TR 98/D6 - Income tax: employee journalists - allowances, reimbursements and work-related deductions

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

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What this Ruling is about

Class of person/arrangement

1. This Ruling applies to the class of persons who are employee journalists in the print, radio and television industry, including radio and television presenters ('employee journalists').

2. This Ruling applies to the following classes of arrangements:

   (a) allowances and reimbursements received by employee journalists; and

   (b) work-related expenses claimed by employee journalists.

3. The Ruling discusses whether allowances and reimbursements received by employee journalists are assessable under sections 6-5 and 6-10 of the *Income Tax Assessment Act 1997* ('ITAA 1997') and paragraphs 26(e) and 26(eaa) of the *Income Tax Assessment Act 1936* ('ITAA 1936').

4. The Ruling also discusses whether the common work-related expenses incurred by employee journalists are deductible, or are specifically excluded (or limited) under sections 8-1, 25-10, 26-5, 26-20, 26-30(1), 26-45(1), 26-50(1), 32-5, 32-35, 32-55, 32-60, 32-65, 32-80, 32-85, 34-10, 42-15, 42-25(2), 42-80, 42-120 and 42-170 of the ITAA 1997 and sections 51AGA, 51AH and 82A of the ITAA 1936.

5. This Ruling does not discuss in depth the substantiation provisions in Subdivision 900-B of the ITAA 1997 (see Taxation Ruling TR 97/24).

6. The tax treatment of allowances and reimbursements received by employee journalists is examined at paragraphs 11 to 19 in the **Ruling** section.

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

Cross reference of provisions

8. To enable easy reference, the following legislative table is provided:

ITAA 1936	ITAA 1997
Section 25	Sections 6-5, 6-10
Paragraph 26(e)	no equivalent
Paragraph 26(eaa)	no equivalent
Subsection 51(1)	Section 8-1
Subsection 51(4)	Section 26-5
Subsection 51(6)	Section 26-20
Subsection 51AB(4)	Subsections 26-45(1), 26-50(1)
Subsection 51AE(1)	Sections 32-35, item 2.1, 32-55, 32-60, 32-65, 32-80 and 32-85
Section 57AF	Section 42-80
Subsection 51AG(1)	Subsection 26-30(1)
Section 51AGA	no equivalent
Section 51AH	no equivalent
Subsection 51AL(1)	Subsection 34-10(2)
Subsection 51AL(2)	Subsection 34-10(1)
Subsection 51AL(4)	Subsection 34-10(3), Section 34-15
Subsection 51AL(11)	Subsection 34-25(1)
Subsection 51AL(12)	Subsection 34-25(3)
Section 53	Section 25-10
Subsection 54(1)	Section 42-15

Subsection 55(1)	Subsection 42-25(2), Section 42-120
Subsection 55(2)	Sections 42-125, 42-130, 42-135 and Subsection 42-140(3)
Subsection 55(8)	Section 42-120
Section 82A	no equivalent

Date of effect

9. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

10. If a taxpayer has a more favourable private ruling (whether legally or administratively binding), this Ruling applies to the taxpayer to the extent of the inconsistency only from and including the 1998-1999 year of income.

Ruling

Allowances

11. The following allowances are examples of allowances commonly received by employee journalists and are fully assessable under sections 6-5 or 6-10 of the ITAA 1997, or paragraph 26(e) of the ITAA 1936:

(i) car expense allowance (calculated on the distance travelled by the car, e.g., cents per kilometre basis);

(ii) travel allowance where an overnight stay is involved;

(iii) overtime meals allowance paid under an industrial award or agreement in connection with overtime worked; and

(iv) telephone or mobile phone allowance.

12. Certain types of allowances received by employee journalists are not assessable because the employer may be subject to fringe benefits tax ('FBT'). An example of such an allowance received by an employee journalist is a living away from home allowance. A deduction is not allowable to the employee for expenses incurred that are covered by such an allowance.

13. The receipt of an allowance does not automatically entitle an employee journalist to a deduction (see paragraphs 20 to 22). The term 'allowance' does not include a reimbursement (see paragraphs 16 to 19).

Reasonable allowance amounts

14. The Commissioner publishes a Taxation Ruling annually that indicates amounts considered reasonable in relation to the following expenses:

(a) overtime meal expenses covered by an allowance paid or payable under the terms of an industrial award or agreement;

(b) domestic travel expenses covered by a travel allowance; and

(c) overseas travel expenses covered by a travel allowance.

15. Allowances received in relation to these expenses are fully assessable (see paragraph 11). If the amount of the claim for expenses incurred is no more than the Commissioner's reasonable amount, substantiation is not required. If the deduction claimed is more than the reasonable amount, the whole claim must be substantiated, not just the excess over the reasonable amount.

Reimbursements

16. If an employee journalist receives a payment from their employer or any other person for **actual** expenses incurred, the payment is a reimbursement and the employer may be subject to FBT. Subject to paragraphs 17 and 18 below, if an employee journalist receives a reimbursement, the amount is not required to be included in their assessable income and a deduction is not allowable for the related expenses (see Taxation Ruling TR 92/15).

17. However, if car expenses are reimbursed by an employer or an associate and are calculated on the distance travelled by the car (e.g., cents per kilometre basis), the amount is included as assessable income of the employee journalist under paragraph 26(eaa) of the ITAA 1936. A deduction is allowable for work-related car expenses actually incurred (see ***Motor vehicle and other transport expenses***, paragraphs 103 to 126).

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 journalist for depreciation on the item to the extent that it is used for income producing purposes (see Taxation

Determination TD 93/145 and ***Depreciation of equipment***, paragraphs 65 to 75).

19. If a payment is received by an employee journalist for an **estimated** expense with no requirement to repay unspent money, the amount received by the employee journalist is considered to be an allowance (not a reimbursement) and is fully assessable to the employee journalist (see **Allowances**, paragraphs 11 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 (paragraph 33).

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 journalists and the extent to which they are allowable deductions are discussed below, in alphabetical order.

Bank/Account fees: A deduction is allowable, as a work-related expense, for Financial Institutions Duty ('FID') that relates to the direct depositing of salary and wages into the employee journalist's bank account(s). A deduction is also allowable for Government Duty Tax and Debits Tax charged on any outgoing from an employee journalist's bank account where the outgoing can be claimed as an allowable deduction (e.g., a work-related expense).

Briefcases: A deduction is allowable for the work-related portion of depreciation on the purchase price of a briefcase. A briefcase bought on or after 1 July 1991 can be depreciated at the rate of 100% if its cost is $300 or less or its effective life is less than 3 years.

Calculators and electronic organisers: A deduction is allowable for the work-related portion of depreciation on the purchase price of these items. Any of these items bought on or after 1 July 1991 can be depreciated at the rate of 100% if its cost is $300 or less or its effective life is less than 3 years. (See also ***Depreciation of equipment***, paragraphs 65 to 75).

Child care: A deduction is not allowable for child care expenses (paragraphs 38 to 40).

Clothing, uniforms and footwear: A deduction is not generally allowable for the cost of clothing and footwear worn by employee journalists.

Computers, computer hardware and software: A deduction is allowable for depreciation on the cost of computers and related software, if purchased as part of an undissected package, to the extent that these items are used for work-related purposes. For the period before 10 a.m. AEST on 11 May 1998, a deduction is allowable for:

- depreciation on the cost of software if purchased with a computer;
- the cost of software (allowable in full in the year of purchase) if bought separately from a computer;

where the software is used for income producing purposes. The deduction must be reduced by the extent of any private use (see paragraphs 20 and 21).

(**Note:** the 1998 Federal Budget provides that the Government proposes to introduce legislation that will result in the cost of software purchased for more than $300 (with or without a computer) on or after 10 a.m. AEST on 11 May 1998 being amortised at the rate of 40% over:

- two and a half years; or
- the life of the software licence;

whichever is shorter.

These comments do not form part of the Ruling and are provided to alert readers to a potential legislative change.)

Conferences, seminars and training courses: A deduction is allowable for the cost of attending conferences, seminars and training courses. There must be a relevant nexus with the current income earning activities of the employee journalist (paragraphs 58 to 64).

Depreciation of equipment: A deduction is allowable for depreciation to the extent of the work-related use of the equipment. Any item of equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less, or if its effective life is less than three years (paragraphs 65 to 75).

Driver's licence: A deduction is not allowable for the cost of acquiring or renewing a driver's licence (paragraphs 76 to 78).

Fares: A deduction is allowable for the cost of using public transport for work-related travel (paragraph 79).

Fines: A deduction is not allowable for fines imposed under a law of the Commonwealth, a State, a Territory, a foreign country, or by a court (paragraph 80).

First aid courses: A deduction is allowable if it is necessary for an employee journalist, as a designated first aid person, to undertake first aid training to assist in emergency work situations for which they are remunerated. If the cost of the course is met by the employer, or is reimbursed to the employee journalist, no deduction is allowable.

Fitness expenses: A deduction is not allowable for expenses incurred in keeping fit (paragraph 81).

Glasses and contact lenses: A deduction is not allowable for the cost of buying prescription glasses or contact lenses (paragraph 82).

Grooming: A deduction is not allowable for grooming expenses including hairdressing, make-up and skin care (paragraphs 83 to 85).

Home office expenses: A deduction is allowable for the running expenses of a private study to the extent that the private study is used for work performed at home (see paragraphs 86 to 93 and Taxation Ruling TR 93/30).

Insurance of tools and equipment: A deduction is allowable for the cost of insuring tools and equipment to the extent of their work-related use.

Internet access: A deduction is allowable for the 'time usage cost' of researching a story on the Net. This includes the work-related portion of the service provider recurrent costs or costs associated with accessing secure web sites. Installation and connection costs of an Internet environment are capital in nature and are not an allowable deduction (paragraphs 94 to 96).

Laundry, dry cleaning and maintenance of clothing, uniforms and footwear: See paragraphs 94 and 95 of Taxation Ruling TR 97/12.

A deduction is allowable for the cost of laundry, dry cleaning and maintenance of supplied or purchased clothing, uniforms or footwear if these items are of a kind described under ***Clothing, uniforms and footwear*** at paragraphs 41 to 52.

Meals: A deduction is not allowable for the cost of meals eaten during a normal working day (paragraphs 99 to 102). A deduction may be allowable where an overtime meal allowance has been received under the terms of an industrial award or agreement (see paragraphs 134 to 137). A deduction may be allowable if meal costs are incurred by an employee journalist who travels overnight for work-related purposes (see paragraphs 177 to 182).

Motor vehicle and other transport expenses: Transport expenses include public transport fares and the running costs associated with using motor vehicles, motor cycles and bicycles, etc., for work-related travel. They do not include accommodation, meals and incidental expenses (see ***Travel expenses*** at paragraphs 177 to 182). The

treatment of motor vehicle and other transport expenses incurred by an employee journalist when travelling is considered below:

Travel between home and work: Subject to the exceptions discussed below, a deduction is not allowable for the cost of travel between home and the normal work place, as it is not incurred in the course of producing assessable income and in any case, it is considered to be a private expense. This principle is not altered by the performance of incidental tasks during the journey, nor is the principle changed if the travel is outside working hours or includes a second or subsequent trip (paragraphs 104 to 107).

Travel from the normal work place to an alternative 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 alternative work place back to the normal work place or directly home. This travel is undertaken in the course of gaining assessable income and the transport expenses are an allowable deduction (paragraphs 108 and 109).

Travel from home to an alternative 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 alternative work place and then on to the normal work place or directly home (paragraphs 110 and 111).

Travel between home and a place of employment while 'on call': A deduction is not allowable for the cost of travel from home to the normal workplace for an employee journalist who is 'on call' (paragraphs 112 and 113).

Travel between two separate work places for the same employer: A deduction is allowable for transport expenses incurred by an employee journalist in travelling between places of income production for the same employer, if the travel is undertaken as part of the employee's income producing activities (paragraphs 114 and 115).

Travel between two separate work places if there are two separate employers involved, 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 the travel is undertaken for the purpose of carrying out income-earning activities (paragraphs 116 to 120).

Depreciation cost limit for cars: Section 42-80 of the ITAA 1997 imposes a limit on the depreciable cost base of cars designed mainly for carrying passengers (see paragraph 123).

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 income-earning activities (see Taxation Ruling IT 2493 and paragraph 124).

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

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

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

(see section 51AF of the ITAA 1936 and paragraphs 125 and 126).

Newspapers and magazines: A deduction is allowable for the cost of newspapers and magazines to the extent that the cost forms part of the research expenses incurred by the employee journalist in researching a topic (paragraphs 127 to 133). Where expenses are incurred for both work-related and private purposes, a reasonable apportionment based on individual circumstances must be made.

Overtime meal expenses: A deduction is allowable for the cost of meals bought while working overtime if an overtime meal allowance is received under the terms of an industrial award or agreement. Special substantiation rules apply (paragraphs 134 to 137).

Pay TV access payment: A deduction is allowable for the work-related portion of Pay TV access payments. A reasonable apportionment must be made, based on individual circumstances, over a period of time which reflects a normal usage pattern (paragraphs 138 to 140).

Parking fees and tolls: A deduction is allowable for parking fees (but not fines), bridge and road tolls, incurred by an employee journalist while travelling on work, e.g., between an employer's work places (paragraphs 141 and 142).

Professional library: A deduction is allowable for depreciation on the cost of a professional library to the extent of its work-related use. The content of reference material must be directly relevant to the employee journalist's income earning activities (paragraphs 143 to 148).

Removal and relocation expenses: A deduction is not allowable for the cost of taking up a transfer in existing employment or in taking up an appointment with a new employer (paragraphs 149 to 155).

Repairs to equipment: A deduction is allowable for the cost of repairs to equipment, to the extent of the work-related use of the item.

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 employee journalist's current income-earning

activities. Self-education costs can include fees, travel, books and equipment (paragraphs 156 to 160). Refer Taxation Ruling TR 98/9.

Social functions: A deduction may be allowable for expenditure incurred by some journalists in attending certain social functions. A deduction is not allowable for the cost of morning/afternoon teas or light refreshments (paragraphs 161 to 164).

Stationery: A deduction is allowable for the cost of purchasing street directories, log books, diaries, business cards, pens, etc., to the extent to which they are used for income-producing purposes.

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 journalist's employment and are not general in nature (paragraphs 166 and 167).

Telephone, mobile phone, pager, beeper and other telecommunications equipment expenses: A deduction is not allowable to an employee journalist if these items are purchased by the employer. If the employee purchases the item, a deduction is allowable for depreciation on the purchase price to the extent of the work-related use of the item (paragraphs 65 to 75). Refer Taxation Ruling TR 98/6.

Cost of calls: A deduction is allowable for the cost of work-related telephone calls (paragraphs 168 and 169).

Installation and connection costs: A deduction is not allowable for the cost of installing or connecting a telephone, etc., (paragraphs 170 and 171).

Rental costs: A deduction is allowable for a portion of telephone/equipment rental costs if an employee journalist can demonstrate that they are 'on call', or required to telephone their employer on a regular basis (paragraphs 172 to 174).

Cancellation fees: An expense incurred for the early cancellation of a mobile telephone contract is not an allowable deduction as it is a capital expense (paragraph 175).

Unlisted telephone numbers: A deduction is not allowable for the cost of obtaining an unlisted (silent) telephone number (paragraph 176).

Travel expenses: A deduction is allowable for the cost of travel (fares, accommodation, meals and incidentals) incurred by an employee journalist who sleeps away from home when travelling in the course of employment, e.g., to a conference interstate (paragraphs 58 to 64). Special substantiation rules apply (paragraphs 177 to 181).

Travel accompanied by a relative: Subsection 26-30(1) of the ITAA 1997 may affect the deduction allowable for travel expenses where relatives accompany an employee journalist on work-related travel (paragraph 182).

Union or professional association fees: A deduction is allowable for annual fees paid to unions and professional associations, although a deduction is not allowable for joining fees. A deduction is not generally allowable for levies. A deduction is not allowable for contributions to staff social clubs or associations (paragraphs 183 and 184).

Watches: A deduction is not allowable for the cost of purchasing or repairing conventional watches, including waterproof watches (paragraphs 185 to 187).

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 journalist to be considered for deductibility. A deduction is not allowable for expenses not incurred by an employee journalist, e.g., items provided free of charge. Under section 51AH of the ITAA 1936, a deduction is not generally allowable if expenses are reimbursed (see paragraphs 17 and 18 for exceptions to the rule).

Expense meets deductibility tests

25. The basic tests for deductibility of work-related expenses are in section 8-1 of the ITAA 1997 which provides that:

> '**8-1(1)** You can ***deduct*** from your assessable income any loss or outgoing to the extent that:
>
> (a) it is incurred in gaining or producing your assessable income; or

(b) it is necessarily incurred in carrying on a business for the purpose of gaining or producing your assessable income.

8-1(2) However, you cannot deduct a loss or outgoing under this section to the extent that:

(a) it is a loss or outgoing of capital, or of a capital nature; or

(b) it is a loss or outgoing of a private or domestic nature; or

(c) it is incurred in relation to gaining or producing your exempt income; or

(d) a provision of this Act prevents you from deducting it.

For a summary list of provisions about deductions, see section 12-5.

8-1(3) A loss or outgoing that you can deduct under this section is called a ***general deduction***.'

26. A number of significant court decisions have determined that, for an expense to satisfy the tests in section 8-1 of the ITAA 1997:

(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) 11 ATD 404; [1958] ALR 225 (*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; (1949) 8 ATD 431); and

(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 their assessable income (*Charles Moore & Co (WA) Pty Ltd v. FC of T* (1956) 95 CLR 344; (1956) 11 ATD 147; (1956) 6 AITR 379; *FC of T v. Cooper* (1991) 29 FCR 177; 91 ATC 4396; (1991) 21 ATR 1616; (1991) 99 ALR 703 (*Cooper's* case); *Roads and Traffic Authority of NSW v. FC of T* (1993) 43 FCR 233; 93 ATC 4508; (1993) 26 ATR 76; *FC of T v. Hatchett* (1971) 125 CLR 494; 71 ATC 4184; (1971) 2 ATR 557 (*Hatchett's* case)).

27. Private or domestic expenditure is considered to include costs of living such as everyday clothing, food, drink and shelter. In *Case T47* 18 TBRD (NS) 242; (1968) 14 CTBR (NS) *Case 56*, J F McCaffrey (Member) stated in 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 characterized as a personal or living expense ...'

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

29. **Example:** Dharshini's employer has supplied her with a mobile telephone which she uses only for work. Dharshini voluntarily buys a spare battery for the telephone. The cost of the spare battery is an allowable deduction.

30. The fact that an expense is incurred by an employee at the direction of their employer does not mean that a deduction is automatically allowable.

31. In *Cooper's* case a professional footballer was denied the cost of purchasing food and drink. His coach had instructed him to consume additional food, so he would not lose weight during the off season. The character of the expense was private.

32. In *Cooper's* case, Hill J said (FCR at 200; ATC at 4414; ATR at 1636; ALR at 725):

> '... 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.'

Expense satisfies the substantiation rules

33. The income tax law requires substantiation of certain work-related expenses. If the total of these expenses is $300 or less, the employee journalist can deduct the amount without getting written evidence (except for certain car, travel allowance and meal allowance expenses), although a record must be kept of how the claim was calculated. A deduction is generally not allowable if the substantiation requirements are not met.

Common work-related expense claims

Bank/Account fees

34. A deduction is allowable, as a work-related expense, for Financial Institutions Duty (FID) that relates to the direct depositing of salary and wages into an employee journalist's bank account(s). A deduction is also allowable for Government Duty Tax (GDT) and

Debits Tax charged on any outgoing from an employee journalist's bank account where the outgoing can be claimed as an allowable deduction (e.g., a work-related expense). Where an employee journalist's bank account is used to meet both work-related and private outgoings, the amount of GDT and/or Debits Tax incurred must be apportioned to exclude the private component.

Briefcases

35. A deduction is allowable for depreciation on the cost of a briefcase under section 42-15 of the ITAA 1997 to the extent that the briefcase is used for work-related activities. A briefcase bought on or after 1 July 1991 can be depreciated at the rate of 100% if its cost is $300 or less or its effective life is less than 3 years.

Calculators and electronic organisers

36. A deduction is allowable for the work-related portion of depreciation of the cost of calculators and electronic organisers used for income producing activities. A calculator or electronic organiser bought on or after 1 July 1991 can be depreciated at the rate of 100% if its cost is $300 or less or its effective life is less than 3 years (see ***Depreciation of equipment***, paragraphs 65 to 75).

37. A deduction is allowable for the cost of batteries and repairs to calculators and electronic organisers to the extent of the work-related use of the items.

Child care

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

39. The High Court held in *Lodge v. FC of T* (1972) 128 CLR 171; 72 ATC 4174; (1972) 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* (1991) 101 ALR 11; 91 ATC 4516; (1991) 22 ATR 125.

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

Clothing, uniforms and footwear

41. The views of the Australian Taxation Office ('ATO') on the treatment of costs of buying and maintaining clothing, uniforms and footwear are set out in Taxation Ruling TR 97/12.

Clothing allowance

42. The receipt of an allowance does not automatically mean that the associated expenditure is deductible. However, allowances received for clothing, uniform/wardrobe and related expenditure are assessable under section 6-5 or 6-10 of the ITAA 1997 or paragraph 26(e) of the ITAA 1936.

Conventional clothing

43. It is considered that for employee journalists, expenses for conventional clothing do not meet the deductibility tests of section 8-1 of the ITAA 1997.

44. The mere fact that a taxpayer's employer requires or expects the taxpayer to wear a particular type or style of conventional clothing does not make the cost of that clothing deductible (see *FC of T v. Cooper* (1991) 29 FCR 177 at 185, 201-202; 91 ATC 4396 at 4402, 4414-4415; (1991) 21 ATR 1616 at 1623, 1637-1638; ALR at 710, 725-726 (*Cooper's* case) and *Mansfield v. FC of T* 96 ATC 4001 at 4008; (1995-96) 31 ATR 367 at 374 (*Mansfield's* case)). Similarly, the fact that a taxpayer may perceive it is important to their success in their occupation or profession to wear a particular type or style of conventional clothing does not make the cost of that clothing deductible (see, for example, *Case 16/93* 93 ATC 208 at 214; AAT *Case 8658* (1993) 25 ATR 1115 at 1121-1122).

45. Taxation Ruling TR 94/22 sets out our views on the decision of the Full Federal Court of Australia in *FC of T v. Edwards* (1994) 49 FCR 318; 94 ATC 4255; (1994) 28 ATR 87 (*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.

46. This can be contrasted with the decision in *Case 72/96* 96 ATC 640. In this case a television newsreader claimed a deduction for the cost of clothing purchased for use on camera. The items of clothing in question comprising suits, shirts, shoes, dresses, jackets and jewellery, were selected by the newsreader because they came up well on television, looked appropriate and created the desired image.

47. The Administrative Appeals Tribunal found that the items of clothing claimed were 'ordinary articles of apparel' that any professional or business woman might purchase to wear to work and the fact that the clothing would look good on television was not sufficient to make the cost a deductible outgoing. Accordingly, the newsreader was denied a deduction for the clothing expense on the grounds that as the clothing was not worn as part of a uniform and was 'not of a special nature and to be worn in unusual circumstances'; the clothing expense was of a private nature.

48. It has been suggested that the cost of all clothing acquired and worn at work is deductible. However, it is clear from the decision of the Full Federal Court in *Edwards'* case (FCR at 322; ATC at 4259; ATR at 90) that this circumstance alone is not sufficient.

49. Similarly, it has been suggested that the cost of purchasing stockings, socks and shoes used solely at work is deductible to taxpayers generally. In *Mansfield's* case Hill J took the view, not without some doubt, that the connection of the cost of stockings with Mrs Mansfield's employment was to be found in the fact that the stockings were part of a compulsory and distinctive uniform that was strictly enforced. Hill J also found that the taxpayer's shoes were part of her compulsory uniform. It was these features that differentiated the hosiery and shoes from ordinary clothing.

50. The view has been expressed that additional expenditure incurred on conventional clothing worn at work is an allowable deduction. Reliance is placed on Board of Review and Tribunal decisions that refer to 'the abnormal expenditure on conventional clothing' test, e.g., *Case A45* 69 ATC 270, and on the reference to additional expenditure in *Edwards'* case. However, it is clear that 'such a test cannot replace either a statutory expression or judicially expressed statements of principle in relation to such an expression' (*Case V79* 88 ATC 550 at 552; *AAT Case 4353* (1988) 19 ATR 3504 at 3507). Even in *Edwards'* case (*FC of T v. Edwards* 93 ATC 5162 at 5168; (1993) 27 ATR 293 at 299) Gummow J observed:

> 'Thus in the present case, in its reasons the AAT referred to the application in the past by it of two "tests" as a guide for determining whether expenditure on clothing is allowable under sub-s. 51(1). The first was the "necessary and peculiar" test (e.g. uniforms required by the employer) and the second the "abnormal expenditure on conventional clothing" test (e.g. the wardrobe of a mannequin). However, as the AAT went on to point out, these "tests" have fallen into disfavour before it and the position which now applies is that such "secondary" criteria tend only to obscure the application of s. 51. That, of course,

throws one back to the search, among other things, for the "essential character" of the outgoing.'

51. In *Edwards'* case, the Court pointed to the significance of the fact that the amount claimed for expenditure was for 'additional clothing' over and above the taxpayer's personal requirements of modesty, decency and warmth. Weight was also given to the fact that there were additional changes of clothes in the working day over and above the first set of clothes, and that the clothing was qualitatively different from that which she wore in ordinary life. The Full Federal Court noted (at FCR 323; ATC 4259; ATR 91) 'the decision turns on its own special facts'. As Hill J pointed out in *Mansfield's* case, *Edwards'* case is at one end of the deductibility spectrum in contrast with the distinctive and compulsory uniforms which are at the other end.

52. As is illustrated in *Case 48/94* 94 ATC 422; AAT Case 9679 (1994) 29 ATR 1077, the 'additional clothing' factor is not sufficient where the income earning activities do not turn upon the wearing of the additional clothes and where they are not specific and suited only for those income earning activities.

Computers, computer hardware and software

53. A deduction is allowable under section 42-15 of the ITAA 1997 for depreciation on the cost of computers and related software owned and used by an employee journalist for work-related purposes. A computer bought on or after 1 July 1991 can be depreciated at the rate of 100% if its cost is $300 or less or its effective life is less than 3 years. If the 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 65 to 75 provide further information on ***Depreciation of equipment***.

54. For the period before 10 a.m. AEST on 11 May 1998, a deduction is allowable for:

- depreciation under section 42-15 of the ITAA 1997 on the cost of software if purchased with a computer;
- the cost of software under section 8-1 of the ITAA 1997 (allowable in full in the year of purchase) if bought separately from a computer;

where the software is used for income-producing purposes. The deduction must be reduced by the extent of any private use.

55. It should be noted that the 1998 Federal Budget provides that the Government proposes to introduce legislation that will result in the

cost of software purchased for more than $300 (with or without a computer) on or after 10 a.m. AEST on 11 May 1998 being amortised at the rate of 40% over:

- two and a half years; or
- the life of the software licence;

whichever is shorter.

These comments do not form part of the Ruling and are provided to alert readers to a potential legislative change.

56. A deduction is allowable under section 25-10 of the ITAA 1997 for the cost of repairs to computer equipment. The cost of any repair must, if applicable, be apportioned to account for any private use of the equipment.

57. A deduction is allowable for the interest paid on money borrowed to finance the purchase of a computer. The amount of interest claimed must, if applicable, be apportioned to account for any private use of the computer.

Conferences, seminars and training courses

58. 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 journalist. There must be a relevant connection between the conference, seminar or training course and the current income earning activities of the employee journalist.

59. In *FC of T v. Finn* (1961) 106 CLR 60; (1961) 12 ATD 348, an architect voluntarily studied architectural development overseas. The High Court held (CLR at 70; ATD at 352) 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.'

60. A deduction is allowable for the cost of travel (fares accommodation and meals expenses), registration and conference material costs incurred in attending work-related conferences or seminars (paragraphs 177 to 181).

61. **Example:** Danilo, an employee journalist, attends a training seminar delivered by the Media Entertainment and Arts Alliance at a venue located away from his workplace and is required to stay overnight. The seminar covers the code of ethics under which

journalists operate and, accordingly, is directly relevant to increasing Danilo's knowledge and skills as an employee journalist. His employer did not reimburse the seminar registration fee. A deduction is allowable for the cost of attending the seminar.

62. 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 only an allowable deduction according to the terms of section 32-35 of the ITAA 1997 (see Taxation Determination TD 93/195).

63. The deductibility of conference, seminar or training course fees is not affected by the existence of any incidental private activity. If the attendance at the conference, seminar or training course is combined with a private activity (e.g., a holiday), only the costs directly attributable to the conference, seminar or training course are an allowable deduction.

64. **Example:** Robert, a cadet journalist, attends a 10 day training course on interview and research techniques. The course is directly relevant to Robert's employment as a journalist and is held at a resort on the Gold Coast. Robert takes advantage of this location to take a few days holiday at the end of the course and incurs additional accommodation and travel expenses as a result. As the main purpose in travelling to the resort was to attend the training course, Robert is entitled to claim the cost of his travel directly to and from the course. The only accommodation and meal expenses he can claim are those directly associated with the course whilst it was in progress.

Depreciation of equipment

65. A deduction is not allowable under section 8-1 of the ITAA 1997 for the cost of equipment as it is considered to be a capital expense.

66. A deduction is allowable under section 42-15 of the ITAA 1997 for depreciation on the cost of equipment owned by the employee journalist to the extent that it is used for income producing purposes. In addition, a deduction is allowable for depreciation on the cost of equipment that is not actually used during the year for income producing purposes, but is installed ready for use for that purpose and held in reserve.

67. If an item of equipment is used partly in the course of employment and partly for other purposes, the depreciation should be apportioned based on an estimate of the percentage of income producing use.

68. **Example:** Dianne, an employee journalist, uses her lap-top for work purposes. Other members of her family also use the same lap-

top for their own private purposes. The lap-top is used partly for work and partly for private purposes. Thus, the depreciation expense should be appropriately apportioned between her private and work-related use.

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

70. There are two methods to calculate depreciation. These are the prime cost method and the diminishing value method. Depreciation using the prime cost method is calculated as a percentage of the cost of the equipment. Depreciation using the diminishing value method is calculated as a percentage of the written down value.

71. An item of equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less (see section 42-130 of the ITAA 1997), or if its effective life is less than three years (see section 42-125, item 1 of the ITAA 1997). However, the item may be depreciated at a rate less than 100% if the taxpayer so elects (see subsection 42-120(1) of the ITAA 1997).

72. The depreciation rates are set out in the ITAA 1997 in table form. General rates are set out section 42-125. Rates for cars and motor cycles are set out in 42-135. Current depreciation rates for particular items of plant are set out in Taxation Ruling IT 2685.

73. **Example:** Mike, a TV reporter, purchases a briefcase for $250 which he uses only to carry work-related documents. The amount of $250 is allowable as a deduction in the year of purchase.

74. An arbitrary figure is not acceptable when determining the value of equipment for depreciation purposes (*Case R62* 84 ATC 454; (1984) 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).

75. **Example:** Antonio purchases a bookshelf on 1 July 1995 for $400. It is not used for work-related purposes until July 1997. It is depreciated at a rate of 20% using the diminishing value method. 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 1997. The depreciation in the 1996 and 1997 income years is $80 and $64 respectively. The opening written down value of the bookshelf at 1 July 1997 is $256. In the 1998 income year the bookshelf is used solely for work-related purposes and the depreciation that is deductible is $256 x 20% = $51.20, rounded to $52.

Driver's licence

76. 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 and/or private expense. The cost of renewing a licence is a private expense.

77. For example, in C*ase R49* 84 ATC 387; (1984) 27 CTBR (NS) *Case 104*, it was held that even though travel was an essential element of the work to be performed by the taxpayer, a driver's licence was still an expense that was private in nature and therefore not deductible under subsection 51(1) of the ITAA 1936 or section 8-1 of the ITAA 1997.

78. This principle is not altered if the holding of a driver's licence is a condition of employment (Taxation Determination TD 93/108).

Fares

79. A deduction is allowable for the cost of using public transport for work-related travel (see ***Motor vehicle and other transport expenses***, paragraphs 103 to 126).

Fines

80. A deduction is not allowable for fines imposed under a law of the Commonwealth, a State, a Territory, a foreign country or by a court (section 26-5 of the ITAA 1997).

Fitness expenses

81. A deduction is not allowable under section 8-1 of the ITAA 1997 for expenses of keeping fit, such as gym fees. This type of expense does not have the essential character of being incurred in the course of gaining or producing assessable income (see Taxation Determination TD 93/114).

Glasses and contact lenses

82. A deduction is not allowable under section 8-1 of the ITAA 1997 for the cost of purchasing prescription glasses or contact lenses as the expense relates to a personal medical condition and is, therefore, private in nature.

Grooming expenses

83. A deduction is not allowable under section 8-1 of the ITAA 1997 for grooming expenses, for example, hairdressing and make-up, as such expenses lack the essential character of expenses incurred in gaining or producing assessable income.

84. The deductibility of these expenses was considered by Hill J in *Mansfield*, supra. He was of the view (*obiter*) that the cost of make-up incurred by a flight attendant retains an essential personal character which excludes it from deductibility, notwithstanding that the taxpayer is required by their employer to wear make-up. Further, he concluded that, even though the taxpayer was required by her employer to be well groomed and presentable, there was 'no additional feature' showing the relationship between the general hairdressing expenses incurred and the taxpayer's employment as a flight attendant. The hairdressing expenses were not an allowable deduction.

85. In *Case 72/96* 96 ATC 640, a television newsreader claimed a deduction for the cost of hairdressing, make-up and clothing purchased for use on camera. The taxpayer stated that she was required to wear her hair in an appropriate style and that the make-up was theatrical in nature. The Administrative Appeals Tribunal found that expenditure on hairdressing and ordinary make-up purchased in order to be well groomed, was expenditure of a private nature.

Home office expenses

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

87. Costs associated with the home are normally of a private or domestic character (*Thomas v. FC of T* [1972-73] ALR 368; 72 ATC 4094; (1972) 3 ATR 165 and *FC of T v. Faichney* (1972) 129 CLR 38; 72 ATC 4245; (1972) 3 ATR 435 (*Faichney's* case). However, a deduction may be allowable for a portion of the expenses associated with an employee journalist's home.

88. TR 93/30 distinguishes between two types of expenses associated with the home:

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

(b) **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.

89. A deduction is not allowable for the cost of occupancy expenses for employee journalists who maintain an office or study at home, if they carry out income producing 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; (1981) 11 ATR 644 and *FC of T v. Forsyth* (1981) 148 CLR 203; 81 ATC 4157; (1981) 11 ATR 657.

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

91. A deduction may be allowable for additional running expenses of maintaining a room an employee journalist shares with their family (e.g., the lounge room) whilst at the same time undertaking some work-related activity. If an employee journalist uses the room for work-related purposes at a time when others are not present, a deduction for relevant running expenses is allowable.

92. If an employee journalist uses the room at a time when others are not present, or uses a separate room, they are entitled to a deduction for additional running expenses associated with the work activities. This applies even if the room is not set aside solely as a home office.

93. To calculate the additional running expenses resulting from using the home/study office for work-related purposes, see paragraphs 19 to 24 of TR 93/30.

Internet access

94. Costs associated with access to the Internet could include the purchase of ***computers, computer hardware and software*** (paragraphs 53 to 57), the installation of a ***telephone*** line (paragraphs 170 and 171) and a regular payment to an Internet service provider ('ISP').

95. The costs associated with accessing the Internet are not generally an allowable deduction under section 8-1 of the ITAA 1997 as they are not incurred in producing assessable income and constitute a private or capital expense. However, when an employee journalist utilises information from the Internet for the purposes of researching a story or

otherwise in the course of carrying out their duties, the work-related portion of the fee paid to the ISP is an allowable deduction.

96. **Example:** Over a period of one month Peter, a newspaper journalist, accesses the Internet for the purpose of researching a story. This research takes Peter 10 hours to complete. For another 10 hours Peter accesses the Internet for private purposes. Peter has a contract with an Internet service provider (ISP) which provides him with 20 hours of access to the Internet each month for a $40 fee. Peter is entitled to claim half the $40 fee paid to the ISP as an allowable deduction.

Laundry, dry cleaning and maintenance

97. The Commissioner's view is that expenditure on laundry, dry cleaning and maintenance of clothing is only deductible where the cost of the clothing is itself deductible. Taxation Ruling TR 97/12 details the circumstances where the cost of clothing (including conventional clothing) may be a deductible expense. Taxation Ruling TR 98/5 provides guidelines for calculating laundry expenses.

98. The Commissioner considers that the essential character of expenditure on laundry or dry cleaning of conventional clothing depends upon the particular circumstances and that each case must be considered on its own facts. Note that the ATO takes a different view to the Small Taxation Claims Tribunal ('STCT') decision in *Westcott v. FC of T* 97 ATC 2129.

Meals

99. A deduction is not allowable for the cost of meals consumed by an employee journalist in the normal course of a working day. It is our view that the cost of meals does not have a sufficient connection with any income earning activity and is a private expense which fails to meet the tests of deducibility described in paragraphs 23 to 33 of this Ruling.

100. The Full Federal Court considered the deductibility of food costs in *Cooper's* case (supra). 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 an allowable deduction. Hill J said (FCR at 199-200; ATC at 4414; ATR at 1636; ALR at 725):

> '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 (FCR at 201; ATC at 4415; ATR at 1638; ALR 727):

> '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.'

101. 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.

102. In C*ase 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 ITAA 1936.

Motor vehicle and other transport expenses

103. Transport expenses include public transport fares and the running costs associated with using motor vehicles, motor cycles, bicycles, etc., for work-related travel. They do not include accommodation, meals and incidental expenses (see ***Travel expenses*** at paragraphs 177 to 182). The tax treatment of motor vehicle expenses incurred by an employee journalist while travelling is considered below.

Travel between home and work

104. A deduction is not allowable for the cost of travel by an employee journalist between home and their normal work place as it is generally considered to be a private expense. This principle is not altered by the performance of incidental tasks during the journey (Miscellaneous Tax Ruling MT 2027, paragraph 34).

105. The High Court considered travel expenses incurred between home and work in *Lunney*, supra. A joint judgement by Williams,

Kitto and Taylor JJ, in that case, stated (CLR at 498-499; ATD at 412-413; ALR at 234-235) that:

> 'The question whether the fares which were paid by the appellants are deductible under s. 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 such income. ... But to say that expenditure on fares is a prerequisite to the earning of a taxpayer's income is not to say that such expenditure is incurred in or in the course of gaining or producing his income.'

106. 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 Rulings IT 2543 and IT 112 and Taxation Determination TD 93/113.

Incidental tasks on the way from the employee journalist's home to regular place of employment

107. Collecting mail, stationery supplies, educational resources and performing other incidental tasks while travelling between the employee journalist's home and their regular place of employment do not, of themselves, transform private travel into work-related travel. The cost of this travel is not an allowable deduction under section 8-1 of the ITAA 1997 (see paragraph 34 of MT 2027).

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

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

109. **Example:** George, an employee journalist, travels from his employer's suburban office, where he is based, to his employer's head office to attend a meeting. After the meeting he travels directly home. The cost of each journey is an allowable deduction to George.

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

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

111. **Example:** Karen, a news reporter for a radio station, is required to travel from home to her employer's head office to attend a meeting. She then travels to her radio station to read the news. The cost of travelling from home to the head office and then on to her normal work place is an allowable deduction. However, the cost of her journey home from the radio station after she has read the news is not an allowable deduction.

Travel between home and a place of employment while 'on call'

112. Where an employee is required to travel to work at short notice, for example, in response to a telephone call, the cost of travelling between home and work is not an allowable deduction. This is because the travel is not incurred in gaining assessable income and is private in nature. The employee's home is not regarded as a place of work as the employee's duties commence upon their arrival at work and not on receipt of the telephone call.

113. This decision is supported by the Federal Court in *FC of T v. Genys* 87 ATC 4875; (1987) 19 ATR 356. This case involved a nursing sister who was employed at various hospitals through an agency, but did not travel to more than one hospital each day. The cost of her travel from home to hospital was not an allowable deduction. Northrop J said (ATC at 4883; ATR at 364):

> 'In conclusion, in my opinion, the mere fact that the taxpayer in this case does not have a regular place of employment in the sense of a permanent employment at one hospital is not sufficient to take her outside the general principles expressed in *Lunney*.'

Travel between two separate work places for the same employer

114. Where transport expenses are incurred by a taxpayer in travelling between places of income production for the same employer, a sufficient nexus exists if the travel is undertaken as part of those same income producing activities.

115. **Example:** Nurcan, a political correspondent, works from two offices of the same employer. The cost of travel from one office to

another for work purposes on the same day is an allowable deduction. A deduction is not allowable to Nurcan for the cost of travelling between home and either work place.

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

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

117. **Example:** Clive, an editor for a music magazine, is employed by a guitar shop to teach guitar three times a week. Clive incurs transport expenses when travelling directly from his job as a magazine editor to his job as a teacher. Clive's transport expenses are an allowable deduction.

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

118. 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.

119. If an employee journalist 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'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).

120. 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*).

Automobile Association/Club membership fees

121. A deduction is allowable for the annual fee for road service if either the log book method or one-third of actual expenses method of claiming work-related car expenses is used. Membership of an Automobile Association/Club usually entitles members to additional benefits such as a magazine and legal advice. These benefits are

considered to be incidental to the main purpose of membership, which is the provision of roadside or breakdown service. The entitlement to a deduction for the annual subscription fee is not affected by this arrangement. A deduction is not allowable for a joining fee or for any additional fees paid to gain entitlement to benefits other than road service.

Car wash expenses

122. If either the log book or one-third of actual expenses method is used to claim work-related car expenses, the cost of cleaning the car can be included in the calculation.

Depreciation cost limit for cars

123. Section 42-80 of the Act imposes a limit on the depreciable cost of cars designed mainly for carrying passengers if the acquisition cost is greater than a specified amount. The depreciable cost limit applies to both new and second hand vehicles (see Taxation Ruling TR 93/24).

Calculation of motor vehicle balancing adjustment

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

Motor vehicle provided by employer

125. A deduction is not allowable for car expenses incurred by an employee journalist if:

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

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

(see section 51AF of the 1936 Act).

126. Costs associated with the operation of the car such as parking fees and tolls are not precluded by the operation of section 51AF of the 1936 Act (see *Case Y43* 91 ATC 412; *AAT Case 7273* (1991) 22 ATR 3402). Parking fees and tolls are also discussed in paragraphs 141 and 142.

Newspapers and magazines

127. A deduction is not generally allowable under section 8-1 of the ITAA 1997 for the cost of newspapers and general interest magazines, as it is a private expense. Even though a taxpayer may be able to use part of the information in the course of their work, the benefit gained is usually remote and the proportion of the expense that relates directly to work is incidental to the private expenditure.

128. This view is supported by: *Case K68* 78 ATC 667; (1978) 22 CTBR (NS) *Case 86*; *Case N67* 81 ATC 349; (1981) 25 CTBR (NS) *Case 18*; *Case P114* 82 ATC 586; (1982) 26 CTBR (NS) *Case 47* and *Case P124* 82 ATC 629; (1982) 26 CTBR (NS) *Case 55*.

129. These cases can be contrasted with *Case R70* 84 ATC 493; (1984) 27 CTBR (NS) *Case 124*, where a supervisor in the Commonwealth Auditor-General's Department was allowed a deduction for the cost of specific issues of *The National Times* and *The Australian Financial Review*. It was held that there was a sufficient connection between the duties carried out by the taxpayer and the content of these specific publications. However, a deduction was not allowed for the cost of the local newspaper, *The Canberra Times*, as the expense was essentially private in nature.

130. It is accepted, however, that some employee journalists may need to utilise particular newspapers or magazines directly as part of their job. If the main reason for the purchase of newspapers or magazines by an employee journalist is for their use in the course of research, a reasonable work-related portion of the cost is allowable (analogous cases: *Case* S*12* 85 ATC 165; (1985) 28 (NS) *Case 18* and *Case U5* 87 ATC 124).

131. **Example:** Fiona, a senior news journalist for a large metropolitan newspaper in Sydney, has all the major Sydney newspapers delivered to her home each morning. Before leaving for work she scans each paper, noting the content of the major stories and, additionally, what interpretation is being placed on each story by her colleagues and competitors. As this research is directly related to her work and any private use is incidental to this research, the cost of each newspaper is an allowable deduction.

132. Whilst it is acknowledged that employee journalists may require access to different newspapers and magazines as part of their employment to a greater degree than other taxpayers, not all newspapers and magazines are relevant to all journalists. Many journalists who specialise in a particular field would only require access to certain publications as part of their income earning activities.

133. **Example:** Judy is a journalist specialising in gardening who writes a syndicated weekly column. Judy purchases a daily

newspaper, the Saturday edition of which features a liftout dedicated to the creation and maintenance of Australian gardens. She also subscribes to a specialist gardening magazine which is published monthly. The Saturday edition of the newspaper and the magazine are directly related to Judy's specialist field. Accordingly, only the cost of these two items is an allowable deduction.

Overtime meal expenses

134. A deduction is allowable for the cost of meals bought while working overtime if a meal allowance is received under the terms of an industrial award or agreement and the expenditure meets the deductibility tests in paragraphs 25 to 32.

135. An amount for overtime meals that has been folded in as part of an employee journalist's normal salary or wages is not considered to be an overtime meal allowance.

136. The general rule is that no deduction is allowed for work-related expenses unless written evidence, such as receipt, is obtained. However, special substantiation rules apply to overtime meal expenses if an employee journalist receives an overtime meal allowance paid under an industrial award or agreement. A deduction is allowable without substantiation for expenses incurred, provided the claim does not exceed the amount considered reasonable by the Commissioner of Taxation. Reasonable amounts are published annually by the Commissioner in a Taxation Ruling.

137. If the deduction claimed is more than the reasonable amount, the whole claim must be substantiated, not just the excess over the reasonable amount.

Pay TV access payment

138. A deduction is not generally allowable under section 8-1 of the ITAA 1997 for the cost of access to Pay TV, as it is not incurred in gaining assessable income and is a private expense. Even though a taxpayer may be able to use part of the information obtained in the course of their work, the benefit gained is usually remote and the proportion of the expense that relates directly to work is incidental to the private expenditure.

139. It is accepted that some journalists may have a requirement to access Pay TV as a direct consequence of their work.

140. **Example:** Phil is a sports writer employed by a metropolitan newspaper. Phil specialises in test cricket and provides coverage for his employer on all the test matches played in the region. Some of the

matches Phil is required to cover are only screened on Pay TV and Phil subscribes to a Pay TV provider in order to compile a report on those test matches. Phil also uses his Pay TV access for private purposes. The work-related portion of Phil's monthly access fee is an allowable deduction. He calculates the correct portion by keeping a diary over a period of one month which establishes a normal pattern of usage.

Parking fees and tolls

141. A deduction is allowable for parking fees (but not fines) and tolls if the expense is incurred while travelling on work:

(a) between two separate work places of the same employer; or

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

142. A deduction is not allowable for parking fees and tolls incurred when travelling between home and the normal place of employment. The cost of normal home to work travel is a private expense and the parking fees and tolls therefore have that same private character. A deduction is allowable for parking fees and tolls if the transport expenses themselves are an allowable deduction.

Professional library

143. A deduction is allowable under section 42-15 of the ITAA 1997 for depreciation of a professional library. 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 under section 55 of the ITAA 1936 (see Taxation Determination TD 93/159) or sections 42-120; 42-125; 42-130; 42-135 and 42-140(3) of the ITAA 1997.

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

145. In *Case P26* 82 ATC 110; (1982) 25 CTBR (NS) *Case* 90, a university lecturer was allowed a claim for depreciation on legal books but denied a deduction for depreciation on general reading and fiction books.

146. If the cost of a textbook has been claimed as a deduction, its cost may not be added to the value of a professional library and depreciated.

147. **Example:** David, an employee journalist, claimed a deduction for the cost of a text book as part of his self education expenses. He cannot include the cost of the same text book in the value of his professional library for depreciation purposes.

148. Paragraphs 65 to 75 of this Ruling provide further information on depreciation.

Removal and relocation expenses

149. A deduction is not allowable under section 8-1 of the ITAA 1997 for removal or relocation expenses incurred by an employee journalist 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.

150. In some instances, an employee journalist may be paid an allowance from the employer as compensation for depreciation, disturbance, removal and storage expenses. This allowance is assessable income under section 6-1 of the ITAA 1997 or subsection 26(e) of the ITAA 1936 and no deductions are allowable under section 8-1 of the ITAA 1997 for associated expenses. It is considered that the expenses are not incurred in deriving assessable income and/or are of a private or domestic nature.

151. If a reimbursement is received for the actual expenses incurred by an employee journalist, the amount is not assessable and deductions are not allowable under section 8-1 of the ITAA 1997.

152. Our view is supported by the decisions in the following two cases:

153. In *Fullerton v. F C of T* 91 ATC 4983; (1991) 22 ATR 757; (1991) 32 FCR 486, 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 his total 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 an allowable deduction under subsection 51(1) of the ITAA 1936 (or section 8-1 of the ITAA 1997), even though the expenditure had a causal connection with the earning of income.

154. 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 earning process to be incurred in gaining or producing assessable income.

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

Self-education expenses

156. A comprehensive explanation on the treatment of these expenses is in Taxation Ruling TR 98/9. Key points include:

(a) A deduction is allowable for self education expenses if:

(i) the education is directly relevant to the taxpayer's current income earning activities; and

(ii) the taxpayer's income earning activities are based on skill/knowledge; and

(iii) 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 their 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 producing activity (*FC of T v. Maddalena* 71 ATC 4161; (1971) 2 ATR 541).

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

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

157. **Example:** Debbie is a journalist who would like to gain knowledge in administration to enable her to commence her own weekly magazine. She is undertaking a part-time Master of Business Administration at a university. Debbie is not allowed a deduction for the costs of this course as the course is not directly related to her current income earning activities and it has been undertaken to enable her to open up a new income producing activity.

Limit on deductibility

158. Section 82A of the ITAA 1936 operates to limit the amount of expenses of self-education otherwise allowable under section 8-1 of the ITAA 1997.

159. Where section 82A applies, the deduction allowable under section 8-1 cannot be greater than the amount by which the net amount of expenses of self-education exceeds $250. In other words, only the excess of the self-education expenses over $250 may be considered for deduction under section 8-1. In performing this calculation, it is not necessary that the self-education expenses be deductible (provided they are 'necessarily incurred' in connection with a prescribed course of education). Expenses that are deductible under provisions other than section 8-1 are also taken into account in the section 82A calculation.

160. However, having established the maximum amount (i.e., the net amount of self-education expenses over $250), any expenses that meet the requirements of section 8-1 may be claimed in full up to the maximum amount.

Social functions

161. A deduction is not allowable under section 8-1 of the ITAA 1997 for expenditure incurred in attending staff dinners or similar functions. Such expenditure qualifies as an entertainment expense under section 51AE of the ITAA 1936. The costs of attending functions such as staff dinners and farewell dinners are not incurred in the course of producing income and they are essentially a private expense.

162. In *Frankcom v. F C of T* (1982) 65 FLR 25; 82 ATC 4599; (1982) 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 gaining his salary and also were of a private nature.

163. A deduction is generally not allowable for the cost of providing entertainment by way of food, drink or recreation (whether to the taxpayer or another person). However, if an employee journalist is required as part of their work to report on a particular social function, the costs associated with attending will be deductible.

164. **Example:** Edwina, a reporter for a major magazine, is responsible for the paper’s social and society pages. In order to gather

the necessary information for her articles, Edwina is required to attend several functions a year regarded as important to the city's socialites. The cost of attending these functions is an allowable deduction to Edwina due to the specialised nature of her work as a journalist.

Stationery

165. A deduction is allowable for the cost of purchasing street directories, log books, diaries, business cards, pens, etc., to the extent to which they are used for income producing purposes.

Technical or professional publications

166. A deduction is allowable under section 8-1 of the ITAA 1997 for the cost of buying or subscribing to technical and professional journals, periodicals and magazines that have a content specifically related to an employee journalist's work and are not general in nature.

167. In *Case P124* 82 ATC 628; (1982) 26 CTBR (NS) *Case* 55, an air traffic controller was not allowed a deduction for the purchase of aviation magazines. This can be contrasted with *Case R70* 84 ATC 493; (1984) 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.

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

Cost of calls

168. A deduction is allowable for the cost of telephone calls made by an employee journalist in the course of carrying out their duties.

169. Work-related calls may be identified from an 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

170. 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 and/or a private expense.

171. In *Case M53* 80 ATC 357; (1980) 24 CTBR (NS) *Case 29*, Dr P Gerber (Member) stated (ATC at 359; CTBR at 236):

> ' ... on payment of the connection fee, this taxpayer brought into existence an advantage for the enduring benefit of his newly established medical practice. ... It follows that it is 'like' an expenditure of a capital nature.'

Rental costs

172. Taxpayers who are either 'on call' or required to contact their employer on a regular basis, may be entitled to a deduction for a portion of the cost of telephone rental.

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

174. 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:

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

Cancellation fees

175. Expenses incurred for the early cancellation of a mobile telephone contract are not an allowable deduction as they are not incurred in gaining assessable income and are of a capital nature.

Unlisted telephone number

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

Travel expenses

177. A deduction is allowable for the cost of travel (fares, accommodation, meals and incidentals) incurred by an employee journalist who sleeps away from home when travelling in the course of employment e.g., to a conference interstate (paragraphs 58 to 64).

178. The general rule is that no deduction is allowed for work-related travel expenses unless written evidence is kept. However, special substantiation rules apply to travel expenses if the employee journalist receives a travel allowance.

179. The receipt of an allowance does not automatically entitle an employee journalist to a deduction for travel expenses. A work-related travel expense must be incurred and only the amount actually incurred is an allowable deduction.

180. If a travel allowance is received and the amount of the claim for expenses incurred is no more than a reasonable amount, substantiation is not required. The Commissioner of Taxation publishes a Taxation Ruling annually that sets out the amount of reasonable expenses covered by a travel allowance.

181. If the deduction claimed is more than the reasonable amount the whole claim must be substantiated, not just the excess over the reasonable amount.

Accompanying relatives' travel expenses

182. A deduction is not allowable for the expenses of a relative accompanying an employee journalist whilst travelling (see subsection 26-30(1) of the ITAA 1997). This rule applies even if the accompanying relative is a fellow employee, if that employee performs no substantive duties during the trip.

Union or professional association fees

183. A deduction is allowable for the cost of annual union or professional association fees. A deduction is not allowable for a fee paid to join a union or professional association as it is a capital expense. Taxation Rulings IT 327 and IT 2416 provide further information on the deductibility of union and professional association fees.

184. A deduction is not allowable under subsection 51AB(4) of the ITAA 1936 or subsections 26-45(1) and 26-50(1) of the ITAA 1997 for payments to staff associations or clubs.

Watches

185. A deduction is not allowable under section 8-1 of the ITAA 1997 for the costs of purchasing and repairing watches, including waterproof watches, as they are considered to be of a private nature.

186. In *Case P71* 82 ATC 338; (1981) 26 CTBR (NS) *Case 3*, an ambulance officer claimed a deduction for the cost of a digital wrist watch. The Board of Review found that a deduction was not allowable under subsection 51(1) of the ITAA 1936. It was held that

the expense was essentially of a private nature and not incurred in gaining assessable income.

187. In *Case N84* 81 ATC 451; (1981) 25 CTBR (NS) *Case 43*, a television cameraman was not allowed a deduction for the cost of a watch which was used for work. The deduction was denied on the grounds that the watch did not possess any special attributes and although it was used for work, this fact did not change the essential character of the expenditure, which was private in nature.

Detailed contents list

188. Below is a detailed contents list for all parts of the Ruling, except the **Explanations** part. An **Index of Explanations** follows:

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Your comments

190. If you wish to comment on this Draft Ruling, please send your comments by: 7 August 1998

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