Option 2: Draft Simplified Clothing Guidelines — Appendix I

Draft occupational clothing guidelines

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DRAFT OCCUPATIONAL CLOTHING GUIDELINES FOR CONSULTATION

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*.
2. *These Guidelines outline:*
3. *the tax law as it relates to occupational clothing;*
4. *the steps that need to be undertaken by employers to have designs of occupational clothing registered; and*
5. *the factors that will be considered in determining whether designs of occupational clothing may be registered.*
6. *These Guidelines commence on the day after they are registered on the Federal Register of Legislative Instruments.*

Legislative authority

1. *Division 34 of the Act has been enacted to regulate 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*:
2. *the clothing is in the nature of occupation specific, or protective clothing;*
3. *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*
4. *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).*

Deductibility of expenditure

1. *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 generally not be deductible under section 8‑1 of the Act.*
2. *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.*
3. *Where occupational clothing satisfies these Guidelines and is registered by an employer, the expenditure incurred by an employee in renting, purchasing or maintaining items of clothing from the registered design will be eligible for tax deductibility* ***if it also*** *satisfies section 8‑1 of the Act[[1]](#footnote-1).*
4. *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 items of conventional clothing.*
5. *The result of such a conclusion in these circumstances 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.*
6. *Details regarding the substantiation requirements of the Act are available from the Australian Taxation Office.*

Register of approved occupational clothing

Background

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

Benefits of Registration

1. *The purpose of the Register is to provide a central reference for the registration of designs of occupational clothing. This enables the Australian Taxation Office to determine the eligibility of claims for tax deductions for expenses incurred in renting, purchasing or maintaining such occupational clothing. In addition, where an employer provides registered occupational clothing to employees without cost, or at a reduced cost, there may be a reduced Fringe Benefits Tax liability for the employer.*

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1. *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 of the Act) and for maintaining the Register (section 34‑45 of the Act).*

Registration of Employers and Occupational Clothing Designs

1. *Employers who introduce non‑compulsory occupational clothing must apply to have the design entered on the Register before expenses incurred by employees in renting, purchasing or maintaining the clothing can be eligible for tax deduction. Registration is also necessary before the ‘otherwise deductible’ rule in the Fringe Benefits law can reduce the employer’s liability for Fringe Benefits Tax where the clothing is provided free or at discounted prices to employees.*

Registration Procedure

1. *Employers must submit a request for registration of their design on the application form available from the administering authority.*

Access to the Register

1. *Any person may inspect, at any reasonable time, the information on the Register held by the administering authority.*

Registration criteria

1. An application for a design can only be entered on the Register if the design as a whole has a distinctive look and a cohesive and obvious identity.
2. *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 expenses incurred in renting, purchasing or maintaining 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

1. An application for a design can only be entered on the Register if the design is appropriate given the nature of the employer’s business or activities. For example, many items of clothing that would be suitable for employees working in an office environment would not be registerable for employees working as gardeners in a landscaping business.

Single Items of Clothing

1. Single items of occupational clothing, other than full body garments (such as overalls or dresses), cannot be entered on the Register.
2. *Consequently, expenditure on such items is ineligible for deductibility for employees under the Act.*

Corporate, Product or Service Identifiers

1. Each item of occupational clothing, including accessories, must include a corporate, product or service identifier that is plainly visible to a casual observer. There are two types:
	* 1. a stand alone identifier which is a distinctive symbol, logo, initial, form of words, etc. and which is permantly affixed to, or printed on, the item of clothing; and
		2. a distinctive pattern identifier applied over the entire item of clothing and which forms an integral part of that clothing.
2. Furthermore, the clothing must not be available for rental or purchase by the general public.
3. Where a pattern of identifiers is used in the design, the employer, product or service must be clearly distinguished by the use of the 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 registrability of a design that uses the stand alone identifier or pattern.

Range

1. Provided that each item of clothing in a design has the identifiers and is sufficiently distinctive, as outlined above, 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.
2. Where an organisation operates over a wide climatic area, a design may 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.
3. A design may distinguish between various staffing groups within an organisation. For example, the design for office staff may differ from the design for field staff. In these cases, 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.

Durability

1. An application for a design can only be entered on the Register if the overall look or concept of the design is able to last more than three years.
2. However, this requirement does not of itself prevent additions, or gradual changes, to a design that do not disturb its overall look. Nor does it prevent an employer totally changing a design when it wants to change its corporate identity or consumer/public perceptions about itself or its employees.
3. *Frequent changes in colours, stand alone identifiers or patterns can detract from the design’s ability to be easily recognised as approved occupational clothing and therefore also detract from its distinctive look.*

Accessories

1. Any accessories such as belts, ties, handkerchiefs, socks (for wearing with shorts or skirts only), handbags, briefcases, trench coats, raincoats, scarves, tie pins/clips, scrunchies, bow ties, umbrellas, head/sweat bands and hats may form part of the design if they bear the same distinctive pattern as the other items in the design, or have the same stand alone identifier.
2. Shoes, stockings and underwear will not form part of approved occupational clothing in any circumstance.

Definitions

The Act

1. The Act is the *Income Tax Assessment Act 1997.*

Class of Employees

1. Class of employees is a class based on the employees’ location, level or category of work.

Employee

1. Employee includes those people subsection 34‑55(1) of the Act adds to the ordinary meaning of ‘employee’.
2. *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

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

Corporate

1. The word ‘corporate’, in the phrase ‘corporate product or service identifiers’, is used to refer to both incorporated and unincorporated bodies and extends to trusts, partnerships, joint venturers and sole traders who introduce occupational clothing for their staff.

Corporate, Product or Service Identifiers

1. 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 (for example, an insignia on a blazer) or they may be a common feature (for example, a pattern in fabric consisting of the employer’s logo).

Design

1. Design has a meaning affected by subsection 34‑25(2) of the Act.
2. *Subsection 34‑25(2) of the Act states that the ‘design of a uniform includes features such as its colouring, construction, durability, ornamentation, pattern and shape’.*

Occupational Clothing

1. Occupational clothing is a set of items of clothing and accessories (other than protective clothing or occupation specific clothing).

Occupation Specific Clothing

1. Occupation specific clothing has the same meaning as in subsection 34‑20(1) of the Act.
2. *Subsection 34‑20(1) 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’. Examples of clothing that fall into this category are chef’s checked pants and cleric’s robes.*
3. *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

1. Protective clothing has the same meaning as in subsection 34‑20(2) of the Act.
2. *Subsection 34‑20(2) of the Act defines protective clothing as clothing of a kind that you mainly use to protect yourself, or someone else, from risk of:*
3. *death; or*
4. *disease (including the contraction, aggravation, acceleration or recurrence of a disease); or*
5. *injury (including the aggravation, acceleration or recurrence of an injury); or*
6. *damage to clothing; or*
7. *damage to an artificial limb or other artificial substitute, or to a medical, surgical or other similar aid or appliance.*
8. *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 but overalls worn by a salesperson in a clothes shop would not.*
9. *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

1. ***AusIndustry***

*Register of Approved Occupational Clothing
Level 5
111 Burke Street
MELBOURNE VIC 3000*

*Postal Address:*

*AusIndustry
Register of Approved Occupational Clothing
GPO Box 85
MELBOURNE VIC 3001
Telephone: (03) 9268 7944
Facsimile: (03) 9268 7999*

*Internet Access: www.business.gov.au*

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

 *‑ compulsory occupational clothing;*

 *‑ occupation specific clothing;*

 *‑ protective clothing; and*

 *‑ the availability of tax deductions on all types of occupational clothing.*

1. *Section 8‑1 of the Act provides, among other things, a deduction for expenses in gaining or producing assessable income to the extent that they are not private or domestic in nature.* [↑](#footnote-ref-1)