



Australian Government

Review of the Register of Approved Occupational Clothing and related tax deductions

Consultation/Discussion Paper
November 2016

NOTES TO PARTICIPANTS

Submissions are due by 16 December 2016

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CONSULTATION PROCESS

Request for feedback and comments

The Government is seeking your views on the operation of the regulatory requirements in Division 34 of the *Income Tax Assessment Act 1997* which provides for a Register of Approved Occupational Clothing and the basis for employee tax deductions for expenses for non-compulsory uniforms. The review will consider whether the current arrangements remain fit-for-purpose, necessary and relevant and alternative options.

Interested parties are invited to comment on the options and questions outlined in the consultation paper.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted.

All information (including name and address details) contained in submissions will be made available to the public on the Treasury website, unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment. A request made under the *Freedom of Information Act 1982* (Commonwealth) for a submission marked 'confidential' to be made available will be determined in accordance with that Act

Closing date for submissions: 16 December 2016

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REVIEW OF THE REGISTER OF APPROVED OCCUPATIONAL CLOTHING AND RELATED TAX DEDUCTIONS

INTRODUCTION/BACKGROUND

1. This purpose of this review is to consider whether the rules and regulatory requirements in Division 34 of the Income Tax Assessment Act 1997 (ITAA 1997) for determining the tax deductibility of expenses on non-compulsory uniforms remain fit for purpose, necessary and relevant.
2. Division 34 only allows a deduction for expenses on non-compulsory uniforms if a deduction would otherwise be allowable under another provision of the ITAA 1997 (generally the main deduction provision – section 8-1) and the registration requirements in the Division are satisfied. Division 34 only becomes relevant if the expenditure satisfies the deductibility tests in section 8-1.¹
3. Division 34 requires that the design of the uniform be registered on the Register of Approved Occupational Clothing, which is maintained by the Industry Secretary.² The Industry Secretary can only grant approval for an application from an employer if satisfied that the design meets the criteria set out in the approved occupational clothing guidelines (the Guidelines)³ issued under the ITAA 1997 by a Treasury Minister. There are associated fringe benefits tax (FBT) considerations where an employer supplies a non-compulsory uniform to an employee or bears the cost of its maintenance.⁴
4. The current Guidelines were last revised on 2 November 2006. They are a disallowable instrument and will expire on 1 April 2017 due to the sunset provisions of the *Legislation Act 2003*. If the Guidelines sunset and replacement Guidelines are not issued, tax deductions would no longer be available for non-compulsory uniforms that were not already on the Register.
5. Under the Government's best practice regulation requirements, sunset legislative instruments are reviewed to ensure they remain fit-for-purpose, necessary and relevant.
6. The current Guidelines are detailed and prescriptive, setting out such matters as what qualifies as a corporate identifier, pattern and colour requirements to ensure the garment is a uniform, range of styles and durability.

1 Taxation Ruling TR 97/12 (Income tax and fringe benefits tax: work related expenses: deductibility of expenses on clothing, uniform and footwear) is also relevant, as it provides guidance on deductions for expenditure on non-compulsory uniforms.

2 The Secretary of the Department of Industry, Innovation and Science.

3 The Guidelines can be found at <https://www.legislation.gov.au/Details/F2006L03642>.

4 The 'otherwise deductible' rule reduces the taxable value of a uniform provided by an employer to an employee by the amount of the deduction that the employee would have been entitled to, had they incurred the expenditure.

7. Since 1993, around 20,000 uniforms sets have been registered (many of which are no longer active) and each year about 300 new applications (including amendments to registered designs) are registered.
8. For the 2013-14 tax year, around 492,000 taxpayers claimed deductions of \$104 million for expenditure on non-compulsory uniforms, reducing Commonwealth revenue by about \$30 million. The average claim was \$211.⁵ The top 8 occupations which make up 40 per cent of the claims are:

Occupation	Number who claimed	Claimants as per cent of population	Average claim (\$)
Office workers	81,995	8%	193
Teachers and teacher's aides	34,192	9%	187
Sales and Marketing	30,342	5%	227
Nurses, health workers and carers	20,636	4%	240
General Manager	9,418	4%	206
Contract, program or project administrator	8,404	8%	193
Public servants	7,039	12%	200
Bank officers	6,070	8%	228

PURPOSE

9. The objective of the regulatory requirements in Division 34 (and the associated Guidelines) is to only allow deductions for non-compulsory uniforms in cases where the clothing is clearly identifiable as a corporate wardrobe. The issue is whether Division 34 and the guidelines are the most appropriate mechanism for achieving this objective. The Government is concerned that the current approach may impose an unnecessary regulatory burden and cost, especially on businesses.
10. A non-compulsory uniform measure was announced in the 1992-93 Budget. Initially it was announced that deductions for non-compulsory uniforms would be denied outright. The stated original intent was:

‘to ensure that the tax laws do not confer an unfair advantage on some employees by permitting deductions for clothing which may not be essentially different from that worn to work by other employees for which no deductions are allowed.’⁶

Compulsory uniforms and protective clothing were to be unaffected.

11. The legislation introduced on 3 November 1992 (Taxation Laws Amendment Bill (No. 6) 1992) reflected the measure and policy intent as originally announced in the 1992-93 Budget. However, during the second reading speech the then Minister Assisting the Treasurer (Mr Baldwin) stated that the Government would be moving amendments to the bill during committee stage so as to ‘not prevent non-compulsory

⁵ Preliminary figures for 2014-15 indicate this has increased.

⁶ 1992-93 Budget Paper No.1 page 4.12.

uniforms or wardrobes from being deductible in cases where the clothing is clearly identifiable as a corporate wardrobe' and that 'the Treasurer will develop strict guidelines to establish whether non-compulsory uniforms or wardrobes, as sets of clothing, are eligible for taxation deduction.'⁷

12. These amendments came at a time when the then Government was investing considerable effort and funds via the then Textile, Clothing and Footwear Development Authority (TCFDA) in a structural adjustment package, deemed necessary to counter shocks from the significant downward adjustments in protective tariffs for those industries. Textile and clothing tariffs were scheduled to be progressively reduced from 55 per cent in 1990 to 25 per cent in 2000. The tariff rate has since been reduced to 5 per cent for these goods.
13. The current law and arrangements can be summarised as follows:
 - (i) Division 34 restricts tax deductions to only those designs for non-compulsory uniforms that are registered. Design guidelines for non-compulsory uniforms are formulated through a legislative instrument made by a Treasury Minister. The current Guidelines were last updated in 2006 and are very detailed and prescriptive.
 - (ii) Employers (and certain other parties) submit applications for registration of their designs to the Industry Secretary for assessment of compliance with the Guidelines.
 - (iii) The Industry Secretary (or a delegate) assesses the application. If the application is granted, the design is included on the Register of Approved Occupational Clothing maintained by the Department of Industry, Innovation and Science.
 - (iv) Employers notify their employees as to whether their non-compulsory work uniforms have been approved and registered on the Register, in order for the employee to claim deductions for expenses on the uniforms.
 - (v) Compliance activity by the ATO ensures that only legitimate clothing deductions are claimed.

CASE FOR GOVERNMENT ACTION/OBJECTIVE OF REFORM

14. In terms of taxation policy, only expenses incurred in earning assessable income can be deducted against that income. Expenses of a private or domestic nature, such as clothing and travel to and from work, are generally not deductible. It is therefore clearly appropriate to put in place mechanisms to ensure taxpayers do not incorrectly claim deductions for expenses that are private or domestic in nature.
15. This review considers whether the current approach is the most efficient and effective way of addressing the concern that taxpayers might claim tax deductions for private or domestic expenditure on conventional clothing worn to work, but that is not a non-compulsory uniform as such.
16. The Guidelines are very prescriptive and would appear to impose a disproportionate compliance burden on employers, given the average claim for non-compulsory

⁷ House of Representatives Hansard, 3 November 1992 page 2444.

uniforms. Employers must firstly ensure that their non-compulsory uniforms meet the detailed design requirements of the Guidelines, and secondly register the uniform with the Department of Industry, Innovation and Science. The register is not publicly available online and as such is not easily accessible for employees who need to find out whether they can deduct their non-compulsory uniform. Employees must therefore rely on their employers to notify them whether or not their non-compulsory uniform is registered; or phone the Department of Industry, Innovation and Science to find out themselves.

17. There is a case for government action to address the compliance burden created by the Guidelines and the register, and simplify the law relating to non-compulsory uniform deductions.

POLICY OPTIONS

18. The options for addressing the issue can be summarised as follows:
 1. Retain the status quo and reissue the current Guidelines. The assessment and registration processes would remain, as would the current Guidelines. However, there is a concern that this option imposes an unnecessary regulatory burden on employers, requiring them to meet prescriptive design criteria that no longer have a sound policy basis.
 2. Re-write the Guidelines with a view to reducing the regulatory burden. The Guidelines could be simplified and made less prescriptive.
 3. Repeal the Division 34 regulatory requirements and rely solely on the general deduction provision (section 8-1) to regulate deductibility of expenditure on non-compulsory uniforms.
 4. Deny all tax deductions for expenditure on non-compulsory uniforms. This option is canvassed for completeness, but it would not address the objective of ensuring deductions are only available for non-compulsory uniforms in cases where the clothing is clearly identifiable as corporate wardrobe.

ANALYSIS OF OPTIONS/IMPACTS

Option 1 — Retain the status quo and remake the current Guidelines.

19. Under this option, the assessment and registration processes would remain, as would the current detailed and prescriptive Approved Occupational Clothing Guidelines.
20. Employers, employees, the Department of Industry, Innovation and Science and the ATO would continue to face existing regulatory/compliance/administration burdens.
21. To provide employees with a degree of confidence that they can deduct expenses for non-compulsory uniforms, employers (and other certain) parties would continue to have to register designs for non-compulsory uniforms in accordance with the existing Guidelines.

Costs

22. This option would neither increase nor decrease current regulatory costs.
23. Employers would continue to incur a regulatory burden and costs in interpreting the Guidelines and designing non-compulsory work clothing to meet the prescriptive requirements. However, employers that already have their uniform designs on the register and do not change the designs, will not be impacted.
24. The Guidelines are very prescriptive, detailing different colour/pattern/print combinations depending on whether the uniform is for a male or female and on the number of employees in the class eligible to wear the uniform. There does not appear to be a sound policy rationale for this level of prescription and the additional regulatory costs it would continue to impose.

Employers are invited to provide details of the regulatory burdens and costs imposed by the current Guidelines and processes. Are the Guidelines easy to interpret? Do they impose unnecessary design costs?

Do the current arrangements and Guidelines encourage employers to design and register non-compulsory uniforms for employees or do they act as a disincentive for employers in registering non-compulsory uniforms designs?

25. The Department of Industry, Innovation and Science would continue to incur administration costs in assessing and registering design applications and maintaining the Register of Approved Occupational Clothing. These costs are understood to be equivalent to 80 per cent of one person's salary each year (around \$100,000 per annum).
26. The current assessment and registration process would provide a level of comfort to the ATO in terms of compliance as expenditure on registered uniforms would generally meet the general deductibility tests in section 8-1 of the ITAA 1997. This is because the Guidelines, in some aspects, are very similar to the since withdrawn ATO ruling IT 2641 – Income Tax: corporate wardrobes and corporate uniforms. Therefore, under this option Treasury understands that the ATO currently incurs minimal costs in seeking taxpayer compliance.

Benefits

27. Employers may benefit because they are familiar with the current processes and because registration provides a definitive way of ascertaining if the items of clothing are non-compulsory uniforms'. Employers with uniform designs already registered, and with no plans to change them, will not be impacted.
28. The current process provides a degree of tax certainty for employees who claim tax deductions for expenses for non-compulsory work uniforms if they are registered. This, of course, relies on employers notifying employees that their non-compulsory uniforms have been approved and registered. While an employee needs to satisfy themselves that a uniform expense would be deductible under section 8-1 of the ITAA 1997, in practice if they are only wearing the registered uniform for work, there is generally no need for them to do anything more.

Treasury is interested in understanding how employers go about informing employees about the taxation status of their non-compulsory uniforms. Do employers generally provide such uniforms, either for free or at a reduced price?

Treasury would also like to hear from employees about their experiences in claiming tax deductions for non-compulsory uniforms. Do they rely solely on notification by their employer as the basis for claiming a tax deduction for expenses on non-compulsory uniforms?

Option 2 — Re-write the Guidelines with a view to reducing the regulatory burden.

29. Under this option, the registration system would remain and the Minister would still issue Guidelines, but the design criteria for non-compulsory uniforms would be simplified and made less prescriptive. Details such as size, and number of colour requirements and colour/print/combinations would be removed from the Guidelines.
30. The Guidelines would be drafted using a more principles-based approach. For example, the requirement (in paragraph 24 of the current Guidelines) for a standalone identifier on clothing to cover 80 per cent of a 4 square centimetre area would be removed. This would be replaced by the requirement that 'each item of occupational clothing, including accessories, must include an identifier that is plainly visible to a casual observer'. **Draft Guidelines based on this simplified approach are in Appendix I for comment.** Existing designs already on the register would not be affected.

Costs

31. Under this option, employers would continue to incur a regulatory burden and costs in interpreting the Guidelines and designing non-compulsory work clothing to meet the less prescriptive requirements, and in registering the design with the Department of Industry, Innovation and Science. However, it is expected that employer costs would be reduced under this option as complying with general principles should be less onerous than complying with detailed criteria that include measurements and colour/pattern/print combinations.

32. The Department of Industry, Innovation and Science would, however, continue to incur administration costs in assessing and registering design applications and maintaining the Register of Approved Occupational Clothing. There could be marginal savings in time and costs of assessing applications, as fewer details need to be considered in making judgements about whether designs meet more principle-based criteria. There may be some minor upfront costs for staff in becoming familiar with the new Guidelines.
33. As an assessment and registration process would continue, it is expected that the ATO would continue to have some level of comfort in terms of compliance, in that expenditure claimed on registered uniforms would meet Division 34 registration requirements and also the general deductibility tests in section 8-1 of the ITAA 1997 (because the revised Guidelines would still be a good indicator that the deductibility test in section 8-1 is met). Under this option, ATO costs in ensuring taxpayer compliance are not expected to change significantly.

Benefits

34. Under this option an assessment and registration process remains. Therefore, employees would continue to have a degree of certainty about claiming tax deductions for expenses for non-compulsory work uniforms, assuming that employers notify their employees that their non-compulsory uniforms have been approved and registered.
35. Employers would also continue to have certainty that the advice they provide their employees about tax deductibility of non-compulsory uniforms is soundly based, as the uniform design has been registered.
36. Employers that provide non-compulsory uniforms to employees free or at a reduced cost would continue to benefit from the FBT exemption on the provision of benefits that would be otherwise deductible to their employees.
37. Employers would benefit from a reduced regulatory burden, as they would no longer be required to meet the detailed and prescriptive requirements of the current Guidelines. As noted above, there does not appear to be a sound policy basis for the current requirements in the Guidelines. For example, the colour/pattern/print combinations of uniforms are restricted. They also depend on the size of the classes of employees, on whether they are males or females, and on the style of the clothing. Applying a principle-based approach is expected to be simpler for employers.

Treasury is interested in stakeholder comments on this proposal and whether employers see potential regulatory and cost savings in adopting more principles based Guidelines, rather than the current prescriptive Guidelines.

Interested parties are invited to review and provide comments on the simplified revised draft Guidelines at Appendix I.

Option 3 — Repeal the Division 34 regulatory requirements and rely on the general operation of the taxation law as it relates to deductibility.

38. Under this option, deductibility for expenditure on non-compulsory uniforms would stand or fall by the application of the general deduction provision in section 8-1 only; noting that satisfying section 8-1 is currently a necessary pre-condition for considering whether expenses for non-compulsory uniforms can be deducted when the uniform has been registered under the Division 34 requirements.
39. This option addresses the concern that the Guidelines made under Division 34 and the associated assessment and registration processes are no longer fit-for-purpose, necessary and relevant. There does not appear to be a strong case to retain the Division 34 regulatory requirements to satisfy the objective of ensuring deductions are only available for non-compulsory uniforms in cases where the clothing is clearly identifiable as a corporate wardrobe.
40. If Division 34 were repealed, the definitions of occupation specific clothing and protective clothing would disappear, but these definitions are used solely to carve out exceptions to the application of Division 34, not to make them specifically deductible. Expenses for those items would continue to be deductible if they satisfied section 8-1 of the ITAA 1997. The 'otherwise deductible' rule would still be available to employers to extinguish any FBT liability in respect of the provision of non-compulsory uniforms to employees.
41. It has always been open to the Commissioner of Taxation to deny deductions under section 8-1 of the ITAA 1997, notwithstanding that the uniform was registered, for example, if not worn in connection with employment. If a non-compulsory uniform is registered, it may generally be assumed it meets the tax deductibility requirements of section 8-1, but that may not always be the case. It may be argued that repealing Division 34 would remove a degree of certainty for employers and employees that deductions are allowable if the non-compulsory uniform is registered. This is not the case and such arguments are likely based on misreading Division 34 as providing a concessional deduction.
42. If Division 34 were repealed, ATO determinations and rulings would continue to provide a similar degree of certainty for taxpayers, noting that the requirements of a uniform, as set out in *Case R55 84 ATC 411*; *Case 109 27 CTBR(NS) 867*, have been reproduced in Taxation Determination TD 1999/62.⁸

Costs

43. Under this option, employers would likely continue to consider whether the design of their non-compulsory uniforms would meet the general deductibility requirements of section 8-1 for their employees, in order to give their employees confidence that they can legally claim a deduction for expenses on non-compulsory uniforms. Employers would need to need to familiarise themselves with the new arrangements. However, this impact is likely to be short lived as employers would soon adapt to the changes.

⁸ <http://law.at0.gov.au/atolaw/view.htm?docid=TXD/TD199962/NAT/ATO/00001>.

Treasury is interested in understanding the extent to which employers assess the likely deductibility of their non-compulsory uniforms under section 8-1 of the ITAA 1997 or do they rely on the fact that if a design has been registered, subparagraph 34-10(1)(a) must be satisfied?

44. Under this option, employees would probably continue to rely on advice from their employer as to whether the set of clothing is in fact a 'uniform'. However, the onus would still be on employees to satisfy themselves that expenditure on such uniforms were deductible under section 8-1.

Benefits

45. There would be some cost savings expected for employers as they would no longer incur the cost of interpreting the prescriptive Guidelines and of preparing documentation for assessment and registration of designs of the uniforms.
46. There would be some cost savings for the Department of Industry, Innovation and Science as it would no longer be required to assess design applications or to maintain the register.
47. Employees should not be affected as it is expected they would continue to rely on advice from their employer about whether their non-compulsory uniform is in fact a 'uniform' for which they could obtain a deduction for expenses incurred in purchasing or laundering.
48. There may be some rare cases at the moment where non-compulsory uniforms are not on the register because, for example, they don't meet the specific design criteria or because the guidelines and registration process act as a disincentive for employers to apply them. As such, employee expenditure on such uniforms would become deductible under this option, where the expenses meet the deductibility requirements of section 8-1 of the ITAA 1997. Potentially, therefore, a larger number of employees may benefit from a tax deduction on expenses for non-compulsory uniforms. That being said, it is possible that employees are already incorrectly claiming such expenses, because of a misunderstanding of the operation of the law on deductions for non-compulsory uniforms.

Option 4 — Deny all tax deductions for non-compulsory work uniforms.

49. This option is canvassed for completeness, although it would not address the objective of ensuring that deductions are only available for non-compulsory uniforms in cases where the clothing is clearly identifiable as corporate wardrobe.
50. Under this option there would be no regulatory burdens imposed on employers, but employees would no longer be able to claim a tax deduction for expenses on non-compulsory uniforms. Employers would no longer be able to utilise the FBT 'otherwise deductible rule' to reduce their FBT liability for providing non-compulsory uniforms to employees.
51. From a tax policy perspective, it is appropriate to have a tax deduction for expenses incurred in earning assessable income, except where the expenditure is really private or domestic in nature. Under this option, however, all expenses for non-compulsory uniforms would be denied a deduction. This outcome would arguably be inconsistent

with general tax policy principles, though it is recognised that in some circumstances there is a fine line between what is a private or domestic expense and what is a work related and deductible expense.

Costs

52. Employees who incur expenses on non-compulsory uniforms would no longer be able to claim a tax deduction on such expenses and consequently they would have a higher income tax liability. These employees would be worse off by, on average, about \$61 per annum (2013-14 figures).
53. Employers may incur additional FBT for providing non-compulsory uniforms to employees free or at a reduced price, because the taxable fringe benefits value would not be reduced by the 'otherwise deductible' rule.
54. There may be some behavioural changes to avoid the consequences of this option. Some employers might make uniforms compulsory so that their employees would be able to claim tax deductions for the costs of purchases, laundry and related expenses.
55. Those businesses involved in designing uniforms for employers and/or supplying non-compulsory uniforms to employees, may also be impacted if denying deductions for expenses for non-compulsory uniforms leads to reduced sales.

Benefits

56. Employers would not incur any regulatory burdens relating to non-compulsory uniforms, as they would no longer need to register uniforms or assess whether the design of the uniform satisfies the tests in Division 34 of the ITAA 1997.
57. The Government would benefit from higher taxation revenue by around \$30 million per annum, assuming no behavioural changes, and the Department of Industry, Innovation and Science would save the administration costs currently incurred in assessing and registering designs. As noted above, the direct salary cost for the Department is around \$100,000 per annum.
58. The ATO would not likely benefit from cost savings, as its compliance activity is on whether clothing expenses are deductible, and if so, the allowable amount. These audit activities are generally carried out as part of a broader work related expenses audit.

Treasury is interested in understanding potential behavioural changes. If deductions for non-compulsory uniforms were denied, would employers consider making such uniforms compulsory?

ADMINISTERING AUTHORITY

59. Currently, the Secretary to the Department of Industry, Innovation and Science and her Department are responsible for assessing and registering design applications. This assessment and registration process could be undertaken by the ATO.
60. If the register is retained, it could be made available over the internet (at present the Register is only available for inspection upon request – subsection 34-45 (2) of the ITAA 1997). It would be easier for employees to satisfy themselves that their

non-compulsory uniform has been registered (at least where they are not being advised by their employer).

If Guidelines are remade, would there be benefits for employers by only have to deal with one government agency when registering non-compulsory uniforms?

**ATTACHMENT: OPTION 2: DRAFT SIMPLIFIED CLOTHING
GUIDELINES — APPENDIX I**

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:*
 - (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 Legislative Instruments.*

LEGISLATIVE AUTHORITY

4. *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:*
 - (a) *the clothing is in the nature of occupation specific, or protective clothing;*
 - (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).*

DEDUCTIBILITY OF EXPENDITURE

5. *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.*
6. *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.*
7. *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 Act¹.

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 items of conventional clothing.*
9. *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.*
10. *Details regarding the substantiation requirements of the Act are available from the Australian Taxation Office.*

REGISTER OF APPROVED OCCUPATIONAL CLOTHING

Background

11. *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

12. *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.*

Contents

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

Registration of Employers and Occupational Clothing Designs

14. *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.*

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.

Registration Procedure

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

Access to the Register

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

Registration criteria

17. 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.
18. *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

19. 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

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

Corporate, Product or Service Identifiers

22. 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:
 - (A) a stand alone identifier which is a distinctive symbol, logo, initial, form of words, etc. and which is permanently affixed to, or printed on, the item of clothing; and
 - (B) a distinctive pattern identifier applied over the entire item of clothing and which forms an integral part of that clothing.

23. Furthermore, the clothing must not be available for rental or purchase by the general public.
24. 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

25. 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.
26. 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.
27. 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

28. 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.
29. 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.
30. *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

31. 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.
32. Shoes, stockings and underwear will not form part of approved occupational clothing in any circumstance.

DEFINITIONS

The Act

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

Class of Employees

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

Employee

35. Employee includes those people subsection 34-55(1) of the Act adds to the ordinary meaning of 'employee'.
36. *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

37. 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

38. 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

39. 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

40. Design has a meaning affected by subsection 34-25(2) of the Act.
41. *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

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

Occupation Specific Clothing

43. Occupation specific clothing has the same meaning as in subsection 34-20(1) of the Act.
44. *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.*
45. *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

46. Protective clothing has the same meaning as in subsection 34-20(2) of the Act.
47. *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:*
- (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.*
48. *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.*
49. *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

50. *AusIndustry*

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Telephone: (03) 9268 7944
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Internet Access: www.business.gov.au

51. *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.*