TD 93/D9 - Income tax: is a professional sportsperson entitled to a deduction under subsection 51(1) of the Income Tax Assessment Act 1936 for the cost of hiring formal clothing to attend functions or presentations?

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

Draft Taxation Determination

Income tax: is a professional sportsperson entitled to a deduction under subsection 51(1) of the *Income Tax Assessment Act 1936* for the cost of hiring formal clothing to attend functions or presentations?

1 No. The cost of hiring formal clothing is not deductible under subsection 51(1) because:

(a) it is not sufficiently connect to the sporting activity which produces the income;

(b) formal clothing is not necessary and peculiar to the actual income producing activities; and

(c) the expense is of a private nature. Formal clothing is worn to observe appropriate dress standards or requirements rather than for reasons that will establish an income earning nexus.

Lockhart J said in *FC of T v. Cooper* 91 ATC 4396, (1991) 21 ATR 1616,'the deductibility of ... (an expense) ...depends upon determining the essential character of the expenditure itself and not upon the fact that, unless it is incurred, the taxpayer will not be able to engage in the activity from which his income is derived.'

2 Even if it is a condition of employment that a person attend a function or presentation, the cost of hiring formal clothing is still not deductible as the expenditure is not related to the income producing activities of playing sport.

Example

A professional footballer is required by his club to attend an award presentation and must wear formal clothing. The player is not allowed a deduction for the hire of that clothing.

Commissioner of Taxation
21/01/93

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Related Determinations:
Related Rulings: IT 54
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