TR 95/D2 - Income tax: hospitality industry employees - allowances, reimbursements and work-related deductions

This cover sheet is provided for information only. It does not form part of *TR 95/D2 - Income tax: hospitality industry employees - allowances, reimbursements and work-related deductions*

This document has been finalised by TR 95/11.

Draft Taxation Ruling
Income tax: hospitality industry employees - allowances, reimbursements and work-related deductions

other Rulings on this topic

IT 112; IT 327; IT 2062; IT 2199; IT 2406; IT 2416; IT 2452; IT 2477, IT 2481; IT 2493; IT 2543; IT 2566; IT 2614; IT 2641; IT 2673; IT 2685; MT 2027; TR 92/8; TR 92/15; TR 92/20; TR 93/24; TR 93/30; TR 94/22; TR 94/23; TD 92/142; TD 92/154; TD 92/157; TD 93/101; TD 93/108; TD 93/111; TD 93/113; TD 93/145; TD 93/159; TD 93/174; TD 93/232; TD 93/244

contents para

What this Ruling is about 1
Date of effect 9
Ruling 11
Explanations 22
Index of explanations 178

Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office.

DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings which represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office.

What this Ruling is about

Class of person/arrangement

1. This Ruling applies to employees in the hospitality industry (hospitality employees). For the purposes of this Ruling hospitality employees are chefs (and other cooks), waiters, waitresses and bartenders.

2. This Ruling deals with:

   (a) the assessability of allowances and reimbursements; and

   (b) deductions for work-related expenses generally claimed by hospitality employees.

3. The Ruling discusses the assessability of allowances and reimbursements under section 25 and paragraphs 26(e) and 26(eaa) of the *Income Tax Assessment Act 1936* (the Act).

4. The Ruling also discusses whether deductions are allowable or are specifically excluded or limited under subsections 51(1), 51(4) or 51(6), or sections 51AGA, 51AH, 51AL, 53, 54, 55, 61 or 82A of the Act.

5. The tax treatment of allowances and reimbursements received is examined at paragraphs 11 to 17 in the **Ruling** section.

6. The common work-related expenses incurred by hospitality employees and the extent to which they are allowable deductions are discussed at paragraph 21 in the **Ruling** section in alphabetical order.

7. The substantiation provisions are not discussed in depth in this Ruling.

8. Further explanation about specific deduction items in the **Ruling** section is contained in the **Explanations** section at the paragraph references indicated.

Date of effect

9. 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).

10. If a taxpayer has a more favourable private ruling (whether legally or administratively binding), this Ruling applies to that taxpayer to the extent of the inconsistency only from and including the 1995-96 year of income.

Ruling

Allowances

11. The receipt of an allowance does not automatically entitle hospitality employees to a deduction. The term 'allowance' does not include a reimbursement (see paragraphs 14 to 18).

12. Allowances fall into the following categories:

(a) fully assessable to the employee with a possible deduction allowable, depending upon individual circumstances (not normally paid to hospitality industry employees);

(b) fully assessable to the employee with no deduction allowable even though an allowance is received (not normally paid to hospitality industry employees);

(c) fully assessable to the employee with a deduction allowable for expenses incurred:

(i) up to the extent of the allowance without substantiation; or

(ii) in excess of the allowance, subject to substantiation of the whole claim

(paragraphs 13 and 34);

(d) not assessable to the employee because the employer is required to pay Fringe Benefits Tax. A deduction is not allowable to the employee for expenses incurred against such an allowance (not normally paid to hospitality industry employees).

13. Allowances commonly received by hospitality employees are listed below.

Fares Allowance: A deduction is allowable for work related travel expenses incurred in connection with the allowance (paragraph 36).

Overtime Meal Allowance: A deduction is allowable equal to the amount of the allowance if it is paid pursuant to an industrial award and the meal expenses are not private in nature (paragraphs 36 and 133 to 136).

Tool Allowance: This allowance is paid to hospitality employees employed on a weekly basis who are required to provide their own tools under an industrial award. A deduction for the depreciation of the cost of tools is allowed immediately if the cost of each tool is $300 or less, or its effective life is less than three years (paragraphs 36 and 170).

Reimbursements

14. If a hospitality employee receives a payment from his or her employer for **actual** expenses incurred, the payment is a reimbursement and the employer may be subject to Fringe Benefits Tax. Generally, if a hospitality employee receives a reimbursement, the amount is not required to be included in his or her assessable income and a deduction is not allowable (see Taxation Ruling TR 92/15).

15. However, if motor vehicle expenses are reimbursed by an employer on a cents per kilometre basis, the amount is included as assessable income of the hospitality employee under paragraph 26(eaa) of the Act and a deduction may be allowable to the employee for the actual expenses incurred (see ***Motor Vehicle and other transport expenses***, paragraph 117).

16. If the reimbursement by an employer is for the cost of a depreciable item (e.g. tools and equipment), a deduction is allowable to the hospitality employee for depreciation (see Taxation

Determination TD 93/145 and ***Depreciation of equipment***, paragraphs 84 to 93 of this Ruling).

17. If a payment is received from an employer for an **estimated** expense, the amount received by the hospitality employee is considered to be an allowance (not a reimbursement) and is fully assessable to the hospitality employee (see **Allowances**, paragraphs 11 to 13).

Tips

18. Other income commonly received by hospitality employees is 'tips'. The receipt of 'tips' is assessable income under paragraph 26(e) of the Act (see paragraphs 37 to 40).

Deductions

19. A deduction is only allowable if an expense:

(a) is actually incurred (see paragraph 23);

(b) meets the deductibility tests (see paragraphs 24 to 31); and

(c) satisfies the substantiation rules (see paragraphs 32 and 33).

20. If an expense is incurred partly for work purposes and partly for private purposes, only the work-related portion is an allowable deduction.

21. The common work-related expenses incurred by hospitality employees and the extent to which they are allowable deductions are discussed below, in alphabetical order.

Calculators and electronic organisers: A deduction is allowable for the work-related portion of depreciation on the purchase price of these items (see paragraphs 41 to 43).

Answering machines, mobile phones, pagers, beepers and other telecommunications equipment: A deduction is not allowable when these items are supplied by the employer. If they are not supplied, a deduction is allowable for the rental cost or for depreciation on the purchase price to the extent of the work-related use of the item.

Child care expenses: A deduction for child care expenses is not allowable (see paragraphs 44 to 46).

Clothing, uniforms and footwear: A deduction is allowable for the cost of buying, renting or replacing clothing, uniforms or footwear if these items are:

(a) protective;

(b) occupation specific;

(c) compulsory and meet the requirements of Taxation Ruling IT 2641;

(d) non-compulsory and registered with the Textile Clothing Footwear Development Authority (TCFDA) or approved in writing by the Australian Taxation Office (ATO); or

(e) conventional, but satisfy the deductibility tests as explained in Taxation Ruling TR 94/22

(see paragraphs 47 to 74).

Computers and software: A deduction is allowable by way of depreciation on computers and related software used for work-related purposes. If the related software is purchased separately from the computer, the portion of the cost that relates to work-related purposes is deductible in full in the year of purchase (see paragraphs 75 to 77).

Conferences seminars and training courses: A deduction is allowable for the cost of attending conferences, seminars and training courses to maintain or increase the knowledge, ability or skills in the hospitality industry (see paragraphs 78 to 83).

Depreciation of equipment: A deduction for depreciation is allowable only to the extent of the work-related use of the equipment (see paragraphs 84 to 93).

Driver's licence: A deduction is not allowable for the cost of acquiring or renewing a driver's licence (see paragraphs 94 to 96).

Fares: A deduction is allowable for the cost of public transport used for travelling for work related purposes (see paragraph 97 relating to ***Motor vehicle and other transport expenses***).

Fines: A deduction is not allowable for fines imposed under any law of the Commonwealth, a State, a Territory, a foreign country, or by a court (see paragraph 98).

Gaming licence: A deduction is allowed for costs incurred in renewing a special employee's licence. A deduction is not allowable for the cost of obtaining this licence (see paragraph 99).

Glasses/contact lenses: A deduction is not allowable for the cost of buying prescription glasses or contact lenses. A deduction is allowable for the cost of safety glasses (see paragraph 100).

Grooming: A deduction is not allowable for costs incurred on grooming, including cosmetics and skin care (see paragraphs 101 to 102).

Home office expenses : See paragraphs 103 to 110.

Private study: A deduction is allowed for the running expenses of a private study if work is performed at home (see paragraphs 106 to 110).

Place of business: A deduction is allowed for running and occupancy expenses if an area of the home has the character of a place of business (see paragraphs 104 to 105).

Laundry and maintenance of clothing, uniforms and footwear: A deduction is allowable for the cost of laundry and maintenance of supplied or purchased clothing, uniforms or footwear if these items are of a kind described under ***Clothing, uniforms and footwear*** (see paragraphs 73 to 74).

Meals: A deduction is not allowable for the cost of meals eaten during a normal working day, as meal expenses are considered to be private (see paragraphs 111 to 116). If an award overtime meal allowance has been paid, a deduction may be allowable (see paragraphs 133 to 136). If meal costs are incurred by a hospitality employee who travels for work-related purposes, the cost of meals may be deductible (see paragraphs 171 to 175).

Motor vehicle and other transport expenses:

Transport expenses: Transport expenses include public transport fares, and the costs associated with using a motor vehicle, motor cycle, bicycle, etc. They do not include meals, accommodation and incidental expenses (see ***Travel expenses*** at paragraphs 171 to 175). The deductibility of motor vehicle and transport expenses incurred by a hospitality employee when travelling is considered below.

Travel between home and work: A deduction is not allowable for the cost of travel from home to the normal place of employment as it is generally considered to be a private expense (see paragraphs 118 to 120). The principle is not altered by the performance of incidental tasks en route.

Travel to and from normal work place but transporting bulky equipment: A deduction is allowable if the travel can be attributed to the transportation of bulky equipment rather than to private travel from home to work (see paragraphs 121 to 122).

Travel between two separate work places if there are two separate employers involved: A deduction is allowable for the cost of travelling directly between two places of employment (see paragraph 123).

Travel from the normal work place to an alternate work place while still on duty and back to the normal work place or directly home: A deduction is allowable for the cost of travel from the normal place of

employment to an alternative location (other than the hospitality employee's home). A deduction is also allowable for the cost of travel from the alternative location back to the normal place of employment or directly home. This travel is undertaken in the course of gaining assessable income and the cost is allowable as a deduction (see paragraph 124).

Travel from home to an alternate work place for work related purposes and back to the normal work place or directly home: A deduction is allowable for the cost of travel from home to an alternative place of employment and then onto the normal place of employment or directly home (see paragraph 125).

Travel between two places of employment or between a place of employment and a place of business: A deduction is allowed for the cost of travelling directly between two places of employment or a place of employment and a place of business provided that the person does not live at either of the places and the travel is undertaken for the purpose of engaging in work-related activities (see paragraphs 126 to 130).

Travel to a place of education: The cost of travel between home and the place of education and back home again is deductible. The cost of travel between work and the place of education and back to work again is deductible. If the hospitality employee travels from home to the place of education and then on to work, only the first leg of the trip is deductible. If the hospitality employee travels from work to the place of education and then home, only the first leg of the trip is deductible (see paragraph 153).

Travel accompanied by a relative: Section 51AG of the Act may affect the deductibility of expenses if relatives accompany a hospitality employee on work-related travel (see paragraph 176).

Depreciation cost limit for motor vehicles: Section 57AF of the Act imposes a limit on the depreciable cost base of motor cars (including station wagons and four-wheel drive vehicles) if the acquisition cost is greater than a specified amount. The depreciable cost base limit applies to both new and second hand vehicles (see Taxation Ruling TR 93/24).

Calculation of motor vehicle balancing adjustment: A depreciation balancing adjustment may be necessary on the disposal of a motor vehicle that has been used for work-related activities (see Taxation Ruling IT 2493).

Parking fees and tolls: A deduction is allowable for the cost of parking fees (but not fines) and tolls when travelling for work-related purposes (see paragraphs 137 and 138).

Professional library: A deduction is allowable for the depreciation of a professional library provided the content of the reference books is directly relevant to the duties performed (see paragraphs 139 to 143).

Removal and relocation expenses: A deduction is not allowable for costs incurred in taking up a transfer in existing employment or in taking up new employment with a different employer (see paragraphs 144 to 148).

Repairs to equipment: A deduction is allowable for the cost of repairs to tools and equipment (see paragraphs 149 and 150).

Self education expenses: A deduction is allowable for the cost of self education if there is a direct connection between the self education and the income earning activities. Self education costs can include fees, travel, books and equipment (see paragraphs 151 to 155). If self education expenses are allowable but also fall within the definition of 'expenses of self education' in section 82A, the first $250 is not deductible (see paragraphs 156 to 158).

Technical or professional publications: A deduction is allowable for the purchase or subscription cost of journals, periodicals and magazines that have a content specifically related to a hospitality employee's employment and are not general in nature (see paragraphs 159 to 161).

Telephone, mobile phone, pager, beeper and other telecommunications expenses:

Cost of calls: A deduction is allowable for the cost of work-related calls (see paragraphs 162 and 163).

Installation or connection costs: A deduction is not allowable for the cost of installing a telephone, etc., as it is a capital expense (see paragraphs 164 and 165).

Rental costs: A deduction is allowable for a proportion of telephone rental costs if an employee can demonstrate that he or she is 'on call', or required to telephone their employer on a regular basis, or frequently required to contact clients while away from the office (see paragraphs 166 to 168).

Silent telephone numbers: A deduction is not allowable for the cost of obtaining a silent telephone number (see paragraph 169).

Travel expenses: A deduction is allowable for the cost of travel expenses (fares, accommodation, meals and incidentals) incurred by hospitality employees when travelling in the course of employment, e.g. travel interstate (see paragraphs 171 and 172). Special substantiation rules apply (see paragraphs 173 to 175).

Unions or professional associations fees: A deduction is allowable for union or professional association fees (see paragraph 177).

Explanations

Deductibility of work-related expenditure

22. In short, a deduction is allowable if an expense:

(a) is actually incurred;

(b) meets the deductibility tests; and

(c) satisfies the substantiation rules.

Expense actually incurred

23. The expense must actually be incurred by the hospitality employee to be considered for deductibility. A deduction is not allowable for expenses not incurred by a hospitality employee, e.g., if items are provided free of charge. Under section 51AH of the Act, a deduction is not generally allowable if expenses are reimbursed (see paragraphs 14 to 17 for exceptions to this rule).

Expenses meet deductibility tests

24. The basic tests for deductibility of work-related expenses are in subsection 51(1) of the Act. It says:

> 'All losses and outgoings to the extent to which they are incurred in gaining or producing the assessable income, or are necessarily incurred in carrying on a business for the purpose of gaining or producing such income, shall be allowable deductions except to the extent to which they are losses or outgoings of capital, or of a capital, private or domestic nature, or are incurred in relation to the gaining or production of exempt income.'

25. A number of significant court decisions have determined that, for an expense to satisfy the tests in subsection 51(1):

(a) it must have the **essential character** of an outgoing incurred in gaining assessable income or, in other words, of an income-producing expense (*Lunney v. FC of T; Hayley v. FC of T* (1958) 100 CLR 478; 11 ATD 404) (*Lunney's* case)).

(b) there must be a **nexus** between the outgoing and the assessable income so that the outgoing is **incidental and**

relevant to the gaining of assessable income (*Ronpibon Tin NL v. FC of T* (1949) 78 CLR 47; 8 ATD 431);

(c) it is necessary to determine the **connection** between the particular outgoing and the operations or activities by which the taxpayer most directly gains or produces his or her assessable income (*Charles Moore & Co (WA) Pty Ltd v. FC of T* (1956) 95 CLR 344; 11 ATD 147; 6 AITR 379; *FC of T v. Cooper* 91 ATC 4396; (1991) 21 ATR 1616 (*Cooper's* case); *Roads and Traffic Authority of NSW v. FC of T* 93 ATC 4508; (1993) 26 ATR 76; *FC of T v. Hatchett* 71 ATC 4184; 2 ATR 557).

26. A deduction will be denied under the exclusionary clauses of subsection 51(1) of the Act if the expense is incurred for an item that is either:

(a) private or domestic in nature (e.g. sunscreen or driver's licence);

(b) capital, or capital in nature (e.g. purchase of a computer); or

(c) incurred in earning tax exempt income (e.g. income of Army Reserve personnel).

27. Private or domestic expenditure is considered to include costs of living such as food, drink, shelter and clothing. In *Case T47* 18 TBRD (NS) 242; 14 CTBR (NS) *Case 56*, J F McCaffrey stated (TBRD at 243; CTBR at 307):

> 'In order to live normally in our society, it is requisite that individual members thereof be clothed, whether or not they go out to work. In general, expenditure thereon is properly characterised as a personal or living expense...'

28. The fact that an expense is voluntarily incurred by a hospitality employee does not preclude it from being deductible (see Taxation Ruling IT 2198).

29. The fact that an expense is incurred by a hospitality employee at the direction of his or her employer does not mean that a deduction is automatically allowable.

30. In *Cooper's* case, Hill J said (ATC at 4414; ATR at 1636):

> '...the fact that the employee is required, as a term of his employment, to incur a particular expenditure does not convert expenditure that is not incurred in the course of the income producing operations into a deductible outgoing.'

31. In *Cooper's* case a professional footballer was denied the cost of purchasing food and drink. His coach had instructed him to consume

additional food, so he would not lose weight during the football season. The character of the expense was private.

Expense satisfies the substantiation rules

32. The income tax law requires substantiation of certain work-related expenses. If the total of these expenses exceeds $300, the records that must be kept include receipts, invoices or similar documents, diaries or log books (e.g. in relation to car expenses).

33. A deduction is not allowable if the substantiation requirements are not met.

Allowances

34. Allowances are taxable under paragraph 26(e) of the Act and must be included as assessable income when completing a tax return for the relevant year.

35. Payments by way of allowances do not necessarily entitle the employee to a deduction. The receipt of an allowance imparts no greater degree of deductibility to an expense that is incurred in relation to that allowance. This is so even if the allowance is paid under an industrial award. It is the nature of the outgoing itself that determines whether the expenditure is deductible under subsection 51(1) of the Act.

36. Can tax deductions be claimed by hospitality employees against allowances received?

Allowance	*Why is it paid?*	*Can deductions be claimed?*
Fares Allowance	Paid for fares, car expenses or other transport costs incurred in travelling between two places of work under an industrial award	Yes. Deductions may be allowable to a hospitality employee whose duties require him or her to travel between two places of work. TD 93/174 and IT 2543 provide further information on the deductibility of travelling expenses.
Overtime Meal Allowance	Paid in respect of overtime meals under an industrial award	Yes. A deduction may be allowable for the cost of meals bought while working overtime. Special substantiation rules apply.
Tool Allowance	Paid to a cook who is required to provide his/her own tools under an industrial award	Yes. A deduction is allowable for the cost of purchasing tools. If the cost of each tool is more than $300, or its effective life is more than three years, the item should be depreciated.

Tips

37. Tips paid to hospitality employees are treated as gratuities under paragraph 26(e) of the Act and are assessable income.

38. It is immaterial whether a payment is made by the employer or a third party, provided that it is incidental to the employment.

39. In *FC of T v. Dixon* (1953) 86 CLR 540; 10 ATD 82, Dixon CJ and William J said (CLR at 556; ATD at 85):

> 'Indeed, it is clear that if payments are really incidental to an employment, it is unimportant whether they come from the employer or from somebody else and are obtained as of right or merely as a recognised incident of the employment or work.'

40. Thus, the following tips made by persons other than the employer, have been held to be assessable income:

- amounts received by a railway dining car waiter - *Penn v. Spiers & Pond Ltd* [1908] 1 KB 766;
- amounts received by a railway porter - *Great Western Railway Co. v. Helps* [1918] AC 141; and

- amounts received by a taxi driver - *Calvert v. Wainwright* (1947) 27 TC 475.

Common work-related expense claims

Calculators or electronic work organisers

41. A deduction is allowable for the work-related portion of depreciation of the cost of calculators and electronic work organisers, used for work-related purposes. If the cost of the item is less than $300, or the effective life of the item is less than three years then an outright deduction is allowable. If the cost of the item is greater than $300, or the effective life of the item is greater than three years, the item may be depreciated (see ***Depreciation of Equipment***, paragraphs 84 to 93).

42. A deduction is allowable for costs incurred in purchasing batteries, and for repairs and maintenance to calculators or electronic work organisers.

43. A deduction is allowable if a hospitality employee chooses to purchase a calculator or work organiser that the hospitality employee finds more functional than the one supplied by the employer.

Child care expenses

44. A deduction for child care expenses is not allowable under subsection 51(1) of the Act, even if it is a prerequisite for a taxpayer to obtain and pay for child care so that he or she can go to work and earn income. Similarly, these expenses are also not deductible if incurred by a hospitality employee to undertake studies relevant to his or her employment.

45. The High Court held in *Lodge v. FC of T* (1972) 128 CLR 171; 72 ATC 4174; 3 ATR 254, that child care expenditure was neither relevant nor incidental to gaining or producing assessable income and therefore not deductible. The expenditure was also of a private or domestic nature (see also *Jayatilake v. FC of T* (1991) 101 ALR 11; 91 ATC 4516; (1991) 22 ATR 125).

46. Taxation Determination TD 92/154 provides further information about these expenses.

Clothing, uniforms and footwear

47. A deduction is allowable for the cost of buying, renting or replacing clothing, uniforms and footwear ('clothing') if:

(a) the clothing is **protective** in nature;

(b) the clothing is **occupation specific** and not conventional in nature;

(c) the clothing is a **compulsory uniform** and satisfies the requirements of Taxation Ruling IT 2641;

(d) the clothing is a **non-compulsory uniform** or wardrobe that has been either:

(i) entered on the Register of Approved Occupational Clothing of the TCFDA; or

(ii) approved in writing by the ATO under the transitional arrangements contained in section 51AL of the Act (all such approvals cease to have effect from 1 July 1995); or

(e) the clothing is **conventional** and the taxpayer is able to show that:

(i) the expenditure on the clothing has the essential character of an outgoing incurred in gaining or producing assessable income;

(ii) there is a nexus between the outgoing and the assessable income so that the outgoing is incidental and relevant to the gaining of assessable income; and

(iii) the expenditure is not of a private nature

(see Taxation Ruling TR 94/22 covering the decision in *FC of T v. Edwards* 94 ATC 4255; (1994) 28 ATR 87 (*Edwards* case)).

Protective clothing

48. Protective clothing must satisfy the deductibility tests in subsection 51(1) of the Act and must not be private or domestic in nature.

49. Hospitality employees may be provided with protective clothing by their employer (e.g. aprons for the protection of their conventional clothing). Hospitality employees may also buy additional items of protective clothing and the cost of this clothing is an allowable deduction under subsection 51(1).

50. It is considered that heavy duty conventional clothing such as jeans, drill shirts and trousers is not protective. We consider that the cost of these items is a private expense and is not an allowable deduction (see Taxation Determination TD 92/157).

51. A deduction is not allowable for the cost of conventional footwear such as running shoes, sports shoes and casual shoes, as it is not considered to be protective. We consider that the cost of this footwear is a private expense and is not an allowable deduction. A deduction is allowable for expenditure on protective footwear such as steel-capped boots.

52. A deduction is not allowable for the cost of items that provide protection from the natural environment (e.g. sunglasses, sunhats, sunscreen, raincoats, umbrellas and thermal underwear). The cost of these items is considered to be a private expense. This view is supported in *Case Q11* 83 ATC 41; 26 CTBR (NS) *Case 75* and in *Case N84* 81 ATC 451; 25 CTBR (NS) *Case 43* (see also Taxation Ruling IT 2477 and Taxation Determination TD 93/244).

53. In *Case Q11* the taxpayer was a self-employed lawn mowing contractor. Amongst other things, he claimed the cost of transistor batteries and sunscreen lotions. Dr G W Beck (Member) said (at ATC 43; CTBR at 525):

> '...a man catering for his desire to listen to music and protecting himself from skin damage is acting in a private capacity and the expenditure is thus of a private nature and excluded by sec. 51...'

Although this taxpayer was self-employed, the same deductibility tests as set out in paragraphs 24 to 31 applied.

54. A deduction is allowable if a hospitality employee wears an apron to protect their clothing from spillages, etc.

Occupation specific clothing

55. Occupation specific clothing must be distinctive and unique, in the sense that by its nature or physical condition it is readily identified as belonging to a particular profession, trade, vocation, occupation or calling (subsection 51AL(26) of the Act).

56. The clothing must be non-conventional in nature to fall within this category, i.e. it is not clothing that can be described as ordinary clothing of a type usually worn by men and women regardless of their occupation. Examples of clothing that are considered to be occupation specific are nurses' traditional uniforms, **chefs' checked pants** and a religious cleric's ceremonial robes.

57. Clothing that could belong to a number of occupations would not fall within the definition of occupation specific clothing. An example of this is a white jacket or coat worn with white trousers. While black trousers (or black skirt) and white shirt may indicate that the wearer belongs to the hospitality industry, it is not sufficiently distinctive in design or appearance to readily identify the specific or

particular occupation of the wearer. The wearer could be a shop assistant, an orchestra member or a member of a number of other occupations.

58. Expenditure on a traditional chef's uniform (for example a set of clothing consisting of a chef's hat, chef's checked pants, a chef's white jacket (long sleeved; double breasted with the traditional number of white buttons; and double cuffed) and a white neckerchief (neck tie)) is deductible under subsection 51(1) of the Act. This is because the clothing is considered to be peculiar to and incidental and relevant to, the gaining of assessable income from the specific occupation of cooking.

59. A waiter's uniform (e.g. consisting of a white shirt worn with black trousers or pants) is not considered to be occupation specific clothing (for the reasons mentioned in paragraph 55). However, the cost of the items may be deductible under subsection 51(1) if:

(a) it is a compulsory uniform or wardrobe that satisfies the requirements of Taxation Ruling IT 2641; or

(b) it is a non-compulsory uniform or wardrobe that has been registered or approved in accordance with paragraphs 65 and 66.

Compulsory uniform or wardrobe

60. A 'corporate' uniform or wardrobe (as detailed in Taxation Ruling IT 2641) is a collection of inter-related items of clothing and accessories that are unique and distinctive to a particular organisation. It is not sufficient that clothing be compulsory, it must still qualify as a uniform. It must possess that level of uniqueness and distinctiveness to fall within the ordinary meaning of the word uniform. It is not considered that a hospitality employee's black pants and white shirts would qualify as an uniform.

61. Paragraph 10 of IT 2641 lists the factors to be considered in determining whether clothing constitutes a 'corporate' wardrobe or uniform.

62. 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).

63. 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' (ATC at 580).

64. If a uniform is provided free of charge to a hospitality employee by their employer and the uniform remains at the employer's premises where it is laundered and maintained, a deduction is not allowable. The employer is generally not subject to Fringe Benefits Tax in these circumstances as there is no private usage. The same principle would apply if the clothing, provided free of charge and remaining at the employer's premises, was not a uniform.

Non-compulsory uniform or wardrobe

65. A deduction is not allowable for the purchase and maintenance costs of a non-complusory uniform or wardrobe **unless** the conditions outlined in section 51AF of the Act are met. This section provides that expenditure on a non-compulsory uniform or wardrobe will be allowable under subsection 51(1), only if the design of the clothing has been entered on the Register of Approved Occupational Clothing kept by the TCFDA, or if the design of the clothing is approved in writing by the ATO under Taxation Ruling IT 2641. Transitional arrangements enabling the ATO to approve designs of non-compulsory uniforms and wardrobes will expire on 30 June 1995.

66. If hospitality employees are provided with uniforms by their employers, that bear the employer's logo, and it is not compulsory to wear the uniform, no deduction is allowable unless the uniform is approved or registered.

Conventional Clothing

67. The views of the Tax Office on the deductibility of costs of buying and maintaining conventional clothing are set out in Taxation Ruling TR 94/22. That Ruling sets out our views on the implications of the decision of the Full Federal Court of Australia in *Edwards* case. Mrs Edwards was the personal secretary to the wife of a former Queensland Governor. She was able to establish that her additional clothing expenses were allowable in her particular circumstances. In most cases, expenses for conventional clothing will not meet the deductibility tests of subsection 51(1) of the Act as they are of a private nature (see also paragraphs 27 and 28).

68. There are a number of cases that support the general principle that the costs of conventional clothing do not meet the deductibility tests of subsection 51(1) of the Act.

69. In *Case 48/94* 94 ATC 422; *AAT Case 9679* (1994) 29 ATR 1077, a self-employed professional presenter and speaker was denied a deduction for the cost of conventional clothing. The taxpayer gave evidence that she maintained a separate wardrobe to meet her work requirements, and that she used this wardrobe exclusively in relation to her work. Sometimes, a client would request that she dress in a specific manner when performing a presentation. Her image was of vital importance in both securing and performing her duties, and her clothes were an aspect of her image. The taxpayer submitted to the Tribunal that her matter could be paralleled to the facts in the *Edwards* case.

70. Senior Member Barbour distinguished this case from the *Edwards* case on the basis of the emphasis placed by the Tribunal and Court on Mrs Edwards' additional changes of clothes throughout a work day - a fact not present in this one - and found the essential character of the expense to be private, saying (ATC at 427; ATR at 1082):

> 'While the A list clothes [those used exclusively for work] assisted in creating an image compatible with the applicant's perceptions of her clients' and audiences' expectations, her activities productive of income did not turn upon her wearing A list clothes, however important the applicant may have perceived these clothes to be in her presentation activities. There is not the requisite nexus between her income-earning activities and the A list clothing expenses.'

Senior Member Barbour went on to say (ATC at 428; ATR at 1083):

> 'For it was essential that the applicant wear something to her income producing activities...the applicant's clothing needed to be suitable for the purpose of wearing to that presentation, but

> this does not change its character to a business expense, and I find the nature of the expense is essentially private.'

71. In *Case U80* 87 ATC 470 a shop assistant was denied a deduction for the cost of black clothes. Senior Member McMahon stated (ATC at 472):

> 'The fact that the employer requires garments of a particular colour to be worn and would even terminate the employment if another colour was substituted, does not in any way detract from the character of the garments as conventional attire, the cost of which must be regarded as a private expense.'

72. At times a hospitality employee may buy clothing not normally worn in their everyday duties. The fact that the clothing was specifically bought for that occasion does not change its private nature. In *Case N74* 81 ATC 389; 25 CTBR (NS) *Case 28*, a geography teacher who went on a study tour to China and Thailand was disallowed her claim for expenditure on special clothing for cold conditions (see Taxation Determinations TD 93/101 and TD 93/111). For example, a bartender who is required to wear black trousers, a white shirt, a tartan vest and a bow tie to work, but outside work only wears jeans and sweatshirts, is not allowed a deduction for his clothing as it is considered to be of a private nature. Similarly, if conventional clothing is damaged in an accident at work, this does not change the character of the clothing. A deduction is not allowable for the cost of buying and maintaining this clothing as it retains its private nature. For example, a waitress is serving dinner and a spillage results in the waitress' conventional clothing being soiled. As the clothing is private, the cost of cleaning the clothing remains private and is not deductible. This principle also applies if the waitress replaces the clothing.

Laundry and maintenance of clothing, uniforms and footwear

73. A deduction is allowable for the cost of cleaning and maintaining clothing that falls into one or more of the categories of deductible clothing listed in paragraph 47. This applies whether the clothing is purchased by the hospitality employee or supplied by the employer.

74. Further information can be found in Taxation Ruling IT 2452 and Taxation Determination TD 93/232.

Computers and software

75. A deduction is allowable for depreciation of computers and software used for work-related purposes. If you purchase the software

separately from the computer a deduction is allowable in full in the year of purchase. The deduction must be apportioned between work-related and private use.

76. For example, chefs may use computers to prepare menus or in relation to self education. Paragraphs 151 to 155 of this Ruling provide further information on the deductibility of self education expenses.

77. A deduction is allowable under section 53 of the Act for the cost of repairs to the extent that the equipment is used for work related purposes. A deduction is allowable for interest on money borrowed to finance the purchase of a computer. The deduction must be apportioned to the extent to which the computer is used for private purposes.

Conferences, seminars and training courses

78. A deduction is allowable for the cost of attending conferences, seminars and training courses designed to maintain or increase knowledge, ability or skills of a hospitality employee. The conferences, seminars and training courses may be held in Australia or overseas.

79. In *FC of T v. Finn* (1961) 106 CLR 60; 12 ATD 348, an architect voluntarily studied architectural development overseas. The High Court held that:

> '...a taxpayer who gains income by the exercise of his skill in some profession or calling and who incurs expenses in maintaining or increasing his learning, knowledge, experience and ability in that profession or calling necessarily incurs those expenses in carrying on his profession or calling...' (CLR at 70; ATD at 352).

80. A deduction is allowable for travel expenses (fares, accommodation and meal expenses), registration and conferences materials' costs incurred in attending work-related conferences or seminars.

81. If part of the cost of a conference, seminar or training course represents the cost of food and drink that is provided, the cost is an allowable deduction according to the terms of section 51AE of the Act. Taxation Determination TD 93/195 explains the extent to which a seminar registration fee is an allowable deduction, according to section 51AE, if part of the fee represents the cost of food and drink provided at the seminar.

82. Information on ***Self education expenses*** can be found in Taxation Ruling TR 92/8 and in paragraphs 151 to 158 of this Ruling.

83. If the dominant purpose in incurring the cost is the attendance at the conference, seminar or training course then the existence of any private activity would be merely incidental and the cost would be fully deductible. If the attendance at the conference, seminar or training course is only incidental to a private activity (i.e. a holiday) then only the costs directly attributable to the conference, seminar or training course are an allowable deduction. The cost of accommodation, meals and travel directly relating to the private activity is not allowable under subsection 51(1) of the Act.

Depreciation of equipment

84. A deduction is not allowable under subsection 51(1) of the Act for expenses of a capital nature.

85. A deduction is allowable under subsection 54(1) of the Act for depreciation on plant and articles owned and used by hospitality employees during the year for the purpose of producing assessable income. In addition, a deduction for depreciation is allowable on plant and articles that are not actually used during the year for income-producing purposes but are installed ready for use for that purpose and held in reserve.

86. There are two methods to calculate a deduction for depreciation. These are the prime cost method and the diminishing value method. Prime cost depreciation is calculated as a percentage of the cost of the equipment. Diminishing value depreciation is calculated initially as a percentage of the equipment's cost and thereafter as a percentage of the written down value.

87. Any item of equipment bought on or after 1 July 1991 is able to be depreciated at a rate of 100% if the cost is not more than $300, or if the effective life is less than three years (section 55 of the Act). This means an immediate deduction is available for the cost of each item in the year in which it is purchased. However, the article may be depreciated at a rate less than 100% if the taxpayer so elects (subsection 55(8) of the Act). The current depreciation rates are set out in Taxation Ruling IT 2685.

88. **Example:** A chef purchases a briefcase for $250 that is used only for work purposes to carry knives and other utensils. The amount of $250 is allowable as an immediate deduction.

89. **Example:** A waiter is required to provide his own 'waiter's friend' (corkscrew) at a cost of $90. The amount of $90 is allowable as an immediate deduction.

90. If equipment is used partly in the course of employment and partly for other purposes, then the depreciation should be apportioned

based on an estimate of the percentage of work-related use (section 61 of the Act).

91. **Example:** A chef uses a computer partly for work and partly for private purposes. Thus, the depreciation should be appropriately apportioned between the private and work-related use.

92. If the equipment used is bought part way through the year, the deduction for depreciation should be apportioned on a pro rata basis.

93. An arbitrary figure is not acceptable when determining the value of equipment for depreciation purposes (*Case R62* 84 ATC 454; 27 CTBR (NS) *Case 113*). In determining the value of an item to be depreciated, its opening value is the original cost to the taxpayer less the amount of any depreciation that would have been allowed if the unit had been used, since purchase, to produce assessable income (Taxation Determination TD 92/142).

Driver's licence

94. A deduction is not allowable for the cost of obtaining or renewing a driver's licence. The cost associated with obtaining a driver's licence is a capital or private expense. The cost of renewing a licence is a private expense.

95. In *Case R49* 84 ATC 387; 27 CTBR (NS) *Case 104*, it was held that even though travel was an essential element of the work to be performed by the taxpayer, a driver's licence was still an expense that was private in nature and therefore not deductible under subsection 51(1) of the Act.

96. Taxation Determination TD 93/108 confirms that a deduction is not allowable for the cost of renewing a driver's licence even if the holding of a driver's licence is a condition of employment.

Fares

97. A deduction is allowable for the cost of using public transport for work-related travel (see paragraphs 117 to 132 relating to ***Motor vehicle and other transport expenses***).

Fines

98. A deduction is not allowable for fines imposed under any law of the Commonwealth, a State, a Territory, a foreign country or by a court (see subsection 51(4) of the Act).

Gaming Licence

99. A deduction is allowable for the cost of renewing a special employee's licence (gaming licence). A deduction is not allowable for the cost of obtaining this licence with the view to gaining employment if a waiter/waitress or bartender is not currently employed.

Glasses and/or contact lenses

100. A deduction is not allowable for the cost of buying prescription glasses or contact lenses as the expense relates to a personal medical condition and is private in nature.

Grooming

101. A deduction is not allowable for the cost of items bought for personal use, such as cosmetics, shaving equipment, deodorant, hair products, hair nets, clips and bobby pins, stockings and sunscreen. These expenses are private in nature. The character of these expenses is not altered by any requirement that the items be purchased as a condition of employment (see *Cooper's* case discussed in paragraph 30).

102. In *Case U216* 87 ATC 1214, a female waitress claimed cosmetic expenses as it was an express condition of her employment. This claim was not allowed because it was private expenditure under subsection 51(1) of the Act. The Tribunal referred to *FC of T v. D P Smith* 81 ATC 4114; 11 ATR 538 and in that case it was decided that the expenditure must be both incidental and relevant to the regular activities carried out in the production of income. The Tribunal found however, that the cosmetic expenses were:

> '...neither relevant nor incidental to the very acts or operations directly engaged in by the applicant in the gaining of her assessable income as a waitress' (ATC at 1215). The Tribunal

added '...I regard the purchase of cosmetics by the applicant as a classic example of private expenditure incurred as part of her day to day living expenses' (ATC at 1216).

Home office expenses

103. A comprehensive explanation of the deductibility of home office expenses is contained in Taxation Ruling TR 93/30. Key points include:

(a) Costs associated with the home are normally of a private or domestic character (*Thomas v. FC of T* 72 ATC 4094; 3 ATR 165 and *FC of T v. Faichney* (1972) 129 CLR 38; 72 ATC 4245; 3 ATR 435 (*Faichney's* case)).

(b) There are two exceptions. A deduction is allowable if:

(i) part of the home is used for work-related activities and has the character of a 'place of business'; or

(ii) part of the home is used in connection with the taxpayer's income earning activities and does not constitute a 'place of business'.

(c) There are two types of expenses associated with the home:

(i) ***Occupancy expenses*** relate to ownership or use of a home and are not affected by the taxpayer's income producing activities. These include rent, mortgage interest, repairs to home, municipal and water rates and house insurance premiums.

(ii) ***Running expenses*** relate to the use of facilities in the home and may be affected as a result of work-related activities. These include heating/cooling and lighting expenses, cleaning costs, depreciation, leasing charges and the cost of repairs to furniture and furnishings in the home office.

A deduction is not allowable for the cost of occupancy expenses for a hospitality employee who maintains an office or study at home, if they carry out activities at home as a matter of convenience. This is clearly established by the High Court decisions in *Handley v. FC of T* 81 ATC 4165; 11 ATR 644 and *Forsyth v. FC of T* 81 ATC 4157; 11 ATR 657.

Place of business

104. Whether an area of a home has the character of a 'place of business' is a question of fact. If a home has the character of a 'place of business', a deduction is allowable for a portion of both the running and occupancy expenses. Paragraphs 5, 7, 11, 12 and 13 of Taxation Ruling TR 93/30 provide information on whether or not an area set aside has the character of a 'place of business', and the expenses allowable as deductions. It is not considered that a hospitality employee in their capacity as an employee would use part of their home as a place of business. However, a hospitality employee may also conduct business from home.

105. If the area set aside has the character of a 'place of business' then a capital gain may accrue or capital loss may be incurred on the disposal of the home by the taxpayer. The amount of capital gain or capital loss will depend on the extent to which, and the period for which, the home was used for the purposes of gaining or producing assessable income (see Taxation Ruling IT 2673).

Private study

106. Hospitality employees may maintain an office or study at home as a matter of convenience (i.e. so they can carry out work at home normally done at the place of employment). For example a chef may prepare rosters or menus in his or her study at home.

107. A deduction is not allowable for running expenses if the taxpayer merely shares a room with his or her family (e.g. the lounge room) and at the same time does some work-related activity. Running expenses retain their private or domestic character (*Faichney's* case). If the taxpayer uses the room at a time when others are not present, a deduction for running expenses is allowable.

108. A deduction is allowable for running expenses associated with the use of a separate room or study used for work-related activities. This reflects the fact that running costs result from the taxpayer carrying out work at home. The extra expenditure must relate to facilities provided exclusively for the taxpayer's benefit while he or she works.

109. To calculate additional running expenses resulting from using the home study/office for work-related purposes (paragraphs 19 to 25 of Taxation Ruling TR 93/30).

110. The deductibility of other expenses related to the home office such as depreciation are set out in paragraphs 84 to 93 of this Ruling.

Meals

111. A deduction is not allowable for the cost of meals consumed by hospitality employees in the normal course of a working day. It is our view that the cost of meals will not have sufficient connection with the work-related activity and, in any case, the cost is a private expense and fails to meet the tests of deductibility described in paragraphs 24 to 31.

112. The Full Federal Court considered the deductibility of food costs in *Cooper's* case. In that case, a professional footballer had been instructed to consume large quantities of food during the off-season to ensure his weight was maintained. By majority, the Full Federal Court found that the cost of additional food to add to the weight of the taxpayer was not allowable. Hill J (at ATC 4414; ATR 1636) said:

> 'The income-producing activities to be considered in the present case are training for and playing football. It is for these activities that a professional footballer is paid. The income-producing activities do not include the taking of food, albeit that unless food is eaten, the player would be unable to play. Expenditure on food, even as here "additional food" does not form part of expenditure related to the income-producing activities of playing football or training.'

Hill J went on to say (at ATC 4415; ATR 1638):

> 'Food and drink are ordinarily private matters, and the essential character of expenditure on food and drink will ordinarily be private rather than having the character of a working or business expense. However, the occasion of the outgoing may operate to give to expenditure on food and drink the essential character of a working expense in cases such as those illustrated of work-related entertainment or expenditure incurred while away from home.'

113. We do not accept that the cost of meals can be apportioned between what the cost of a home-made meal would be and the cost of a meal purchased during an ordinary working day.

114. A deduction is generally not allowable for the cost of food or meals consumed while on duty. These costs fail to meet the tests of deductibility described in paragraphs 24 to 31, and are considered to be private in nature.

115. In *Case Y8* 91 ATC 166; *AAT Case 6587* (1991) 22 ATR 3037, a police officer claimed deductions for the cost of meals while performing special duties away from his normal place of residence. It was held that the cost of these meals was private in nature and no deduction was allowable under subsection 51(1) of the Act.

116. A deduction is allowable for the cost of meals bought while working overtime, if an award overtime meal allowance has been paid and the expenditure is not private in nature (see paragraphs 133 to 136).

Motor vehicle and other transport expenses

117. Transport expenses include public transport fares, and the costs associated with using motor vehicles, motor cycles, bicycles, etc. They do not include meals, accommodation and incidental expenses (see ***Travel expenses*** at paragraphs 171 to 175). The deductibility of motor vehicle and transport expenses incurred by a hospitality employee when travelling is considered below.

Travel between home and work

118. A deduction is not allowable for the cost of travel by hospitality employees from home to their normal work place as it is generally considered to be a private expense. This principle is not altered by the performance of incidental tasks en route (see paragraph 34 of Taxation Ruling MT 2027).

119. The High Court considered travel expenses incurred between home and work in *Lunney's* case. A joint judgment by Williams, Kitto and Taylor JJ stated the following:

> '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 his income' (CLR at 498-499; ATD at 412-413).

120. The fact that the travel is outside normal working hours or involves a second or subsequent trip does not change this principle. For more information see paragraph 6 of Taxation Ruling IT 2543, Taxation Ruling IT 112 and Taxation Determination TD 93/113.

Travel to and from normal work place but transporting bulky equipment

121. A deduction is allowable if the transport costs can be attributed to the transportation of bulky equipment rather than to private travel between home and work. See *FC of T v. Vogt* 75 ATC 4073; 5 ATR 274.

122. **Example:** Jane is a chef who takes her utensils home with her in a briefcase at the end of each day. Jane is not considered to be transporting bulky equipment and no deduction is allowed.

Travel between two separate work places if there are two separate employers involved

123. A deduction is allowable for the cost of travelling directly between two work places.

Travel from the normal work place to an alternate work place while still on duty and back to the normal work place or directly home

124. A deduction is allowable for the cost of travel from a hospitality employee's normal work place to other work places. The cost of travel from the alternate work place back to the normal work place or directly home is also deductible. This travel is undertaken in the performance of a hospitality employee's duties. It is incurred in the course of gaining assessable income and is allowable as a deduction.

Travel from home to an alternate work place for work related purposes and then to the normal work place or directly home

125. A deduction is allowable for the cost of travel from home to an alternate work place. The cost of travel from the alternate work place to the normal place of employment or directly home is also deductible (see paragraphs 32 to 35 of Taxation Ruling MT 2027).

Travel between two places of employment or between a place of employment and a place of business

126. A deduction is allowable for the cost of travelling directly between two places of employment or between a place of employment and a place of business. This is provided that the travel is undertaken for the purpose of engaging in work-related activities.

127. If the hospitality employee lives at one of the places of employment or business a deduction may not be allowable as the travel is between home and work. It is necessary to establish whether

the income-producing activity carried on at the person's home qualifies the home as a place of employment or business. The fact that a room in the hospitality employee's home is used in association with employment or business conducted elsewhere will not be sufficient to establish entitlement to a deduction for travel between two places of work (see Taxation Ruling IT 2199).

128. A deduction is not allowable for the cost of travel between a person's home, at which a part-time income-producing activity is carried on, and a place of full-time employment unless there is some aspect of the travel that is directly related to the part-time activity (*Case N44* 81 ATC 216; 24 CTBR (NS) *Case 114*).

129. In this case, a qualified accountant, employed by a firm of accountants, conducted a limited private practice from his home. He set up a separate room in his home as an office. The taxpayer claimed a deduction for car expenses incurred in travelling between his residence/office and his place of employment. The fact that the taxpayer's home was, incidentally, used in the production of income was insufficient to make the travel between his home and his place of employment an outgoing incurred in the production of assessable income. The travel retained its essential character of travel between home and work and therefore, it was not deductible.

130. Taxation Ruling IT 2199 and MT 2027 provide further information on the deductibility of travelling expenses between places of employment/business.

Depreciation cost limit for motor vehicles

131. Section 57AF of the Act imposes a limit on the depreciable cost base of motor cars (including station wagons and four-wheel drive vehicles) if the acquisition cost is greater than a specified amount. The depreciable cost base limit applies to both new and second hand vehicles (see Taxation Ruling TR 93/24).

Calculation of motor vehicle balancing adjustment

132. A depreciation balancing adjustment may be necessary on the disposal of a motor vehicle that has been used for work-related activities (see Taxation Ruling IT 2493).

Overtime meal allowance

133. An overtime meal allowance is paid under a law or industrial award for the purpose of enabling an employee to buy food and drink at meal or rest breaks while working overtime.

134. A deduction is allowable for the cost of meals bought while working overtime if the expenditure meets the deductibility tests in paragraphs 24 to 31, and it is not of a private nature.

135. The general rule is that no deduction is allowed for overtime meal expenses unless documentary evidence, such as a receipt, is obtained. However, special substantiation rules apply if a hospitality employee receives an overtime meal allowance paid under an industrial award. A deduction is allowable without substantiation, provided the claim does not exceed the allowance received and the allowance is considered reasonable by the Commissioner of Taxation (see Taxation Ruling TR 94/23).

136. If a deduction claimed is more than the allowance received hospitality employees must have documentary evidence to support the total claim, not only the excess.

Parking fees and tolls

137. A deduction is allowable for parking fees (but not fines) and tolls if the expenses are incurred while travelling:

(a) between two separate places of work;

(b) to a place of education for self education purposes (if the self education expenses are deductible);

(c) in the normal course of duty and the travelling expenses are allowable deductions.

This decision is supported by *Case Y43* 91 ATC 412; *AAT Case 7273* (1991) 22 ATR 3402.

Note: A deduction is denied to a hospitality employee for certain car parking expenses where the conditions outlined in section 51AGA of the Act are met.

138. A deduction is not allowable for parking fees and tolls incurred when hospitality employees are travelling between their home and their normal place of employment. The cost of that travel is a private expense and parking fees retain that character (see exception in paragraph 121).

Professional library

139. A deduction is allowable under section 54 of the Act for depreciation of a professional library. If an individual reference book is purchased after 1 July 1991, and the cost does not exceed $300 or its effective life is less than 3 years, it may be depreciated at 100% in

the year of purchase under section 55 (see Taxation Determination TD 93/159).

140. For depreciation purposes, reference books may only be included in the professional library if their content is directly relevant to the duties performed. Encyclopaedia and general reference books are considered too general and no deduction is allowed for the cost.

141. In *Case P26* 82 ATC 110; 25 CTBR (NS) *Case 90*, a university lecturer was allowed a claim for depreciation expenses on legal books but denied a deduction for depreciation on general reading and fiction books.

> 'No doubt the illustrations and anecdotes which he was able to use did serve as useful teaching aids but in my view these were not plant or articles within the meaning of section 54 of the Act, as they were not used or installed ready for use for the purposes of producing assessable income' (ATC at 112; CTBR at 661).

142. If the cost of a textbook has been claimed as a deduction previously, its cost may not later be added to the value of a professional library and depreciated. For example, a chef may have claimed a deduction for cost of a textbook as part of her self education expenses. The cost of this textbook is not able to be included in the value of a professional library for depreciation purposes.

143. Paragraphs 84 to 93 of this Ruling provide further information on depreciation.

Removal and relocation expenses

144. Many hospitality employees employed by hotel/resort chains are transferred or choose to relocate to other hotels/resorts in the chain. A deduction is not allowable for removal or relocation expenses incurred by a hospitality employee to take up a transfer in existing employment or to take up an appointment with a new employer. This applies whether the transfer of employment is voluntary or at the employer's request. Even if the chef, waiter/waitress or bartender receives an allowance or a reimbursement, a deduction for these expenses is still not allowable.

145. A deduction is not allowable if a hospitality employee transfers employment from one locality to another and incurs expenditure in moving from one place of residence to a new place to take up duties of the new position, as it is not incurred in gaining or producing assessable income. These expenses come at a point too early to be regarded as being incurred in gaining or producing assessable income.

The hospitality employee is travelling to his work and not between two places of employment.

146. In *Fullerton v. FC of T* 91 ATC 4983; (1991) 22 ATR 757, the taxpayer worked for the Queensland Forest Service (QFS) as a professional forester for over 20 years. In that time, QFS transferred him to a number of different locations. As a result of a reorganisation his position ceased to exist. He had no choice but to accept a transfer as he may have been retrenched. The QFS reimbursed a portion of the relocation expenses and the taxpayer claimed the remainder as a tax deduction. It was held that the expenditure on the taxpayer's domestic or family arrangements is not deductible under subsection 51(1) of the Act, even though the expenditure had a causal connection with the earning of income.

147. In *Case U91* 87 ATC 525, the taxpayer, a Commonwealth public servant, was transferred at the request of his employer from a State office to the central office of the department in Canberra. He was denied a deduction for expenses incurred in attempting to auction his house. It was held that the expenses were too remote from the income-producing process to be incurred in gaining or producing assessable income.

148. Taxation Rulings IT 2406, IT 2481, IT 2566 and IT 2614 provide further information on the treatment of these expenses.

Repairs to equipment

149. A deduction is allowable for the cost of repairs to tools and equipment under section 53 of the Act to the extent of the work-related use of the item.

150. **Example:** Steve takes his knives, that are used solely for work-related purposes, to a knife sharpener to be sharpened every Saturday morning. A deduction is allowable for the cost of sharpening these knives.

Self education expenses

151. A comprehensive explanation of the deductibility of self education expenses is contained in Taxation Ruling TR 92/8. Key points include:

(a) A deduction is allowable for self education expenses if the education is directly relevant to the taxpayer's income earning activities. This particularly applies if a hospitality employee's income earning activities are based on

skill/knowledge and the education enables him or her to maintain or improve that skill/knowledge.

(b) A deduction is allowable if the education is likely to lead to an increase in the hospitality employee's income from his or her current income earning activities.

(c) A deduction is not allowable if the education is designed to enable a hospitality employee to get employment, to obtain new employment or to open up a new income earning activity (*FC of T v. Maddalena* 71 ATC 4161; 2 ATR 541).

(d) Self education includes courses undertaken at an educational institution (whether leading to a formal qualification or not), attendance at work-related conferences or seminars, self-paced learning and study tours.

(e) Self education expenses include fees, travel expenses (e.g. attending a conference interstate), transport costs, books and equipment.

152. **Example:** Kenneth is currently employed as a cleaner at a local restaurant. He has been attending bar school at night, to enable him to work behind the bar either at his current place of employment or with a new employer. The expenses incurred in undertaking this training are considered to be incurred at a point too soon to be regarded as incurred in gaining or producing assessable income and no deduction is allowed.

153. A deduction is allowable for transport costs in connection with a course of education in the following situations:

(a) the cost of travel between home and the place of education and then back home;

(b) the first leg of the trip, if a taxpayer travels from home to the place of education and then on to work (the cost of travelling from the place of education to work is not a self education expense);

(c) the first leg of the trip, if a taxpayer travels from work to a place of education and then home (the cost of travelling from the place of education to home is not a self education expense);

(d) the cost of travel between work and the place of education and then back to work.

A summary of items (a) to (d) is contained in the following table:

	Deductible as self education expense?		Deductible as self education expense?	
Home	YES ➔	Place of Education	YES ➔	Home
Home	YES ➔	Place of Education	NO ➔	Work
Work	YES ➔	Place of Education	NO ➔	Home
Work	YES ➔	Place of Education	YES ➔	Work

154. **Example:** Katrina is an apprentice chef who travels to a technical college in another city to undertake her apprenticeship course for two consecutive days each fortnight. She is allowed a deduction for the cost of travel to and from her place of education, overnight accommodation, meals and incidentals.

155. The following expenses related to self education are not allowable under subsection 51(1) of the Act:

(a) a Higher Education Contribution Scheme (HECS) payment (subsection 51(6));

(b) meals purchased by a taxpayer while attending a course at an educational institution other than as part of travel expenses.

Limit on deductibility

156. If self education expenses are allowable under subsection 51(1) of the Act but also fall within the definition of 'expenses of self education' in section 82A, only the excess of the expenses over $250 is deductible, i.e. the first $250 is not deductible.

157. 'Expenses of self education' are defined in 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 prescribed course of education. 'A prescribed course of education' is defined in section 82A as a course 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 or trade, or in the course of any employment.

158. **Example:** Katrina, an apprentice chef, incurs self education expenses totalling $1650 in connection with her apprenticeship course at a technical college. Katrina is allowed a deduction for the remaining $1400.

Technical or professional publications

159. A deduction is allowable under subsection 51(1) of the Act for the cost of buying or subscribing to journals, periodicals and magazines that have a content specifically related to a hospitality employee's work and are not general in nature.

160. In *Case P124* 82 ATC 629; 26 CTBR (NS) *Case 55*, an air traffic controller was not allowed a deduction for the purchase of aviation magazines. Dr G W Beck (Member) said:

> 'His work did not require him to buy the papers and magazines...[and although]. There might be some tenuous connection between the cost of aviation magazines and the maintenance of knowledge necessary for holding a flying licence...but it seems to me that the possible connection is altogether too remote' (ATC at 633-634; CTBR at 422).

161. This can be contrasted with *Case R70* 84 ATC 493; 27 CTBR (NS) *Case 124*, in which an accountant employed with the Public Service was allowed a deduction for the cost of publications produced by a business and law publisher. The nexus between the expense and the accountant's occupation was established, as the publications contained current technical information which related to her day-to-day work. She was, however, not allowed a deduction for the cost of daily newspapers and periodicals.

Telephone, mobile phone pager, beeper and other telecommunications equipment expenses

Cost of calls

162. A deduction is allowable for the cost of telephone calls made by an employee in the course of carrying out his or her duties.

163. Work-related calls may be identified from the itemised telephone account. If such an account is not provided, a reasonable

estimate of call costs, based on diary entries of calls made over a period of one month, together with relevant telephone accounts, will be acceptable for substantiation purposes.

Installation or connection costs

164. A deduction is not allowable for the cost of installing or connecting a telephone, mobile phone, pager, beeper or other telecommunication equipment as it is considered to be a capital expense (see Taxation Ruling IT 85).

165. In *Case M53* 80 ATC 357; 24 CTBR (NS) *Case 29*, it was held that (ATC at 359; CTBR at 236):

> '...on payment of the connection fee, this taxpayer bought into existence an advantage for the enduring benefit of his newly established medical practice.'

Rental costs

166. The situations where telephone rental will be an allowable deduction are identified in Taxation Ruling IT 85. It states 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.

167. A deduction will also be allowable if an employee can demonstrate that he or she is frequently required to contact clients while away from the office.

168. If the telephone is not used 100% for work-related purposes, then only a proportionate deduction will be allowable. The proportion can be calculated using the following formula:

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

Silent telephone number

169. A deduction is not allowable for the cost of obtaining a silent number listing as it is a private expense (Taxation Determination TD 93/115).

Tool Allowance

170. A deduction is allowable for the cost of buying tools. An immediate deduction will be allowed if the cost of each tool does not exceed $300 or its effective life is less than three years. If the cost

exceeds $300 or its effective life is greater than three years the item should be depreciated (see paragraphs 84 to 93). Any amount received as a tool allowance is considered to be assessable income (see paragraph 34).

Travel Expenses

171. Travel expenses include the costs of fares, accommodation, meals and incidentals. A deduction is not allowable for travel expenses unless documentary evidence is obtained.

172. A deduction is allowable for the costs incurred by hospitality employees in undertaking work-related travel. An example is if hospitality employees attend seminars interstate.

173. If hospitality employees receive a travel allowance that the Commissioner considers reasonable, a deduction is allowable for travel expenditure incurred. No substantiation is required if the deduction claimed is equal to or less than the reasonable travel allowance.

174. If hospitality employees receive an allowance that is less than the reasonable rate, a deduction up to the amount of the allowance received is allowable without the need for substantiation.

175. Claims that exceed a reasonable allowance must be substantiated in full (see Taxation Ruling TR 94/23).

Accompanying relatives travel expenses

176. A deduction is not allowable for the expenses of a relative accompanying a hospitality employee whilst travelling (see section 51AG of the Act). This rule applies whether or not the accompanying relative is a fellow employee (if that employee performs no substantive duties during the trip).

Unions or professional associations fees

177. A deduction is allowable for union or professional associations fees. Taxation Rulings IT 327, IT 2062 and IT 2416 provide further information on the deductibility of unions and professional associations fees.

Index of explanations

178. The following is an index of the Explanations section of this Ruling.

Allowances **34**
Calculators or electronic work organisers **41**
Child care expenses **44**
Clothing, uniforms and footwear **47**
Protective Clothing 48
Occupation Specific 55
Compulsory Uniform or Wardrobe 60
Non-compulsory uniform or wardrobe 65
Conventional Clothing 67
Laundry 73
Computers and software **75**
Conferences, seminars and training courses **78**
Deductibility of work-related expenditure **22**
Expense actually incurred 23
Expenses meet deductibility tests 24
Expenses satisfy substantiation rules 32
Depreciation of equipment **84**
Driver's licence **94**
Fares **97**
Fines **98**
Gaming licence **99**
Glasses and/or contact lenses **100**
Grooming **101**
Home office expenses **103**
Place of business 104
Private study 106
Meals **111**
Motor vehicle and transport expenses **117**
Between home and work 118
Bulky equipment 121
Two separate work places (two employers) 123
Alternate work place (from work) 124
Alternate work place (from home) 125
Between two places of employment 126
Overtime meal allowance **133**
Parking fees and tolls **137**
Professional library **139**
Removal and relocation expenses **144**
Repairs to equipment **149**
Self education expenses **151**

Limit on deductibility 156
Technical or professional publications 159
Tips 37
Tool allowance 170
Travel expenses 171
Unions or professional association fees 177

Your Comments

178. If you wish to comment on this Draft Ruling, please send your comments by:

31 March 1995

to:

Contact Officer Wendy Ower

Telephone (03) 215 3875

Facsimile (03) 215 3689

Address Australian Taxation Office
14 Mason Street
Dandenong VIC 3175

Attention: Ms Wendy Ower, INB Advisings.

Commissioner of Taxation

2 February 1995

ISSN 1039 - 0731

ATO references
NO 94/8177-0
BO DAN

Price $4.10

FOI index detail
reference number

subject references
- allowable deductions
- allowances
- assessable income
- associations
- car
- child care expenses
- clothing
- computers and software
- conferences and seminars
- depreciation
- dry cleaning
- education expenses
- effective life
- employment related expenses
- entertainment expenses
- equipment
- fines
- glasses
- gratuities
- home office expenses
- laundry
- licence fees
- motor vehicle
- newspapers
- overseas travel expenses
- parking fees and tolls

- prescribed course of education
- private or domestic expenses
- professional associations
- publications
- relocation of employees
- removal expenses
- self education expenses
- subscriptions
- travel
- travel expenses
- use of home to produce income

legislative references
- ITAA 25
- ITAA 26(e)
- ITAA 26(eaa)
- ITAA 26AAB
- ITAA 51
- ITAA 51(1)
- ITAA 51(4)
- ITAA 51(6)
- ITAA 51AE
- ITAA 51AF
- ITAA 51AG
- ITAA 51AGA
- ITAA 51AH
- ITAA 51AL
- ITAA 51AL(26)
- ITAA 53
- ITAA 54
- ITAA 54(1)
- ITAA 55
- ITAA 55(8)
- ITAA 57AF
- ITAA 61
- ITAA 82A

case references
- Calvert v. Wainwright (1947) 27 TC 475
- Charles Moore & Co (WA) Pty Ltd v. FC of T (1956) 95 CLR 344; 11 ATD 147; 6 AITR 379
- FC of T v. Cooper 91 ATC 4396; (1991) 21 ATR 1616
- FC of T v. Dixon (1953) 86 CLR 540; 10 ATD 82
- FC of T v. D P Smith 81 ATC 4114; 11 ATR 538
- FC of T v. Edwards 94 ATC 4255; (1994) 28 ATR 87
- FC of T v. Faichney (1972) 129 CLR 38; 72 ATC 4245; 3 ATR 435
- FC of T v. Finn (1961) 106 CLR 60; 12 ATD 348
- FC of T v. Hatchett 71 ATC 4184; 2 ATR 557
- FC of T v. Maddalena 71 ATC 4161; 2 ATR 541
- FC of T v. Vogt 75 ATC 4073; 5 ATR 274
- Forsyth v. FC of T 81 ATC 4157; 11 ATR 657
- Fullerton v. FC of T 91 ATC 4983; (1991) 22 ATR 757
- Great Western Railway Co v. Helps [1918] AC 141
- Handley v. FC of T 81 ATC 4165; 11 ATR 644
- Jayatilake v. FC of T 91 ATC 4516; (1991) 22 ATR 12; (1991) 101 ALR 11
- Lodge v. FC of T (1972) 128 CLR 171; 72 ATC 4174
- Lunney v. FC of T; Hayley v. FC of T (1958) 100 CLR 478; 7 AITR 166
- Penn v. Spiers & Pond Ltd [1908] 1 KB 766
- Roads and Traffic Authority of NSW v. FC of T 93 ATC 4508; (1993) 26 ATR 76
- Ronpibon Tin NL v. FC of T (1949) 78 CLR 47; 4 AITR 236
- Thomas v. FC of T 72 ATC 4094; 3 ATR 165
- Case T47 18 TBRD (NS) 242; 14 CTBR (NS) 56
- Case N44 81 ATC 216; 24 CTBR (NS) Case 114
- Case N74 81 ATC 389; 25 CTBR (NS) Case 28
- Case N84 81 ATC 451; 25 CTBR (NS) Case 43
- Case P26 82 ATC 110; 25 CTBR (NS) Case 90
- Case P124 82 ATC 629; 26 CTBR (NS) Case 55
- Case Q11 83 ATC 41; 26 CTBR (NS) Case 75
- Case R49 84 ATC 387; 27 CTBR (NS) Case 104
- Case R55 84 ATC 411; 27 CTBR (NS) Case 109
- Case R62 84 ATC 454; 27 CTBR (NS) Case 113
- Case R70 84 ATC 493; 27 CTBR (NS) Case 123
- Case U91 87 ATC 525
- Case U95 87 ATC 575

- Case U216 87 ATC 1214
- Case Y8 91 ATC 166; AAT Case 6587 (1991) 22 ATR 3037
- Case Y43 91 ATC 412; (1991) 22 ATR 3402
- Case 48/94, 94 ATC 422