

TD 93/164 - Income tax: employment agreement: are costs incurred in settling disputes arising out of employment agreements deductible under subsection 51(1) of the Income Tax Assessment Act 1936 (ITAA) to the employer and to the employee?

 This cover sheet is provided for information only. It does not form part of *TD 93/164 - Income tax: employment agreement: are costs incurred in settling disputes arising out of employment agreements deductible under subsection 51(1) of the Income Tax Assessment Act 1936 (ITAA) to the employer and to the employee?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *19 August 1993*



This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA 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, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: employment agreement: are costs incurred in settling disputes arising out of employment agreements deductible under subsection 51(1) of the *Income Tax Assessment Act 1936* (ITAA) to the employer and to the employee?

1. Yes. Costs incurred in the settling of disputes arising out of employment agreements are allowable deductions under subsection 51(1) of the ITAA.
2. Under the *Employee Relations Act (Vic) 1992* relationships between employers and employees are governed by employment agreements. Existing award conditions are to be phased out.
3. An employment agreement is a written, legal and binding confirmation of the employer/employee relationship. The agreement covers rates of pay, working conditions, leave entitlements and many other special provisions. Agreements are for a fixed term, not exceeding five years.
4. Costs associated with settlement of disputes may be incurred by both the employer and the employee and include representation (which could be a union, an accountant, a lawyer or any other representative) during negotiation.

Example:

Fred was employed under an employment agreement with Julie. The agreement provided for a tool allowance of \$750 per year. After two years Julie discovered that the trade only allowed for a tool allowance of \$100 per year. She refused to pay Fred more than \$100 in future. Fred disagreed and took his complaint to the appropriate tribunal for arbitration.

Fred was represented by his lawyer who sent him an account for \$250 for services rendered. Fred is entitled to claim the payment as a deduction. It was an expense incurred in protecting an existing right under the employment agreement. It is not an expense of a private or of a capital nature.

Julie was represented by her accountant, who charged her \$350 for services rendered. Julie can claim the payment as a deduction because it is an expense incurred in the carrying on of a business.

Commissioner of Taxation

19/8/93

FOI INDEX DETAIL: Reference No. I 1215939

Previously issued as Draft TD 93/D164

Related Determinations: TD 93/161, TD 93/162, TD 93/163, TD 93/165

Related Rulings:

Subject Ref: employment agreement

Legislative Ref: ITAA 51(1)

Case Ref:

ATO Ref: MBN AC MS 1492 CPX 17

ISSN 1038 - 8982