



The Bar Has Been Raised On When an Expense Relates to your Work

Cameron Lambourne might be inclined to agree with the ABC on this one after his day in front of the AAT. There was quite an alarming precedent set in this case which I will detail later on. The profession certainly hope there will be an appeal on some elements of this case.

First to the issues best just accepted as simply a lesson in diligence.

Statements and orders are not enough - The taxpayer could only present a statement of his account listing all his invoices from the uniform shop. The statement only showed the total amount for all the invoices not the actual goods. He had sought to rely on obtaining the invoices if ever needed but the company had since gone into liquidation. Even though the court accepted that at least some of the invoices would have been for uniforms, without the perfect evidence none of the expense was allowed. This is interesting because section 900-115(3)(b) states that you can write on your evidence what the goods are. The taxpayer was honest enough to admit he didn't know what each individual invoice was for.

This part of the case made me think about all our clients who buy tools from Snap On vans and the like then just bring us in the list of payments they have made off their account during the year. Snap On is a franchise arrangement, the individual van owners could well go broke and not be around to ask for the detail, when the ATO come knocking. It is important that you start keeping these invoices showing just what you purchased, as well as the statement of account to show what you have paid.

The taxpayer also presented orders he had made for goods from the internet but again no invoices. The AAT wanted evidence that these amounts were paid before they would accept that the expense had been incurred. An example would have been bank statements but none were presented. Interestingly, there is a requirement that invoices contain the address of the supplier, in this case it was suggested that an email address may suffice.

Sunglasses not deductible if they help you do your job better – There is a precedent that if you need sunglasses to protect your eyes, for example because you are outside for long periods of time to do your job, then they are tax deductible.

In this case the taxpayer was required to be on watch at times. Some officers were supplied with polarized sunglasses by the Navy as it enhanced their ability to see images through the water, such as people overboard. The taxpayer claimed that the sunglasses enabled him to better do his job.

The lesson to learn here is don't give long winded excuses about needing polarized lenses to see better when your job is to be on watch. Just the common garden variety reason of protecting your eyes from glare is all that is needed. Nevertheless, I would like to see this taken up on appeal to as this principle brings into question any expenditure that just makes you better able to do your job. Which is more or less what the ATO did next.

Let's Hope this is Overturned

Now to the bit that gives the ATO that bad name. Please note that this is not a one off, it appears to now be the mindset of auditors. Appealing this case would be a chance to nip this attitude in the bud. Let's hope an appeal manages to get support from the profession.

The taxpayer was a Navy officer, his duties included, electronics technician, fitness leader and sailor. The ATO tried to narrow his claim down to only those relating to the electronics work but this was at least overridden.

This case went close to saying for an expense to be deductible it must be that if you didn't incur it you would not be paid. The expense must be directly necessary to produce the income. From paragraph 94 and 95

"The fact that a loss or outgoing has a relationship to a taxpayers employment or the carrying out of their duties is not enough. As provided by the High Court in Payne the question is "whether the outgoing was incurred in the course of gaining or producing actual or expected income. That is, is the occasion of the outgoing found in whatever is productive of actual or expected income?"

The Tribunal accepts that the duties under taken by the Applicant extend beyond that of those associated with his role as an Electronics Technician. Based on the evidence before it, the Tribunal accepts that the nine items in dispute relating to the D5 claim for other work related expenses may have been used by the Applicant in carrying out his duties and that he may have precured them for such purposes. The question though is whether the outgoings related to the purchase of these items were incurred in the course of producing the Applicant's assessible income. It is this point that is in contention. The Applicant contended that it was necessary for him to purchase the 9 items in order to be able to perform his duties and that they were a requirement, whereas the Respondent contends that they were purchased at the Applicant's discretion not at the direction of or requirement of the Navy."

Accordingly, deductions were denied for electronic equipment purchased to improve presentations on board the ship, a tablet that contained manuals and fitness equipment that was used by the whole crew and remained on the ship after he left. The general theme was that if you really needed them to do your job then the Navy would have supplied them. No discretion to do your job better or just have a nexus with your work. No, the tribunal is saying, unless you could

not do your job without them then no deduction. It is not enough that they made your job easier or provided a better result.

The ATO used a letter from a superior officer to support their claim that the equipment was not absolutely necessary and this overrode the fact that the taxpayer had discussed the purchases with his commanding officer who could not reimburse him due to budgetary constraints so it was decided he should claim them as a tax deduction instead. From paragraphs 96 and 97:

“The evidence of Lieutenant NR McGuire provided on behalf of the Department of Defence makes it clear that in the normal course of events the Applicant would not have to expend significant funds on ‘other expenses’. He provided that all tools should be provided by the ADF and that in the unusual although occasional event that equipment/tools are required to be purchased by the ship, the member would be reimbursed the cost if it was approved. He said this was referred to as ‘locally purchasing’.

Lieutenant NR McGuire indicated that there was no requirement for the Applicant to purchase gym/fitness equipment to carry out his role as a Military Fitness Leader, however, did acknowledge that the Applicant had purchased such equipment. He was however, unaware of the particular details of the purchases. Further Lieutenant NR McGuire provided that a tablet was not required by the Navy.”

All parties agreed that the expenditure was not a requirement by the Navy but at the taxpayer’s discretion. The shock here is that despite having a nexus to his employment, that is that the items were used to do his job, the deduction was denied because he could have done the job without them. From paragraph 101

“There is no evidence before the Tribunal that the Applicant would not have continued to be paid in relation to his duties (be that his salary or allowances) if he had not purchased and supplied these items. While there is little doubt these items may have assisted the Applicant to better perform his duties, he was provided with the equipment that his employer considered was required to perform his duties.”

Protecting Yourself

It is all about proving as much as possible how necessary the expense is in earning your income. A start is to get, before the ATO become involved, a letter from your employer that includes a very wide description of your duties to closely match the items you are claiming a tax deduction for. It would be great if the letter could say that it is recognized that there are many expenses you need to incur in order to do your job to the highest standard and rather than a convoluted process of reimbursement your salary has been set above the award in recognition of these extra expenses. I think that is the key, taking the requirement above the bare necessity to premium performance and identifying that that is why you are paid the big bucks.

While you are drafting this letter make sure it includes details of any expenses that you can specify such as:

- need to use your car in your job.
- That the tools you require weigh more than 20kg and there is nowhere safe at work to store them. If they are stolen it is your expense to replace them
- The tools provided on site are not sufficient to cover all your needs
- That your uniform is compulsory
- You are required to work from home at times
- You need to provide your own electronic devices for the follow reasons
- You are required to have a mobile phone for the following purposes
- The course you are doing is either necessary to keep your current skills up to date or will help you further advance in your current occupation
- You have not been reimbursed for any of the above expenses

Reference Lambourne v Com of Tax AATA 4562 12th November
<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AATA/2020/4562.html>