IT 327 - Payments by employees to trade unions, associations of employees and professional associations

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TAXATION RULING NO. IT 327

PAYMENTS BY EMPLOYEES TO TRADE UNIONS, ASSOCIATIONS OF EMPLOYEES AND PROFESSIONAL ASSOCIATIONS

F.O.I. EMBARGO: May be released

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1103174	SUBSCRIPTIONS	51(1)
	SUBSCRIPTIONS IN EXCESS OF $42	73
	SUBSCRIPTIONS - SPECIAL LEVIES 16 CTBR (NS) CASE 14 70 ATC CASE B68	

FACTS Consideration has been given to the deductibility of subscriptions, levies and contributions to trade unions or associations of employees and professional associations under sections 51(1) and 73 following the decision of Taxation Board of Review No.2 reported as 70 ATC, Case B68; 16CTBR (NS) Case 14. In that case, the taxpayer was a commercial airline pilot who, in the relevant year of income, claimed a deduction for a subscription to the Australian Federation of Air Pilots. The taxpayer's objection was based solely on the provisions of section 73 and, although the Board by majority upheld the Commissioner's decision, it was made clear in the reasons of all three members that the claim would have been allowed if the terms of the objection had been sufficiently wide to permit consideration of the question under section 51.

RULING 2. It has been decided to accept in principle that a periodical subscription made by an employee to a trade union or an association of employees may qualify for deduction under section 51 where the subscription is made in circumstances which are comparable with those encountered in the decided case. The reasoning in the airline pilot's case is a further indication on the part of the Boards of Review that, in the absence of binding authority to the contrary, a narrow view should not be taken of claims made under section 51 in relation to expenditure which an employee might reasonably be expected to incur in the course of deriving assessable income.

3. Deductions claimed for periodical subscriptions should be considered firstly under section 51 and recourse to the provisions of section 73 will be necessary only if section 51 is inapplicable. Broadly stated the test is whether when considered from the taxpayer's point of view, the payment falls within the description of an outgoing which is incidental and relevant to the derivation of assessable income. The question whether a periodical subscription paid to any organisation

qualifies for deduction under section 51 is a matter for determination in the light of the particular facts and, strictly, it would be necessary to have regard to the activities of the organisation to ascertain the principal purpose for which the outgoing was incurred.

4. In the decided case the taxpayer, as a member of the Australian Federation of Air Pilots, was required to pay an annual subscription of an amount approximately equal to 1% of his gross salary. Although the Federation has power under its constitution to pursue certain other objects, its activities in the main are directed towards protecting the interests of its members, the publication of a professional journal and the negotiation of short term contracts relating to salary and conditions of all services. While membership of the Federation is not compulsory, an overwhelming majority of eligible pilots are members and, having regard to the pressures exerted by the Federation in improving salaries and working conditions for its members, there is a clear link between the payment of the annual subscription and the derivation of assessable income.

5. Most trade unions and associations of employees have as their principal objective the gaining of higher salaries and improved working conditions for members. At present, annual subscriptions to such organisations are almost invariably at a flat rate and usually exceed $42 per annum. Where this is the case, it would ordinarily be apparent from the nature of the taxpayer's occupation and local knowledge of the activities of the organisation to which the payment is made whether the deduction claimed should be allowed under section 51 without further enquiry. Similar treatment should also be extended to members of associations such as the Australian Federation of Air Pilots where it is known that the annual subscription payable by all members is a fixed percentage of gross salary.

6. Where special levies or contributions are paid by employees to a trade union or association of employees, it will be necessary to have regard to the purpose for which the payment is made and to determine whether the test contained in section 51 is satisfied. A levy made specifically to assist a political party or to provide overseas relief would be quite unrelated to the derivation of assessable income nor could it be accepted as a periodical subscription within the meaning of section 73(3). On the other hand, levies paid by members of, for example, the Association of Professional Engineers to defray costs of arbitration proceedings qualify for deduction under section 51.

7. Periodical subscriptions paid by employees to professional associations which are concerned with providing a specialised service to members practising in a particular profession usually exceed the limit of $42 per annum specified in section 73(3). As in the case of periodical subscriptions to trade unions and associations of employees, however, such claims would qualify for deduction under section 51 in appropriate circumstances. Although such associations may not be directly concerned with obtaining increased earnings as such for members, access to information disseminated and other assistance provided

by a professional association play just as necessary a part in enabling an employee to keep abreast of current developments in his particular field as the type of expenditure considered by the High Court in FC of T v Finn (1961) 106 CLR 60. Thus, an accountant employed by a bank would be eligible for deductions under section 51 for periodical subscriptions paid to a bank officers' association and for annual subscriptions paid to a society of accountants.

8. Where it is reasonably clear that a payment made to a trade union, an association of employees or a professional association cannot satisfy the test in section 51, as for example a payment made by a taxpayer in retirement, or a payment which is obviously unrelated to the derivation of income, the claim falls for consideration under section 73(3) if it comes within the description of a periodical subscription.

COMMISSIONER OF TAXATION