TR 2001/D10 - Income tax: deductibility of payments to strike funds

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Draft Taxation Ruling
Income tax: deductibility of payments to strike funds

Contents	Para
What this Ruling is about	**1**
Date of effect	**5**
Ruling	**6**
Explanations	**11**
Examples	**28**
Cross references of provisions	**31**
Detailed contents list	**32**
Your comments	**33**

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 applies to the class of persons who make payments to strike funds and contingent strike funds. This Ruling applies to the class of arrangement in which the above class of persons make payments to strike funds and contingent strike funds.

2. The Ruling examines:

   (i) if such payments are deductible under section 25-55 of the *Income Tax Assessment Act 1997* (the 1997 Act);

   (ii) if the payments are deductible under section 8-1 of the 1997 Act; and

   (iii) if payments to contingency strike funds are deductible; and

   (iv) whether refunds of payments to the contributor 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 action.
   - 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. Draft Taxation Ruling TR 2001/D11 considers whether payments from strike funds to striking workers or workers who are stood down, form part of the assessable income of recipients.

Date of effect

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

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 deductions 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.[1]

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 solely to maintain or improve the contributor's pay.

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 to provide financial support to members who will be facing financial

[1] A one-off payment from a strike fund to a member who is in financial hardship during industrial action is not assessable income. See TR 2001/D11.

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 made after the fund has been applied to the common purpose, that is paid only to the contributors and substantially in proportion to the contributions actually made, will not be assessable income as the principle of mutuality will apply.

Explanations

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 1997 Act 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 1997 Act does not override the operation of section 8-1 of the 1997 Act 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 of 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. [2]

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. There is no entitlement to receive a payment from the fund, nor an 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 such a 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 gaining or improving the contributor's pay, the contribution will be deductible to the contributor[3].

Contingency strike fund

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

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[2] 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

[3] We have been advised by a leading trade union that strike funds are not established for this purpose.

contingency strike fund is to provide support to those employees who might be facing financial hardship during later industrial action.

Refunded contributions

25. The principle of mutuality applies when a number of persons associate together for a common purpose and contribute to a common fund in which all are interested. A receipt does not constitute assessable income if the principle of mutuality applies. Any refund of surplus contributions to the contributors, after the fund has been applied to the common purpose, is not regarded as income provided the refunds are paid only to contributing members substantially in proportion to contributions made (*New York Life Insurance Co. v. Styles* (1889) 14 App Cas 381, *F C of T v. Australian Music Traders Association* 90 ATC 4536; (1990) 21 ATR 471).

26. Any refund to contributors of surplus contributions in a reasonable proportion to contributions made after the fund (which has been set up to provide relief to members in financial hardship) has been applied to the common purpose would fall within the principle of mutuality and accordingly are not regarded as income according to ordinary concepts.

Examples

27. 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.

28. 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.

29. The payment by Ian to the strike fund is not deductible to him, as the payment will not maintain or improve his pay.

Cross references of provisions

30. A reference in this Ruling to section 8-1 of the 1997 Act expresses the same ideas as subsection 25(1) and subsection 51(1) of the *Income Tax Assessment Act 1936* ('ITAA 1936') respectively. A

reference to section 25-55 of the 1997 Act expresses the same ideas as section 73 of the ITAA 1936.

Detailed contents list

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

	Paragraph
What this Ruling is about	**1**
Class of person/arrangement	1
Date of effect	**5**
Ruling	**6**
Section 25-55: membership of an association	6
Section 8-1: incurred in gaining or producing assessable income	7
Contingency strike funds	9
Refunded contributions	10
Explanations	**11**
Forms of industrial action	11
Operation of strike funds	14
Application of section 25-55	16
Application of Section 8-1	20
Contingency strike funds	24
Refunded contributions	25
Examples	**27**
Cross references of provisions	**30**
Detailed contents list	**31**
Your comments	**32**

Your comments

32. If you wish to comment on this draft Ruling, please send your comments promptly by **23 November 2001** to:

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12 October 2001

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Related Rulings/Determinations:
TR 92/20; TR 2000/7; TR 2001/D11

Subject references:
allowable deduction
- strike funds

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

Case references:
- Amalgamated Zinc (De Bavay's) Ltd v. FC of T (1935) 54 CLR 295
- Charles Moore & Co (WA) Pty Ltd v. FC of T (1956) 95 CLR 344; 11 ATD 147
- Colonial Mutual Life Assurance Society Ltd v. FC of T (1953) 89 CLR 428
- Commissioner of Taxation v. Payne 46 ATR 228; 2001 ATC 4027
- F C of T v. Australian Music Traders Association 90 ATC 4536; (1990) 21 ATR 471
- FC of T v. Rowe 97 ATC 4317
- FC of T v. Smith 78 ATC 4157
- FC of T v. DP Smith 81 ATC 4114
- Fletcher v. FC of T 91 ATC 4959; (1991) 173 CLR 1
- Lunney v. FC of T; Hayley v. FC of T (1958) 100 CLR 478; 11 ATD 404
- W Nevill & Co Ltd v. FC of T (1937) 56 CLR 290
- New York Life Insurance Co. v. Styles (1889) 14 App Cas 381
- Ronpibon Tin NL and Tongkah Compound v. FC of T (1949) 78 CLR 47; 8 ATD 431

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