $42 in an income year for his membership subscription to each association.

Example 5

41. Carmel is a part-time member of the Australian Army Reserve and pays for membership of the Armed Forces Federation of Australia. Pay and allowances (other than for continuous full-time service) received as a member of the Army Reserve are exempt from tax under section 51-5 of the Act. Carmel is not entitled to a deduction under section 8-1 of the Act for her membership payment because the expense has not been incurred in gaining or producing assessable income. However, because Carmel has made a payment for membership of a trade, business or professional association, she would be allowed a deduction for her membership payment up to a maximum amount of $42 per year of income under section 25-55 of the Act.

> **NOTE:** During the period 1 December 1983 to 30 June 1987, only one-half of the pay and allowances of part-time members of the Australian Reserve Forces was exempt from tax. During that period the Commissioner allowed a deduction for one-half of the periodic membership subscription under subsection 51(1) of the 1936 Act or $42 under subsection 73(3) of the Act, whichever was the greater amount. (Taxation Ruling IT 2184).

Levies and other contributions

42. Where special levies or contributions are paid by members to a trade, business or professional association, it is essential to consider the purpose for which the payment is made and whether the requirements of section 8-1 of the Act are satisfied. It is not decisive that these payments may be compulsory. What is important is the connection between the purpose for payment of the levy and the activities by which the assessable income of the member is produced.

43. If an association imposes a special levy on its members to enable it to refurbish its existing premises or acquire new premises or plant to conduct its activities, the expense is of a capital nature to the association. However the levy paid by the members would not be capital expenditure. Other than obtaining the advantage that the association or trade union is better able to carry on its activities, the payment of the levy does not add to the profit yielding structure of a member or result in any advantage of an enduring nature to the member. Therefore, provided that there is sufficient connection between the main activities of the association and the member's assessable income, a deduction for the payment of the levy would be allowable to the member under section 8-1 of the Act.

44. By comparison, a levy made specifically to assist a political party or to provide overseas relief would be quite unrelated to the derivation of the member's assessable income and would not be an allowable deduction to the member under section 8-1 of the Act, even if the member personally made the contribution to a political party or provided overseas relief.

45. Furthermore, levies made specifically to assist families of employees suffering financial difficulties as a result of employees being on strike, or having been laid off by their employers, are not considered to be allowable deductions under section 8-1 of the Act. These payments are not sufficiently connected with the activities of the member by which the member's assessable income is produced to meet the requirements of the section.

46. If a salaried, elected trade union official pays a contribution into a general fund for the election of trade union officials, the expense is not incurred in gaining the official's assessable income. Rather, it is incurred to assist in obtaining future employment for the official and others. Therefore, a deduction is not allowable under section 8-1 of the Act.

47. Furthermore, special levies and contributions are not membership fees but are payments in addition to membership fees. A deduction is not allowable under section 25-55 of the Act in respect of special levies and contributions.

Example 6

48. Paula is a teacher in a public school. Her union imposes a $50 levy on each member to fund a campaign designed to increase public awareness of the need for additional resources for public schools and to promote the image of public education in the State. Paula would not be entitled to a deduction for this expense if she incurred it in her own right as it is not sufficiently connected with the derivation of her income from teaching. Therefore, Paula is not entitled to a deduction for the levy under section 8-1 of the Act. As the levy is in addition to the membership fees, it does not constitute a payment for membership in it's own right and a deduction is not allowable under section 25-55 of the Act.

Example 7

49. Jane is elected as an official of the XYZ union at a salary of $20,000 annually. Her success at future elections determines the period of her employment. It is a condition of her employment that she contribute $20 each week to an election fund for the financing of present or future election campaigns of XYZ union officials generally. Jane would not be entitled to a deduction under subsection 8-1 of the Act for the amount contributed to the election fund as it is not incurred in gaining her assessable income but is incurred to assist in obtaining future employment for Jane and others. Further, the levy is not a membership fee so a deduction cannot be claimed under section 25-55 of the Act.

Example 8

50. John and Pat are members of the Association of Professional Engineers. John is a practising engineer while Pat is a retired engineer. The association imposes a levy on its members to defray the costs of arbitration proceedings. John is entitled to a deduction under section 8-1 of the Act for a levy paid by him as he would be entitled to deduct the costs of arbitration proceedings if he incurred them in his own right. Pat is not entitled to a deduction under section 8-1 of the Act for the levy paid by her as she is no longer earning assessable income as an engineer. Pat would not be entitled to a deduction under section 25-55 of the Act as the levy is not a payment for membership of the association.

Example 9

51. Jeremy is a university lecturer. At his university the academics are requested to pay their Staff Association a one-off levy equal to one day's pay. This money is paid into the association's

'fighting fund'. The money paid into this fighting fund is then used by the Association to improve the members' salary and working conditions. The levy is not used for political purposes, but is used solely for protecting the interest of members, safeguarding their jobs and for obtaining legal advice or instituting legal proceedings on behalf of their members.

52. Given the purposes of the fund, it is considered that the necessary connection exists between the payment of the levy and the derivation of Jeremy's assessable income. A deduction for this levy would therefore be allowable to him under section 8-1 of the Act.

Example 10

53. Anne, a telephone technician, belongs to the Telecommunications Union. The union's main activity is the representing of its members in workplace agreement negotiations. In order for the union to better perform its activities it imposes a levy to enable it to:

(a) construct new premises in Brisbane;

(b) refurbish existing premises in Melbourne; and

(c) acquire new plant and equipment for the union's headquarters in Perth.

54. These particular costs represent expenditure of a capital nature to the union but the levy payable by Anne is not a capital expense. As the building and equipment will enable the union to better perform its activities, such activities being relevant to the earning of Anne's assessable income, Anne is entitled to a deduction under section 8-1 of the Act for the levy paid by her.

Periodic subscriptions paid by pensioners and self-funded retirees

55. Pensioners or self-funded retirees may choose to join a representative association. In considering a claim for a deduction under section 8-1 of the Act for payments to these associations, regard must be given to the objects and activities of each particular association. If the activities of a pensioner or retiree association are incidental and relevant to the gaining of the member's assessable income, subscriptions paid to these associations would be deductible under section 8-1 of the Act. An example of such activities would be where an association is primarily established to provide investment or taxation information to members.

56. However, a subscription paid to an association established primarily to influence public opinion on matters unconnected with the derivation of its members' assessable income would not qualify for a

deduction. Similarly, subscriptions to an association set up to represent to government the political beliefs of its members would not qualify for a deduction under section 8-1 of the Act.

57. The term 'trade, business or professional association' is used in section 25-55 of the Act but is not defined. The terms 'trade' and 'business' when added to 'association' would indicate that it is an association for trade and business people. However, the term 'professional' has several meanings and could be interpreted as referring to the structure of the association rather than its membership. In light of the obvious meaning that applies to 'trade' and 'business', it must be concluded that 'professional' has a similar meaning. This is confirmed by decisions of the Board of Review regarding the application of section 73 of the 1936 Act, in 8 CTBR *Case 46* (1938) and 11 TBRD *Case L68* (1960); 9 CTBR (NS) *Case 105*, where the Boards said that a trade, business or professional association was an association whose members were 'united for trade or business or professional purposes'.

58. Therefore, the term 'trade, business or professional association' is a reference to an association for people engaged in a trade, business or profession.

59. A pensioner or retiree association is not an association principally for people in a trade, business or profession. Therefore, section 25-55 of the Act does not apply to membership subscriptions to pensioner and retiree associations.

Example 11

60. Bill has retired and is in receipt of income from investments. He pays an annual subscription of $50 to an association whose object is to obtain government benefits for self funded or independent retirees. The association lobbies government on behalf of its members and issues monthly newsletters advising of its progress and of other matters of interest to members. Bill's subscription to the association is not deductible under section 8-1 of the Act as there is no direct connection between the payment of the subscription and the earning of his investment income. A deduction is not allowable under section 25-55 of the Act as the association is not a trade, business or professional association.

Example 12

61. Jane is a retired pensioner and derives income from a superannuation pension and her investments. She pays an annual subscription of $55 to an Independent Retirees' Association. The Association issues a monthly magazine to its members in which it

advises them of financial market conditions, financial rights, all recent tax law changes and provides general advice and non financial assistance to its members. Jane is thus kept well abreast of the current changes and developments in the financial market and to the taxation law which may affect her investments. Jane's subscription of $55 is fully deductible under section 8-1 of the Act as there is a direct connection between the subscription and her investment income.

Detailed contents list

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Your comments

63. If you wish to comment on this draft Ruling, please send your comments promptly by **31 March 2000** to:

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Association & membership expenses

Legislative references:
- ITAA 1936 51(1)
- ITAA 1936 73(3)
- ITAA 1997 8-1
- ITAA 1997 25-55
- ITAA 51-5

Case references:
- 8 CTBR Case 46 (1938);
- 11 TBRD Case L68 (1960); 9 CTBR (NS) Case 105;
- Case B68 70 ATC 326; (1970) 16 CTBR (NS) Case 14;
- FC of T v. Finn (1961) 106 CLR 60;
- FC of T v. Gordon (1930) 43 CLR 456

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