TD 1999/D23 - Income tax: is the cost of life membership paid to a work-related or business association an allowable deduction and, if it is, is it allowable in full in the year it is paid?

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Draft Taxation Determination

Income tax: is the cost of life membership paid to a work-related or business association an allowable deduction and, if it is, is it allowable in full in the year it is paid?

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office (ATO). DTDs may not be relied on; only final TDs are authoritative statements of the ATO.

1. Yes, a deduction is allowable if the essential character of the expense relates to the earning of assessable income and it is neither a capital expense or a non-deductible expense (e.g., entertainment). Where the expense exceeds $1,000, a deduction may only be allowable over a period of years. Special rules are discussed in paragraphs 3 and 4 of this Determination.
2. The essential character of an expense is a question of fact. In determining the essential character of the expense, regard should be had to:
   (i) The advantage obtained as a result of the expenditure. For example, where the only advantage obtained upon payment of a life membership fee was a priority in accessing entertainment facilities in circumstances where separate fees were payable for subscription to journals or access to professional advice, a deduction for the life membership fee would not be allowable;
   (ii) The purpose of the taxpayer in incurring the expenditure. For example, if it could be concluded that the taxpayer's dominant purpose was to access a leisure facility that is available to members, a deduction would not be allowable. Alternatively, if the taxpayer paid the fee to obtain access to an airport lounge which was to be used primarily when undertaking business travel, a deduction would be allowable.

The rules, if any, associated with the granting of life membership may also assist in determining the character of the expense. For example, the rules may change the member's voting rights, allow them extra benefits, or require that the periodical journal or professional advice be paid for separately.

3. If expenditure would otherwise qualify as an allowable deduction under section 8-1 of the *Income Tax Assessment Act 1997* ('the 1997 Act'), it is necessary to consider if the expenditure is allowable in full in the year it is incurred, or over a period of years. Where the expenditure is less than $1,000, a deduction is allowable in full in the year it is paid as it falls within paragraph (a) of the definition of 'excluded expenditure' in subsection 82KZL(1) of the *Income Tax Assessment Act 1936* ('the 1936 Act'). Where the expenditure is $1,000 or more, a deduction is allowable in

accordance with section 82KZM of the 1936 Act. Section 82KZM requires the deduction to be apportioned and claimed over the period to which the expenditure relates, or 10 years, whichever is the lesser period.

4. In calculating the deduction allowable under section 82KZM:

(i) the deduction is prorated in the first and last year in accordance with the number of days in the first and last year that belong to the eligible service period. For example, if the life membership fee was paid on 30 June and the eligible service period was 3,652 days, the allowable deduction in the first year is 1/3652 of the life membership fee;

(ii) a lesser period than 10 years may be used if, retirement is likely to occur within ten years, and the rules relating to life membership result in a loss of substantial rights upon retirement. In such circumstances, it may be possible to conclude that the expenditure relates solely to the period up to retirement.

5. Where a deduction is not allowable under section 8-1 of the 1997 Act, a deduction may nevertheless be allowable under section 25-55. Section 25-55 provides for a deduction up to an amount of $42 in respect of a payment made for membership of a trade, business or professional association. For example, a retired taxpayer who paid a life membership fee to a professional association would not be entitled to a deduction under section 8-1 because the expense does not relate to the earning of assessable income. A deduction of $42 would be allowable in the year that the life membership fee was paid.

6. Sections 8-1 and 25-55 of the 1997 Act, to which this Determination refers, express the same ideas as subsections 51(1) and 73(3), respectively, of the 1936 Act.

Your comments

7. If you wish to comment on this draft Determination, please send your comments promptly by 14 May 1999 to:

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Commissioner of Taxation
14 April 1999

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Related Rulings/Determinations:

Subject references:

advance expenses and payments; association and membership expenses; deductions and expenses

Legislative references:

ITAA36 51(1); ITAA36 73(3); ITAA36 82KZL(1); ITAA38 82KM; ITAA97 8-1; ITAA97 25-55

Case references:

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