TR 95/D5 - Income tax: employee performing artists - allowances, reimbursements and work-related expenses

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Draft Taxation Ruling

Income tax: employee performing artists - allowances, reimbursements and work-related expenses

other Rulings on this topic

IT 85; IT 112; IT 327; IT 2062; IT 2198; 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 93/108; TD 93/111; TD 93/113; TD 93/114; TD 93/115; TD 93/159; TD 93/232; TD 93/244

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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.

What this Ruling is about

Class of person/arrangement

1. This Ruling applies to employee performing artists. For the purposes of this Ruling a 'performing artist' is a person who is a musician, actor, variety artist, dancer or circus performer.

2. The Ruling does not cover the expenses of journalists, including radio and television presenters, radio and television journalists nor the expenses of directors, producers, script writers, composers, choreographers and support personnel.

3. The Ruling deals with:

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

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

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

5. 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 51AE, 51AGA, 51AH, 51AL, 53, 54, 55, 61 or 82A of the Act.

6. This Ruling will, on finalisation, withdraw Taxation Rulings IT 124, IT 181 and IT 187.

7. The tax treatment of allowances and reimbursements received is examined at paragraphs 13 to 19 in the **Ruling** section.

8. The common work-related expenses incurred by employee performing artists and the extent to which they are allowable deductions are discussed, in alphabetical order, at paragraphs 20 to 22 in the **Ruling** section.

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

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

Date of effect

11. 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).

12. 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 1995-1996 year of income.

Ruling

Allowances

13. The receipt of an allowance does not automatically entitle an employee performing artist to a deduction. The term 'allowance' does not include a reimbursement (see paragraphs 16 to 19).

14. 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 employee performing artists);

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

(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 (see paragraph 15);

(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 employee performing artists).

Reasonable allowances

15. 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. 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. If a deduction is claimed in excess of the allowance, the whole claim must be substantiated.

Reimbursements

16. If an employee performing artist 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 an employee performing artist 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).

17. 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 performing artist under paragraph 26(eaa) of the Act and a deduction may be allowable for the actual expenses incurred (see ***Transport expenses***, paragraphs 170 to 194).

18. 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 employee performing artist for depreciation (see Taxation Determination TD 93/145 and ***Depreciation of equipment***, paragraphs 86 to 93 of this Ruling).

19. If a payment is received from an employer for an **estimated** expense, the amount received by the employee performing artist from an employer is considered to be an allowance (not a reimbursement) and is fully assessable to the employee performing artist (see **Allowances**, paragraphs 13 to 15).

Deductions

20. A deduction is only allowable if an expense:

(a) is actually incurred (paragraph 24);

(b) meets the deductibility tests (paragraphs 25 to 32); and

(c) satisfies the substantiation rules (paragraphs 33 to 34).

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

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

Agent's fees: A deduction is allowable for commissions paid to theatrical agents. A deduction is not allowable for up-front fees or joining fees paid to an agent (see paragraphs 35 to 38).

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.

Audition expenses: A deduction is not allowable for costs of preparing for and attending auditions (see paragraph 39).

Child care: A deduction is not allowable for child care expenses (see paragraphs 40 to 42).

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 paragraph 43).

A deduction is not allowable for the cost of evening wear for orchestra members (see Taxation Determination TD 93/111 and paragraph 53 of this Ruling).

A deduction is allowable for the cost of buying or hiring costumes, e.g. a clown costume (see paragraph 60).

A deduction is allowable for the cost of conventional clothing bought or hired as a costume for a role (see TR 94/22). Whether apportionment is necessary depends on the particular facts of the case.

A deduction is not allowable for the cost of an employee performing artist's conventional street wear worn at work (see paragraphs 63 to 65).

A deduction is allowable for the cost of a dancer's special tights.

Coaching classes: acting, singing, dancing, etc: A deduction is allowable for the cost of classes taken to maintain existing skills or obtain related skills. A deduction is allowable for the cost of lessons to acquire skills for use in a particular role or performance (see paragraphs 71 to 75).

Computers and software: A deduction is allowable for depreciation of computers and software used for work-related purposes. A deduction is allowable in full in the year of purchase if the related software is bought separately from the computer. The deduction must be apportioned between work-related and private use (see paragraphs 76 to 79).

Conferences and seminars: A deduction is allowable for the costs of attending conferences, seminars and training courses to maintain or increase knowledge, ability or skills in the profession. There must be a connection between the conference etc. and the work-related activities (see paragraphs 80 to 85).

Depreciation of equipment: A deduction is allowable for depreciation only to the extent of the work-related use of the equipment (see paragraphs 86 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 or the cost of using public transport for work-related travel (see paragraph 97). See also ***Transport expenses*** (paragraphs 170 to 194).

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 (see paragraph 98).

Fitness expenses including chiropractic/massage/physiotherapy: A deduction is allowable for fitness expenses only if it can be shown that the employee performing artist is required to undertake strenuous physical activity as part of his or her income earning activities (see paragraphs 99 to 101).

Gifts: A deduction is not allowable for the cost of gifts such as flowers or alcohol for fellow performers, producers or directors because it is a private expense (see paragraph 102).

Glasses and contact lenses: A deduction is not allowable for the cost of buying prescription glasses or contact lenses (see paragraph 103).

Grooming: A deduction is generally not allowable for grooming expenses such as hairdressing, makeup and facials. A deduction is allowable for the cost of a particular hairstyle if an employee performing artist is required to have a particular hairstyle for a role. Similarly, a deduction is allowable for the cost of make-up bought by an employee performing artist for stage, film or television performances (see paragraphs 104 to 106).

Hairdressing: See ***Grooming***.

Home office/home studio expenses: see paragraphs 107 to 113.

*Place of business****:*** A deduction is allowable for a proportion of running and occupancy expenses if an area of the home has the character of a place of business (see paragraphs 108 to 110).

*Private study/studio****:*** A deduction is allowable for the running expenses of a private study or studio used for work performed at home (see paragraphs 111 to 113).

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 114 to 115).

Make-up: See ***Grooming***.

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 116 to 121). A deduction may be allowable if an award overtime meal allowance has been paid (see paragraph 121). A deduction may be allowable for the cost of meals incurred by an employee performing artist who travels for work-related purposes (see ***Travel expenses****,* paragraphs 195 to 200).

Motor vehicle expenses: A deduction is allowable for costs associated with using a motor vehicle for work-related travel (see paragraph 122). See also ***Transport expenses*** (paragraphs 170 to 194).

Newspapers: Generally, a deduction is not allowable for the cost of newspapers (see paragraph 123).

Overtime meal allowance: A deduction is allowable for the cost of meals bought while working overtime if an award overtime meal allowance is received provided the expenditure is not private in nature (see paragraphs 124 to 129). Special substantiation rules apply.

Parking fees: A deduction is allowable for parking fees paid by an employee performing artist while travelling in the course of employment, e.g. between work venues (see paragraphs 128 to 129).

Photographs: A deduction is allowable for the cost of maintaining a photographic portfolio for publicity purposes. A deduction is not allowable for the initial cost of preparing the portfolio (see paragraph 130).

Professional library: A deduction is allowable for depreciation of a professional library that includes books, tapes, compact discs, records and videos. The content of the reference material must be directly relevant to the income earning activities. An apportionment must be made for private use (see paragraphs 131 to 135).

Removal and relocation expenses: A deduction is not allowable for the cost of taking up a transfer in existing employment or an appointment with a new employer (see paragraphs 136 to 141).

Research expenses: A deduction is allowable for costs incurred in researching a role or character (see paragraphs 142 to 143).

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 work-related activities. Self education costs can include fees, travel, books and equipment (see paragraphs 144 to 148).

If self education expenses are allowable but also fall within the definition of 'expenses of self education' in section 82A of the Act, the first $250 is not an allowable deduction (see paragraphs 149 to 150).

Social functions: A deduction is not allowable for the cost of attending award nights or other social events, whether there is an entertainment industry connection or not (see paragraphs 151 to 153).

Tapes/compact discs/cassettes: A deduction is allowable for the work-related portion of the cost of audio and video tapes and compact discs (see also comments under ***Professional library***, paragraphs 131

to 135). A deduction is allowable for the cost of tapes and cassettes used for rehearsal or for portfolio purposes (see paragraph 154).

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 employee performing artists and are not general in nature (see paragraphs 155 to 157).

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

Cost of calls: A deduction is allowable for the cost of work-related calls (see paragraphs 158 to 159).

Installation or connection costs: A deduction is not allowable for the cost of installing or connecting a telephone etc., as it is a capital expense (see paragraphs 160 to 161).

Rental costs: A deduction is allowable for a proportion of telephone rental costs if the employee performing artist can demonstrate that he or she is 'on call', or required to telephone their employer on a regular basis (see paragraphs 162 to 163).

Silent telephone numbers: A deduction is not allowable for the cost of obtaining a silent telephone number (see paragraph 164).

Television receivers, video recorders and compact disc players: A deduction is allowable for depreciation of these items if their use can be related to income earning activities (see paragraph 165). See also ***Tapes/compact discs/cassettes*** (paragraph 155) and ***Depreciation of equipment*** (paragraphs 86 to 93).

Theatre/film tickets: A deduction is allowable for the cost of theatre and film tickets if the show is directly relevant to income earning activities (see paragraphs 166 to 168). See also ***Research expenses*** (paragraphs 142 and 143) and ***Self education expenses*** (paragraphs 144 to 150).

Tolls: A deduction is allowable for bridge and road tolls paid by an employee performing artist when travelling in the course of employment, e.g. between work venues (see paragraph 169).

Transport expenses: 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***, paragraphs 195 to 200). The deductibility of transport expenses incurred by an employee performing artist 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 (see paragraphs 172 to 174).

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 transportation of bulky equipment rather than to private travel between home and work. A deduction is not allowable if an employer provides:

(a) a secure area for the storage of equipment at the work place; or

(b) insurance cover for stolen equipment; or

(c) has a policy of compensation for, or replacement of stolen equipment

(see paragraphs 175 to 177).

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 paragraphs 178 and 179).

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 gaining assessable income and is allowable as a deduction (see paragraphs 180 to 182).

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 (see paragraphs 183 and 184).

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 (see paragraphs 185 to 190).

Travel in connection with self education: See ***Self education expenses*** (paragraphs 146 and 147).

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).

Motor vehicle provided by employer: A deduction is not allowable for car expenses incurred by an employee performing artist if:

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

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

(see section 51AF of the Act).

Travel expenses: A deduction is allowable for the cost of travel expenses (fares, accommodation, meals and incidentals) incurred by an employee performing artist when travelling in the course of employment (see paragraphs 195 to 196). Special substantiation rules apply (see paragraphs 197 to 199).

Travel accompanied by a relative: Section 51AG of the Act may affect the deduction that may be claimed for relatives if work-related travel is undertaken (see paragraph 200).

Union fees and professional association fees: A deduction is allowable for union or professional association fees (see paragraph 201).

Explanations

Deductibility of work-related expenses

23. 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

24. The expense must actually be incurred by the employee performing artist to be considered for deductibility. A deduction is not allowable for expenses not incurred by an employee performing artist, 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.

Expense meets deductibility tests

25. 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.'

26. 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).

27. 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).

28. 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...'

29. The fact that an expense is voluntarily incurred by a performing artist does not preclude it from being an allowable deduction (Taxation Ruling IT 2198).

30. **Example:** Andre, a dancer, is supplied with dancing tights by his employer and also voluntarily buys another pair. The cost of the tights and the laundry costs of both pairs are allowable deductions.

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

32. 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.'

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

33. 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).

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

Common work-related expense claims

Agent's fees

35. A deduction is allowable for commissions paid to theatrical agents.

36. **Example:** Kate, a singer, obtains a one week gig at a nightclub and the total remuneration is $1,000. Kate must pay 10% commission to her agent, which is $100. Her assessable income will include the $1,000 and the $100 commission is an allowable deduction.

37. **Example:** With the same facts as paragraph 36, however the nightclub pays Kate $1,000 and then pays the agent his commission of $100. In this situation a deduction is not allowable to Kate for the $100 as the expense has been incurred by the nightclub and not Kate.

38. A deduction is not allowable for an up-front, joining or search fee to an agent. It is incurred too soon to be regarded as incurred in producing assessable income. It is a cost of obtaining employment rather than a cost incurred in the course of employment. This will be so regardless of how any such fee is described. In *FC of T v. Maddalena* 71 ATC 4161; 2 ATR 541 (*Maddalena's* case), Barwick CJ stated (ATC at 4162; ATR at 548):

> 'The costs to an employee of obtaining his employment does not form an outgoing in the course of earning the wages payable in the employment.'

Audition expenses

39. A deduction is not allowable for costs of preparing for and attending auditions. These costs are incurred too soon to be seen as incurred in producing assessable income. The expenses are incurred in getting work rather than doing work (see *Maddalena's* case and paragraph 38 above).

Child care

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

41. 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 an allowable deduction. The expenditure was also of a private or domestic nature (see also *Jayatilake v. FC of T* 101 ALR 1191 ATC 4516; (1991) 22 ATR 125).

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

Clothing, uniforms and footwear

43. 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 Textile Clothing Footwear Development Authority (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

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

45. 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.

46. In *Case Q11* the taxpayer was a self-employed lawn mowing contractor. Amongst other things, he claimed the cost of transistor batteries and sun screen lotions. Dr G W Beck (Member) said (ATC at 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 25 to 33 applied.

Occupation Specific Clothing

47. 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 and women regardless of their occupation. Examples of clothing that are considered to be occupation specific are female nurses' traditional uniforms, chefs' checked pants and a religious cleric's ceremonial robes.

48. It is not considered that employee performing artists would wear occupation specific clothing.

Compulsory uniform or wardrobe

49. 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.

50. 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).

51. 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).

52. The deduction for clothing was denied, because there was:

> 'nothing distinctive or unique about the combination of clothing that 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).

53. A deduction is not allowable to orchestra members for the cost of buying or hiring dinner suits, including tails, evening gowns, shirts and blouses, black trousers, shoes and bow ties. Taxation Determination TD 93/111 provides further information.

Non-compulsory uniform or wardrobe

54. A deduction is not allowable for the purchase and maintenance costs of a non-complusory uniform or wardrobe **unless** the conditions outlined in section 51AL 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.

Conventional Clothing

55. The views of the ATO 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 paragraph 28).

56. 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.

57. 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.

58. 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.'

59. Nevertheless, if a direct connection exists between the expenditure on conventional clothing and the employee performing artist's income earning activities the expenditure may be allowable. Taxation Ruling TR 94/22 gives the following two illustrations of instances where this nexus exists.

60. **Example:** Cameron is a professional actor who buys clothing to wear on stage as a costume in a particular production. A direct nexus exists between Cameron's expenditure on clothing and his income-producing activities as an actor, even though the clothing purchased to play a part may be conventional in nature. Cameron's clothing expenditure is directly related to his performing his employment activities in the clothing to earn his income, and is allowable. Whether apportionment is necessary depends upon the particular facts.

61. **Example:** Lauren is a television game show hostess who attends a studio every Tuesday to tape multiple episodes of the show for the week. Her employer does not provide her with clothing to wear on the show. She buys evening wear and formal wear to complement the sets and prize showcases.

62. Lauren's expenditure on clothing worn in these activities, even though it may be conventional clothing, has a direct nexus with her work-related activities as spokesmodel on the game show. Lauren's clothing expenditure is directly related and contributes to her performing her employment activities in the clothing to earn her income and is allowable. Whether apportionment is necessary depends on the particular facts.

63. Claims by other models whether appearing on television or not would need to be determined on their own facts. On the other hand, the mere use of an artist's conventional clothing for stage, television,

film or other performances does not provide sufficient nexus between the cost of the clothing and the income earning activities.

64. **Example:** Rocco has a part in a weekly television drama and also obtains occasional work appearing in commercials. For both activities he is required to come dressed appropriately for the part that might range from jeans and T-shirt to a dark suit. He has a range of conventional street wear which he also wears on camera as required. Rocco is not able to claim a deduction for the cost of his clothing.

65. In Rocco's case the expenditure was incurred to purchase conventional clothing and is private. The fact that the clothing is available and may be worn in income-earning activities does not provide sufficient nexus for a deduction to be allowable under subsection 51(1) of the Act.

66. In *Case U80* 87 ATC 470, a shop assistant was denied a deduction for the cost of black clothes. Senior Member McMahon stated:

> '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' (ATC at 472).

67. In *Cooper's* case, Hill J said:

> '...the fact that the employee is required, as a term of his employment, to incur particular expenditure does not convert expenditure that is not incurred in the course of the income producing operations into a deductible outgoing' (ATC at 4414; ATR at 1636).

68. **Example:** Sandra is a violinist with a State symphony orchestra and is required to wear a black evening gown for performances. A deduction is not allowable for the cost of buying, cleaning, repairing or replacing the dress.

Laundry and maintenance

69. 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 43. This applies whether the clothing is purchased by the performing artist or supplied by the employer.

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

Coaching classes: singing, acting, dancing, etc

71. A deduction is allowable for the cost of training to maintain existing skills or to acquire or improve related skills. This is so even if the training is undertaken between engagements.

72. The nature of the entertainment industry is such that an employee performing artist may have a number of employers during a year and there may be regular periods between engagements where no income is earned. As Senior Member Roach observed in *Case W39* 89 ATC 395; *AAT Case 1199* 20 ATR 3523 (ATC at 397; ATR at 3526):

> '...it is not essential for deductibility that, when expense is incurred by a person as an employee rather than as a self employed person, the person be concurrently employed.'

73. Employee performing artists need a range of related skills. An employee performing artist may also have to acquire a specific skill for a particular role. A deduction is allowable for the cost of acquiring specific skills.

74. **Example:** Emily, an actress, decides to undertake singing and dancing lessons. These skills merely complement her acting ability and do not open up a new field of employment. A deduction is allowable for the cost of the singing and dancing lessons.

75. **Example:** Geoff, an actor, obtains a part that requires him to play a professional tennis player. He takes tennis lessons from a professional tennis coach in order to look proficient when playing the scenes. A deduction is allowable for the cost of the tennis lessons.

Computers and software

76. A deduction is allowable for depreciation of computers and related software used for work-related purposes. If software is purchased as part of a computer system, the total cost of the system is depreciable (see Taxation Ruling IT 26). If the related software is bought 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 (paragraphs 86 to 93 of this Ruling provide further information on deductibility of ***Depreciation of equipment***).

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.

78. A deduction is allowable for interest on money borrowed to finance a computer. The deduction must be apportioned to the extent to which the computer is used for private purposes.

79. For example, employee performing artists may use computers to study scripts or arrange musical scores. A computer may also be used for self education purposes (paragraphs 144 to 150 of this Ruling provide further information on the deductibility of ***Self education expenses***).

Conferences and seminars

80. A deduction is allowable for the costs of attending conferences, seminars and training courses designed to maintain or increase knowledge, ability or skills in the performing artist's profession. There must be a connection between the conference, etc. and the income earning activities of the employee. The conferences, courses or seminars may be held in Australia or overseas.

81. 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).

82. 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 (see paragraphs 195 to 200).

83. 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.

84. Information on ***Self education expenses*** can be found in Taxation Ruling TR 92/8 and at paragraphs 144 to 150 of this Ruling.

85. 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

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

87. A deduction is allowable under subsection 54(1) of the Act for depreciation on plant and articles owned and used by the employee performing artist 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 work-related purposes, but are installed ready for use for that purpose and held in reserve.

88. 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.

89. 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 item may be depreciated at a rate less than 100% if the taxpayer so elects (subsection 55(8)). The current depreciation rates are set out in Taxation Ruling IT 2685.

90. If equipment is used partly in the course of employment and partly for other purposes, then the depreciation expense should be apportioned based on an estimate of the percentage of income-producing use (section 61 of the Act).

91. **Example:** Scott**,** a pop musician, purchases a guitar case for $290. The amount of $290 is allowable as an immediate deduction because it is not more than $300.

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 (see 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 an allowable deduction 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 ***Transport expenses***, paragraphs 170 to 194).

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 (subsection 51(4) of the Act).

Fitness expenses including chiropractic/massage/physiotherapy

99. A deduction is generally not allowable for the costs of keeping fit such as gym fees and aerobic class fees. For an employee performing artist this type of expense does not normally have the essential character of being incurred in the course of gaining or producing assessable income (see Taxation Determination TD 93/114).

100. A deduction is allowable however if an employee performing artist can show that fitness expenses are an essential element of the work-related activities.

101. **Example:** Alvin, a circus trapeze artist, regularly attends a gymnasium to maintain fitness and strength to perform his rigorous aerial routines. Alvin's fitness expenses have the essential character of an income producing activity. The cost of attending the gymnasium has a direct nexus to the earning of assessable income and is allowable.

Gifts

102. A deduction is not allowable for the costs of gifts such as flowers or alcohol for fellow performers, producers or directors because they are private expenses. There is no connection between these costs and income earning activities.

Glasses and contact lenses

103. 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

104. A deduction is generally not allowable for grooming expenses such as hairdressing, make-up and facials. A deduction is allowable for the cost of a particular hairstyle for a role. Similarly, a deduction is allowable for the cost of make-up if an artist provides his or her own make-up for stage, film or television performances.

105. **Example:** Sophie is an actress in a television series. She has regular hair styling and beauty treatments to present a well groomed image to the public. These costs relate to Sophie's personal care and are private and not allowable.

106. **Example:** Alex obtains a role as a policeman in a stage play. He is required to have his normally shoulder length hair cut short and maintained that way for the duration of the play. He also supplies his own makeup to wear on the stage. Alex can claim a deduction for the cost of both the haircuts and the makeup because a direct nexus exists between the expenditure and his income earning activities as an actor.

Home office/home studio expenses

107. A comprehensive explanation of the deductibility of home office/home studio 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 income producing 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 earning activities. These include rent, mortgage interest, repairs to the 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 income producing 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 an employee performing artist who maintains 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* 81 ATC 4165; 11 ATR 644 and *Forsyth v. FC of T* 81 ATC 4157; 11 ATR 657.

Place of business

108. 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 an employee performing artist in their capacity as an employee would use part of their home as a 'place of business'. However, an employee performing artist may also conduct business from home.

109. **Example:** Lam is an employee pianist who also gives piano lessons in a room at his home that he uses exclusively for this purpose. The room is 10% of the home, based on floor area. He receives tuition fees for these music lessons. Lam is entitled to a deduction for a portion of the running expenses and 10% of the occupancy expenses provided the room is characterised as a place of business. However, if the room is also used for private or domestic purposes only a proportion of the running expenses are an allowable deduction.

110. 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 dwelling by the taxpayer. The amount of the capital gain or capital loss will depend on the extent to which, and the period for which, the dwelling was used for the purpose of gaining or producing assessable income (see Taxation Ruling IT 2673).

Private study/studio (if home is not a 'place of business')

111. Employee performing artists may maintain a study or studio at home as a matter of convenience (i.e. so he or she can carry out work at home normally done at the place of employment). For example, a musician may practice in his or her study at home.

112. A deduction for running expenses is not allowable 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 for work-related purposes at a time when others are not present, a deduction for running expenses is allowable (paragraphs 24 and 25 of Taxation Ruling TR 93/30 set out a formula for calculating additional running expenses).

113. A deduction is allowable for running expenses associated with the use of a separate room or studio 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.

Laundry and maintenance

114. 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 43. This applies whether the clothing is purchased by the employee performing artist or supplied by the employer.

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

Meals

116. A deduction is not allowable for the cost of meals consumed by employee performing artists 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 25 to 32.

117. 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 (ATC at 4414; ATR at 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 at 4415; ATR at 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.'

118. 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.

119. 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 22 to 29, and are considered to be private in nature.

120. 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.

121. A deduction is allowable for the cost of meals bought while working overtime, if an award overtime meal allowance is received and included in assessable income (see also ***Overtime meal allowance***, paragraphs 124 to 127).

Motor vehicle expenses

122. A deduction is allowable for the costs of using a motor vehicle for work-related travel (see ***Transport expenses***, paragraphs 170 to 194).

Newspapers

123. 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 performing artist 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*.

Overtime meal allowance

124. 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.

125. A deduction is allowable for the cost of meals bought while working overtime if the expenditure meets the deductibility tests in paragraphs 25 to 32, and it is not of a private nature.

126. 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 an employee performing artist 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).

127. If a deduction claimed is more than the allowance received the employee performing artist must have documentary evidence to support the total claim, not only the excess.

Parking fees

128. Deductions are allowable for parking fees (but not fines) 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 an allowable deduction);

(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 performing artist for certain car parking expenses if the conditions outlined in section 51AGA of the Act are met.

129. A deduction is not allowable for parking fees incurred when employee performing artists 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 (see exception in paragraphs 172 to 174).

Photographs

130. A deduction is allowable for the cost of maintaining a photographic portfolio for publicity purposes. A deduction is not allowable for the initial cost of preparing the portfolio as it is incurred too soon to be part of the income earning activities (see *Maddalena's* case and paragraph 38 of this Ruling).

Professional library

131. A deduction is allowable under subsection 54(1) of the Act for depreciation of a professional library. If individual reference material is purchased after 1 July 1991, and the cost of each item 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 of the Act (see Taxation Determination TD 93/159).

132. For depreciation purposes, reference material may only be included in the professional library if its content is directly relevant to the duties performed. Encyclopaedia and general reference books are considered too general and no deduction is allowed for their cost. Similarly, tapes, records and compact discs or videos need to have a content directly relevant to the income earning activities for a portion of their cost to be allowable.

133. 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).

134. 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, an employee performing artist 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.

135. Paragraphs 86 to 93 of this Ruling provide further information on ***Depreciation of equipment***.

Removal and relocation expenses

136. A deduction is not allowable for removal or relocation expenses incurred by an employee performing artist 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 employee performing artist receives an allowance or a reimbursement, the allowance is assessable under subsection 25(1) or paragraph 26(e) of

the Act and no deduction for these expenses is allowable under subsection 51(1) (see paragraphs 13 to 19).

137. The ATO view is that if a taxpayer 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, that expenditure is not incurred in gaining or producing assessable income and is not an allowable deduction under subsection 51(1) of the Act. These expenses come at a point of time too early to be regarded as being incurred in gaining or producing assessable income. The taxpayer is travelling to his work and not between two places of employment.

138. 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 an allowable deduction under subsection 51(1) of the Act, even though the expenditure had a causal connection with the earning of income.

139. 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.

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

141. **Example:** Dominic is an opera singer who lives in Adelaide and is employed part time with the State Opera Company. He obtains a full time position with an Australian Opera Company based in Sydney. Dominic moves with his family to live permanently in Sydney. Dominic's costs of relocating to Sydney are not allowable.

Research expenses

142. A deduction is allowable for costs incurred by an employee performing artist in researching a role or character that he or she is to play. Costs could include books, videos, theatre tickets and other reference material containing information on the character, era or event.

143. **Example:** Barry is to play the role of a former Prime Minister in an historical drama. He purchases several biographies of the Prime Minister and hires a video documentary on the Prime Minister's years in Government. The cost of the biographies and video hire is allowable. He also visits the film archives. The cost of admission and travel is allowable.

Self education expenses

144. 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 an employee performing artist'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 performing artist's income from his or her current income earning activities.

(c) A deduction is not allowable if the education is designed to enable an employee performing artist to get employment, 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.

145. **Example:** Con is an employed actor who would like to form a production company. He is doing a part-time course in Business Administration. Con is not allowed any deduction for the costs of this course as there is insufficient connection with his current income earning activities.

146. 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

147. **Example:** Gina is a member of the Adelaide Symphony Orchestra and attends a master class held interstate. She incurs seminar fees of $150 and travel and accommodation expenses of $500. She is allowed a deduction for the cost of travel to and from her place of education, overnight accommodation, meals and incidentals.

148. 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

149. 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 an allowable deduction, i.e. the first $250 is not an allowable deduction.

150. '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.

Social functions

151. A deduction is not allowable for the cost of attending award nights or other social events. If the cost of the ticket provides for food, drink or recreation, it qualifies as an entertainment expense under section 51AE of the Act and therefore is not allowable as a deduction under subsection 51(1) of the Act. Even if no food or drink is provided the nexus between the expenditure and the income earning activities is too remote and it is essentially a private expense. The expenditure is not allowable under subsection 51(1).

152. 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 disallowed 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 deduction. It did not matter that the expenditure was directly relevant to business transactions.

153. In *Frankcom v. FC of T* 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. The expenses were not incidental and relevant to the taxpayer gaining his assessable income and were of a private nature.

Tapes/compact discs/cassettes

154. A deduction is allowable for the work-related portion of the costs of audio and video tapes and compact discs (see also comments under ***Professional library***, paragraphs 131 to 135). A deduction is allowable for the cost of tapes and cassettes used solely for rehearsal or for portfolio purposes.

Technical or professional publications

155. A deduction is allowable under subsection 51(1) of the Act for the purchase or subscription cost of journals, periodicals and magazines that have a content specifically related to an employee performing artist's work and are not general in nature. For example, the cost of magazines such as *TV Week* or *Rolling Stone Magazine* is not allowable as they are general interest publications.

156. 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. The members agreed that:

> '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 be that the possible connection is altogether too remote' (ATC at 633-634; CTBR at 422).

157. This can be contrasted with *Case R70* 84 ATC 493; 27 CTBR (NS) *Case 124*, where 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 purchase cost of daily newspapers.

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

Cost of calls

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

159. 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 and connection costs

160. A deduction is not allowable for the cost of installing or connecting a telephone etc as it is considered to be a capital expense. (see Taxation Ruling IT 85).

161. 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

162. 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.

163. 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

164. 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).

Television receivers, video/audio cassette recorders and compact disc players

165. A deduction is allowable for depreciation of these items if their use can be related to income earning activities. An apportionment will be necessary if the items are used for private purposes (see also ***Tapes/compact disc/cassettes*** (paragraph 154) and ***Depreciation of equipment*** (paragraphs 86 to 93)).

Theatre/film tickets

166. A deduction is allowable under subsection 51(1) of the Act for the costs of attendance at theatre or film performances if the performances have a content specifically related to the employee performing artist's own work. Costs associated with attendance at performances for general interest or entertainment or private purposes are not allowable.

167. **Example:** Ellen is a member of a professional ballet company. She attends a performance of Swan Lake by the Bolshoi Ballet Company that is on tour in Australia. Ellen is to dance in a production of Swan Lake being staged by her own company. The style and standard of performance of a world famous ballet company has a direct nexus to Ellen's own income earning activities as a ballet dancer and the cost of attending the performance is allowable under subsection 51(1).

168. **Example:** Bruce is an actor. He regularly attends films and stage plays out of general interest and for entertainment. The connection between Bruce's attendance at these productions and his income earning activities as an actor is too remote for a deduction to be allowable under subsection 51(1) of the Act.

Tolls

169. A deduction is allowable for bridge and road tolls paid by an employee performing artist when travelling in the course of employment, e.g. between work venues.

Transport expenses

170. A deduction is allowable for the costs incurred by an employee performing artist in undertaking work-related travel.

171. 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, paragraphs 195 to 200). The deductibility of transport costs incurred by an employee performing artist when travelling is considered below:

Travel between home and work

172. A deduction is not allowable for the cost of travel by an employee performing artist from home to 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 (paragraph 34 of Taxation Ruling MT 2027).

173. The High Court considered travel expenses incurred between home and work in the case *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).

174. 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

175. 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). A deduction is not allowable if an employer provides:

(a) a secure area for the storage of equipment at the work place; or

(b) insurance cover for stolen equipment; or

(c) has a policy of compensation for, or replacement of stolen equipment (see *Case 59/94* 94 ATC 501; *AAT Case 9808* (1994) 29 ATR).

176. **Example**: On a particular day, George, a drummer, drives from home to rehearsal with his full drum kit in the back of his station wagon. He is allowed a deduction for his travelling costs because when viewed objectively, the travel is related to the transport of his bulky drum kit rather than getting himself to rehearsal.

177. **Example:** Geoffrey, a trumpet player, carries only his trumpet to work in his car. Geoffrey's car expenses are private as his travel from home to work is not attributable to carrying bulky equipment.

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

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

179. **Example:** Anna is employed as an actress by a production company making a commercial. After filming she travels directly from the studio to a regular job as a sales assistant. As Anna travels directly between the two jobs, the travel expenses are allowable.

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

180. A deduction is allowable for the cost of travel from an employee performing artist'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 allowable. This travel is undertaken in the performance of an employee performing artist's duties. It is incurred in the course of gaining assessable income and is allowable as a deduction.

181. **Example:** Ingrid, a dancer, travels from the dance studio where she normally works to a school auditorium for a special performance for the school children. She then travels back to the studio. The cost of this travel is an allowable deduction.

182. **Example:** If, in the above example, Ingrid had travelled directly home from the school performance, the cost incurred in travelling from the regular studio to the school and then directly home is also allowable.

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

183. 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 allowable (see paragraphs 32 to 35 of Taxation Ruling MT 2027).

184. **Example:** Elizabeth plays a cello in a city orchestra and is required to travel to a country venue to give a performance with the orchestra. The cost of the travel from home to the country venue and back is allowable.

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

185. 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.

186. If the employee performing artist 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 performing artist'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).

187. 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*).

188. 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 an allowable deduction.

189. **Example:** Virginia is employed as a television actress during the day and teaches guitar at her home in the evenings. The cost of travelling from the production studio to home is not an allowable deduction. It is a private expense rather than an expense incurred in deriving assessable income.

190. Taxation Rulings 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

191. 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 costs 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

192. 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

193. A deduction is not allowable for car expenses incurred by an employee performing artist if:

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

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

(see section 51AF of the Act).

194. 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 paragraphs 128 and 169).

Travel Expenses

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

196. A deduction is allowable for the cost of travel expenses incurred by an employee performing artist when travelling in the course of employment, e.g. travel interstate to perform at another work venue.

197. If an employee performing artist receives 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.

198. If the employee performing artist 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.

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

Accompanying relatives' travel expenses

200. A deduction is not allowable for the expenses of a relative accompanying an employee performing artist while 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).

Union fees and professional association fees

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

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Your comments

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

31 March 1995

to:

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Attention: Mr Robert Kilpatrick.

Commissioner of Taxation

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