TR 96/D4 - Income tax: cosmetics and other personal grooming expenses

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Draft Taxation Ruling
Income tax: cosmetics and other personal grooming expenses

other Rulings on this topic

TR 95/8; 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 95/21; TR 95/22; TR 96/D2; TR 96/D3; TD 93/244

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What this Ruling is about

Class of person/arrangement

1. This Ruling sets out our views on the deductibility, under subsection 51(1) of the *Income Tax Assessment Act 1936* (the Act), of expenses incurred in respect of cosmetics and other personal grooming expenses, following the decision of the Federal Court of Australia in *Mansfield v. FC of T* 96 ATC 4001; [(1996) 31 ATR 367 - not yet reported] (*Mansfield's* case).

2. In *Mansfield's* case the Court also dealt with the deductibility of expenditure on rehydrating moisturiser, and on rehydrating hair conditioner and shoes and stockings worn as part of a compulsory uniform. These matters are covered in Draft Taxation Rulings TR 96/D3 and TR 96/D2 respectively.

3. Cosmetics and personal grooming expenses include the cost of perfume, after shave, deodorant, nail polish, nail or hair care products, skin care products, lipstick, foundation and other make-up, hair spray, hair styling, haircuts, hair colouring, hair perm, and other personal care or related products or treatments.

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).

Ruling

5. The decision in *Mansfield's* case confirms the long standing view that, as a general rule, expenditure on cosmetics and personal care and grooming is private in nature and not deductible.

6. However, this rule is not of universal application and it is possible in special circumstances for there to be a sufficient connection between the expenditure and the income earning activities of the taxpayer. For example, it is accepted that a deduction may be allowable for some stage make-up and grooming expenses incurred by performing artists when performing a role (see Taxation Ruling TR 95/20, paragraphs 109 to 111). See also Draft Taxation Ruling TR 96/D3 dealing with expenditure on rehydrating moisturiser and rehydrating hair conditioner where there was a requirement that the taxpayer be well groomed and where the occasion of the expenditure was found in the harsh working conditions.

Explanations

General principles

7. Expenditure on cosmetics and other personal grooming expenses falls for consideration under subsection 51(1) of the Act. In so far as it is relevant for present purposes, subsection 51(1) provides as follows:

> '... outgoings to the extent to which they are incurred in gaining or producing the assessable income ... shall be allowable deductions, except to the extent to which they are ... outgoings of ... a private or domestic nature ...'

8. For expenditure by an employee to be deductible under the first limb of subsection 51(1) of the Act, the High Court of Australia has indicated that the expenditure 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* (1958) 100 CLR 478 at 497-498). There must be a nexus between the outgoing and the assessable income so that the outgoing is incidental and relevant to the gaining of the assessable income (*Ronpibon Tin NL v. FC of T* (1949) 78 CLR 47). Consequently, it is necessary to determine the connection between the particular outgoing and the operations by which the taxpayer more directly gains or produces his or her assessable income (*Charles Moore & Co (WA) Pty Ltd v. FC of T*

(1956) 95 CLR 344 at 349-353; *FC of T v. Cooper* 91 ATC 4396 at 4403; (1991) 21 ATR 1616 at 1624; *Roads and Traffic Authority of NSW v. FC of T* 93 ATC 4508 at 4521; (1993) 26 ATR 76 at 91). Whether such a connection exists is a question of fact to be determined by reference to all the facts of the particular case. In most cases a sufficient connection will not exist between expenditure on cosmetics and personal grooming and the derivation of income by an employee taxpayer, and the expenditure will be private in nature: see *Mansfield's* case.

Deduction not allowable

9. The decision of Mr Justice Hill in *Mansfield's* case, which concerned a flight attendant, confirmed that expenditure on hairdressing and make-up is essentially of a non-deductible private nature. The fact that an allowance for grooming was paid and that the employer required its employees to be well groomed, did not alter the private nature of the expenses.

10. In *Mansfield's* case Mr Justice Hill stated (ATC at 4008):

> '... it becomes unnecessary to consider whether that part of the amount which Mrs Mansfield expended on makeup would be deductible. However, as presently advised I do not think that it would. Even if makeup as such is required by the airline as an incident of the employment, I am presently of the view that makeup retains an essential personal characteristic which excludes it from deductibility.'

11. In *Mansfield's* case the Court also considered claims for hair spray, styling, cutting, conditioner applied by the hairdresser, conditioner applied at home, shampooing at the hairdresser and shampoo purchased for use at home. The Court allowed a deduction for the additional cost of rehydrating conditioner necessitated by the lack of humidity in the pressurised environment of the aircraft cabin, but found the remaining expenditure on hairdressing was not deductible. When considering the non-deductibility of hairdressing expenditure, Mr Justice Hill stated (ATC at 4009):

> 'The fact that Mrs Mansfield was required by her employer to be well groomed and presentable does not of itself operate to confer deductibility. Expenditure on hairdressing is of a private nature. There is no additional feature which shows any relationship between the expenditure on the one hand and Mrs Mansfield's employment as a flight attendant. The expenditure does not have the character of employment-related expenditure and in my view is not deductible. Her selection of a perm, which requires

somewhat regular maintenance, is her choice. It is not occasioned by her employment.'

Deduction allowable

12. A deduction may be allowable for some make-up and hairdressing costs incurred by a performing artist when performing a role. The cost of maintaining a particular hairstyle or length for a role is an allowable deduction. A deduction is allowable for the cost of stage make-up, including cleansing materials to remove stage make-up. A deduction is not allowable for the cost of cleansing materials to relieve skin conditions (see Taxation Ruling TR 95/20 at paragraphs 109 to 111).

Examples

Example 1

13. Brian, an officer in the Australian Defence Forces (ADF), is required to maintain a short back and sides hair style. Failure to meet the rigid requirements set by the ADF could result in disciplinary action being taken. Consequently, Brian has his hair cut twice a month and wishes to claim a deduction for this expense.

14. A deduction is not allowable for the cost of Brian's hair cuts as this is a private expense. The fact that Brian's employer has rigid grooming standards does not alter the private nature of the expense.

Example 2

15. Sarah is an executive secretary to the managing director of an international company. She is required to be well groomed at all times when at work. When accepting her position, her employer made it very clear that good grooming was of critical importance to the organisation and that her presentation would be regularly monitored. In recognition of the importance of grooming to her employer, Sarah is paid a grooming allowance of $20 per week. Sarah wants to claim expenses incurred on hairdressing and cosmetics that relate solely to work and for which she receives an allowance.

16. The receipt of an allowance does not necessarily mean that a deduction is automatically allowable for any related expenses. The additional feature that Sarah's employer requires good grooming is not sufficient to alter the characterisation of the expense as essentially private in nature.

Example 3

17. Alan is an entertainer. As part of his act he portrays himself as an aged person. Alan wishes to claim a deduction for the stage make-up and make-up remover he uses to make himself appear older than he actually is.

18. Alan would be allowed a deduction for the cost of the stage make-up used while he is playing the role of the aged person as part of his act.

Your comments

19. If you wish to comment on this Draft Ruling, please send your comments by: 22 March 1996

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case references

- Charles Moore & Co (WA) Pty Ltd v. FC of T (1956) 95 CLR 344
- FC of T v. Cooper 91 ATC 4396; (1991) 21 ATR 1616
- Lunney v. FC of T (1958) 100 CLR 478
- Mansfield v. FC of T 96 ATC 4001; (1996) 31 ATR 367
- Roads and Traffic Authority of NSW v. FC of T 93 ATC 4508; (1993) 26 ATR 76
- Ronpibon Tin NL v. FC of T (1949) 78 CLR 47