

COMMONWEALTH OF AUSTRALIA

Income Tax Assessment Act 1997

FORMULATION OF GUIDELINES UNDER DIVISION 34

I, KELLY O'DWYER, the Minister for Revenue and Financial Services, acting under Division 34 of the *Income Tax Assessment Act 1997*:

formulate the attached Guidelines under Division 34 of the *Income Tax Assessment Act 1997*.

The attached Guidelines commence on 1 October 2017, and the previous Guidelines are revoked with effect from the same day.

Dated this 7th day of August 2017

KELLY O'DWYER

Minister for Revenue and Financial Services

APPROVED OCCUPATIONAL CLOTHING GUIDELINES 2017

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APPROVED OCCUPATIONAL CLOTHING GUIDELINES 2017

INTRODUCTION

1. NOTE: The material appearing below in *italics* is explanatory only and does not form part of the Guidelines formulated under Division 34 of the *Income Tax Assessment Act 1997* (the Act).
2. *These Guidelines outline:*
 - (a) *the tax law as it relates to occupational clothing;*
 - (b) *the steps that need to be undertaken by employers to have designs of occupational clothing registered; and*
 - (c) *the factors that will be considered in determining whether designs of occupational clothing may be registered.*
3. *These Guidelines commence on the day after they are registered on the Federal Register of Legislation.*

LEGISLATIVE AUTHORITY

4. *Division 34 of the Act regulates the deductibility of non-compulsory uniforms and wardrobes. The taxation law only allows a deduction to employees for expenditure on uniforms or wardrobes where either:*
 - (a) *the clothing is in the nature of ***occupation specific**, or ***protective clothing**; or*
 - (b) *the wearing of the clothing is a compulsory condition of employment for ***employees** and the clothing is not conventional in nature (***compulsory occupational clothing**); or*
 - (c) *where the wearing of the clothing is not compulsory, the design of the clothing is entered on the Register of Approved Occupational Clothing (the Register).*
5. *The meanings of the highlighted words used in Clause 4 above are contained in the 'Definitions' section of these Guidelines.*

DEDUCTIBILITY OF EXPENDITURE

6. *In the vast majority of cases, clothing worn by an employee while at work will be of a conventional nature and expenditure on the clothing will only rarely be an allowable deduction under section 8-1 of the Act. One exception to this general rule concerns occupational clothing which is entered on the Register.*

7. *Where occupational clothing satisfies these Guidelines and is registered by an employer, the expenditure incurred by an employee in the rental, purchase or maintenance of items of clothing from the registered design will be eligible for tax deductibility under section 8-1 of the Act.*

8. *The availability of a deduction is also dependent upon how the registered occupational clothing is worn. Employees must be aware that the clothing should be worn as an entirety, or set, rather than as individual pieces. The constant wearing of occupational clothing items in conjunction with conventional clothing may lead to the conclusion that the clothing is simply a collection of ordinary conventional clothing.*

9. *The result of such a conclusion would be that tax deductions relating to the clothing would be denied. In addition, where an employer has supplied the clothing without cost or at a reduced cost to employees a Fringe Benefits Tax liability may arise for the employer.*

10. *Details regarding the substantiation requirements of the Act are available from your local Australian Taxation Office.*

REGISTER OF APPROVED OCCUPATIONAL CLOTHING

Background

11. *One of the ways to ensure that employee expenditure on uniforms or wardrobes is eligible as a tax deduction is for the employer to have the design of occupational clothing entered on the Register of Approved Occupational Clothing (the Register). Only designs of uniforms or wardrobes which are **not** protective clothing, occupation specific clothing or compulsory for an employee to wear while at work, need to be registered.*

Benefits of Registration

12. *The purpose of the Register is to provide a central reference for the registration of designs of occupational clothing. This will enable the eligibility of claims for tax deductions for expenses incurred in the rental, purchase or maintenance of such occupational clothing to be determined by the Australian Taxation Office. In addition, where an employer provides clothing from a registered design without cost, or at a reduced cost to employees there will be no Fringe Benefits Tax liability imposed upon the employer.*

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13. *The Register lists those designs of occupational clothing which the administering authority is satisfied meet the criteria set out in these Guidelines. Under the Act, the Industry Secretary is responsible for deciding whether to register designs of non-compulsory uniforms (section 34-30) and maintaining the Register (section 34-45). The Secretary can delegate those functions to employees of a certain level within the Department (section 34-65).*

Registration of Employers and Occupational Clothing Designs

14. *Employers who introduce occupational clothing **must** apply to have the design entered on the Register if expenses incurred by employees in the rental, purchase or maintenance of the clothing are to be eligible for tax deduction. Registration will also ensure that employers are not subject to Fringe Benefits Tax in situations where the clothing is provided free or at discounted prices to employees.*

Registration Procedure

15. *Employers must submit a request for registration of their design on the application form available from the administering authority. All details required on the form must be provided in order that a full assessment of the eligibility of the design can be undertaken. An incomplete form will be returned for completion. This will delay registration.*

Access to the Register

16. *Any person may inspect, at any reasonable time, the information on the Register held by the administering authority. The contact details for the administering authority, AusIndustry, (a division of the Industry Department) are at the end of these guidelines.*

REGISTRATION CRITERIA

17. *Whether clothing constitutes ***approved occupational clothing** is a question of fact and impression that can only be determined on a case by case basis in the light of all the circumstances.*

18. *For applications for a ***design** to be entered on the Register to succeed the design, as a whole, must have a distinctive look and a cohesive and obvious identity. If the clothing is considered to be simply a collection of conventional clothing items the application for registration will fail. In addition, tax deductions will not be allowable for the expenses incurred in the rental, purchase or maintenance of the clothing and the employer may be subject to Fringe Benefits Tax if the clothing is supplied to employees without cost or at a reduced cost.*

FACTORS TO BE CONSIDERED

Nature of the Employer's Business or Activities

19. The nature of the employer's business or activities will be considered when determining the suitability of the designs that make up the approved occupational clothing. For example, items of clothing that may be suitable for a business operating in an office environment may not be suitable for activities carried on at a plant nursery or a boat building factory.

Single Items of Clothing

20. Single items of occupational clothing, other than full body garments (such as dresses), will not be admitted to the Register. *Consequently, expenditure on such items is ineligible for deductibility under section 8-1 of the Act.*

Corporate, Product or Service Identifiers

21. Corporate, product or service identifiers are a **compulsory requirement** for any design seeking admission to the Register. There are two types of identifiers:

- (a) stand alone - a corporate, product or service identifier which is a discreet symbol, logo, initial, form of words etc. and which is distinct from the item of clothing to which it is affixed; and
- (b) pattern - a corporate, product or service identifier which is used in the form of a distinctive pattern over the entire item of clothing and which forms an integral part of that clothing.

The identifier does not include outlines or boxes which are not part of the logo.

22. An identifier must appear **at least once on the external surface of each item** of occupational clothing **including accessories**. In addition, the occupational clothing must be designed to ensure that when two or more items are worn together at least one 'stand alone' identifier **or** an approved identifier pattern should be **plainly visible** to the casual observer. Furthermore, the clothing must not, after the addition of identifiers, be available for rental or purchase by the general public.

'Stand Alone' Identifiers

23. The identifier must be in a contrasting colour or shade to that used for the item to which it is attached and be of sufficient size to be plainly visible to the casual observer from a distance of **two metres**. The employer, product or service depicted must also be easily identifiable from the same distance. The minimum size of stand alone identifiers to be used are:

- (a) Clothing items: The stand alone identifier should be sufficient to cover **80% of a 4 square centimetre area** (eg 2 cm x 2 cm, 1 cm x 4 cm etc.) This will allow identifiers of different shapes to qualify.

- (b) Accessories: The stand alone identifier should cover a **1 square centimetre area**.

These are minimum qualifications only, and the identifiers may be larger.

24. A 'stand alone' identifier must be permanently affixed by being, for example, ironed on, sewn down on all sides, embroidered into, or printed onto an item of clothing. Detachable badges, pins, buttons and flag tags sewn into seams are not acceptable and will not qualify clothing for entry on the Register.

Pattern Identifiers

25. A **pattern** of identifiers, usually used as a print, may be used in place of a stand alone identifier provided that:

- (a) identifiers used in the pattern are, of a contrasting colour to the main background colour, a minimum size of **1 cm x 1 cm** and there are a minimum of **three** such identifiers in an area of material measuring **15 cm x 15 cm**; and
- (b) the employer, product or service depicted is easily identifiable from a distance of **two metres**.

26. It will not be sufficient that a pattern is used exclusively by an employer if the employer, product or service cannot be distinguished by that pattern. Thus, the pattern must be used by the employer in a manner similar to advertising so that the public readily recognises it. (It is accepted that new identifiers or patterns may take some time to be readily recognised by the public and this will not detract from the acceptance of the identifier or pattern.) For example, the yellow and black square and the red bullseye, used by two well known organisations.

Colours

27. *The use of a large number of colours would make it difficult to say that a design is distinctive.*

Therefore, the total number of colours or shades used in the design (including highlight colours but not including the colours used in identifiers) must be limited to a **maximum of eight** including black and white.

28. There must be a common theme of colours, patterns and prints applying between:

- (a) the male and female designs; and
- (b) the designs for each class of employee.

In general, this criterion applies in respect of an employer. The only exceptions are:

- (i) where it is a requirement for safety reasons for employees in different classes to be easily

identifiable; or

- (ii) where the employer maintains separate public identities for parts of its organisation, the employer may elect for this criterion to apply separately to each part of the organisation.

29. The limitation on the number of colours to be used in the design is not affected by the weight or construction of the fabric, its content, or whether it is knitted or woven, eg. a navy woven skirt and matching navy knitwear would be considered to be one plain colour only.

30. The number of colour/pattern/print combinations available for use by an employer is limited by the number of employees in the class that the clothing has been designed for. This is to ensure that the uniform is cohesive and the corporate, product or service identity obvious. The following table sets out how many colour/pattern/print combinations are allowed for an employer with a particular number of employees in the class that the clothing has been designed for. For example, an employer with 600 employees in the same class may use the number of colour/pattern/print combinations in the second column of the table below (101-3,000 employees). If the uniform utilised the colours navy and white, the five colour/pattern/print combinations for the shirts could be:

- 1) Navy 2) White 3) Navy/White Dots
- 4) Navy/White Stripes 5) Navy/White Floral Print

Number of colour/pattern/print combinations available to be allowed a tax deduction:

		Total Number of Employees in a Class			
		1 - 100	101 - 3,000	3,001 - 10,000	Over 10,000
Males	Full body garments Overalls etc.	2	3	4	6
	Outer, upper body garments Jackets/knitwear etc.	2	3	4	5
	Inner, upper body garments Shirts/t shirts etc.	3	5	7	8
	Lower body garments Pants/trousers/shorts etc.	2	3	4	5
Females	Full Body Garments Overalls/dresses etc.	2	3	4	6
	Outer, upper body garments Jackets/knitwear etc.	2	3	4	5
	Inner, upper body garments Blouses/shirts/t shirts etc.	3	5	6	8
	Lower body garments Pants/trousers/skirts/shorts etc.	2	4	6	7

Range

31. Provided that each item of clothing in each design has the identifiers, as outlined in clauses 21 to 26 above, attached and the colour/pattern/print combinations are within the permissible numbers outlined in the table at Clause 30, there is no limit to the number of styles that can be used for any one item of clothing. Style in this sense means for example an A line skirt, pleated skirt, short sleeved shirt, collarless shirt etc. Therefore in the example at Clause 30 the navy shirt may come in long or short sleeves and still only count as one colour/pattern/print combination. However, should the shirt have a white collar or trim that would count as a separate colour/pattern/print combination. The use of white buttons, or up to two lines of white running stitch as a trim would mean that the navy shirt would still only count as one colour/pattern/print combination.

Durability

32. Changes in colours, identifiers and patterns can detract from the design's ability to be easily recognised as approved occupational clothing and therefore also detract from its distinctive look. It is expected that the overall look or concept of an approved occupational clothing design must be able to last between **three to five years and not be changed merely to follow the latest fashions.**

33. However, this requirement will not of itself prevent gradual changes to any design that does not disturb the overall look of that design, or prevent an employer totally changing its design(s) if it wishes to change its 'corporate' identity or consumer/public perceptions about the employing organisation or its employees.

Changes to Designs

34. *Each change or variation of a design (but excluding changes of style only) **must** be approved by the administering authority. Once a design is changed, either in total or just an item or two, it would be expected that the employer would, within a period of 12 months, request that the superseded design or items be removed from the Register. The costs of rental, purchase or maintenance of the superseded design or items, incurred by employees, will cease to be eligible for tax deductibility from the date of the removal of the design or item from the Register.*

35. *It is therefore necessary for the employer to nominate which design or item is being replaced by the new variation.*

36. *Where a design change is proposed for more than one item of clothing, all changes must be presented for approval at the one time.*

Accessories

37. Accessories such as belts, ties, handkerchiefs, long walk socks (for wearing with shorts), handbags, briefcases, trench coats, raincoats, scarves, tie pins/clips, scrunchies, bow ties, umbrellas, head/sweat bands and hats which are made of the same distinctively patterned fabrics as the other items in the design, or have a

'stand alone' identifier, will form part of the design.

38. Shoes, short socks, stockings and underwear will not form part of approved occupational clothing in any circumstance.

DEFINITIONS

Class of Employees

39. Class of employees is a class of employees based on the level or category of work.

Employee

40. Employee in subsection 34-5(1) of the Act includes 'an individual who is an employee as well as an individual who receives, or is entitled to receive, withholding payments covered by subsection 34-5(3) of the Act. That subsection refers to withholding payments on payments to a company director or an office holder as well as return to work payments and benefit, training and compensation payments.

Compulsory Occupational Clothing

41. Compulsory occupational clothing is clothing which is not conventional in nature and which an employer has prescribed in an express policy stating that there is a requirement or **compulsion** to wear the clothing by employees. That policy must also be consistently enforced by the employer.

Corporate

42. The word 'corporate', in the phrase 'corporate product or service identifiers', is used to refer to both incorporated and unincorporated bodies and applies to trusts, partnerships, joint venturers and sole traders who introduce occupational clothing for their staff. There is no specific limit on the number of employees for whom a design may be introduced. For example, a corner store which employs three or four people could, if it wishes, introduce occupational clothing.

Corporate, Product or Service Identifiers

43. Corporate, product or service identifiers are features which readily identify a particular organisation, product or service and include such things as well known, specific or registered trade marks, logos, initials, insignia, emblems, arms, and patterns. They may be a 'stand alone' feature (eg. an insignia on a blazer) or they may be a common feature (eg. a pattern in fabric consisting of employer's logo).

Design

44. *Subsection 34-25(2) of the Act states that 'design of a uniform includes features such as its colouring, construction, durability, ornamentation, pattern and shape'.*

45. Where an organisation operates over a wide climatic area, it may be necessary for the design of the occupational clothing to take into account the climate for which it is intended. For example an employer who has operations in both southern Tasmania and far north Queensland may wish to submit 4 designs - 1 winter and 1 summer design for each climatic region.

46. A design may also be used as a means of distinguishing between various staffing groups within an organisation eg. a set of clothing items used by office staff may differ from the set used by field staff. In these cases, the factors listed in these Guidelines should be considered in the context of the collection which applies to each separate staffing group within the organisation and entered separately on the Register. For example, the collection to be worn by the office staff should be considered separately to that worn by technicians in the field.

Occupational Clothing

47. Occupational clothing is a set of one or more items of clothing and accessories (other than protective or occupation specific clothing) which distinctively identify a particular employing organisation, product or service and which employees are encouraged by their employer to acquire and wear at work, but are under no compulsion to do so.

Occupation Specific Clothing

48. *Subsection 34-20(1) of the Act provides a definition of occupation specific clothing. This definition states, in part, that occupation specific clothing is 'clothing that distinctively identifies the employee as belonging to a particular profession, trade, vocation, occupation or calling'.*

49. *Examples of clothing that fall into this category are chef's checked pants and cleric's robes.*

50. *Expenditure on items of clothing which are occupation specific in nature is subject to the requirements of section 8-1 of the Act to be deductible. This type of clothing is not covered by these Guidelines.*

Protective Clothing

51. *'Protective clothing' is defined in subsection 34-20(2) of the Act. It is clothing of a kind that you mainly use to protect yourself, or someone else, from risk of:*

- (a) death; or*
- (b) disease (including the contraction, aggravation, acceleration or recurrence of a disease); or*
- (c) injury (including the aggravation, acceleration or recurrence of an injury); or*
- (d) damage to clothing; or*
- (e) damage to an artificial limb or other artificial substitute, or to a medical, surgical or other similar aid or appliance.*

52. *Examples of clothing that fall into this category are overalls, aprons, goggles, shields, hard hats and safety boots. When considering whether an item constitutes 'protective clothing' regard must be had to the nature of the business or activities carried on by the employer. For example, a mechanic's overalls would be protective however, designer overalls worn by a salesperson in a clothes shop would not.*

53. *Expenditure on items of clothing which are protective in nature is, subject to the requirements of section 8-1 of the Act, deductible. **This type of clothing is not covered by these Guidelines.***

CONTACT ADDRESSES

54. **AusIndustry**

Register of Approved Occupational Clothing

Level 5

111 Burke Street

MELBOURNE VIC 3000

Postal Address:

AusIndustry

Register of Approved Occupational Clothing

GPO Box 2013

CANBERRA ACT 2601

Telephone: (03) 9268 7944

Facsimile: (03) 9268 7999

Internet Access: www.business.gov.au

55. *All enquiries regarding the following matters should be directed to your local **Australian Taxation Office**:*

- compulsory occupational clothing;*
- occupation specific clothing;*
- protective clothing; and*
- the availability of tax deductions on all types of occupational clothing.*