


TR 94/D17 - Income tax: employee work-related deductions within the nursing industry

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This document has been finalised by TR 94/17.



Draft Taxation Ruling

Income tax: employee work-related deductions within the nursing industry

other Rulings on this topic

IT 85; IT 112; IT 300; IT 327; IT 2096; IT 2115; IT 2198; IT 2199; IT 2290; IT 2452; IT 2543; IT 2685; MT 2027; MT 2038; TR 92/8; TR 93/22; TR 93/30; TD 92/157; TD 92/163; TD 93/49; TD 93/74; TD 93/97; TD 93/108; TD 93/121; TD 93/147; TD 93/154; TD 93/159; TD 93/174; TD 93/243.

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What this Ruling is about

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1. This Ruling deals with deductions for work-related expenses generally claimed by employees within the nursing industry. However, ward helpers, cleaners and kitchen workers employed in hospitals and nursing homes are not covered by this Ruling. The Ruling discusses whether or not deductions are allowable under either subsection 51(1) or section 54 of the *Income Tax Assessment Act 1936* (the Act).
2. While employment-related expenses over \$300 in total need to be substantiated by documentary evidence (section 82KZ) to be allowable under subsection 51(1), this Ruling does not discuss these substantiation requirements in detail.

Ruling

3. Work related expenses for individuals within the nursing industry are treated as follows:

Living out allowance: Where an allowance is paid as a result of inconvenience, isolation or discomfort, no deduction is allowable.

Overtime meal allowance: A deduction is allowable equal to the amount of the allowance where it is paid pursuant to an industrial award.

Stocking allowance: No deduction can be claimed against this allowance.

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Uniform and maintenance allowance: If an allowance is paid, deductions for uniform and maintenance are allowable only in circumstances where the uniform itself is deductible.

Travelling allowance: Deductions for travelling expenses incurred in connection with an allowance are allowable.

On call allowance: No deduction can be claimed against this allowance.

Motor vehicle allowance: Deductions against a motor vehicle allowance can be claimed where the travel is work-related.

Shift allowance: No deduction can be claimed against this allowance.

Telephone allowance: If an allowance is paid, deductions for the cost of work-related telephone calls are allowable.

District allowance: No deduction can be claimed against this allowance.

Uniform & uniform maintenance: Expenditure on the purchase and maintenance of a traditional nurse's uniform is an allowable deduction.

Shoes: Deductions are allowable for expenditure on special non-slip footwear which is not conventional in nature.

Stockings: Deductions are not allowable for the cost of purchasing stockings.

Socks: Deductions are not allowable for the cost of purchasing socks.

Laundry expenses: Deductions are allowable for expenditure on laundering and dry cleaning of clothing that is deductible.

Grooming: Deductions for the cost of grooming, including the cost of cosmetics, skin care products and hairdressing are not allowable.

Travel to and from work: Deductions for the cost of travel between home and the taxpayer's place of employment are not allowable.

Travel between two places of employment where there are two separate employers involved: Deductions for the cost of travel between two places of employment where there are two separate employers are allowable.

Travel between two places of employment where neither is a place of residence: Deductions for the cost of travel between two places of employment are allowable.

Travel while on-call, stand-by or 24 hour duty: Deductions for the cost of travel between home and the taxpayer's place of employment are generally not allowable.

Business trip on the way to or from work: Deductions for the cost of travel, where the taxpayer is required to make a business call on the way to or from work, are allowable.

Travel to work where home is a place of business: Deductions for the cost of travel from home, where home is a place of business, to the place of employment is only allowable in particular circumstances.

Agency nurses: Deductions for the cost of travel to various hospitals by a nurse employed through an agency are not allowable.

Travel in connection with employment away from home: Deductions for the cost of travel from home to the place of employment by an employee employed away from home is not allowable.

Transporting equipment to and from work: Deductions for the cost of travel between home and the place of employment where the transportation of equipment is involved may be allowable in limited circumstances.

Travel for the purposes of self-education, conferences or seminars: Deductions for the cost of travel for the purposes of self-education or the attendance at conferences or seminars are allowable.

Additional travel to work: Deductions for the cost of additional travel from home to the place of employment are not allowable.

Commuting for vacation periods: Deductions for the cost of commuting for vacation periods are not allowable.

Parking expenses: Deductions for parking costs incurred in travelling to and from work each day are not allowable.

Fines and penalties: Deductions for the payment of fines and penalties for breaches of the law are not allowable.

Driver's licence: Deductions for the cost of renewal of a driver's licence is not allowable.

Self-education expenses: Deductions for self-education expenses are allowable where the self-education undertaken is directly relevant to employment activities or is likely to lead to an increase in income from those activities.

Home office expenses: Deductions for the running expenses of home offices are allowable for nurses who perform work-related duties at their place of residence.

Telephone calls: The cost of work-related telephone calls are allowable.

Telephone rental: (including mobile phones) A proportion of telephone rental will be allowable where a nurse can demonstrate that

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he or she is on call or is required to telephone his or her employer on a regular basis for the purpose of his or her employment.

Telephone installation: Costs of installing a telephone are of a capital nature and are not allowable.

Beepers or pagers: A proportion of rental, service fee or depreciation will be allowable where a nurse can demonstrate that he or she is on call.

Answering machine: Depreciation is allowable where a nurse can demonstrate that he or she is on call.

Agency nurses: The costs associated with obtaining employment through an agency are not deductible. These include preparation of resumes, calls to the agency, telephone rental, beeper or pager, answering machine and travel to and from any employer hospitals.

Agency commissions or fees: In the circumstance where a commission is payable to the nurses' agency, that commission is only deductible to the nurse if he or she actually incurs the expense. Up-front fees, joining fees or search fees paid to a nurses' agency are not deductible.

Watches : Deductions for depreciation and maintenance of nurses' fob watches are allowable. Costs associated with conventional wrist watches are not deductible.

Calculators or electronic organisers: Deductions are allowable by way of depreciation. The depreciation charge is to be apportioned between work-related and private usage.

Scissors, clamps, stethoscopes etc: Deductions for the costs of purchasing instruments for use in performing duties are allowable.

Stationery : Deductions for the cost of items of stationery, ie, pens, paper, diaries, etc are allowable to the extent that they are used for work-related purposes.

Computer and associated software: Deductions are allowable by way of depreciation. The depreciation charge is to be apportioned between work-related and private usage.

Journals and subscriptions: Deductions are allowable for the subscriptions to technical journals and periodicals, providing a close nexus between the nature of the publication and the day-to-day duties of the job is demonstrated.

Library and reference books: The cost of reference books or depreciation of professional library are an allowable deduction. Reference books and textbooks with a reasonably long shelf-life should normally be depreciated.

Union or professional association fees: Deductions for fees paid to unions or professional associations are allowable.

Annual practicing certificate fees: A deduction for the cost of obtaining an Annual Practising Certificate issued by the Victorian Nursing Council is allowable.

Sickness and accident insurance: Premiums paid under a sickness and accident insurance policy are allowable deductions if the benefits constitute assessable income.

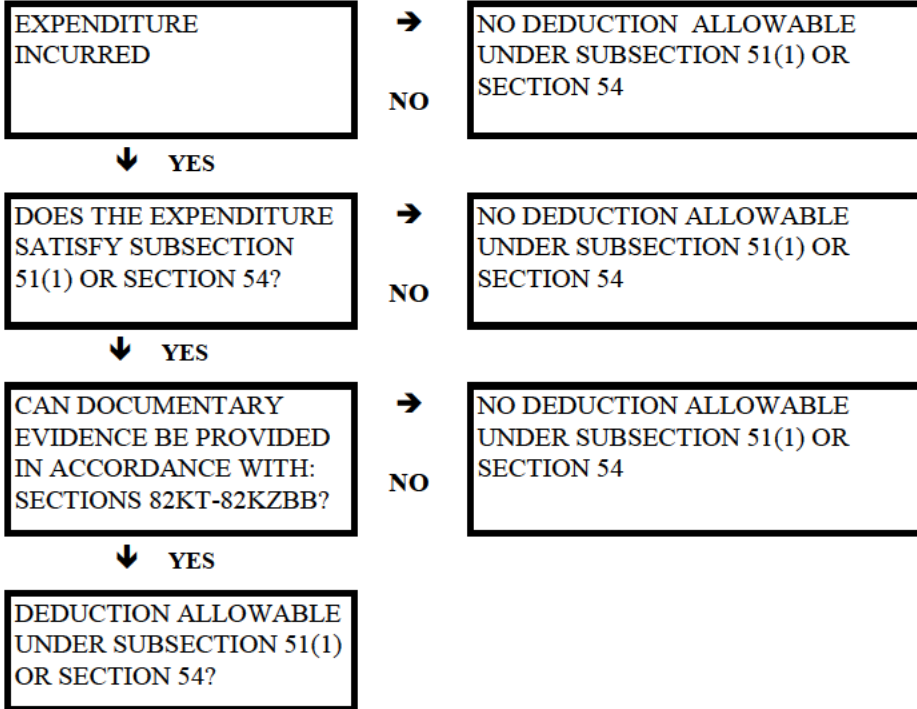
Explanations

Deductibility of items of expenditure

4. The issue of whether or not a deduction is allowable for the type of expenditure set out in this Ruling is determined by looking at subsection 51(1) or section 54.
5. Under subsection 51(1), a deduction is available for all losses and outgoings to the extent to which they are:
 - incurred in gaining or producing assessable income; or
 - incurred in carrying on a business for the purpose of gaining or producing assessable income.
6. If the deduction is to be allowable under subsection 51(1), it must satisfy each of the following criteria:
 - the loss or outgoing must be incurred by the taxpayer;
 - the loss or outgoing must have been incurred in gaining or producing assessable income; and
 - the assessable income must be that of the taxpayer claiming the deduction.
7. If the expenditure satisfies the requirements of subsection 51(1) or section 54, then other requirements such as the substantiation provisions need to be met. Although detailed substantiation requirements are not within the ambit of this Ruling, the following illustration is designed to provide a brief overview of the deductibility of items under current tax legislation.

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Example:



Allowances

8. Nurses are paid some allowances peculiar to their jobs:

- Living out allowance
- Meal allowance
- Stocking allowance
- Uniform and maintenance allowance
- Transport allowance
- Travel allowance
- On call allowance
- Shift allowance
- Telephone allowance
- District allowance

9. The amounts of these allowances must be included in the income tax return of the relevant year as they are assessable income under paragraph 26(e) of the Act.

10. It is important to note that these allowances are taxable under paragraph 26(e) of the Act and must be included as assessable income when completing a tax return (see Tax Pack for further details).

11. Where an allowance of a particular kind is paid to a taxpayer, this does not necessarily entitle the employee to a deduction. This is so even if the allowance is paid pursuant to an industrial award. It is the nature of the outgoing itself which determines whether the expenditure is deductible under the provisions of subsection 51(1) and this is explained further in Taxation Ruling Taxation Ruling IT 2543 and Taxation Determination TD 93/174.

12. Can tax deductions be claimed against the allowance received?

Allowance	Why is it paid?	Can deductions be claimed?
Living out allowance	To compensate for the inconvenience, isolation and discomfort encountered during the course of the employment	No deduction is allowable under subsection 51(1). It has been held that additional expenses incurred in living out remain private in nature and therefore not deductible; (<i>Lunney v. FC of T; Hayley v. FC of T</i> (1958) 100 CLR). TD93/49 provides further information on the deductibility of similar allowances.
Overtime meal allowance	Paid in respect of overtime meals under an industrial award	Yes. A deduction equal to the amount of the allowance, where it is reasonable, is allowed (subsection 82KZ(4)). In 1993/94, \$15 per overtime meal is considered to be reasonable (TR 93/22).
Stocking allowance	Paid to compensate for the purchase of stockings worn during the course of work	No. Stocking expenditure is considered to be private in nature, even where it is a condition of employment. (<i>Case N97 87, ATC 521; 25 CTBR(NS) Case 50</i>).
Uniform & maintenance allowance	Paid to compensate for expenses associated with purchasing and maintaining a nurses' uniform	Deductions can only be claimed where the uniform itself is of a deductible type, i.e. a traditional nurses' uniform, a uniform as per Taxation Ruling Taxation Ruling IT 2641, or a uniform on the TCFDA register.

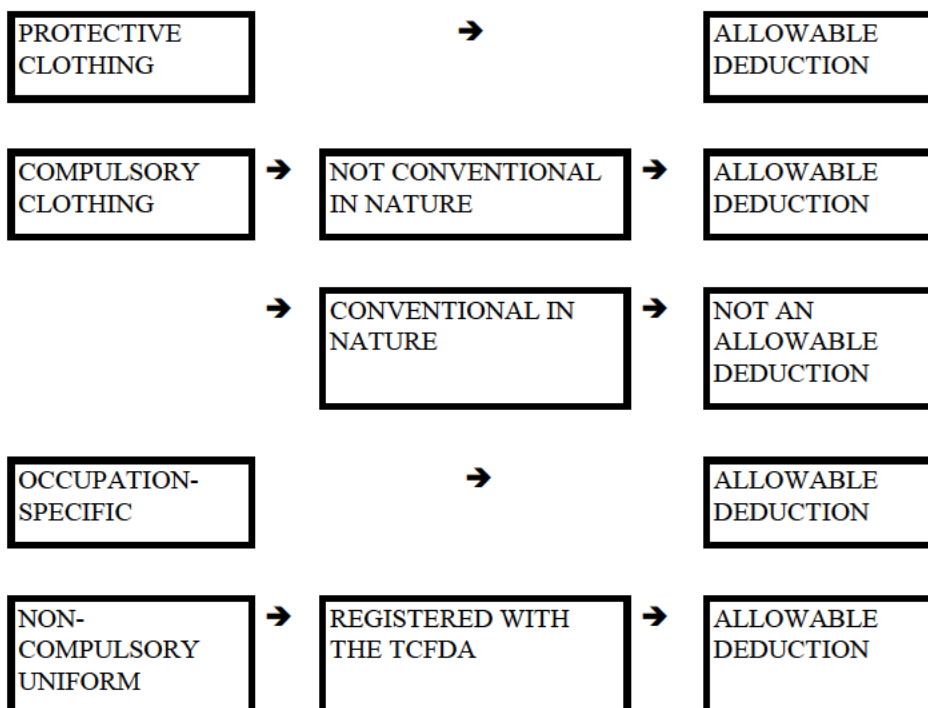
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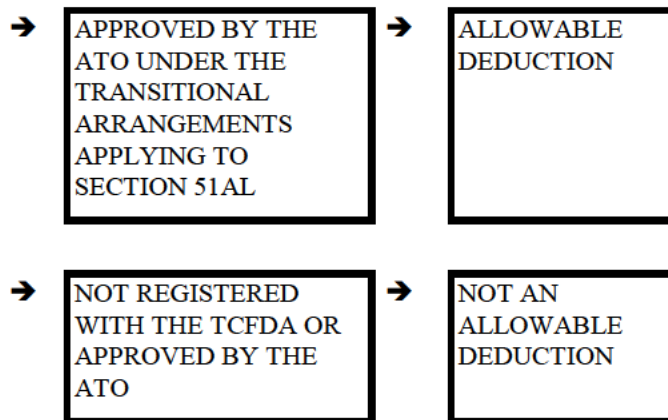
Travelling allowance	Paid for fares, car expenses or other transport costs incurred in travelling between two places of work under an award	Yes. Deductions may be allowable when a nurse whose duties require his or her to travel between two places of work. TD 93/174 and Taxation Ruling IT 2543 provide further information on the deductibility of travelling expenses.
On call allowance	Paid when a nurse is required to be on-call when off-duty	No. The allowance does not in any way relate to any additional expenditure that a nurse may incur while on call.
Motor vehicle allowance	Paid where a nurse is required to use his or her own motor vehicle in the performance of his or her duties during normal working hours	Yes. Deductions may be claimed where a nurse uses his or her motor vehicle in the course of his or her employment.
Shift allowance	Paid to nurses whose hours of ordinary duty finish outside what is considered to be standard working hours	No. The allowance does not in any way relate to any additional expenditure that a nurse may incur while undertaking shift work.
Telephone allowance	Paid to nurses for the purpose of being on call	Yes. Where a nurse is required to be on call a proportion of rental plus the costs of any work-related calls are deductible.
District allowance	To compensate for the inconvenience, isolation and discomfort encountered during the course of the employment	No deduction is allowable under subsection 51(1). It has been held that additional expenses incurred in living out remain private in nature and therefore not deductible; (<i>Lunney v. FC of T; Hayley v. FC of T</i> (1958) 100 CLR). TD93/49 provides further information on the deductibility of similar allowances.

Uniforms and Clothing*Uniforms*

13. An employee can only claim a deduction for expenditure on clothing under subsection 51(1) where:

- the clothing is **protective** in nature (subsection 51(1));
- the wearing of the clothing is a **compulsory condition** of employment and it is not conventional in nature (subsection 51(1));
- the clothing is **occupation-specific** and not conventional in nature (subsection 51(1));
- the clothing is a non-compulsory uniform or wardrobe that has been either:
 - (a) entered on the Register of Approved Occupational Clothing of the Textile, Clothing, Footwear Development Authority (TCFDA); or
 - (b) approved in writing by the Australian Taxation Office (ATO) under the transitional arrangements contained in section 51AL.

Example:

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14. A traditional nurses' uniform, eg., cap, white uniform and cardigan, is not considered to be protective clothing; rather it is clothing which is occupation-specific and not conventional in nature.

15. In accordance with Taxation Determination TD93/121, a nurse can claim a deduction under subsection 51(1) for expenditure on the purchase and maintenance of a traditional nurses' uniform.

16. Expenditure on a uniform that does not qualify as a traditional nurses' uniform, as mentioned in paragraphs 14 and 15 above, will only be deductible under subsection 51(1) provided that:

- it is worn as a compulsory condition of employment and it is not conventional in nature; or
- it has appropriate corporate identifiers (e.g., logos, insignia) attached; or
- it is a corporate uniform within the meaning of Taxation Ruling IT 2641;
- if it is a non-compulsory uniform, it must be either:
 - (a) entered on the Register of Approved Occupational Clothing of the TCFDA; or
 - (b) approved in writing by the ATO under the transitional arrangements applying to section 51AL.

17. A corporate wardrobe or uniform (as detailed in Taxation Ruling IT 2641) is a collection of inter-related items of clothing and accessories which are unique, distinctive and peculiar to the particular organisation.

18. Taxation Ruling IT 2641, paragraph 10, lists the factors to be considered in determining whether clothing constitutes a corporate wardrobe or uniform. These are as follows:

- objective: a means of enhancing the public image of the employing organisation and to act as a form of indirect

advertising; should also be intended to secure a commitment from employees to the corporate culture of the organisation;

- understanding of how the wardrobe is to be worn: an understanding that such items are only to be worn while on official duty, including travel to and from work;
- fabric: there should be a limited range of fabrics; these fabrics should be readily identifiable as belonging to a corporate wardrobe of a particular organisation;
- colours: the total number of colours or shades used in the wardrobe should be limited;
- style: there should be a limited number of styles available both in respect of individual items of apparel (eg. women's blouses), and in respect of the wardrobe as a whole;
- corporate identifiers: these are features that readily identify a particular organisation and include such things as logos, initials or insignias on buttons, pockets. Identifiers are not compulsory but they add to the distinctive and unique nature of the wardrobe;
- durability: in order to be distinctive and unique, a corporate wardrobe should be durable in the sense that the overall concept or the look of the wardrobe should be intended to last for a number of years;
- range: it is necessary to take into account the total number of possible variations in fabrics, colours and styles in order to determine whether the wardrobe, as a whole, has a cohesive identity or whether the wardrobe should simply be considered a collection of conventional clothing items; and
- accessories: expenditure on accessory items such as handbags, shoes and trench coats which do not bear any distinguishable features such as corporate identifiers is considered to be of a private nature.

19. In *Case R55 84 ATC 411, 27 CTBR(NS) Case 109*, K P Brady (Chairman), J E Stewart and D J Trowse in a joint statement of reasons came to the following conclusions:

'Conventional clothing of a particular colour or style does not necessarily, because of those factors alone, assume the character of a uniform. Likewise, ordinary clothing is not converted into a uniform by the simple process of asserting that it fills that role or by the wearing of a name plate, etc. attached to clothing.' (ATC at 416; CTBR at 874).

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20. To illustrate the concepts outlined above, the following example is provided as a guide and considers a variety of scenarios regarding the deductibility of expenditure on uniforms:

Example:

21. Tara is a State Enrolled Nurse; her uniform requirements and the deductibility thereof is considered in the following:

- Uniform: compulsory for all employees; white nursing uniform, short sleeves; navy blue cardigan.

Tara can claim a deduction for the cost and maintenance of the uniform under subsection 51(1); see Taxation Determination TD93/121, paragraph 1.

- Uniform: compulsory for all employees; striped nursing uniform (short sleeves) or striped blouse and dark green skirt; dark green cardigan
uniform items must conform with accepted design, style, fabric, and colour specifications of the employer.

The hospital uniform requirements exhibit the following characteristics; uniform is occupation-specific; uniform is compulsory; clothing is not conventional in nature and uniform must conform with accepted design, style, fabric and colour specifications of the hospital.

Tara can claim a deduction for the cost and maintenance of the uniform under subsection 51(1).

- Uniform: compulsory for all employees; navy slacks or skirt; white blouse; navy cardigan, pullover or polo top.

It is accepted that the uniform requirements are compulsory for all employees; however, it appears that the items of clothing are conventional in nature, i.e. there is no employer requirement as per design, style or fabric, and corporate identifiers are not required. The fact that a colour requirement exists is not sufficient to identify the clothing as being of a non-conventional nature.

Tara cannot claim a deduction for the cost and maintenance of the uniform under subsection 51(1).

22. In *Case U95*, 87 ATC 575, a shop assistant employed by a retail merchant was to dress according to the standard detailed in the staff handbook. The prescribed dress standards were as follows:

'Selling Staff: Female Staff - To wear a plain black tailored dress, suit or skirt, plain black or white blouse, either long or short sleeved. No cap sleeved, or sleeveless dresses or blouses to be worn.' (ATC at 577).

The deduction for clothing was denied, because there was 'nothing distinctive or unique about the combination of clothing which would identify the wearer' as an employee of the organisation, or even a shop assistant from another department store. Further, 'the colour combination of the clothing would be included in the range of acceptable street dress unassociated with business or employment, as well as a combination of colours sometimes worn by female or food waiting staff'.

23. If the uniform requirements were non-compulsory, a deduction under subsection 51(1) is allowable only if the provisions of section 51AL are met, i.e. the clothing requirements are either:

- (a) entered on the Register of Approved Occupational Clothing of the TCFDA; or
- (b) approved in writing by the ATO under the transitional arrangements contained in section 51AL.

Protective Clothing

24. Expenditure on pinafores, aprons or white medical coats are considered protective in nature and deductible under subsection 51(1); see Taxation Determination TD 93/121, paragraph 4.

25. Protective clothing as defined in subsection 51AL(26) is any garment that is of a kind which is for use wholly or principally to protect:

- (a) the wearer or another person from, or from risk of:
 - (i) death; or
 - (ii) the contraction, aggravation, acceleration or recurrence of a disease; or
- (b) the wearer from, or from risk of:
 - (i) injury (including the aggravation, acceleration or recurrence of an injury); or
 - (ii) loss or destruction of, or damage to:
 - (A) other clothing worn by the wearer; or
 - (B) an artificial limb or other artificial substitute,

or

a medical, surgical or other similar aid or appliance, used by the wearer.

Shoes

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26. Expenditure on special non-slip shoes is deductible as expenditure on protective clothing under subsection 51(1), reference is made to Taxation Determination TD 93/121, paragraph 3.

27. Expenditure on conventional shoes eg. running or aerobic shoes, sports shoes, dress shoes and casual shoes are not an allowable deduction under subsection 51(1).

Laundry expenses

28. Laundry expenses for work-related clothing will only be deductible under subsection 51(1) in the following circumstances:

- the clothing is **protective** in nature and an allowable deduction under subsection 51(1);
- the wearing of the clothing is a **compulsory condition** of employment and it is not conventional in nature, and an allowable deduction under subsection 51(1);
- the clothing is **occupation-specific** and not conventional in nature, and an allowable deduction under subsection 51(1);
- the clothing is a non-compulsory uniform or wardrobe and allowable under subsection 51(1), having been either:
 - (a) entered on the Register of Approved Occupational Clothing of the TCFDA; or
 - (b) approved in writing by the ATO under the transitional arrangements contained in 51AL.

29. Laundry expenses for conventional clothing used in the workplace are not allowable deductions under subsection 51(1); expenditure of this type is considered to be of a personal and private nature.

Stockings

30. The cost of acquiring and maintaining stockings is not deductible under subsection 51(1), as it is considered to be expenditure of a private nature and not incurred in gaining or producing assessable income. This decision has taken into consideration the fact that, in some cases, nurses are required to wear coloured stockings as part of their uniform or as a preventative measure against health problems.

31. *Case N97*, 81 ATC 521; 25 CTBR(NS) *Case 50* considered the question of whether a nurse could claim a deduction under subsection 51(1) for the cost of acquiring stockings for work purposes. Dr P. Gerber (Member) stated in ATC at 524; CTBR at 369) that:

'notwithstanding the condition of employment that they must be worn on duty. Stockings, by their very nature, are part of

conventional attire - whether worn under protest or otherwise...there is nothing unique which would single out a person wearing them as being a nurse....'(ATC at 524; CTBR at 369).

32. In *Case P117*, 82 ATC 591; 26 CTBR (NS) *Case 43*, an employee claimed the cost of 'supphose' stockings on the grounds that they were prescribed by a medical practitioner to assist in overcoming a medical condition. It determined that the expenditure incurred by the taxpayer in the purchase of these stockings was clearly of a private nature as it was not incurred in gaining or producing assessable income.

Socks

33. The cost of acquiring and maintaining socks required as a part of a uniform are not deductible under subsection 51(1), as it is considered to be expenditure of private nature and not incurred in gaining or producing assessable income.

Grooming (cosmetics, skin care, hairdressing)

34. A deduction for expenses incurred in the purchase of cosmetics and skin care products is not an allowable deduction under subsection 51(1). It is considered that the expenditure on cosmetics and skin care products are essentially of a private nature and not incurred in earning assessable income.

35. Hairdressing expenses incurred by nurses are not allowable under subsection 51(1) as they are considered to be an expense of a private nature. This decision is supported by the following cases: *Case N34* 81 ATC 178; 24 CTBR (NS) *Case 104*; *Case L61* 79 ATC 488; 23 CTBR (NS) 680; *Case U217* 87 ATC 1216 and *Case R54*, 84 ATC 408; 27 CTBR (NS) *Case 108*.

Travel expenses

Travel to and from work

36. The costs incurred on travel between home and the taxpayer's place of work is not an allowable deduction, under subsection 51(1), in accordance with the principal established in *Lunney v. FC of T*; *Hayley v. FC of T* 100 CLR 478; 7 AITR 166.

37. In each of these cases, travel expenses incurred in travel between home and work were claimed on the basis that the expenditure was incurred in producing income. A joint judgment on both cases by Williams, Kitto and Taylor JJ stated the following;

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'The question whether the fares which were paid by the appellants are deductible under section 51 should not and, indeed, cannot be solved simply by a process of reasoning which asserts that because expenditure on fares from a taxpayer's residence to his place of employment or place of business is necessary if assessable income is to be derived, such expenditure must be regarded as "incidental and relevant" to the derivation of income.But to say that the expenditure on fares is a prerequisite to the earning of a taxpayer's income is not to say that such income is incurred in or in the course of gaining or producing assessable his income.' (at 498-499).

Travel between two places of employment where there are two separate employers involved

38 If a taxpayer travels directly between two places of employment involving two separate employers, such travel will generally be accepted as business travel, where the travel is undertaken for the purpose of enabling the taxpayer to earn assessable income.

Example:

39. Christopher is a State Enrolled Nurse, and employed at the Royal Perth Hospital. He is also employed on a part-time basis at a local fast food outlet as a kitchen hand from 6.00 pm to 9.00 pm Mondays to Thursdays.

- Christopher finishes his shift at the hospital at 5.30 pm and travels directly to the fast food outlet to commence duties at 6.00 pm. The cost of travel from the hospital to the fast food outlet is deductible as work-related travel.
- Christopher finishes his shift at the fast food outlet at 9.00 pm and travels directly to the hospital to commence duties at 10.00 pm. The cost of travel from the fast food outlet to the hospital is deductible as work-related travel.
- Christopher finishes his shift at the hospital at 3.00 pm, goes shopping at a local complex, and then travels to the fast food outlet to commence duties at 6.00 pm. Travel expenses incurred between the hospital and fast food outlet are not deductible, because there was no direct travel between the two places of employment.

Travel between two places of employment where neither is a place of residence

40. If a taxpayer travels directly between two places of employment, such travel will generally be accepted as work-related travel, where the person does not live at either of the places, and travel is undertaken for the purpose of enabling the taxpayer to engage in income-producing

activities; see Miscellaneous Taxation Ruling MT 2027, paragraph 23.

Example:

41. Suzanne is a State Enrolled Nurse and lives at the Murray Bridge Nurses' Residence, which is attached to the Murray Bridge Local Hospital. The treatment of her travel costs are considered in the following instances:

- If Suzanne is employed by the Murray Bridge Local Hospital, her travel costs from the nurses' residence to the hospital would not be deductible, being travel from home to work and in accordance with the general principles established in *Lunney & Hayley*;
- If Suzanne is employed at the Warragul Private Hospital situated twenty-five kilometres away from the Murray Bridge Nurse's Residence, her travel costs from the nurses' residence to her place of employment would not be deductible, being travel from home to work and in accordance with the general principles established in *Lunney & Hayley*;
- If Suzanne is employed at the Murray Bridge Local Hospital, and is required to travel to the Warragul Private Hospital during the course of her duties, the costs associated with her travel from the Murray Bridge Local Hospital to the Warragul Private Hospital (and back to resume her duties at the Murray Bridge Local Hospital) are deductible, being work-related travel.

Travel while on-call, stand-by or 24 hour duty

42. The costs incurred on travel between home and the taxpayer's place of work is not an allowable deduction in the following cases:

- where the taxpayer is on-call, for example: seven days a week, 24 hours a day;
- where the taxpayer is on stand-by; and
- where the nurse is member of the armed services and on 24 hour duty.

43. *Case R8*, 84 ATC 157, 27 CTBR(NS) *Case 59* concerned a nurse who was engaged in agency work, with no fixed schedule, but was on-call seven days a week, 24 hours a day. A claim was made for travelling expenses between her home and the various places where she was required to work. It was decided that travelling expenses were not deductible under section 51(1), being no more than travel from home to various places of employment.

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44. *Case S82*, 85 ATC 608, 28 CTBR(NS) *Case 87* involved nursing sister employed as a flight sister on an air ambulance, and required to be on-call for emergency flights on a rostered basis. A claim was made for travel expenses between home and the airport. It was determined that the deduction was not allowable because 'her duties did not commence until she reached the airport base, only then did she take charge of the patient and assess the patient's suitability to be transported in the aircraft' (T J McCarthy (Member), ATC at 608; CTBR at 678).

45. In *Case J21 77* ATC 193; 21 CTBR(NS) *Case 43*, an Army officer was obliged to live off-base due to accommodation shortages; he subsequently made a claim for travel expenditure between his home and the base. It was argued by the taxpayer that because he was on 24-hour duty at all times and subject to military law within the meaning of the Defence Act and its regulations and could be called at any time to attend the base and perform duties, he was entitled to a deduction under section 51(1). It was determined that the taxpayer was not entitled to a deduction for travelling expenses because he was subject to military law; further, the claimed deduction was not incurred in the gaining of income so as to qualify for a deduction under subsection 51(1).

46. The general exception to the rule can be found in the decision of *Owen v Pook* (1970) AC 244. A medical practitioner, under the terms of his appointment with a hospital, was required to be accessible by telephone to receive emergency calls and to give immediate instructions on treatment prior to travelling to hospital. As such, his responsibility for the patient commenced on receiving the call, and any subsequent travel would be work-related. See Income Tax Ruling Taxation Ruling IT 112, paragraph 21(1), which states that in the above scenario the taxpayer 'might properly be regarded as having commenced his duties at home on receiving the call'.

47. Further, reference is made to *F C of T v. Collings* 76 ATC 4254; (1976) 6 ATR 476. In that case the taxpayer was an employee and engaged in supervising a major conversion in a computer facility. Under the arrangements of her employment she was required to receive telephone calls and give advice to fellow workers at the office, over the phone, when problems arose in the operation of the computer. For this purpose she was provided with a portable computer which could be connected through a telephone line to the central computer. In circumstances where the problem could not be rectified by this means, the employee would return to the office.

48. Rath J in the Supreme Court of New South Wales commented that the travelling expenses in respect of travel between home and work outside the normal daily journey were 'in the special

circumstances of this case' outgoings incurred in gaining or producing her assessable income, and were not of a private or domestic nature and were accordingly allowable deductions under subsection 51(1). Additional discussion is made at paragraphs 12 & 21(e) in Income Tax Ruling Taxation Ruling IT 112 and Taxation Ruling MT 2027, paragraph 20.

49. Taxation Ruling MT 2027 at paragraphs 17 to 22 discusses the above principles. Paragraph 17 states that: 'travel to and from work in response to a call while on stand-by duty would not ordinarily alter the character of that travel, i.e., it remains private travel.'

Business trip on the way to or from work

50. If a taxpayer is required to make business-related calls on his or her way to or from work, a deduction for travel expenses incurred in relation to these business trips are allowable deductions under subsection 51(1).

51. In 13 CTBR *Case 15*, it was found that an employee manager of a film company, who used his vehicle for travel between his residence and the first theatre inspection on any given day, such travel is business travel and does not constitute travel 'for private or domestic purposes'.

52. Taxation Ruling MT 2027 at paragraphs 28 to 36 considers the issue of a business trip on the way to or from work. Paragraph 34 further states; '...it has been decided that the total journey from the employee's home to the client's premises and on to the office should be accepted as business travel...The preceding principles apply equally to cases where an employee makes a business call in the afternoon and travels from there to home, rather than returning to the office.' (paragraph 35, Taxation Ruling MT 2027).

Travel to work where home is a place of business

53. If a taxpayer has a place of employment away from home and carries on an income-producing activity from home, a deduction for the cost of travel between home and the place of employment away from home is not an allowable deduction under section 51(1).

54. In *Case N44* 81 ATC 216, 24 CTBR(NS) *Case 114* a taxpayer made a claim for travel between his home, where he carried on a limited private practice and his place of full-time employment. It was stated by M.B. Hogan and Dr P. Gerber that:

'...there is nothing in the travel between this taxpayer's home and his city office on any normal working day which would confer any meaningful distinction on the outgoing of the principal laid down by the High Court in *Lunney and Hayley*. The fact that the taxpayer's home is, incidentally used in the production of income

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is insufficient to make the travel between the taxpayer's home and his office an outgoing incurred in the production of assessable income.' (ATC at 219-220; CTBR at. 918-919).

55. For the purposes of a deduction for travel expenses, it is not sufficient that a room in the home is used in association or connection with employment or business activities. Taxation Ruling TR 93/30 at paragraphs 11 to 14 considers the question of when is an area of a home a place of business rather than a private study.

56. An exception would be when some particular aspect of the travel from home to the place of full-time employment is directly related to the part-time employment, e.g. the cost of delivering fruit from a home-based orchard to the market on the way to full time employment; see Taxation Ruling MT 2027. paragraphs 23; Taxation Ruling Taxation Ruling IT 2199.

Agency nurses

57. A taxpayer employed at various hospitals through an agency is not entitled to claim a deduction for travel expenditure incurred in travelling between home and the various hospitals in accordance with the principal established in *Lunney v. FC of T*; *Hayley v. FC of T* 100 CLR 478.

58. Re *FC of T v. Genys* 87 ATC 4875; (1987) 19 ATR 356 a nursing sister employed at various hospitals through an agency claimed travel expenses from home to various hospitals. A further argument put forward was that the taxpayer's home was an operating base and her duties were of an itinerant nature and commenced at the time she left home.

59. Northrop JJ stated:

'I have come to the consideration that the taxpayer's employment cannot be regarded as "itinerant"...here, the taxpayer does not travel between two places of work after commencement of her duties; she simply drives from home to work and back again...In conclusion, in my opinion, the mere fact that the taxpayer in this case does not have a regular place of employment in the sense of a permanent employment at one hospital is not sufficient to take her outside the general principles expressed in *Lunney*'. (ATC at 4882-4883; ATR at 364).

60. Where it can be established that the taxpayer's office or employment is of an itinerant nature, i.e. travel must be fundamental part of the taxpayer's work; the taxpayer must not be able to perform his or her duties without the use of a motor vehicle; the taxpayer contract of employment must require him or her to perform his or her duties at more than one place of employment; the nature of the job itself must make travel in the performance of his or her duties

essential; and it must be able to be said that he or she is travelling in the performance of his or her duties from the time of leaving home; see Taxation Ruling Taxation Ruling IT 112, paragraph 21(d). In these circumstance it can be said that the taxpayer's position would fall into line with the decision in *FC of T v. Wiener* 78 ATC 4009, (1978) 8 ATR 335.

61. Travel from home to the office and back made in these limited circumstances will be accepted as an ordinary incident of the business travel and, as such, will also be treated as business travel; see Taxation Ruling MT 2027, paragraph 27.

Travel in connection with employment away from home

62. If a taxpayer obtains employment away from home, i.e. in a country town or in another state, and subsequently travels between his or her home and the place of employment, boarding for the time away. The expenditure incurred in travel to the place of employment is not an allowable deduction under subsection 51(1).

63. Re *Case L25* 79 ATC 124; 23 CTBR(NS) *Case 31*, a taxpayer had obtained employment in another state and commuted weekly between two states by air, boarding for the time away. In a joint statement by H.P. Stevens, D.C. Fairleigh QC and J.R. Harrowell, it was held that the travel and accommodation expenses claimed by the taxpayer was not incurred in gaining or producing assessable income and the expenditure was inherently of a private and domestic nature.

Transporting equipment to and from work

64. In limited circumstances it may be necessary for the taxpayer to use his or her vehicle in the transportation of equipment to and from work, it is accepted that such travel would ordinarily constitute business travel; see Taxation Ruling MT 2027, paragraph 37.

65. This condition would not apply where, as a matter of convenience, an employee performs some work at home and transports papers, materials, etc. (whether bulky or not) between home and work for that purpose; see Taxation Ruling MT 2027, paragraph 38).

66. In *FC of T v. Vogt* 75 ATC 4073; (1975) 5 ATR 274 a professional musical was allowed the cost of travel associated with the transportation of his musical instruments and associated equipment (e.g. trumpet, flugelhorn, acoustic bass, electric bass and amplifiers) to and from his place of employment. It was stated by Waddell J that the 'expenditure was incurred in gaining or producing assessable income'.

67. In *Case Q1* 83 ATC 1; 26 CTBR(NS) *Case 65* a school principal claimed deductions for repairs and depreciation on her vehicle. She argued that the nature of her work required her to work after hours at home, and subsequently she used her vehicle to transport working

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materials between home and work. In a joint statement by K.P. Brady (Chairman), L.C. Voumard and J.E. Stewart (Members) the position was put as follows:

'...we would regard the expenditure as incurred simply in travelling from the taxpayer's home to her place of employment on the authority of *Lunney v. F C of T* (1958) 100 CLR 478 is of a non-deductible private nature under sec. 51(1)'. (ATC at 3-4; CTBR at. 472).

Travel for the purposes of self-education, conferences or seminars

68. Travel costs in connection with self-education are treated as follows:

- costs incurred in travel between the taxpayer's home and the educational institution and subsequent return are allowable deductions, being incidental costs of study; see Taxation Ruling TR 92/8, paragraph 43;
- costs incurred in travel between the taxpayer's home and the educational institution and then on to his or her place of employment; in such cases, the first leg of the journey would be an allowable deduction; the cost of the second leg of the journey are costs incurred in travelling to work and not an allowable deduction in accordance with the principle established in *Lunney and Hayley*; see Taxation Ruling TR 92/8, paragraph 43;
- costs incurred in travel between the taxpayer's workplace and the educational institution and subsequently home; in such cases the first leg of the journey would be an allowable deduction, being incidental costs of study; the second leg of the journey is private and domestic in nature and not deductible.

In *Case S45* 85 ATC 345; 28 CTBR(NS) *Case 51* a taxation officer was allowed a deduction for costs incurred in travel from his workplace to the tertiary institution; however travel costs from the tertiary institution to home were disallowed being 'classically of an outgoing of a domestic nature'.

- travel costs incurred between the taxpayer's place of employment and the educational institution and subsequent return to the place of employment are allowable deductions under subsection 51(1).

69. Travel associated with attendance at conferences, seminars and lectures are allowable deductions, provided the sole predominant purpose of the trip related directly to the taxpayer's income-generating activity.

70. In *Case R13* 84 ATC 168; 27 CTBR(NS) *Case 64* a dentist who attended a dental congress in Paris which lasted 5 days arranged his schedule to provide for a four-day stopover in Athens on his way to Paris. On completion of the congress he spent a period in excess of three weeks in the United Kingdom touring England, Scotland and Wales, and returned from London via Singapore where he stopped of for a period of three days. It was determined from the statements tendered that the taxpayer assigned equal importance to the objects of attending the conference and tourism. A claim for half the expenditure incurred on airfares was allowable on this basis, and the fares served both purposes; however only the first object qualified for a deduction under subsection 51(1).

71. Regarding overseas and extended domestic travel in connection with attendance at conferences, seminars and the like, it is a requirement under taxation law that certain documents and information must be maintained. These requirements are as follows:

- the amount attributable to each category of expenditure, i.e. fares, taxi, bus, train and air fares, other transportation costs, accommodation, meals, entertainment, etc.;
- reason and purpose for undertaking the trip; and
- a detailed itinerary of the trip, including a travel diary; see Taxation Ruling MT 2038 for further information.

Additional travel to work

72. In situations where a taxpayer is required to make additional trips on the same day to his or her place of employment to re-commence duties, such travel expenditure is not an allowable deduction under subsection 51(1).

73. In *Case T7*, 86 ATC 1093; *AAT Case 7* (1986) 18 ATR 3033, a nursing sister was employed at a small bush hospital and claimed the cost of additional travel between her home and the hospital, because she was required to travel to the hospital twice on the same day due to staff shortages. Dr P. Gerber and K.L. Beddoe in a joint statement commented as follows:

'I am not persuaded in this case that travel to work twice rather than once a day alters the character of the expenditure it is still travel between home and work, and thus excluded from a deduction under sec. 51(1) of the *Income Tax Assessment Act*'. (ATC at 1094; ATR at 3034).

Commuting for vacation periods

74. Where the taxpayer works in a remote area and is subject to discomfort, isolation and/or adverse environmental conditions, travel

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cost associated with vacation travel is not an allowable deduction under subsection 51(1).

75. In *Case S55* 85 ATC 402; 28 CTBR(NS) *Case 61* a high school teacher working in a remote area claimed costs of commuting from school for vacation periods. It was held that the expenditure incurred in commuting to a capital city on vacation was of a private nature and not deductible under subsection 51(1).

Parking expenses

76. Parking fees incurred as a result of driving a vehicle to and from work each day are essentially of a private nature, and not deductible under subsection 51(1).

77. In *Case S32* 85 ATC 290; 28 CTBR(NS) *Case 37* a lecturer was denied the cost of a parking permit which allowed him to park his vehicle on campus. It was held that the expenditure was essentially of a private nature, even though the taxpayer used his car, at least in part, in his employment.

Fines and penalties

78. Fines and penalties incurred in the course of employment resulting from breaches of the law, i.e. traffic offences, are not an allowable deduction under subsection 51(4).

79. In *Case P55* 82 ATC 253; 25 CTBR(NS) *Case 109* a taxpayer was employed as technician and area supervisor; part of a condition of his employment was that he held a driver's licence. While driving on the firm's business, the taxpayer was booked and later charged with a driving offence. A claim for a deduction was made for the costs of defending the charge. The claim was disallowed and in a joint statement by K.P. Brady (Chairman) and J.E. Stewart (Member) it was stated that;

'we are of the opinion that the expenses were essentially of a private nature and therefore not deductible, in that they were primarily to protect the taxpayer's right to drive a car ...We see the taxpayer's concern to avoid any threat to his income-producing activities (while of great importance to him) as being of secondary importance to the basic concern' (ATC at 254; CTBR at. 826).

Driver's licence

80. The cost of renewal of a driver's licences is not deductible under subsection 51(1).

81. Taxation Determination TD 93/108 states that no deduction is allowable for the cost of renewing a driver's licence where the holding of a driver's licence may be a condition of employment.

Home office expenses

82. There may be occasions where nurses carry out work-related activities at home. There may be a room set aside for such activity (e. a study) or it may be completed in any part of the home. Either way there may be additional expenses incurred as a result of these activities. Such expenses are described as home office expenses. Home office expenses can also be included as part of a claim for self-education expenses. The following paragraphs discuss the deductibility of such expenses.

83. The expenses that may be associated with a home office or study can be divided into two broad categories. These are:

- occupancy expenses relating to ownership or use of a home. These include rent, mortgage interest, municipal and water rates and house insurance premiums; and
- running expenses relating to the use of facilities within the home. These include electricity charges for heating/cooling, lighting, cleaning costs, depreciation, leasing charges and the cost of repairs on items of furniture and furnishings in the office.

84. As a general rule, expenses associated with a taxpayer's home are of a private or domestic nature and do not qualify as deductions for taxation purposes.

85. An exception to this general rule is where part of the home is used for income-producing activities and has the character of a place of business. In this case both occupancy and running expenses may be claimed as a deduction.

86. Another exception to this general rule is where part of the home is used in connection with the taxpayer's income-producing activities but does not constitute a place of business. In this case only the running expenses may be claimable as a deduction.

Place of business

87. The issue as to what constitutes a place of business has been the subject of several court decisions in the past. Two of the most significant cases were *FC of T v. Forsyth* 81 ATC 4157; (1981) 11 ATR 657; (1981) 148 CLR 203 and *Handley v. FC of T* 81 ATC 4165; (1981) 11 ATR 644; (1981) 148 CLR 182. Both of these cases, as heard by the High Court, involved barristers who were attempting to establish that the part of their homes, where they performed after hours duties, were in fact a place of business. In *Handley*, Wilson J stated with respect to the taxpayer's claim for interest:

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'...The room used as a study does not cease to be part of a taxpayer's home merely because as a matter of convenience he uses it for professional purposes 20 hours per week during 45 weeks of the year. It is true that in choosing...this particular residence...the taxpayer was influenced by the fact that there was in it a room which he considered to be suitable for use by him as a study. But it remained essentially part of the home...No part of the outgoings possess the requisite character of outgoings incurred in gaining or producing assessable income, nor are they necessarily incurred in carrying on the taxpayer's profession. In any event, I believe that they must be regarded as outgoings of a capital, private or domestic nature, thus coming within the exception to section 51.' (ATC at 4176; ATR at 656; CLR at 201-202).

88. There is no one factor which will necessarily indicate whether an area set aside will have the character of a place of business. Some of the factors which assist the decision are:

- the area is clearly identifiable as a place of business;
- the area is not readily suitable or adaptable for use for private or domestic purposes;
- the area is used exclusively or almost exclusively for carrying on of a business;
- the area is used regularly for visits of clients or customers;
- or
- the absence of an alternative place for conducting income-producing activities (see *Swinford v. FC of T* 84 ATC 4803; (1984) 15 ATR 1154).

89. With regard to *Handley and Forsyth*, Hunt J stated, in *Swinford* (ATC 4806; ATR at 1158) that 'There can be no doubt that as a result of these two cases, it will be difficult (perhaps impossible) for any taxpayer to obtain a deduction where his home office is a study used in those circumstances'.

90. Further to the above, in the case *FC of T v. Genys* 87 ATC 4875; (1987) 19 ATR 356 a nurse who worked at many hospitals through an agency attempted to argue that her home was her operating base and hence a place of business. Northrop J stated (ATC at 4881; ATR at 362) that 'in the present case, I am of the opinion that the mere receipt of telephone calls from the agency requesting the respondent to work a particular shift is not sufficient to constitute the respondent's home as a place of work'. The further argument that the taxpayer's employment was itinerant was rejected on the basis that the taxpayer did not travel

between two places of work after the commencement of her duties; rather she simply drove from home to work and back again.

Running expenses

91. Mason J stated in *Faichney v. FC of T* 72 ATC 4245; (1972) 3 ATR 435; (1972) 129 CLR 38 with respect to lighting and heating:

'to the extent to which the expenditure is incurred in providing light and heat for the taxpayer exclusively whilst he is engaged in work from which he derives income it may be said to be an expense having a business or employment character'. (ATC at 4250; ATR at 439; CLR at 45).

92. It is accepted that where work-related activity is performed at home those additional costs that relate exclusively to the performance of those duties will be deductible.

Electricity, Heating/Cooling, Lighting

93. These expenses may be claimable where they relate exclusively to work performed at home. This, for example, would not cover the situation where the taxpayer carried out the work-related activity in the lounge room while other family members watched television.

Depreciation

94. Where items of plant are used in connection with employment-related activities, a proportionate amount may be claimed based upon business usage. Examples of such plant are: desk, chair, bookshelf, filing cabinet and computer. Rates of depreciation are to be found in Taxation Ruling Taxation Ruling IT 2685. Where individual items cost less than \$300 or have an effective life of less than three years they can be written off in the year of purchase. This means that an item costing \$200 which is used 50% for work-related activity can be written off immediately and hence \$100 is deductible.

Repairs

95. Where an item that is depreciable or deductible is repaired a proportion of the cost is deductible, e.g., taxpayer incurs \$80 on repairs to ergonomic chair located in home study. The chair is used 75% of the time for work-related purposes, hence \$60 is allowable.

Example:

96. Vanessa is a registered nurse who is also a clinical nurse specialist (CNS) in the cardiac ward at the Royal Perth Hospital. In her capacity as a CNS she often makes short presentations to her work colleagues on topics affecting their day-to-day work. While some time is made available to her at work for her preparation, she spends further time at home preparing her notes. She has a spare bedroom which she has converted to a study by fitting it out with a desk (\$140), a chair

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(\$90), a bookshelf (\$400), a personal computer (\$2,200) and a small fan heater (\$50).

97. What can she claim?

- (a) Desk: deduction can be claimed by way of depreciation.
- she uses the desk 70% for work and 30% for private
 - therefore 70% of the annual depreciation charge is allowed
 - as the item cost less than \$300 the rate is 100% (subsection 55(2))
 - it follows that 70% of \$140, or \$98, is allowable.
- (b) Chair: the same reasoning applies to the chair as applies to the desk.
- hence 70% of \$90, or \$63, is allowable.
- (c) Bookshelf: a deduction can be claimed by way of depreciation
- the bookshelf stores 30% work material and 70% private
 - therefore 30% of the annual depreciation charge is allowable
 - the rate of depreciation is 13%
 - it follows that 30% of (13% of \$400), or \$16, is allowable.
- (d) Computer: a deduction can be claimed by way of depreciation as Vanessa uses the computer for typing notes for her presentations.
- computer is used 50% for work and 50% for private purposes
 - therefore 50% of the annual depreciation charge is allowable
 - the rate of depreciation is 27%
 - so 50% of (27% of \$2200), or \$297, is allowable.
- (e) Fan heater: a deduction can be claimed by way of depreciation.
- heater is used 25% for work and 75% for private purposes
 - therefore 25% of the annual depreciation charge is allowable
 - as the amount is below \$300 the depreciation rate is 100%
 - it follows that 25% of \$50, or \$13, is allowable.
- (f) Electricity: the computer, heater and lighting are drawing electricity while she is performing work-related activity

- the deduction may be based on formula in Taxation Ruling TR 93/30
- a reasonable percentage of the annual electricity bill. may also be used
- the annual electricity bill is \$400
- she proposes to claim 5%, or \$20, on the basis that this would be a reasonable estimate of her work-related electricity usage.

Telephone expenses

98. From time to time, it may be necessary for a nurse to make and receive work-related calls. The following paragraphs discuss the deductibility of various types of telephone expenses.

Installation costs

99. Installation costs for telephones are not deductible under subsection 51(1) as they are considered to be a capital expense. See *Case M53 80 ATC 357*; 24 CTBR (NS) 73 where it was held that (ATC at 359; CTBR at 76) '...on payment of the connection fee, this taxpayer brought into existence an advantage for the enduring benefit of his newly established medical practice.'

Rental

100. Generally, the use of a phone and hence the rental costs would have a private or domestic character and not be allowable deductions. But consider *Case N5 81 ATC 35*; 24 CTBR (NS) 682 where the Board said that:

'...expenditure on maintaining the use of a telephone can, because of its very nature, be properly deductible under section 51, obviously so when installed and used in a place of business and not infrequently when installed in private premises so long as it is used in the production of assessable income.' (ATC at 37; CTBR at 684).

101. The situations where telephone rental will be deductible, especially in the employee context, is summarised at paragraph 3 of Taxation Ruling Taxation Ruling IT 85. It identifies that taxpayers who are either on call or required to contact their employer on a regular basis may be entitled to a deduction for some portion of the cost of telephone rental.

On call

102. The following types of on call arrangements have been identified as being relevant to nurses:

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- designated on call nurses; or
- general on call arrangements.

103. For designated on call nurses, the arrangement will involve the nurse being designated as on call. It could be for a limited period or indefinitely. For example, in order to equip itself for emergency surgery performed after hours, a hospital may designate some of its theatre nurses as being on call. This means they must be contactable, whether by phone or pager, at all times.

104. Compare this situation to the taxpayer in *Case N5*, who was an ambulance driver. On his days off he may be called to perform extra shifts should one of the other drivers call in sick. He was not designated as being on call in the same way as the nurse in the above example. It was only a general understanding between the taxpayer and his employer that he would be available for work on his days off.

105. A general on call arrangement would cover situations where a nurse may be on call but is not a designated on call nurse. A typical example of this would be an agency nurse who is simply waiting for a call as to what their next shift will be.

106. This is akin to the situation outlined in *Case N5*, and similar to the case of *Nolder v. Walters* (1930) 15 TC 380, where a pilot awaited his nightly telephone call as to what his schedule would be for the next day. In relation to the nature of the telephone call it was said that 'it was a mere question of communicating with him with a view to him coming to the office to do his duties which begin when he gets there'.

Deductibility of telephone rental

107. Only those nurses who fall within the first type of on call arrangement will be entitled to a deduction for telephone rental. Telephone rental would be incurred at a point too soon to be regarded as deductible in the second type of on call arrangement. (See *Hayley's* case and, *Lunney's* case).

108. Also mentioned in Taxation Ruling IT 85 is a category of taxpayers who are required to contact their employers on a regular basis. An exception to this may be agency nurses who may call regarding prospective shifts. The rental expense would once again be incurred prior to the carrying out of any income-earning activity.

109. Any claims for telephone rental are made on an apportionment basis, i.e. between work-related and private usage.

Telephone calls

110. The direct cost of work-related telephone calls is an allowable deduction under subsection 51(1). E.g., a nurse calls her ward, after

her shift, from home as she has forgotten to pass on information about a patient to her associate charge nurse.

Mobile phones

111. A proportion of rental will be allowable in the same circumstances as a regular home phone. If it has been purchased, depreciation will only be allowable where a deduction for rental would be otherwise allowed.

Beepers or pagers

112. These items will be treated the same as mobile phones. If rental would be allowable on the home phone then a proportion of depreciation or rental will be allowable.

Answering machines

113. If the rental on the phone to which it is connected deductible then a proportion of the cost of the answering machine will be deductible.

Amount of rental deduction

114. Where the phone, beeper or answering machine is not used 100% for work-related purposes then a proportionate deduction only will be allowable. The proportion can be calculated using the following formula:

$$\frac{\text{Business calls (incoming and outgoing)}}{\text{Total calls (incoming and outgoing)}}$$

Example:

115. A theatre nurse is on call for 8 weeks in any given year. During this period she received and made 10 calls for work-related purposes. Over the year there were 300 calls made and received in total. Therefore the work-related percentage is 3.33%. If the total phone rental for the year was \$150 then 3.33% amounts to \$5. As well as claiming this amount as a phone rental deduction the direct cost of the outgoing business calls are also deductible.

Self-education expenses

116. Expenses incurred in attending courses, seminars or conferences designed to update the knowledge of the taxpayer in his or her particular occupational field so that the taxpayer may become more proficient in his or her occupation, or improve his or her chances of promotion are deductible. Our policy on the deductibility of self-education expenditure has been consolidated in Taxation Ruling TR 92/8.

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117. On occasions, it is difficult to determine whether self-education expenses have a sufficient connection with income production to justify a deduction.

118. Generally there will be two situations where the self-education will be directly relevant to the taxpayer's income-earning activities:

- where the taxpayer earns income by exercising skill or some specific knowledge and the subject of the self-education enables the taxpayer to maintain or improve that skill or knowledge: or
- where the subject of self-education objectively leads to, or is likely to lead to, an increase in a taxpayer's income from his or her income-producing activities in the future.

119. The test for the deductibility of self-education expenses is whether the expenses are incurred in gaining or producing the assessable income (subsection 51(1)).

120. The following cases are examples of how the interpretative process has developed.

121. In *FC of T v. Finn* (1961) 106 CLR 60; 12 ATD 348 the taxpayer, who was a senior government architect, toured Europe, the United Kingdom and South America whilst on leave. He devoted all of his available time to studying the architecture of the places he visited. It should be noted that this was not an *ad hoc* tour as the taxpayer planned his tour before he went. He developed an extensive itinerary and corresponded with many of the people and places he proposed to, and did, visit.

122. With respect to the expenses being directly relevant to Finn's income-earning activities, he contended that the tour was undertaken to bring himself up to date with current trends and to further better his prospects of promotion.

123. In holding that the self-education was relevant and that the expenses were deductible, Kitto J stated:

'but it was nevertheless in my opinion incidentally to the proper execution of his office and not otherwise that he engaged in those activities. For the office was of a kind which by its nature made incumbent upon the occupant much more than the performance of set duties at set times. Its professional status implied an obligation of progressive acquaintance with a living and developing art.' (CLR at 69; ATD at 348).

124. The taxpayer was required to exercise a particular skill and the study tour made it possible for him to maintain his efficiency level when it came to carrying out that skill. (The likelihood of increased salary was relevant but the claim succeeded anyway)

125. In *FC of T v. Hatchett* 71 ATC 4184; (1971) 2 ATR 557; (1971) 125 CLR 494 the taxpayer was a school teacher who completed the Teacher's Higher Certificate (including a thesis) as well as some subjects of an Arts Degree. Possession of the Higher Certificate entitled him to an immediate payrise without any change in his duties. He was not successful in many of the Arts subjects he attempted.

126. In holding the costs of the Higher Certificate were deductible Menzies J stated:

'the possession of a Teacher's Higher Certificate would not only enable the taxpayer to earn more money in the Department in the future, it forthwith entitled him to be paid more money for doing the same work without any change in grade.' (ATC at 4186; ATR at 559; CLR at 498).

127. With respect to the university fees for the arts degree, it was considered that there was no connection between the fees paid and the earning of the taxpayer's assessable income. It was commented that a teacher with university qualifications is likely to be a better teacher and hence more likely for promotion. This is not sufficient to make the fees deductible though.

128. In *FC of T v. Highfield* 82 ATC 4463; (1982) 13 ATR 426 the taxpayer was a dentist involved in general practice with some emphasis on periodontic work. He spent a year in the United Kingdom completing a post-graduate degree in periodontics, his aim being to increase the amount of periodontic work done within his general practice.

129. The issue was whether or not he genuinely intended to use his qualifications to expand his existing general practice or to become a specialist. Lee J stated (ATC at 4468; ATR at 432): 'I am satisfied that his purpose in going to London was to use the knowledge, which he obtained, in the general advancement of his practice as a general practitioner'.

130. This being the case it was not discussed what the treatment would have been if the taxpayer had intended to set himself up as a specialist upon attainment of the qualifications. We believe he would have been opening up a new field of employment.

131. In *FC of T v. Studdert* 91 ATC 5006; (1991) 22 ATR 762 the taxpayer was a Qantas flight engineer who incurred costs on light aircraft flying lessons leading to a private pilot's licence. The Administrative Appeals Tribunal (AAT) decided that it was part of the taxpayer's duties to understand the overall workings of aircraft flight. The expenses were deductible because the lessons improved the taxpayer's proficiency in those duties.

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132. Hill J made a similar finding and commented that the taxpayer was better equipped to perform his skilled job and that better proficiency was a motivation for undertaking the lessons. His Honour also agreed that a deduction could be supported by the fact that the flying proficiency would assist the taxpayer in promotion to higher grades in his current job.

Expenses incurred too soon

133. Generally where an expense is incurred to obtain employment as opposed to being incurred in the course of employment, it will not be deductible. This proposition, based on subsection 51(1), is supported by the decision of the High Court in *FC of T v. Maddalena* 71 ATC 4161; (1971) 2 ATR 541. It then follows that where self-education is undertaken to get employment, to obtain new employment or to open a new field of income-producing activity no deduction is allowed because the expenses are incurred too soon to have any connection with any assessable income.

134. An example of the above can be found in *FC of T v. Roberts (MI)* 92 ATC 4787; (1992) 24 ATR 479. Taxpayer, after being retrenched, went to the United States of America to study for a Master's degree of Business Administration (MBA). Prior to completion he was offered a job which would be a promotion compared to his prior employment. Whilst the self-education may have enabled the taxpayer to secure the higher-paid employment, the expenses of that self-education represented the cost of obtaining employment. As such it was incurred at a point too soon to be regarded as incurred in the production of the assessable income. Similar reasoning was used to deny deductions in *C37* 71 ATC 166; 17 CTBR(NS) *Case 34: M42* 80 ATC 300; 24 CTBR(NS) *Case 15; T11*, 86 ATC 174; 29 CTBR(NS) *Case 13; W85*, 89 ATC 740; 20 ATR 5310.

Board and tribunal decisions

no increase or likely increase in salary

135. Where the self-education is not directly relevant to the taxpayer's income-earning activities, the expenses may be deductible where there is some likelihood of an increase in pay. As per the Higher Certificate in Hatchett if that increase in pay is too remote then the expenses will not be deductible. It is not sufficient that the taxpayer would be a better employee and hence more likely to be promoted.

136. An example of the above would be *R88* 84 ATC 595; 27 CTBR(NS) *Case 141* where a taxpayer, who was a safety officer, undertook a business degree. It was acknowledged, by the taxpayer, that the course did not directly relate to his income-earning activities but he hoped the studies would result in a promotion. The claim was

disallowed as the likelihood of a promotion or pay increase was too remote. Similar reasoning was used to deny deductions in *D28 72 ATC 165*; 17 CTBR(NS) *Case 34*; Q30 83 ATC 129; 26 CTBR(NS) *Case 94*; T87 86 ATC 1121.

insufficient link with current income-earning activities

137. Some courses of self-education may be relevant to current income-earning activities but only in a general sense, i.e. they may make the taxpayer better at their duties but do not have any specific relevance to those duties.

138. An example of this would be *H40 76 ATC 337*; 17 CTBR(NS) *Case 6* where the taxpayer, an industrial chemist, attended the Dale Carnegie Course in Effective Speaking and Human Relations. The taxpayer maintained the course would provide him with greater job satisfaction and equipped him to be a better supervisor. Whilst that may be true, the expenses had very little connection with the taxpayer's income-earning activities and this lack of connection denied their deductibility. Similar reasoning was used to deny deductions in *N77 81 ATC 399*; 25 CTBR(NS) *Case 31*; *N111 81 ATC 630*; 25 CTBR(NS) *Case 65*; *U101 87 ATC 616 (1986)*; *VI, 88 ATC 154*.

Taxpayer's intention

139. The use of the words 'to the extent' in subsection 51(1) indicate that a single outgoing may only be partially incurred for the purpose of producing income. Hence it is possible that the expenses of self-education may serve a dual purpose, i.e. an income-producing one and a private one. When this situation arises it will be necessary to apportion the expenditure between the two purposes, e.g. taxpayer attends a conference overseas but plans to stay on longer and have a holiday. It may be appropriate to apportion the airfare 50/50 if this accurately reflects the influence each purpose had over the taxpayer in deciding to go overseas (conference fees would be fully deductible).

140. If the main purpose of the self-education expenditure is related to gaining or producing assessable income and the private purpose is merely incidental, apportionment is not appropriate, e.g. taxpayer attends a conference because:

- it relates to his income-earning activities; and
- a work colleague from interstate is attending and thinks it would be a good opportunity to catch up with him.

The second private purpose is merely incidental to the first work-related purpose hence the conference fees would still be fully deductible.

141. If the income-producing purpose is merely incidental to the main private purpose then only the expenses directly attributable to the

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income-producing purpose are allowable, e.g. Phil, a psychiatric nurse, goes on an overseas holiday to the United Kingdom for two months. He is aware there is a psychiatric institution in two of the towns in which he will be holidaying and decides that he will visit them. He makes no plans prior to departure as to when he will conduct the visits. The main purpose of the trip is private and the work-related visits are merely incidental to that private purpose. As such no part of the airfare is deductible but the direct costs associated with attending the institutions will be.

Types of self-education expenses allowable

142. Subject to the general tests under subsection 51(1) being met, the following types of expenses related to self-education are allowable deductions under the subsection:

- course or tuition fees of attending an educational institution or of attending work-related conferences or seminars, including student union fees;
- the cost of textbooks, professional and trade journals, technical instruments and equipment and clerical activities (e.g. word-processing and photocopying);
- fares, accommodation and meal expenses incurred on overseas study tours, on work-related conferences or seminars attended away from a taxpayer's home or attending an educational institution away from the taxpayer's home;
- interest incurred on moneys borrowed to pay for the expenses listed above;
- deductions for the running expenses of a private study used in connection with self-education.

Types of self-education expenses not allowable

143. The following expenses related to self-education are not allowable under subsection 51(1):

- a Higher Education Contribution Scheme (HECS) payment.(subsection 51(6));
- meals purchased by a taxpayer while attending a course at an educational institution in the course of normal travel to and from home (*U215 87 ATC 1210; 18 ATR 140*).

Motor vehicle expenses

144. Motor vehicle expenses in relation to self-education may be claimed in the following circumstances:

- the taxpayer travels directly from work to the educational institution and directly back to work again: the cost of all the travel forms part of the cost of self-education;
- the taxpayer travels directly from home to the educational institution and then directly back home again: the cost of all of the travel forms part of the cost of self-education;
- the taxpayer travels from home to the educational institution and then to work: the cost of travel from home to the educational institution forms part of the cost of self-education: the cost of the travel from the educational institutional to work is not deductible;
- the taxpayer travels from work to the educational institution and then to home: the cost of travel from work to the educational institution forms part of the cost of self-education: the cost of travel from the educational institution to home is not deductible.

Limit on deductibility of self-education expenses

145. Where self-education expenses are allowable under subsection 51(1) of this Ruling, but also fall within the definition of 'expenses of self-education' in section 82A, the first \$250 is not deductible; i.e. only the excess of the expenses over \$250 is deductible.

146. 'Expenses of self-education are defined under section 82A as all expenses (other than HECS payments, open learning charges and debt repayments under the tertiary student financial supplement scheme) necessarily incurred by a taxpayer in connection with a course of education provided by a school, college, university or other place of education and undertaken by the taxpayer to gain qualifications for use in the carrying on of a profession, business, trade or in the course of any employment.

147. Where the expenses are allowable under subsection 51(1) and they are not expenses of self-education as defined, the full amount will be deductible.

Example:

148. A registered nurse holds a Diploma of Nursing. She decides to undertake study to advance her career prospects by completing a Bachelor of Nursing Degree. She incurs \$1470 in expenses whilst completing the course.

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149. The expenses associated with her study are allowable under subsection 51(1) as the degree is directly relevant to her income-earning activities. As the expenses also fall within the definition of expenses of self-education under section 82A, the total claim for the self-education expenses under subsection 51(1) is limited to \$1,220. The first \$250 is denied due to the operation of section 82A.

Example:

150. A registered nurse attends a two day conference run by the Transplant Nurses' Association. The conference is designed to keep her abreast of developments in the field of transplant nursing. The cost of the conference is \$500 and this includes the conference fees, travel to and from the conference as well as accommodation and meals whilst at the conference location.

151. The expenditure is deductible under subsection 51(1) but as they are not expenses of self-education under the definition in section 82A the full amount is deductible.

Other issues under section 82A

152. In order to qualify as a place of education, the provision of education and training must be the primary function. The following will represent self-education under section 82A:

- completion of a post-graduate qualification where there may be no formal course of instruction, e.g. Doctorate (*Q117 83 ATC 606; 27 CTBR(NS) Case 45*);
- completion of a course by correspondence where the syllabus and course objectives are set by a place of education (*T101 86 ATC 1176; 18 ATR 10*);
- completion of a course where there is no set standard to achieve, as long as it is conducted by a place of education (*S95 85 ATC 688; 29 CTBR(NS) Case 2*).

Agency nurses

153. An agency nurse is defined as a nurse who is not employed on a permanent (part- or full-time) basis by a hospital but rather works at a number of different hospitals via placements through an agency. This can include nurses who are already permanently employed at one hospital but who wish to work extra shifts and do so through the services of an agency.

154. It is considered that a nurse who works through an agency will not be able to claim that her home is her base of operations or a place of business. This will prevent any claim for deductions on the basis

that her home is a place of business. This principle is established in *FC of T v. Genys* 87 ATC 4875.

155. When a nurse signs with an agency, he or she is not employed by the agency but is employed by the hospital who uses his or her services. This means that the hospital is obligated under the pay as you earn (P.A.Y.E.) provisions to deduct the tax and the hospital remain the employer even if the agency deducts the tax. (see Taxation Ruling IT 2576).

156. As the agency nurse is employed by the hospital he or she will be unable to claim deductions that relate to gaining employment through an agency. This is because the expenditure would be incurred to secure employment and hence be incurred at a point to soon to be regarded as incurred in the gaining or production of assessable income. This principle was established in *FC of T v. Maddalena* 71 ATC 4161. Barwick CJ stated (ATC at 4162; ATR at 548): 'The cost to an employee of obtaining his employment does not form an outgoing incurred in the course of earning the wages payable in the employment.'

157. Deductions would be subsequently denied for the cost of: preparing a resume for the agency, telephone calls to the agency, purchasing or renting a beeper or pager, purchase of an answering machine and travel to and from hospitals.

158. The types of deductions allowable are those which relate directly to the earning of assessable income. This will include any tools and equipment purchased, stationery items and travel between two places of work. Expenses such as union fees and practicing certificate fees are allowable.

Agency commission

159. Where a hospital engages the services of a nurse through an agency, the agency is remunerated by way of a commission. The amount will be a percentage of what the nurse is paid. This amount will not be an allowable deduction to the nurse unless he or she actually incurs the expense.

Example:

160. A nurse works one night at a hospital and the total remuneration is \$100. The nurse must pay 8% commission to the agency which is \$8. Hence his or her assessable income will include the \$100 but the \$8 commission is an allowable deduction.

Example:

161. As per the above but the hospital pays the nurse \$100 and then pays the agency its commission of \$8. In this situation the nurse cannot claim the \$8 as an allowable deduction because the amount is

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not included in her assessable income. The expense has been incurred by the hospital and not the nurse. She has not sacrificed any of her pay to the agency as she has received the full \$100.

Agency fees

162. Where a nurse is required to pay an up-front, joining or search fee to the agency, this amount is not deductible. It is incurred too soon to be regarded as incurred in the production of assessable income. It is a cost of obtaining employment rather than a cost incurred in the course of employment. This will be so regardless of how any such fee is described.

Tools and equipment

Watches

163. A deduction for the depreciation of nurses' fob watches are allowable, under subsection 51(1). Where the cost of the fob watch is less than \$300 an immediate 100% depreciation deduction is available under subsection 55(2). Expenses incurred in the purchase of batteries and for repairs and maintenance of fob watches are also deductible under subsection 51(1).

164. Expenses associated with the costs and repair of a conventional wrist watch are not deductible; it is considered that this expenditure is of a private and domestic nature.

165. In *Case S82 85 ATC 608*; 28 CTBR(NS) *Case 87* a qualified nurse was denied the costs associated with the replacement of a conventional wrist watch. Regardless of statements made by the taxpayer, that the watch (which had a second hand) was specifically purchased for, and used constantly, in her work, as well as being worn at other times, it was determined that the such expenditure was private in nature.

166. In *Case P71 82 ATC 338*; 26 CTBR (NS) *Case 3* an ambulance officer was denied a deduction for the cost of a digital wrist watch. It was determined that the expense was essentially of a private nature and not incurred in gaining assessable income. 'The evidence does not provide any basis either for concluding that the taxpayer's employment would be threatened by his failure to own a watch and use it for that purpose...' (ATC at 341; CTBR at 17).

167. In *Case N84 81 ATC 451*; 25 CTBR (NS) *Case 43* a television cameraman was denied a deduction for the cost of a normal digital watch. It was determined that the watch did not possess any 'special attributes to take it out of the category of private outlays' and although the item was 'used by the taxpayer in his work, the fact did not change

their essential character as private expenditures' (ATC at .453; CTBR at .309).

Calculators or electronic work organisers

168. The cost or replacement cost of calculators and electronic work organisers, used for work-related purposes, are allowable as an outright depreciation deduction where the expenditure on the item is less than \$300 or the effective life of the item is less than three years.

169. Costs incurred in the purchase of batteries and in repairs and maintenance are allowable under subsection 51(1).

170. If the calculator or electronic work organiser is used partly for work-related purposes, only a proportionate deduction is allowable.

171. Where a nurse is supplied with a calculator or work organiser but chooses to purchase his or her own calculator which he or she finds more functional than the one supplied, he or she would be entitled to claim a deduction in accordance with paragraphs 98 and 100.

Scissors, clamps, stethoscopes etc

172. Equipment such as scissors, clamps and stethoscope purchased for use in the ordinary course of duties are an allowable deduction under subsection 51(1). No deduction allowed for expenses to the extent to which they reimbursed by the employer or where they constitute expenditure of a capital, private or domestic nature.

Stationery, pens, diaries

173. Expenses incurred on the purchase of stationery, diaries, paper, and pens which are used for work-related purposes are allowable under subsection 51(1).

174. Expenses incurred by nurses in purchasing computers and related software for work-related purposes are allowable deductions under subsection 51(1) or section 54.

175. By way of example; a unit manager may use a computer in his or her home office for the preparation of reports or rosters; or a clinical teacher may use his or her private computer to prepare course materials.

176. A deduction for depreciation on the computer can be made under section 54; the claim should be apportioned to the extent that the computer is used for private purposes.

177. The purchase of software is an allowable deduction in the year of purchase. The deduction is to be apportioned on a business and private usage. Taxation Ruling IT 26 provides further information on the deductibility of software expenses.

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Library and reference books

178. A deduction by way of depreciation is allowable for reference books and text books under section 54, where the content of such reference materials are directly related to the duties of the nurse, and such materials are used to update knowledge of current developments in the medical field.

Miscellaneous items

Journals and subscriptions

179. A deduction is allowable under subsection 51(1) for the purchase or subscription cost of journals, periodicals and magazines which have a content specifically related to a nurse's employment-related activities. Expenditure on magazines such as *Time*, *The Bulletin*, *National Geographic* and *Reader's Digest* are not allowable as they are general interest publications.

180. In *Case R70 84 ATC 493*; *27 CTBR(NS) Case 124* a supervisor in the Commonwealth Auditor-General's Department was allowed deductions for the cost of specific issues of *The National Times* and *The Financial Review*. It was found that there was a sufficient connection existing between the duties carried out by the taxpayer and the content of these specific publications. A deduction for the cost of the local newspaper, *The Canberra Times*, was disallowed as the expense was essentially private in nature.

Union fees

181. A periodical subscription by a nurse to a trade union or similar association is deductible under subsection 51(1): and in accordance with Taxation Ruling IT 327, on the basis that the principal objective of such a union or association is the gaining of higher salaries and improved working conditions for members.

Annual practicing certificate fees

182. Where a nurse is required to obtain a Practicing Certificate, the cost of such is considered deductible under subsection 51(1), as costs relevant and incidental to the earning of assessable income.

Sickness and accident insurance

183. Premiums paid by nurses under a sickness and accident policy may be deductible depending on the benefits obtained during the period of the incapacity.

184. If the benefits received during the period of incapacity are periodic payments (i.e. weekly, monthly) then a deduction is allowable for the premiums paid. The periodic payments are considered to be income in nature.

185. If the benefit received during the period of incapacity is a lump sum payment, then generally no deduction is allowable for the premiums paid as the lump sum payment is considered to be capital in nature.

186. If the benefits received during the period of incapacity are a combination of both periodic payments and lump sum payment, then a deduction is allowable for that portion of the premiums applicable to the periodic payments.

187. This decision is confirmed in *J45 77 ATC 417* and *FC of T v. Smith* 81 ATC 4114. Taxation Ruling IT 208, Taxation Ruling IT 2230, Taxation Ruling IT 2370 and Taxation Ruling IT 2460 provide further information on the deductibility of sickness and accident premiums.

Date of effect

188. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling 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 Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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