# *TR 95/D3 - Income tax: employee lawyers - allowances, reimbursements and work-related deductions*

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# Draft Taxation Ruling
Income tax: employee lawyers - allowances, reimbursements and work-related deductions

**other Rulings on this topic**

**IT 26; IT 85; IT 112; IT 208; IT 299; IT 327; IT 2062; IT 2198; IT 2199; IT 2230; IT 2261; IT 2354; 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; TD 92/142; TD 92/151; TD 92/154; TD 92/157; TD 93/108; TD 93/113; TD 93/115; TD 93/145; TD 93/159; TD 93/232; TD 93/244; TR 92/8; TR 92/15; TR 92/20; TR 93/24; TR 93/30; TR 94/22; TR 94/23**


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*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 employee lawyers. For the purposes of this Ruling, an employee lawyer is a person who is employed as a solicitor, articled clerk or law clerk.

2. This Ruling deals with:

   (a) the assessability of allowances and reimbursements received by employee lawyers; and

   (b) deductions for work-related expenses generally claimed by employee lawyers.

3. The Ruling also discusses whether deductions are allowable or are specifically excluded (or limited) under subsections 51(1), 51(4), 51(6), or sections 51AB, 51AE, 51AF, 51AG, 51AGA, 51AH, 51AJ, 51AK, 51AL, 53, 54, 55, 57AF, 59, 60, 61, or 82A of the *Income Tax Assessment Act 1936* ('the Act').

4. The tax treatment of allowances and reimbursements is examined at paragraphs **Error! Reference source not found.** to **Error! Reference source not found.** in the **Ruling** section.

5. The common work-related expenses incurred by employee lawyers and the extent to which they are allowable deductions are discussed, in alphabetical order, at paragraph 20 in the **Ruling** section.

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

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

# Date of effect

8. 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 (paragraphs 21 and 22 of Taxation Ruling TR 92/20).

9. If an employee lawyer has a more favourable private ruling (whether legally or administratively binding), this Ruling applies to that employee lawyer to the extent of the inconsistency only from and including the 1995-1996 year of income.

# Ruling

**Allowances**

10. The receipt of an allowance does not automatically entitle an employee lawyer to a deduction.

11. Allowances fall into the following categories:

(a) fully assessable to the employee with a possible deduction allowable, depending upon individual circumstances;

(b) fully assessable to the employee with no deduction allowable even though an allowance is received;

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

(i) up to the amount of the allowance without substantiation, or

(ii) in excess of the allowance, subject to substantiation of the whole claim (paragraph 12);

(d) not assessable to the employee because the employer may be subject to Fringe Benefits Tax. A deduction is not allowable to the employee for expenses incurred against such an allowance.

The allowances referred to in (a), (b) and (d) above are not normally received by employee lawyers and are not discussed in this Ruling.

***Reasonable allowances***

12. The Commissioner of Taxation publishes Taxation Rulings annually that indicate amounts considered reasonable for the following allowances:

(a) overtime meal expenses;

(b) domestic travel expenses; and

(c) overseas travel expenses.

These allowances are fully assessable.

13. If an allowance is received that is equal to or less than an amount considered to be reasonable, a deduction for expenses incurred is allowable up to the amount of the allowance, without substantiation, provided that the expenses satisfy the deductibility tests. If a deduction is claimed in excess of the allowance, the whole claim must be substantiated.

## Reimbursements

14. If an employee lawyer receives an amount 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 an employee lawyer 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 employee lawyer under paragraph 26(eaa) of the Act and a deduction may be allowable for the actual expenses incurred (see ***Transport expenses***, paragraphs 161 to 185).

16. If the reimbursement by an employer is for the cost of a depreciable item (e.g. a laptop computer), a deduction is allowable to the employee lawyer for depreciation (see Taxation Determination TD 93/145 and ***Depreciation of equipment***, paragraphs 69 to 79 of this Ruling).

17. If a payment is received from an employer for an **estimated** expense, the amount received by the employee lawyer is considered to be an allowance (not a reimbursement) and is fully assessable to the employee lawyer (see **Allowances**, paragraphs 10 to 13).

## Deductions

18. A deduction is only allowable if an expense:

(a) is actually incurred (paragraph 22);

(b) meets the deductibility tests (paragraphs 23 to 30); and

(c) satisfies the substantiation rules (paragraphs 31 and 32).

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

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

***Admission fees:*** A deduction is not allowable for the cost of admission fees (paragraph **Error! Reference source not found.** to **Error! Reference source not found.**).

***Annual Practising certificate:*** A deduction is allowable for the cost of renewing Annual Practising Certificates.

***Briefcases*****:** A deduction is allowable for depreciation, to the extent of the work-related use of the briefcase (paragraph **Error! Reference source not found.**).

***Calculators and electronic organisers:*** A deduction is allowable for depreciation, to the extent of the work-related use of the calculators and electronic organisers (see ***Depreciation of equipment***, paragraphs 69 to 79).

***Child care expenses:*** A deduction is not allowable for child care expenses (paragraphs 39 to 41).

***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;

(paragraphs 42 to 55).

***Club membership fees:*** A deduction is not allowable for club membership fees as they are expenses of a private nature.

***Computers and software:*** A deduction is allowable for depreciation to the extent of the work-related use of the computers and software, if purchased together. If the software is purchased separately, a deduction is allowable to the extent of the work-related use of the software (paragraphs 59 to 62).

***Conferences and seminars:*** A deduction is allowable for the cost of attending conferences, seminars and training courses to maintain or increase an employee lawyer's knowledge, ability or skills in the legal profession, if the expense is connected with work-related activities (paragraphs 63 to 68).

***Depreciation:*** A deduction is allowable for depreciation, to the extent of the work-related use of the equipment. An item of equipment bought after 1 July 1991 is able to be depreciated at a rate of 100% if its cost is $300 or less or its effective life is less than three years (paragraphs 69 to 79).

***Driver's licence:*** A deduction is not allowable for the cost of acquiring or renewing a driver's licence (paragraphs 80 to 82).

***Fines:*** A deduction is not allowable for fines imposed under any law of the Commonwealth, a State, a Territory or a foreign country or by a court (paragraph 83).

***Glasses and contact lenses:*** A deduction is not allowable for the cost of purchasing prescription glasses or contact lenses (paragraph 84).

***Home office expenses:***
*Private study:* A deduction is allowable for the running expenses of a private study to the extent that the private study is used for work-related activities paragraphs 94 to 97).

*Place of business:* A deduction is allowable for running and occupancy expenses to the extent that an area of the home has the character of a place of business (paragraphs 90 to 93).

***Insurance - income continuance:*** A deduction is allowable for insurance premiums to the extent that they are paid to cover the loss of income (paragraphs 98 and 99).

***Interest:*** A deduction is allowable for interest on money borrowed to the extent to which the money is used for work-related purposes.

***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*** (paragraphs 56 and 57).

***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 (paragraphs **Error! Reference source not found.** to **Error! Reference source not found.**). A deduction may be allowable for the cost of meals incurred by an employee lawyer who travels for work-related purposes (***Travel expenses*** paragraphs 186 to 191).

***Motor vehicle expenses:*** See paragraphs 107 to 110, and see also ***Transport expenses***.

***Newspapers*:** Generally, a deduction is not allowable for the cost of newspapers (paragraphs 111 and 112).

***Parking fees and tolls:*** A deduction is allowable for the cost of parking fees, bridge and road tolls (but not fines) paid by an employee lawyer while travelling in the course of employment, e.g. between work places (paragraphs 113 and 114).

***Practising certificate:*** A deduction is allowable for the cost of renewing an Annual Practising certificate (paragraph 37).

***Professional library:*** A deduction is allowable for depreciation to the extent of the work-related use of the professional library (paragraphs 115 to 123).

***Removal and relocation expenses:*** A deduction is not allowable for the cost of taking up a transfer in existing employment or in taking new employment with a different employer (paragraphs 124 to 128).

***Repairs:*** A deduction is allowable for the cost of repairs to equipment to the extent that the equipment is used in work-related activities (paragraph 129).

***Self education expenses:*** A deduction is allowable for the cost of self education if there is a direct connection between the course of education and the income earning activities. Self education costs include fees, travel, books and equipment (paragraphs 130 to 139). 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 an allowable deduction (paragraphs 137 to 139).

***Social functions:*** A deduction is not allowable for the cost of attending staff dinners, client gatherings or similar functions if food, drink or recreation is provided (paragraphs 140 to 145).

***Stationery*:** A deduction is allowable for the cost of stationery to the extent to which it is used for work-related purposes.

***Supreme Court library fees:*** A deduction is allowable if Supreme Court library fees are paid on an annual basis. A deduction is not allowable if Supreme Court library fees are paid once only upon admission to practice (paragraph 146).

***Suspension from practice:*** A deduction is not allowable for the cost of defending the right to practise (paragraph 147 and 148).

***Technical or professional publications:*** A deduction is allowable for the cost of buying or subscribing to journals, periodicals and magazines that have a content specifically related to an employee lawyer's work and are not general in nature (paragraphs 149 to 153).

***Telephone, mobile phone, pager, beeper and other telecommunications equipment expenses:***
*Cost of telephone calls:* A deduction is allowable for the cost of work-related calls (paragraphs 154 and 155).

*Installation or connection costs:* A deduction is not allowable for the cost of installing or connecting a telephone, mobile phone, pager, beeper or other telecommunications equipment, as it is a capital expense (paragraphs 156 and 157).

*Telephone rental:* A deduction is allowable for a proportion of telephone rental costs if an employee lawyer can demonstrate that he or she is 'on call', or required to telephone their employer on a regular basis (paragraphs 158 and 159).

*Silent telephone number:* A deduction is not allowable for the cost of obtaining a silent telephone number (paragraph 160).

***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***). The deductibility of transport expenses incurred by an employee lawyer when travelling is considered below.

*Travel between home and work:* A deduction is not allowable for the cost of travel between home and the 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 (paragraphs 162 to 168).

*Travel between home and the normal work place but transporting bulky equipment:* A deduction is allowable if the transport expenses can be attributed to the necessary transportation of bulky equipment/material rather than to private travel between home and work (paragraphs 169 to 172).

*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 (paragraphs 173 and 174).

*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 work place to other work places. A deduction is also allowable for the cost

of travel from the alternate work place back to the normal work place or directly home. This travel is undertaken in the course of work-related activities and is an allowable deduction (paragraphs 175 and 176).

*Travel from home to an alternate work place for work-related purposes and then to the normal work place or directly home:* A deduction is allowable for the cost of travel from home to an alternate work place and then on to the normal work place or directly home (paragraphs 177 and 178).

*Travel between two places of employment or between a place of employment and a place of business:* A deduction is allowable for the cost of travelling directly between two places of employment or a place of employment and a place of business, provided that the travel is undertaken for the purpose of carrying out work-related activities (paragraphs 179 to 185).

*Travel in connection with self education:* See ***Self education expenses*** (paragraphs 130 to 139).

***Travel expenses:*** A deduction is allowable for travel expenses (fares, accommodation, meals and incidentals) incurred by an employee lawyer when travelling in the course of employment, e.g. travel interstate to supervise at another office (paragraphs 186 to 191).

*Travel accompanied by a relative:* Section 51AG of the Act may affect the deduction allowable for the travel expenses of relatives accompanying an employee lawyer while travelling (paragraph 191).

***Union fees and professional association fees:*** A deduction is allowable for the costs of union fees, subscriptions to professional associations and employee lawyer registration fees (paragraphs 192 to 196).

# Explanations

### Deductibility of work-related expenses

21. 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*

22. The expense must actually be incurred by the employee lawyer to be considered for deductibility. A deduction is not allowable for expenses not incurred by an employee lawyer, 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 (paragraphs 14 to 17).

### *Expense meets deductibility tests*

23. The basic tests for deductibility of work-related expenses are in subsection 51(1). 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.'

24. 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; [1958] ALR 225; 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 (*Ronpibon Tin*));

(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* (1991) 29 FCR 177; 91 ATC 4396; (1991) 21 ATR 1616 *(Cooper's* case*); Roads and Traffic Authority of NSW v. FC of T* (1993) 43 FCR 223; 93 ATC 4508; (1993) 26 ATR 76; *FC of T v. Hatchett* (1971) 125 CLR 494; 71 ATC 4184; 2 ATR 557 (*Hatchett's* case)).

25. 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. medical expenses);

(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).

26. 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 (Member) 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...'

27. The fact that an expense is voluntarily incurred by an employee lawyer does not preclude it from being an allowable deduction (see Taxation Ruling IT 2198).

28. **Example:** Spiro, an employee lawyer, is provided with writing materials by his employer and also voluntarily buys a fountain pen for use at work. The cost of the fountain pen is an allowable deduction.

29. The fact that an expense is incurred by an employee lawyer 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:

> '...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' (FCR at 200; ATC at 4414; ATR at 1636).

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*

31. The income tax law requires substantiation of certain work-related expenses. If the total of the work-related expenses exceeds

$300, the employee lawyer is required to keep records. These records include receipts, invoices or similar documents, diaries or log books.

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

## Common work-related expense claims

### *Admission fees*

33. A deduction is not allowable under subsection 51(1) of the Act for employee lawyers' admission fees, as they are considered to be capital or of a capital nature.

34. In *Case J30* 77 ATC 282; 21 CTBR (NS) *Case 52*, a law clerk claimed a deduction for admission fees to practise as a solicitor. After admission he continued in the same employment performing the same duties on increased salary. The claim was disallowed by majority. The Tribunal applied the High Court decision of *FC of T v. Maddalena* 71 ATC 4161; 2 ATR 541 (*Maddalena's* case). It was considered that the expense was not incurred in doing work as a law clerk but in obtaining work as a solicitor and this would be so notwithstanding that it was with the same employer. *Hatchett's* case was distinguished on the basis that admission amounted to a change in the applicant's status. Taxation Board of Review Member Dr Gerber stated:

> '...transmuted from the dross of clerkship to the gold of an Officer of the Court' (ATC at 282; CTBR at 583).

35. In *Case Z1* 92 ATC 101; *AAT Case 7541* (1992) 22 ATR 3549, it was held that the admission expenses secured the applicant a 'lasting advantage' and that it also secured her the status of a solicitor that was considered a 'profit yielding subject' (*Sun Newspapers Ltd and Associated Newspapers Ltd v. FC of T* (1938) 61 CLR 337; 5 ATD 23; [1939] ALR 10 (*Sun Newspapers*)). In applying *Maddalena*, the Tribunal held that the admission expenses were also incurred in getting, not in doing, work as an employee and came at a point too soon to be properly regarded as incurred in gaining assessable income.

36. In *Case L38* 79 ATC 208; 23 CTBR (NS) *Case 44*, a clerk at a State Treasury Department claimed admission fees to the State Supreme Court. The claim was disallowed by the tribunal on the grounds that upon admission the applicant had acquired an asset of enduring benefit, that answered the description of a capital asset.

### *Annual Practising certificate*

37. A deduction is allowable for the cost of renewing Annual Practising certificates.

### *Briefcases*

38. A deduction is allowable for depreciation under subsection 54(1) of the Act to the extent that the briefcase is used for work-related activities. For example, an employee lawyer may use a briefcase to carry books and files to work, confidential material or legal information to court hearings (see Taxation Ruling IT 2261 and paragraphs 69 to 79 of this Ruling).

### *Child care expenses*

39. A deduction is not allowable for child care expenses, even if it is a prerequisite for an employee lawyer to obtain and pay for child care so that he or she can go to work and earn income. A deduction is also not allowable for these expenses if incurred by an employee lawyer to undertake studies relevant to his or her employment.

40. 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 was 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).

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

### *Clothing, uniforms and footwear*

42. 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 (not discussed in this ruling);

(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 pertaining to 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)).

*Occupation specific clothing*

43. Occupation specific clothing is defined in subsection 51AL(26) of the Act. It distinctly identifies the employee as belonging to a particular profession, trade, vocation, occupation or calling. It is not clothing that can be described as ordinary clothing of a type usually worn by men or women regardless of their occupation. Examples of clothing that are considered to be occupation specific are female nurses' traditional uniforms, chefs' checked pants, a religious cleric's ceremonial robes and a barrister's robes and wig.

*Compulsory uniform or wardrobe*

44. 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.

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

46. In *Case R55* 84 ATC 411; 27 CTBR (NS) *Case 109*, it was concluded that:

> '...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).

47. In *Case U95* 87 ATC 575, a shop assistant employed by a retail merchant was required 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 are to be worn.' (ATC at 577).

48. The deduction for clothing was denied because there was:

> '...nothing distinctive or unique about the combination of clothing which would identify the wearer as a [name of employer] shop assistant or even a shop assistant from another department store. 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 drink or food waiting staff.' (ATC at 580).

*Non-compulsory uniform or wardrobe*

49. A deduction is not allowable for the purchase and maintenance costs of a non-compulsory uniform or wardrobe, **unless** the conditions outlined in section 51AL of the Act are met. Section 51AL 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.

*Conventional clothing*

50. 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 paragraphs 25 and 26).

51. 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.

52. 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.

53. Senior Member Barbour distinguished this case from *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.'

54. 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.'

55. In *Case K2* 78 ATC 13; 22 CTBR (NS) *Case 21*, an employee solicitor was required as part of his duties to appear in various courts.

It was not his practice to wear a suit. On one occasion a barrister called him as a witness and, although he was neatly dressed, the judge admonished him for not wearing a suit. From that date he wore a suit when involved in litigation work. On the days that he wore a suit, he wore it to and from the office and while at the office. It was held that the expenditure in respect of the suit was not incurred in gaining or producing assessable income and that it was of a private nature.

*Laundry and maintenance*

56. 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 **Error! Reference source not found.**. This applies whether the clothing is purchased by the employee lawyer or supplied by the employer.

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

### *Club membership fees*

58. A deduction is not allowable for club membership fees as they are expenses of a private nature. Subsection 51AB(4) of the Act specifically denies a deduction for the cost of club membership or the right to enjoy the facilities of a club.

### *Computers and software*

59. A deduction is allowable for depreciation under subsection 54(1) of the Act on computers owned and used by employee lawyers for work-related purposes (paragraphs 69 to 79).

60. For example, an employee lawyer may use a computer to prepare submissions, reports or for self education purposes. If the computer is also used for private purposes, the deduction for depreciation is allowable only to the extent of the work-related use (paragraphs 74 and 75).

61. If software is purchased as part of a computer system, the total cost of the system is depreciable (see Taxation Ruling IT 26).

62. A deduction is allowable under subsection 51(1) if the related software is purchased separately from the computer to the extent that it relates to use for work-related purposes (see IT 26).

***Conferences, seminars and training courses***

63. A deduction is allowable for the cost of attending conferences, seminars and training courses to maintain or increase the knowledge, ability or skills required by an employee lawyer. There must be a relevant nexus with the work-related activities of the employee lawyer.

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

> '...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).

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

66. If the dominant purpose in incurring the costs 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.

67. 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.

68. Information on ***Self education expenses*** can be found in TR 92/8 and in paragraphs 130 to 139 of this Ruling.

***Depreciation of equipment***

69. A deduction is not allowable under subsection 51(1) of the Act for the cost of equipment as it is considered to be a capital expense.

70. However, a deduction is allowable under subsection 54(1) for depreciation on equipment owned and used by an employee lawyer for work-related purposes. A deduction is also allowable for depreciation on equipment that is not actually used during the year for work-related purposes, but is installed ready for use for that purpose and held in reserve.

71. 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.

72. 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 its effective life is less than three years (subsection 55(2) of the Act). This means that an immediate deduction is available for the cost of each item of equipment in the year in which it is bought. 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.

73. **Example:** Fred, an employee lawyer, pays $250 for a briefcase that is used only for work-related purposes, e.g. carrying reference books, notes and client files. The amount of $250 is an allowable deduction in the year of purchase.

74. If equipment is used partly for work-related purposes and partly for other purposes, the depreciation should be apportioned, based on an estimate of the percentage of work-related use (section 61 of the Act). For example, this principle would apply to equipment such as computers, printers, word processors, fax machines, typewriters, answering machines, video recorders and tape recorders that are used both for work-related and private purposes.

75. **Example:** Alison is an employee lawyer who owns a laptop computer. She uses this computer at work during the week and at home on weekends for writing personal letters. She is entitled to a deduction for a proportion of the depreciation based on the work use of the laptop computer. A reasonable apportionment might be 5/7 business use.

76. If the equipment is bought part way through the year, the deduction for depreciation is apportioned on a pro-rata basis.

77. 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 (see Taxation Determination TD 92/142).

78. **Example:** A bookshelf is purchased on 1 July 1991 for $400 but it is not used for work-related purposes until 1 July 1993. It is depreciated at a rate of 13.5% using the diminishing value method.

79. To determine the opening written down value of the bookshelf for taxation purposes, it should be depreciated at the specified rate from the date of purchase to 30 June 1993. The depreciation in the 1992 and 1993 years is $54 and $47 respectively. The opening written down value of the bookshelf at 1 July 1993 is $299. In the 1994 tax year the bookshelf is used for work-related purposes and the depreciation expense that is deductible is $299 × 13.5% = $40.36, rounded to $41.

### *Driver's licence*

80. A deduction is not allowable for the cost of obtaining or renewing a driver's licence as it is a capital or private expense.

81. 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 the cost was not an allowable deduction under subsection 51(1).

82. 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.

### *Fines*

83. A deduction is not allowable for fines imposed under any law of the Commonwealth, a State, a Territory or a foreign country or by a court. Subsection 51(4) of the Act expressly precludes these payments from deductibility under subsection 51(1).

### *Glasses and contact lenses*

84. A deduction is not allowable under subsection 51(1) of the Act for the cost of buying prescription glasses or contact lenses as the

expense relates to a personal medical condition and is private in nature.

### *Home office expenses*

85. A comprehensive explanation of the deductibility of home office expenses is contained in Taxation Ruling TR 93/30.

86. In general, expenses associated with an employee lawyer's home are of a private or domestic nature. However, a deduction may be allowable for a proportion of the expenses associated with an employee lawyer's home, if either:

(a) part of the home is used in connection with the employee lawyer's work-related activities but does not constitute a 'place of business', i.e. an area of the home is a private study; or

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

87. TR 93/30 distinguishes between two broad categories of deductible expenses:

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

(b) ***Running expenses*** relating to the use of facilities in the home. 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.

88. A deduction is not allowable for the cost of occupancy expenses for employee lawyers who maintain an office or study at home if they carry out work-related activities at home as a matter of convenience. This is clearly established by the High Court decisions in *Handley v. FC of T* (1981) 148 CLR 182; 81 ATC 4165; 11 ATR 644 (*Handley's* case) and *FC of T v. Forsyth* (1981) 148 CLR 203; 81 ATC 4157; 11 ATR 657. In *Handley's* case, the High Court decided that Mr Handley's outgoings on mortgage interest, rates and insurance premiums were related to the building and/or home as a whole, and they would remain the same whether or not he worked at home.

89. This principle is based on the proposition that occupancy expenses are related to the building's primary function as a house, and this is not changed even if a room is set aside exclusively for work-

related purposes (see *Thomas v. FC of T* (1972-73) ALR 368; 72 ATC 40943; 3 ATR 165).

*Place of business*

90. A deduction is allowable for a proportion of both occupancy and running expenses if an area of the home has the character of a 'place of business'.

91. Whether an area of a home has the character of a 'place of business' is a question of fact. Paragraphs 5, 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'.

92. It is not considered that an employee lawyer, in his or her capacity as an employee, would use part of their home as a place of business. However, an employee lawyer may also conduct a business from home.

93. If an area of a home has the character of a 'place of business', there may be capital gains tax implications on the disposal of the home (see Taxation Ruling IT 2673).

*Private study*

94. A deduction is allowable for work-related running expenses if an employee lawyer maintains an office or study at home (e.g. carrying out research, reading client briefs and preparing submissions etc.).

95. For the running expenses to be deductible, the area of an employee lawyer's home set aside as a private study must be used exclusively for these activities (see *FC of T v. Faichney* (1972) 129 CLR 38; 72 ATC 4245; 3 ATR 435).

96. **Example:** Mary is an employee lawyer who reads her client briefs in the lounge room where other family members are able to watch television. The expenditure for lighting and heating/cooling retains its private or domestic character and is not deductible. If she uses the room at a time when others are not present, or uses a separate room, she is entitled to a deduction for work-related running expenses. This applies even if the room is not set aside solely as a home office.

97. The amount that Mary is entitled to claim is the difference between what was actually paid for heating, cooling and lighting, and what would have been paid had she not worked from home. Taxation Ruling TR 93/30 provides a formula for calculating the additional expense for an appliance such as a heater.

### *Insurance*

98. A deduction is allowable for the cost of the annual premium if an employee buys insurance against loss of an income stream if the periodical payments receivable under the policy constitute assessable income (see *FC of T v. Smith* (1981) 147 CLR 578; 81 ATC 4114; 11 ATR 538).

99. In Taxation Rulings IT 208 and IT 2230 the Commissioner has advised that if the policy provides for both income and capital benefits, the premium needs to be apportioned, and only that portion of the premium referable to the income benefits is an allowable deduction.

### *Meals*

100. A deduction is not allowable for the cost of meals consumed by employee lawyers 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 23 to 30.

101. 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 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' (FCR at 199-200; ATC at 4414; ATR at 1636).

Hill J went on to say:

> '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' (FCR at 201; ATC at 4415; ATR at 1638).

102. It is our view that the essential character of food and drink is private, except in a restricted set of circumstances. These circumstances relate to meals consumed by an employee lawyer engaged in work-related activities when required to sleep away from home. In this case, the cost of meals retains the essential character of a work-related expense, rather than an outgoing of a private nature.

103. In *Case Y8* 9 1 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.

104. 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.

105. 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 21 to 32, and are considered to be private in nature.

106. A deduction is not allowable for the cost of meals bought by an employee lawyer when working late, unless an award overtime meal allowance is received and the expenditure is not private in nature.

***Motor vehicle expenses*** (see also ***Transport expenses)***

*Depreciation cost limit*

107. 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*

108. 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).

*Motor vehicle provided by employer*

109. A deduction is not allowable for car expenses incurred by an employee lawyer if:

(a) the car is provided by the employer for the exclusive use of the employee lawyer and/or their relatives; and

(b) the employee lawyer and/or their relatives are entitled to use the car for private purposes

(see section 51AF of the Act).

110. Costs associated with the operation of the car such as parking fees and tolls are not precluded by the operation of section 51AF (see *Case Y43* 91 ATC 412; *AAT Case 7273* (1991) 22 ATR 3402). Parking fees and tolls are also discussed at paragraphs 113 and 114.

### *Newspapers*

111. A deduction is generally not allowable under subsection 51(1) of the Act for the cost of newspapers and magazines, as it is a private expense. Even though an employee lawyer may be able to use part of the information in the course of his or her work, the benefit gained is usually remote and the proportion of the expense that relates directly to work is incidental to the private expenditure. This view is supported in *Case P30* 82 ATC 139; 25 CTBR (NS) *Case 94* and *Case P114* 82 ATC 586; 26 CTBR (NS) *Case 47*.

112. **Example:** Simone, an employee lawyer, often buys a particular newspaper because it contains law lists. Any work-related purpose of buying the newspaper is considered to be incidental to her overall private purpose, and no deduction is allowable.

### *Parking fees and tolls*

113. 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 an employee lawyer for certain car parking expenses where the conditions outlined in section 51AGA of the Act are met.

114. A deduction is not allowable for parking fees and tolls incurred when employee lawyers are travelling between their home and their normal place of employment (see *Case C47* 71 ATC 219; 17 CTBR (NS) *Case 44*). The cost of that travel is a private expense and the

parking fees and tolls therefore have that same private character (see exception in paragraphs 169 to 172).

***Professional library***

115. A deduction is allowable under section 54 of the Act for depreciation on the cost of a professional library.

116. In *Munby v. Furlong (Inspector Of Taxes)* [1976] WLR 410; [1976] 1 All ER 753, it was held that the word 'plant' was not confined to objects that were used physically by a professional man but extended to objects used by him intellectually in the course of carrying on his profession and therefore included books purchased by a barrister for the purpose of his practice.

117. Further, Lord Denning MR, in that case, indicated that the cost of textbooks having a life of four to nine years, was capital expenditure. A deduction is therefore allowable for depreciation on the cost of books in a professional library, to the extent that they are used for work-related purposes.

118. For depreciation purposes, reference books may only be included in the professional library if their content is directly relevant to the duties performed. For example, encyclopaedias would not be included, as they are too general in nature.

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

> '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, as they were not used or installed ready for use for the purposes of producing assessable income' (ATC at 116; CTBR at 666).

120. If an individual reference book is purchased after 1 July 1991, and its 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 (see Taxation Determination TD 93/159).

121. A distinction must be drawn between textbooks purchased for use in a course of study and books forming part of a professional's library. A student's books will generally be used only during the course of study, and in most cases only during the year of purchase. A deduction is allowable for the cost of the books in the year of purchase providing there is a nexus between the study and the earning of assessable income.

122. If the cost of a textbook has been claimed as a deduction, its cost may not be subsequently added to the value of a professional library and depreciated. For example, an employee lawyer may have claimed a deduction for the cost of a textbook as part of her self education expenses. The cost of that textbook cannot be included in the value of a professional library for depreciation purposes.

123. Paragraphs 69 to 79 of this Ruling provide further information on the deductibility of depreciation.

***Removal and relocation expenses***

124. A deduction is not allowable under subsection 51(1) of the Act for removal or relocation expenses incurred by an employee lawyer to take up a new posting within an existing employment or in taking up new employment with a different employer. This applies whether the transfer of employment is voluntary or at the employer's request.

125. An employee lawyer may receive an allowance from his or her employer as compensation for the costs of relocating. The allowance is assessable under subsection 25(1) or paragraph 26(e) and no deduction is allowable under subsection 51(1). It is considered that the expense is not incurred in deriving assessable income and/or is of a private or domestic nature.

126. In *Fullerton v. FC of T* (1991) 32 FCR 486; 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 was not deductible under subsection 51(1), even though the expenditure had a causal connection with the earning of income.

127. 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.

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

### *Repairs*

129. A deduction is allowable under subsection 53(3) of the Act for the cost of repairs to equipment, to the extent to which the equipment is used for work-related purposes.

### *Self education expenses*

130. A comprehensive explanation of the deductibility of self education expenses is contained in 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 taxpayer'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 taxpayer's income from his or her current income earning activities.

(c) A deduction is not allowable if the education is designed to enable a taxpayer to get employment, or to obtain new employment or to open up a new income earning activity (*Maddalena's* case).

(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.

131. In *Case U186* 87 ATC 1066; 18 ATR 3943 *Case 129*, the applicant was an employee lawyer working with a legal firm, and a part-time law lecturer. He was offered a place in a Masters course in the United States and after accepting the offer, he resigned both jobs in August 1982. Both employers were willing to re-employ him when he returned and, on his return in June 1983, he resumed employment with the same legal firm. In 1984 he resigned and took up employment with a law firm in Hong Kong. In August 1985 he returned to Australia and commenced to practise law on his own account.

132. The Tribunal held that the applicant was not entitled to a deduction for travel, study and living expenses on the ground that they were not incurred 'in the course of' the derivation of any relevant

income. In addition they were denied on the ground that they were incurred at a point too soon in time.

133. **Example:** James is an employee law clerk who would like to go into business for himself and is taking a part-time course in Business Administration. James is not allowed any deduction for the costs of this course as there is insufficient connection with his current income earning activities.

134. 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, where 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, where 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 |

135. **Example:** Effie is an employee lawyer who travels a long distance to a university to undertake her 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.

136. The following expenses related to self education are not allowable deductions 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*

137. 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.

138. '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.

139. **Example:** Keith, an employee lawyer, incurs self education expenses totalling $1650 in connection with his law course at a university. Keith is allowed a deduction for the remaining $1400.

### *Social Functions*

140. A deduction is generally not allowable for expenses incurred in attending social functions if the expenses relate to the provision of entertainment (see subsection 51AE(4) of the Act). Broadly, the 'provision of entertainment' means entertainment by way of food, drink, recreation, accommodation or travel. This subsection applies irrespective of who pays for the entertainment and/or who receives the entertainment.

141. A deduction is not allowable for the cost of an employee lawyer's meals while travelling away from home, if the taxpayer also buys a meal for a client (see subsection 51AE(4)). A deduction is not allowable for expenses incidental to the meal (see Taxation Determination TD 92/151).

142. **Example:** Joe, who is currently in America on an overseas business trip, has dinner with his business client Fred and pays for Fred's meal. Joe is not entitled to a deduction for any of the costs associated with his dinner with Fred, including the cost of his own meal.

143. In *Case Y11* 91 ATC 184; *AAT Case 6641* (1991) 22 ATR 3063, a senior officer in the Australian Defence Force involved in negotiations to buy defence equipment was denied a deduction for expenditure incurred in attending a range of lunches, cocktail parties, dinners and other forms of social contact relevant to the performance of his duties. Direct business was done on many of those occasions. It was held that subsection 51AE(4) operated to deny the claim. It did not matter that the expenditure was directly relevant to business transactions.

144. In *Frankcom v. FC of T* (1982) 65 FLR 25; 82 ATC 4599; 13 ATR 636, a magistrate was denied a deduction for the costs of attending a cocktail party hosted by the Bar Association and Law Society and dinners given by the Queensland Stipendiary Magistrates' Association. The taxpayer's duties as a magistrate did not necessitate

his attendance at social functions. Hence, the expenditure was not incidental and relevant to the taxpayer earning his salary and they were also of a private nature.

145. A deduction is not allowable to an employee lawyer for the cost of providing morning or afternoon tea or light refreshments to other staff members. These expenses are not incurred in producing assessable income and are also of a private nature. Even if the provision of refreshment is part of 'team building', the essential character of the expense remains private.

### *Supreme Court library fees*

146. A deduction is not allowable under subsection 51(1) of the Act for Supreme Court library fees payable as a 'once-only' fee on admission to practice, as they are of a capital nature. A deduction is allowable under subsection 51(1) if the fees are paid annually or periodically.

### *Suspension from practice*

147. A deduction is not allowable under subsection 51(1) of the Act for expenses incurred by an employee lawyer in defending his or her right to practise. The expenses are considered to be capital or of a capital nature.

148. In *Case V140* 88 ATC 874; *AAT Case 4596* (1988) 19 ATR 3859, a solicitor was suspended from practice for one year and ordered to pay the costs of the Law Society. The Tribunal applied the tests described in *Sun Newspapers* by Dixon J, namely, that the advantage sought (the right to practise as a solicitor) was a lasting one; the manner in which that right was to be used was to derive recurring income; and the means adopted to obtain (in this case retain) that right was a 'once and for all' payment.

### *Technical or professional publications*

149. 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 an employee lawyer's work and are not general in nature. For example, a deduction is not allowable for the cost of buying magazines such as *Time*, *The Bulletin* and *Reader's Digest* as they are general interest publications.

150. 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).

151. 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 that related to her day-to-day work. She was, however, not allowed a deduction for the cost of daily newspapers and periodicals.

152. **Example:** Tania, an employee taxation lawyer in a large company, subscribes to the *Taxation in Australia* journal. The cost is an allowable deduction as there is sufficient nexus between the expense and Tania's job.

153. **Example:** Rachel, an employee lawyer, subscribes to *The International Manager*. The cost would not be an allowable deduction as there is insufficient nexus between the expense and Rachel's job.

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

*Cost of calls*

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

155. 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*

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

157. In *Case M53* 80 ATC 357; 24 CTBR (NS) *Case 29,* Dr P Gerber (Member) stated:

'...on payment of the connection fee, this taxpayer bought into existence an advantage for the enduring benefit of his newly established medical practice' (ATC at 359; CTBR at 236).

*Rental costs*

158. The situations where telephone rental will be an allowable deduction, especially for employees, 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.

159. If the telephone is not used 100% for work-related purposes, 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*

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

***Transport expenses***

161. Transport costs 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***, paragraphs 186 to 190). The deductibility of transport costs incurred by an employee lawyer when travelling is considered below.

*Travel between home and work*

162. A deduction is not allowable for the cost of travel by an employee lawyer between home and his or her 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 Taxation Ruling MT 2027, paragraph 34).

163. The High Court considered travel expenses incurred between home and work in *Lunney's* case. Williams, Kitto and Taylor JJ stated that:

> '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).

164. 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.

165. **Example:** Nigel, a legal aid employee lawyer, is phoned at his home outside normal working hours as a client has been arrested. He travels from his home to his office in response to this call. A deduction is not allowable for the cost of travel between his home and the office.

166. On another occasion Nigel travelled from the office to the police station and then back to the office or directly home. A deduction is allowable for the cost of this travel (see paragraphs 175 and 176).

167. An employee lawyer may be regularly employed at various legal aid offices on some days and at his or her permanent work place on other days. As the employee lawyer performs normal duties at the various legal aid offices and the permanent work place, all these locations are considered to be the normal work place.

168. **Example:** Bill is an employee lawyer who works in his employer's city office and also commutes to a suburban branch office. A deduction is not allowable for the cost of travel between Bill's home and either of these locations as it is travel to and from his normal work place (but see paragraphs 169 to 172).

*Travel between home and the normal work place but transporting bulky equipment*

169. A deduction is allowable if the transport costs can be attributed to the transportation of bulky articles or equipment rather than to private travel between home and work (see *FC of T v. Vogt* [1975] 1 NSWLR 194; 75 ATC 4073; 5 ATR 274).

170. This does not apply where, as a matter of convenience, the employee lawyer performs some work at home and transports papers,

materials, etc. (whether bulky or not), between home and work for that purpose (see *Case Q1* 83 ATC 1: *Case 65* 26 CTBR (NS) 469 and see also Taxation Ruling MT 2027, paragraph 38).

171. **Example:** Charlie, an employee lawyer, has to attend a hearing at a country court. He uses his car to enable him to carry 50kg of working papers home so that he can travel directly to court the next day. Charlie would be entitled to a deduction for his car expenses when transporting the bulky working papers.

172. **Example:** Geoffrey, an employee lawyer, chooses to do some work at home and carries 50kg of working papers and a notebook computer in his car when travelling to and from work. Geoffrey's car expenses are private, as his travel between home and work is not attributable to the necessary carrying of bulky articles or equipment.

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

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

174. **Example:** Julian, an employee lawyer, is allowed a deduction for the cost of travel from his office directly to a university to give night lectures, for which he is paid.

*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*

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

176. **Example:** Bonnie, an employee lawyer, travels from her normal office to her employer's head office to attend a meeting. After the meeting she travels directly home. The cost of each journey is an allowable deduction to Bonnie.

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

177. 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 an allowable deduction. (see Taxation Ruling MT 2027, paragraphs 32 to 35).

178. **Example:** Anna, an employee lawyer, is required to travel from home to assist with an urgent brief at her employer's head office. She then travels to her normal work place. The cost of travelling from home to the head office and then on to the normal work place is an allowable deduction. However, the cost of travelling home from the normal work place is not an allowable deduction.

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

179. 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 income-producing activities.

180. **Example:** Kirsten, an employee lawyer, works at two branch offices each day. The cost of travel from one office to another is an allowable deduction as the cost is incurred in travelling between two places of employment (see Taxation Ruling IT 2199).

181. If the employee lawyer 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 employee lawyer'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 IT 2199).

182. 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 (see *Case N44* 81 ATC 216; 24 CTBR (NS) *Case 114*).

183. 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 it was not deductible.

184. **Example:** Virginia, an employee lawyer, teaches guitar at her home in the evenings. The cost of travelling from her office to home is not an allowable deduction. It is a private expense rather than an expense incurred in deriving assessable income.

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

### *Travel expenses*

186. Travel expenses include the cost of fares, accommodation, meals and incidentals.

187. A deduction is allowable for the costs incurred by an employee lawyer in undertaking work-related travel. An example is where an employee lawyer attends a seminar interstate. No deduction is allowable for travel expenses unless documentary evidence is obtained.

188. No substantiation is required if an employee lawyer receives a travel allowance that the Commissioner considers reasonable and the deduction claimed is not greater than the allowance.

189. If the employee lawyer receives an allowance that is less than the reasonable rates, a deduction up to the amount of the allowance received is allowable without the need for substantiation.

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

#### *Accompanying relatives' travel expenses*

191. Section 51AG may affect the deductibility of travel expenses if relatives accompany an employee lawyer on work-related travel. This may apply whether or not the accompanying relatives are fellow employees, if those employees perform no substantive duties during the trip.

### *Union fees or professional association fees and levies*

192. A deduction is allowable for the cost of union or professional association fees. Taxation Rulings IT 299, IT 327, IT 2062 and IT 2416 provide further information on the deductibility of union and professional association fees.

193. IT 2062 sets out our views on the deductibility of levies paid to unions and associations. It says:

> '...where levies are paid by employees to a trade union or professional association it is necessary to have regard to the purposes for which the payments are made in order to determine whether they satisfy the terms of subsection 51(1). It is not decisive that the levies may be compulsory. What is important is the connection between the payment of the levy and the activities by which the assessable income of the employee is produced.
>
> Levies made specifically to assist families of employees suffering financial difficulties as a result of employees being on strike or having been laid off by their employers are not considered to be allowable deductions under subsection 51(1) - they are not sufficiently connected with the activities by which the assessable income is produced to meet the requirements of the subsection' (IT 2062 paragraphs 2 and 3).

194. A deduction is allowable for a levy paid to enable a trade union or professional association to provide finance to acquire or construct new premises, to refurbish existing premises or to acquire plant and equipment to conduct their activities (see IT 2416).

195. A deduction is allowable for a levy if it is paid into a separate fund and it can be clearly shown that the monies in that fund are solely for protecting the interests of members and their jobs, and for the obtaining of legal advice or the institution of legal action, etc. on their behalf (see IT 299).

196. A deduction is not allowable under subsection 51(1) for payments to staff social clubs or associations as they are considered to be private expenses.

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# Your Comments

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

31 March 1995

to:

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Attention: Mr Paul Muller.

**Commissioner of Taxation**

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