

TD 92/154 - Income tax: are childcare expenses paid by a person for that person's children deductible under subsection 51(1) of the Income Tax Assessment Act 1936?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *10 September 1992*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax: are childcare expenses paid by a person for that person's children deductible under subsection 51(1) of the *Income Tax Assessment Act 1936*?

1. No. Subsection 51(1) permits deductions for losses and outgoings incurred in gaining or producing assessable income except where they are capital, private or domestic in nature.
2. The High Court held in *Lodge v FC of T* (1972) 128 CLR 171; 72 ATC 4174; 46 ALJR 575; 3 ATR 254; that child care expenditure was neither relevant nor incidental to gaining or producing assessable income, and therefore not deductible. The expenditure was also of a private or domestic nature.
3. This view has been consistently affirmed in later court decisions, most recently by the Full Federal Court in 1991 in *Jayatilake v FC of T* 91 ATC 4516; 22 ATR 125; 101 ALR 11;.
4. The same principle applies whether the expenses are paid to a registered organisation or to any other person for this purpose.
5. In this context childcare expenditure includes fees paid, travel expenses, cost of child's lunch etc.,

Commissioner of Taxation

10/09/92

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Subject Ref: childcare expenses

Legislative Ref: ITAA 51(1)

Case Ref: *Lodge v FC of T* (1972) 128 CLR 171; 72 ATC 4174; 46 ALJR 575; 3 ATR 254; *Jayatilake v FC of T* 91 ATC 4516; 22 ATR 125; 101 ALR 11;.

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