



# ***TR 94/16 - Income tax: employee work-related deductions of employees of the Australian Defence Force***

 This cover sheet is provided for information only. It does not form part of *TR 94/16 - Income tax: employee work-related deductions of employees of the Australian Defence Force*

 This document has changed over time. This is a consolidated version of the ruling which was published on *23 June 1994*



## Taxation Ruling

### Income tax: employee work-related deductions of employees of the Australian Defence Force

#### other Rulings on this topic

IT 2198, IT 2406, IT 2477;  
IT 2481, IT 2543, IT 2549,  
IT 2566, IT 2614, IT 2641,  
IT 2685; MT 2026, TR 92/8,  
TR 92/20 TD 92/154,  
TD 92/157 TD 92/163,  
TD 93/30, TD 93/68,  
TD 93/59, TD 93/108,  
TD 93/112; TD 93/114  
TD 93/145, TD 93/244;

contents	para
What this Ruling is about	1
Date of effect	5
Ruling	8
Explanations	15
Index of Explanations	352

*This Ruling, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Ruling is a public ruling and how it is binding on the Commissioner.*

## What this Ruling is about

1. This Ruling deals with the deductions for work-related expenses generally claimed by members of the Australian Defence Force (ADF) (the three arms being the Army, Navy and Air Force).
2. This Ruling discusses whether deductions are allowable under subsection 51(1), sections 51AE, 54 and 55 of the *Income Tax Assessment Act 1936* (ITAA).
3. The Ruling also gives guidance on substantiation for work-related expenses claims.
4. Deductions for ADF members' work-related expenses are listed below in alphabetical order. For further explanation, refer to paragraph references in brackets in the Explanations section of this Ruling.

## Date of effect

5. This Ruling generally applies to years commencing both before and after its date of issue. However, our views in relation to the cost of compulsory Mess subscriptions and the costs of attending compulsory Mess functions apply only to the 1994-95 income year and later income years. For the 1993-94 income year and earlier income years, we will accept that compulsory Mess subscriptions and the costs of attending compulsory Mess functions are allowable deductions.
6. Furthermore, this Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute

# TR 94/16

agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

7. 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 1994-95 year of income.

## Ruling

### Allowances and reimbursement

8. The receipt of an allowance does not normally entitle a member to a deduction for expenses incurred in relation to the allowance.

9. A claim can only be made against an allowance if expenditure is incurred; it is allowable as a deduction, and the requirements of the substantiation provisions are satisfied.

10. If the expenses incurred are allowable, and the substantiation requirements are satisfied, the amount allowable is not limited by the amount of allowance received.

11. If an employee receives a reimbursement, the amount is not included in assessable income, and a deduction is not allowable. However, if motor vehicle expenses are reimbursed on a cents per kilometre basis then the amount is included in assessable income and a deduction is allowable. If the reimbursement is for the cost of a depreciable item, a depreciation expense is allowable. See Taxation Determination TD 93/145 and paragraphs 156 to 169 of this Ruling.

### Taxable allowances

12. The following are some of the more common allowances paid to ADF members that are taxable under paragraph 26(ea) of the ITAA.

Arduous Conditions Allowance	Parachutist Allowance
Clearance Diving Allowance	Special Action Forces Allowance
Common Duties Allowance	Special Royal Navy Allowance
Diving Allowance	Submarine Escape Training
Field Allowance	Facility Allowance
Flight Duties Allowance	Submarine Service Allowance
Flying Allowance	Trainees Dependant Allowance
Hard Lying Allowance	Trainee leaders Allowance
Isolated Establishment Allowance	Unpredictable Explosives Allowance
Language Proficiency Allowance	



### **Non-taxable allowances**

13. The following allowances are exempt under subparagraph 23(t)(iii) of the ITAA. No deductions are allowable for expenses connected with tax exempt income.

Separation Allowance	Education Allowance
Living Out Allowance	Child Education Allowance
Living Out Away From Home Allowance	Re-engagement Allowance
	Disturbance allowance

14. Work-related expenses commonly incurred by ADF members, and their tax treatment are listed below in alphabetical order.

#### **Beepers, paging units, mobile phones and answering machines:**

Deductions for the purchase cost and rental cost of such items are allowable deductions, where it can be shown that the member is either on call or required to contact their employer on a regular basis. An apportionment must be made between work-related and private use (paragraphs 96 to 99)

**Child Care Expenses :** A deduction for child care expenses is not allowable (see paragraphs 100 to 102).

**Clothing, uniforms and footwear:** Expenditure on the purchase and maintenance of clothing is allowable where it is:

- (a) protective (e.g. steel capped boots, aprons, goggles)
- (b) occupation specific;
- (c) compulsory and meets the requirements of IT 2641;
- (d) non compulsory and registered with the TCFDA or approved in writing by the Australian Taxation Office; or
- (e) conventional but satisfies the deductibility tests as explained in TR 94/22) (paragraphs 103 to 144).

The cost of stockings is not an allowable deduction, (paragraphs 138 to 144).

Expenses incurred for official military uniforms such as shirts displaying rank or embellishment and matching trousers, regulation jumpers, camouflage shirt and trousers are allowable (paragraph 122).

Expenditure on conventional clothing such as underwear, socks, running shoes, ordinary footwear and hire clothing is not deductible (see paragraphs 124 to 127).

Special items that are worn with or as part of a uniform and are unconventional in nature (eg ceremonial sword) are allowable (see paragraphs 128 to 129).

Expenditure on monogrammed Physical Training clothing, such as track suits, T-shirts and shorts displaying a Regimental Crest, is allowable. Gym/running shoes are not allowable (see paragraph 130).

Expenses incurred on the purchase of plain Physical Training clothing (T-shirts, shorts, shoes, socks, track suits, etc) are not allowable deductions (see paragraph 131).

**Computers and software:** A depreciation expense on computers and related software used for work-related purposes is allowable as a deduction. However, if the related software is purchased separately from the computer, the portion of the cost that relates to work-related purposes is deductible in full in the year of purchase (paragraphs 145 to 148).

**Conferences seminars and training courses:** Expenses incurred to attend conferences, seminars and training courses to maintain or increase the knowledge, ability or skills in the teaching profession are allowable deductions provided there is a nexus with the duties performed by the nurse (paragraphs 149 to 155).

**Depreciation of Equipment :** A deduction for depreciation is allowable only to the extent of the income-producing use of the equipment (see paragraphs 156 to 169).

**Donations:** Donations to non public funds such as the Welfare Fund are not allowable (see paragraph 170). This does not preclude donations to the 'Regular Defence Force Welfare Association'.

**Driver's Licence:** Deductions for the cost and renewal of a driver's licence are not allowable. Expenditure on a premium paid on top of the cost of a standard licence is allowable (see paragraphs 171 to 174).

**Extra Regimental Duties (ERD):** Expenses in relation to ERD are allowable where the ERD forms part of income earning activity and the expense is not of a private or domestic nature (see paragraphs 175 to 179).

**Fines:** Fines imposed under a law of the Commonwealth, a State, Territory or a foreign country are not allowable deductions (see paragraph 180).

### **Fitness related expenses**

**Expenses for Physical Training :** Expenditure incurred while participating in regular PT is an allowable deduction. However, expenditure on conventional clothing and running shoes is not allowable (paragraph 181).

**Expenses for sporting activities - general:** Expenditure incurred (including for travel) in connection with sporting activities (e.g. football, golf, volleyball) may be allowable where the activity has a

direct connection with the main income producing activities of the member (paragraphs 182 to 190).

***Gym or sporting facility membership subscriptions:*** Payment of a membership subscription to a gym or sporting facility is not an allowable deduction (see paragraph 191).

**Glasses/contact lenses :** The cost of purchasing prescription glasses or contact lenses is not deductible as the expense relates to a personal medical condition, and is private (see paragraph 192).

**Grooming and underclothes:** Expenditure on personal grooming items, underwear, stockings, hair products and sun screen, is not allowable (see paragraph 193 to 195).

**Haircuts:** The cost of haircuts is not allowable (see paragraphs 196 to 198).

**Home office expenses** (paragraphs 199 to 217)

***Private Study:*** Deductions for the running expenses of a private study are allowable where work is performed at home (see paragraphs 204 to 213).

***Place of Business:*** Deductions for running and occupancy expenses are allowable where an area of the home has the character of a place of business (paragraphs 214 to 217).

**Meals:** Deductions for the costs of meals purchased and consumed while on duty are not allowable unless an award overtime meal allowance has been paid (paragraphs 218 to 223).

**Messing and related expenses**

***Compulsory Mess subscriptions:*** The cost of compulsory Mess subscriptions is not allowable (see paragraphs 224 to 231).

***Charges for compulsory attendance at Mess functions:*** Charges for compulsory attendance to Mess functions are not allowable (see paragraphs 232 to 235).

***Food, drink and entertainment:*** Expenditure in the Mess on food, drink, entertainment (for self or guests), etc. is not allowable (see paragraphs 236 to 239).

**Motor Vehicle Expenses**

***Travel to and from work:*** The expense of travelling to and from work is ordinarily not an allowable deduction (see paragraphs 240 to 247).

# TR 94/16

***Living on Base:*** The expense of travelling from residence on Base to the place where normal duties are performed is ordinarily not an allowable deduction (see paragraph 243).

***Living off the base :*** The expense of travelling to and from work is ordinarily not an allowable deduction (see paragraphs 244 to 247).

***Incidental tasks on the way from home to the regular place of employment:*** Expenses incurred in travelling between home and the regular place of employment are private and not deductible. This principle is not altered by the performance of incidental tasks en route (paragraph 248 to 249).

***Carrying equipment to and from work:*** Where travel can be attributed to the carrying of bulky equipment rather than travel from home to work, then the costs are allowable (see paragraphs 250 to 257).

***Between bases:*** The cost of travelling on and between bases for work purposes is an allowable deduction (see paragraphs 258 to 263).

***Performing duties on the way to and from work:*** Expenses relating to performing duties on the way to and from work are allowable provided the task performed is not merely incidental (see paragraphs 264 to 266).

***Extra Regimental (or Service) Duties:*** Expenditure on travel in relation to ERD or Service duties is allowable, provided the ERD forms part of income earning activity and the expense is not of a private or domestic nature (see paragraphs 267 to 268).

***Medical appointments:*** Expenses for travelling to and from base for official medical appointments are allowable. Expenses for travelling to personal medical appointments are not allowable (see paragraphs 269 to 271).

***Travel while 'on-call':*** The expense of travelling while on call is allowable if the duties commence when the telephone call is received or the travel undertaken is not to the normal place of work (see paragraphs 272 to 276).

***Travel to a place of education:*** The cost of travel between home and the place of education and back home again is deductible. The cost of travel between work and the place of education and back to work again is deductible. If a member travels from home to the place of education and then on to work, only the first leg of the trip is deductible. If a member travels from work to the place of education and then home, only the first leg of the trip is deductible (paragraph 277).

***Newspapers:*** Generally, the cost of newspapers is not deductible (see paragraphs 278 to 279).

**Parking fees and tolls:** Deductions for the cost of parking fees (but not fines) and tolls may be allowable in some circumstances (see paragraphs 280 to 282).

**Professional library:** Depreciation on a professional library is allowable as a deduction, provided the content of the reference books is directly relevant to the duties performed (see paragraphs 283 to 286).

**Removal and relocation expenses:** Deductions for expenses incurred to take up a transfer in existing employment or to take up an appointment with a new employer are not allowable (paragraphs 287 to 292).

**Rifles, ammunition and related equipment:** Deductions for the purchase cost of additional and/or more sophisticated equipment used for work-related purposes are allowable (see paragraph 293).

**Rifle cleaning materials :** Deductions for the purchase cost of additional gun cleaning materials are allowable (see paragraph 294).

**Self-education expenses:** Expenses incurred for self-education are deductible if there is a direct connection between the course of self-education and your income-earning activities. Where self-education expenses are allowable but also fall within the definition of 'expenses of self-education', the first \$250 is not deductible (paragraphs 295 to 316).

**Language course expenses:** General self-education principles should be applied to determine whether or not the expense in a particular situation is allowable (see paragraph 313).

**Expenses in connection with Language Proficiency Allowance (LPA):** General self-education principles need to be considered when determining the deductibility of expenses incurred in maintaining a language proficiency (see paragraphs 314 to 316).

**Technical or professional publications:** A deduction is allowable for the purchase or subscription cost of journals, periodicals and magazines which have a content specifically related to a member's work and are not general in nature (see paragraphs 317 to 319).

### **Telephone**

**Installation costs:** Installation costs are not allowable as they are capital expenditure (see paragraphs 321 to 322).

**Telephone rental:** Generally, the use of a phone and hence the rental costs would have a private or domestic character and not be allowable deductions. Members 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 (paragraphs 323 to 325).



**Cost of telephone calls:** The cost of calls made by a member in the course of carrying out his or her duties are generally deductible (paragraph 326).

**Telephone silent number:** The cost of obtaining a silent number listing is not deductible as it is private in nature (paragraphs 327 to 328).

**Tools :** The cost of tools relating to the member's current job is deductible to the extent the tools are used for work purposes (see paragraph 329 to 331).

**Watches:** Expenditure on wrist watches is not allowable (see paragraphs 332 to 338).

**Weight loss expenses:** Expenses relating to losing weight are not allowable (see paragraphs 339 to 342).

## **Explanations**

### **Deductibility of work-related expenses**

15. The employees of the ADF experience conditions of employment that are very different from other occupations. The number of variations in occupation is so diverse that it is not possible to describe them all in this Ruling.

16. When a member gains employment in the ADF he/she is regarded as being 'on call' 24 hours a day and subject to Military Regulations at all times. This however, was not the view taken in *Case J21 77 ATC*

193; 21 CTBR (NS) 43 In *Case J21*(army officer claiming travel to and from work) MB Hogan and N Dempsey stated (ATC at 193; CTBR at 462):

'In our view irrespective of the fact that he is subject to the Defence Act and regulations at all times, he actually earns his income when he is physically at the base to perform his duties. This being so he is in no different a position than any other employee...'

17. The Tax Office does not consider that members of the ADF are generally on call for 24 hours a day.

18. Whether or not a deduction is allowable for the types of work-related expenses set out in this Ruling, is determined by looking at subsection 51(1), sections 54 and 55 and sections 82KT to 82 KZBB.

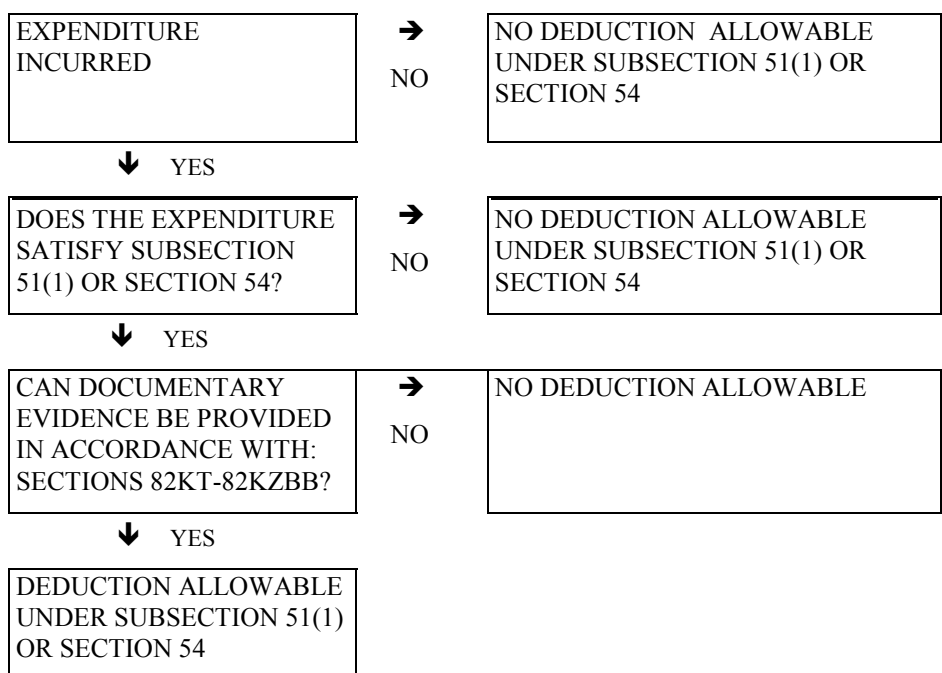
19. The main provision under the ITAA dealing with work-related expenses is subsection 51(1). It provides that:

'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 nature, private or domestic nature, or are incurred in relation to the gaining or production of exempt income.'

20. Under subsection 51(1), a deduction is available for all losses and outgoings to the extent to which they are:

- incurred in gaining or producing assessable income; or
- incurred in carrying on a business for the purpose of gaining or producing assessable income

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 producing of exempt income.



21. In short, for expenditure on an item to be a tax deduction, the expense must:

- actually be incurred;
- meet deductibility tests; and
- satisfy the substantiation rules under sections 82KT to 82KZBB of the ITAA.

**Expense actually incurred**

22. ***The expense must actually be incurred by the taxpayer to be allowable.*** A deduction cannot be claimed for expenses not incurred by the member, or expenses reimbursed by the ADF. In addition, a deduction cannot be claimed by the member for items provided free of charge. For example, it costs Stephen \$24 to travel to another base for a meeting. This expense is then reimbursed out of petty cash. Stephen cannot claim a deduction for this expense.

**Expenses meet deductibility tests**

23. ***The expense must be relevant and incidental to the earning of the income*** (*Ronpibon Tin NL v. FC of T* (1949) 78 CLR 47; 4 AITR 236). In this case the taxpayer companies were mining companies which, as a result of World War 2, were unable to continue part of their normal operations in Malaya. They claimed the entirety of their management and administration expenses. A portion of the deduction was allowed and on the question of deductibility in general it was said that (CLR at 56; ATR at 435):

'For expenditure to form an allowable deduction as an outgoing incurred in gaining or producing the assessable income it must be incidental and relevant to that end.'

24. ***There needs to be a perceived connection between the expense and the income earning activity*** (*Hatchett v. FC of T* 71 ATC 4184; 2 ATR 557). In this case a primary school teacher was denied the costs of studying at university. Although it was argued that this expense would increase the chance of a promotion and in turn, result in earning more income, it was held not to be allowable as there must be a 'perceived connection' between the outgoing and the income gained.

25. ***The expense must have the essential character of an income producing expense*** (*Lunney v. FC of T*; *Haley v. FC of T* (1958) 100 CLR 478; 11 ATD 405, (*Lunney's case*)). The taxpayers in these cases claimed the costs of travelling to and from work. It was held that to be deductible under subsection 51(1) the expenditure must be relevant and incidental to gaining the income, and that this depends on the essential character of the expenditure. The Court held (CLR at 498; ATD at 412):

'The question whether the fares which were paid by the taxpayers are deductible under s51(1) 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 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...

Whether or not it should be so characterised depends upon considerations which are concerned more with the essential character of the expenditure itself.'

26. In *Lunney's* case it was held the expenditure incurred in travelling to and from work did not have the essential character of an income producing expense. Its character was private.

27. It is common for ADF members to claim tax deductions for expenses incurred as a result of a direction from a commanding officer. It is also common for claims to be made because an expense was incurred as a condition of service. These factors do not change the 'essential character' of an item if it is not normally deductible.

28. In *FC of T v. Cooper* 91 ATC 4396; 21 ATR 1616 (*Cooper's* case), Hill J said (ATC at 4414; ATR at 1616):

'...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.'

(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.)

29. However, the fact that an expense is voluntary does not automatically preclude an item from being deductible. See Taxation Ruling IT 2198 - *Allowable deductions: expenditure voluntarily incurred by employee taxpayers*.

30. A further important consideration may be the taxpayer's subjective purpose in incurring an expense. In the High Court decision of *Fletcher v. FC of T* 91 ATC 4950; 22 ATR 613 (*Fletcher's* case) it was held that subjective purpose may be taken into account, where an expense is voluntarily incurred and the connection between the production of the income and the expense is not objectively clear. *Fletcher's* case also emphasised that subsection 51(1) issues may be decided by a characterisation of the expense.

31. A deduction will be denied under the exclusion clauses of subsection 51(1) where it is incurred for an item that is either:

- private or domestic in nature (e.g. haircuts or grooming)
- capital or capital in nature (e.g. purchase of a computer)
- incurred in earning tax exempt income (eg income of Army Reserve personnel).

32. ***Expenditure on items that are private or domestic in nature is expressly denied under the exclusionary clauses of subsection 51(1).***

Private or domestic expenditure is considered to include costs of living such as food, drink, shelter and clothing. In *Case T47* TBRD 1968 243; 14 CTBR (NS) 56 JF McCaffrey stated (TBRD at 243; CTBR at 307):

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

**Expense satisfies the substantiation rules**

33. The following paragraphs give guidance on general rules of substantiation.

***\$300 limit for substantiation***

34. If the total claim for work related expenses is less than \$300 then the substantiation provisions do not apply in accordance with subsection 82KZB(2) of the ITAA.

35. Expenses that are related to Overtime Meal Allowances and Award Travel Allowances and car expenses that are claimed using the Set Rate per km or 12% of cost method are not included in the \$300 limit [82KZB(2)].

36. Where the total of 'employment-related' expenses, travel and car expenses exceeds \$300, then the total of the claims must be substantiated, not just the excess (see TD 92/163).

***What records must be kept***

37. Receipts for expenses must be kept which have the following details:

- name of the person or business who supplied the goods or services;
- date on which the expense was incurred;
- amount in the currency in which the expense was incurred;
- nature of the goods and services supplied;
- date on which the document was made out.

38. In addition the document must be in the English language. If the expense was incurred outside Australia the document must be in a language of the country where the expense was incurred [ 82KU(1)].

***Diaries***

39. An entry in a diary or similar document:

- (i) is required in addition to receipts for activities undertaken while travelling where you either received a travelling allowance or you incurred travel expenses [82KZ(2)];
- (ii) may be used instead of receipts for expenses of \$10 or less up to a total of \$200 [82KU(6) and (7)]; or
- (iii) may be used instead of receipts for expenses which the Commissioner is satisfied are undocumentable expenses (such as tollway or parking meter expenses) [82KU(6), (7) and (8)].

***What entries must be made in a diary***

40. In relation to an eligible expense, a travel allowance or a travel expense the following entries must be made for each activity engaged in by the taxpayer:

- date the entry was made;
- place where the activity was undertaken;
- date and approximate time when the activity started;
- duration of the activity; and
- nature of the activity.

***When must entries be made***

41. The entries must be in the English language and must be made before, at the time of, or reasonably soon after the activity ended [82KZ(2)].

***When do entries need to be signed***

42. Diary entries in a **travel diary** do not need to be signed by the person making the entry. However **diary entries for expenses** mentioned in paragraphs 43 and 44 need to be signed at the time of making the entry [82KU(6)]. Where a number of entries are made on the same day only one signature at the time of the last entry is required.

***Small amounts under \$10 per expense***

43. Where a taxpayer incurs expenses under \$10 per item and the total expenses in a year of income is less than \$200 the taxpayer does not need to provide receipts [82KU(7)].

44. In relation to these expenses an entry must be made in a diary which records:

- the same details required for a receipt;

# TR 94/16

- the date of the entry; and
- the name of the person making the entry and their signature [82KU(6)].

45. Examples of such expenses would be take-away meals, writing materials or trade magazines.

***Undocumentable expenses***

46. A taxpayer does not need to provide receipts for expenses incurred where the Commissioner is satisfied that it would be unreasonable to expect the taxpayer to get a receipt [82KU(8)].

47. A signed diary entry recording the same details as a receipt, the name of the person making the entry and the date of the entry must be made at the time the expense was incurred or as soon as is reasonably practical to the time of incurring the expense.

**Methods of claiming motor vehicle expenses*****Quick reference guide***

48. The following table is a quick reference to the four available methods:

Method	Available if	Requirements
<b>Set rate per kilometre subsection 82KX</b>	Up to 5000 business km.  Not if leased for less than 12 months.	Reasonable estimate of business km travelled.
<b>12% of cost subsection 82KW(3) and (4)</b>	More than 5000 business km.  Not if leased for less than 12 months.	Reasonable estimate that more than 5000 business km travelled.  Documentary evidence of cost of car.  Limited to 12% of \$48,415 (section 57AF).

<b>1/3 of actual car expenses subsection 82KW(2)</b>	More than 5000 business km. Not if leased for less than 12 months.	Reasonable estimate that more than 5000 business km travelled.  Documentary evidence of car expenses or, for fuel and oil expenses, odometer records.
<b>Log book method subsections 82KUA to KV</b>	Any business km.	At first, keep log book for 12 continuous weeks.  May need to repeat if more cars, changed use.  Odometer records at start and end of log book period.  Odometer records for start and end of subsequent years.  Documentary evidence of car expenses or, for fuel and oil, odometer records.

***Definition of car***

49. A car is a motor vehicle (including a four wheel drive vehicle), being:

- a motor car, station wagon, panel van, utility truck or a similar vehicle, or
- any other road vehicle designed to carry a load of less than 1 tonne or fewer than 9 passengers,

but does not include:

- a motor cycle or similar vehicle;
- a taxi taken on hire;
- a motor vehicle on short term hire [82KT(1)].

50. Expenses of operating trucks and commercial vehicles are not usually covered by the substantiation provisions.

***Definition of car expenses***



# TR 94/16

51. Car expenses include:

- operating costs;
- repairs;
- depreciation;
- interest on money borrowed to buy the car;
- other borrowing costs;
- lease costs including preparation, registration and stamping of the lease or of assignment or surrender of the lease; and
- costs (other than principal or interest) of discharging a mortgage given as security for repayment of money borrowed to buy the car [82KT(1)].

52. Car expenses do not include:

- expenses incurred in respect of travel outside Australia; or
- a taxi fare or similar expense [82KT(1)].

## ***Elections***

53. A taxpayer can elect one of the four methods for substantiating motor vehicle expenses. That election should be made before the date of lodgment of the return to which the election relates.

The Commissioner will allow further time for this election to be made [82KY(1)]. A taxpayer can change the method for substantiating motor vehicle expenses from year to year.

54. The election should be held with the calculations of the car expenses by the taxpayer and must be produced when requested by the Tax Office. In the case of an electronically lodged return the election should be held with the paper return.

55. Where no election is made the claim for car expenses will be the greater of:-

- one third of actual expenses; or
- 12% of cost of the car; or
- set rate per kilometre where the car has travelled less than 5000 kilometres for business purposes [82KY(2)].

56. The substantiation requirements of each of these methods must still be met for the claim to be allowed.

## ***Log books***

57. A daily log book must have the following particulars:

- date of the journey;
- odometer readings at the beginning and end of the journey;

- number of kilometres travelled;
- purpose of the journey;
- name of the driver;
- date on which the journey was made; and
- name of the person making the journey (see MT 2026).

The entry must be signed by the person making the entry [82KT(1)].

58. Where a number of journeys are made in the one day, it is acceptable for the last entry of the day to be signed. Where the car makes several consecutive business journeys during the day, those consecutive trips can be treated as one for log book purposes [82KT(2)].

59. For a more detailed explanation of the Log Book Method see IT 2549 and MT 2026.

### **Retention periods for documents**

60. For car or travel expenses which are incurred in the course of producing assessable income which is not salary or wages the retention period is from when the expense was incurred or record was commenced to 7 years after the return of income was lodged.

61. For salary and wage earners the record retention period is 3 years 6 months after the date of the lodgment of the return of income in which the claim is made.

62. If an objection, request for amendment, review or appeal arising out of an objection decision has not been finalised at the end of the retention period, the retention period extends until the matter is determined or disposed of [82KT(1) and 82KZA].

### ***When do records need to be produced***

63. Subsection 82KZA(2) requires the Commissioner to serve a notice in writing on a taxpayer which gives a specified period of not less than 28 days to produce documentary evidence relating to expenses to the Tax Office.

### ***What form of records must be produced***

64. When a notice has been served, the taxpayer must produce the documentary evidence related to the expenses including:

- receipts;
- odometer records;
- log books;
- travel diaries; and

# TR 94/16

- expense diaries.

65. In addition the taxpayer must produce a schedule in the English language and in a form approved by the Commissioner:

- a cross-reference to the documentary evidence of the expense;
- in relation to the cross-reference, a summary of the particulars set out in the documentary evidence together with, in a case where the expense was incurred in a foreign currency, particulars of the amount of the expense in Australian currency [82KZA(3)]

## **Allowances**

### ***Taxable allowances***

66. The following allowances are assessable income under paragraph 26(ea) of the ITAA:

#### ***Arduous conditions allowance***

67. Paid to compensate ADF members who are required to work under environmental conditions involving heat, confined spaces and exposure to chemicals of a hazardous nature.

#### ***Clearance diving allowance***

68. Paid in recognition of the acquisition and continued maintenance of skills and knowledge required for military clearance diving.

#### ***Clearance diving allowance (disability element)***

69. Paid in recognition of the environmental factors and accompanying stress associated with clearance diving duties.

#### ***Common duties allowance***

70. Paid in recognition of those extra duties performed by an ADF member that are associated with the community life of approved expeditions to the Antarctica.

#### ***Diving allowance***

71. Paid in recognition of diving duties performed by members whose normal functions do not include diving; and the need to attract and retain such members.

#### ***Field allowance***

72. Paid to provide financial recompense for the extreme nature of the disabilities experienced when in the field for substantial periods,

including the significant liability to be on call and work long and irregular hours under adverse conditions.

***Flight duties allowance***

73. Paid to compensate ADF members who are not entitled to Flying Allowance, for the disabilities experienced when performing in flight duties in service aircraft.

***Flying allowance (qualification/skills element)***

74. Paid in recognition of the acquisition and maintenance of substantial skills and knowledge required of military aviation, and the need to attract and retain members as aircrew. The rates of the skills element vary to reflect the skills and knowledge applicable to the various ranks.

***Flying allowance (disability element)***

75. Paid in recognition of the disabilities and stresses inherent in the military flying environment.

***Hard lying allowance***

76. Paid to provide some form of compensation for the discomfort experienced by ADF members required to live in a seagoing ship, seagoing submarine or a defence force vessel for at least 48 hours and who do not qualify for a Seagoing Allowance or Submarine Service Allowance.

***Isolated establishment allowance***

77. Paid to ADF members living a certain radius from base. It is paid to compensate members living off base for their additional expenses in travelling to and from work.

Note: no 'contra' deduction is allowable. (A contra deduction refers to the automatic claiming of a deduction to the value of an allowance received.) Travel costs to and from work, regardless of why or where a person resides is a personal expense, and ordinarily not deductible (see paragraphs 240 to 247).

***Language proficiency allowance***

78. Paid to encourage ADF members to become proficient in an approved foreign language and to obtain aids to assist in maintaining that proficiency.

***Parachutist allowance***

79. Paid in recognition of the stress and skills associated with parachuting and attention and retention factors which are not comprehended within the salary structure.

## ***Service allowance***

80. Paid to ADF members after the completion of their initial training.

## ***Special action forces allowance (qualification/skills and disabilities)***

81. Paid in recognition of the special demands which cannot be adequately reflected in the salary structure. The allowance comprises two elements - Qualification/Skills and Disabilities. The former acknowledges the significant levels of additional skill that must be acquired and maintained. The latter acknowledges the hazard and stress associated with service within the Special Services environment.

## ***Special Royal Navy allowance***

82. Payable to a member of the RAN posted to Britain for RN duties associated with deep sea experimental diving.

## ***Submarine escape training facility allowance***

83. Paid to an instructor or trainee performing submarine escape duties or training.

## ***Submarine service allowance***

84. Paid to submariners who are posted to or available for posting to a seagoing submarine in recognition of the factors of responsibility, environment, stress and attraction and retention of personnel.

## ***Trainees dependant allowance***

85. Paid to enable trainees with dependants to receive a salary not less than a private (or equivalent rank).

## ***Trainee leaders allowance***

86. Paid to selected cadet and apprentice leaders in recompense for additional duties undertaken and higher responsibility exercised.

## ***Unpredictable explosives allowance***

87. Paid to compensate for the hazard and consequential stress involved in dealing with unpredictable explosives.

## ***Non-taxable allowances***

88. These allowances are exempt under subparagraph 23(t)(iii) of the ITAA:

## ***Separation allowance***

89. Paid to compensate members for the effects of separation from their homes. It recognises both the intangible effects of separation and the additional expenses incurred by a member, such as the need to maintain contact with dependants and the requirements for some

household tasks, normally done by the member, to be carried out on a commercial basis.

***Living out allowance***

90. Paid to cover reasonable extra costs of commercial accommodation because service accommodation is not available.

***Living out away from home allowance***

91. Paid to married members on duty away from their homes to meet reasonable costs of commercial accommodation used because service accommodation, in which rations and quarters would be supplied free of charge, is not available. The allowance is paid in respect of actual expenditure incurred in respect of accommodation, meals, food, laundry and utilities.

***Education allowance***

92. Paid under the Military Financial Regulations (r 131), the Naval Financial Regulations (r 122) and the Air Force Regulations (r 634) and is a cash allowance.

***Child education allowance***

93. Paid for actual education costs for children in respect of members posted overseas.

***Disturbance allowance***

94. Paid to cover expenses of moving, such as reconnecting the telephone, when a member is posted.

**95. Common work-related expense claims**

**Beepers, paging units and answering machines**

96. To the extent that this equipment is used for work purposes the purchase cost of beepers, paging units and answering machines is deductible under subsection 54(1) of the ITAA.

97. If such an item is purchased on or after 1 July 1991 for \$300 or less, or has an effective life of less than three years, the portion of the cost that relates to use for work-related purposes is deductible in full in the year of purchase.

98. If the item cost more than \$300 and has an effective life of more than three years, the portion of the cost that relates to use for work-related purposes is deductible as depreciation. The rate of depreciation depends on the effective life of the item. These items ordinarily have an effective life of 7 years.

99. Rental expenses are allowable deductions under subsection 51(1) and must be apportioned between work-related and private use.

**Child care expenses**

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

101. The High Court held in *Lodge v. FC of T* (1972) 128 CLR 171; 72 ATC 4174; 46 ALJR 575; 3 ATR 254; that child care expenditure was neither relevant nor incidental to gaining or producing assessable income and therefore not deductible. The expenditure was also of a private or domestic nature.

102. Taxation Determination TD 92/154 on child care expenses provides further information about these expenses.

**Clothing, uniforms and footwear**

103. Deductions for clothing are allowable in the following circumstances where:

- (a) the clothing is **protective** in nature;
- (b) the clothing is **occupation specific** and not conventional in nature; or
- (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 Australian Taxation Office (ATO) under the transitional arrangements contained in section 51AL (all such approvals cease to have effect from 1 July 1995);
- (e) the clothing is conventional and the taxpayer is able to show that expenditure on the clothing has the essential character of an outgoing incurred in gaining or producing assessable income, there is an nexus between the outgoing and the assessable income so that the outgoing is incidental and relevant to the gaining of assessable income, and that 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; 28 ATR 87).

It is our view that in most cases expenditure on conventional clothing will not be deductible. If the taxpayer is able to show in his or her case that a sufficient connection does exist between expenditure on conventional clothing and the gaining of assessable income, it may be necessary to apportion the claim for deduction. A reasonable estimate of the work use relative to private use of clothing should be applied.

***Protective clothing***

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

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

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

106. The cost of protective clothing or safety footwear is allowable. Examples of protective clothing include aprons, welding masks and goggles and steel capped boots.

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

108. The protective clothing criteria do not extend to conventional protection from the natural environment. Items which provide such protection (i.e., sunglasses, sun hats and sunscreen; raincoats, umbrellas and other wet weather clothing) are a private expense even if it is a requirement of employment. The purchase costs of these items are not allowable deductions under subsection 51(1). This view is supported in *Case Q11*, 83 ATC 41; (1983) 26 CTBR (NS) *Case 75* and *Case N84*, 81 ATC 451; (1981) 25 CTBR(NS) *Case 43*.

109. The purchase cost of normal sunglasses bought by members is not an allowable deduction under subsection 51(1) as it is private in nature. This is supported in *Case N84*, 81 ATC 451; (1981) 25



CTBR(NS) *Case 43*, where a news cameraman was denied a deduction for the cost of sunglasses used in his work due to the essential private nature of the sunglasses.

110. This is in contrast to the decision in *Case 10/94*, 94 ATC 168; *AAT Case 9254* (1994) 27 ATR (date of decision; 18 January 1994) where a police motorcycle patrolman was allowed a deduction for a pair of wrap-around sunglasses. In this case, the additional safety features of the wrap-around sunglasses protected the taxpayer from foreign particles. They were purchased for their protective function and were used as protective eye wear by the police officer in the course of performing his duties.

111. Taxation Ruling IT 2477- *Cost of sunglasses used by truck drivers or commercial travellers*.

112. Taxation Determination TD 93/244 - *Are items purchases to provide protection from the sun, i.e. sunglasses, hats and sunscreen, allowable under subsection 51(1) of the Income Tax Assessment Act 1936?*, provide further information.

113. Taxation Determination TD 92/157, *Is the cost of heavy duty clothing such as jeans, drill trousers and drill shirts claimed to be protective clothing deductible as a work expense?*, provides further information on the deductibility of protective clothing.

### ***Occupation specific clothing***

114. Occupation specific clothing in relation to an employee, means clothing that, disregarding any features of the clothing that distinctively identifies the employee as a person associated, directly or indirectly, with:

- the employer of the employee; or
- a group consisting of:
  - (i) the employer of the employee; and
  - (ii) one or more associates of the employer (within the meaning of section 26AAB);

distinctively identifies the employee as a member of a particular profession, trade, vocation, occupation or calling (subsection 51AL(26)).

115. Occupation specific clothing must be distinctive and unique, in the sense that by its nature or physical condition it is readily identified as belonging to a particular profession, trade, vocation, occupation or calling. The clothing must be non-conventional in nature to fall within this category. That is, it is not clothing which can be described as ordinary clothing of a type usually worn by men and women regardless of their occupation. Examples of clothing which is considered to be

occupation specific are nurses' traditional uniforms, chefs' checked pants and a religious cleric's ceremonial robes.

116. Clothing which could belong to a number of occupations would not fall within the definition of occupation specific clothing. An example of this is a white jacket or coat worn with white trousers. While a white jacket or coat worn with white trousers may indicate that the wearer belongs to the health profession, it is not sufficiently distinctive in design or appearance to readily identify the specific or particular occupation of the wearer. That is, the wearer could be a pharmacist, dentist, laboratory technician, or a number of other occupations.

***Compulsory uniform or wardrobe***

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

118. Taxation Ruling IT 2641, paragraph 10, lists the factors to be considered in determining whether clothing constitutes a 'corporate' wardrobe or uniform.

119. 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).

120. In *Case U95 87 ATC 575* (ATR ref), 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).

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

well as a combination of colours sometimes worn by female or food waiting staff.

122. Expenditure on military uniform is deductible. We consider that for taxation purposes a uniform includes items such as: military white, blue or khaki shirts with rank or other embellishments (depending on the arm of the force); standard matching trousers; regulation jumpers and jackets; official Mess uniform; hats or caps with rank or other embellishments; camouflage shirt and trousers. However, this does not include items or accessories of a conventional nature e.g. handbags, shoes, hair accessories, socks or t-shirts. (refer to paragraph 10(i) of Income Tax Ruling IT 2641 - *Corporate Wardrobes*.)

### ***Non-compulsory uniform or wardrobe***

123. A deduction is allowable for the purchase and maintenance costs of clothing if that clothing meets the criteria of a non-compulsory uniform or wardrobe under subsection 51AL. This section provides that expenditure on non-compulsory uniforms or wardrobes will only be allowable under 51(1) if the design of the clothing has been entered on the Register of Approved Occupational Clothing kept by the Textiles, Clothing and Footwear Development Authority (TCFDA) or if the design of the clothing is approved in writing by the Tax Office under IT 2641. Transitional arrangements enabling the Tax Office to approve designs of non-compulsory uniforms and wardrobes will expire on 30 June 1995.

### ***Conventional clothing***

124. The views of the Tax Office on the deductibility of costs of purchasing and maintaining conventional clothing are set out in TR 94/22.

125. In most cases, expenditure of conventional clothing will not meet the deductibility tests of subsection 51(1).

126. In *Case T83 86 ATC 1114*, an officer cadet employed in the Department of Defence was denied a deduction for a lounge suit that he was required to purchase to wear at various Army functions. It was held that the expense was of a private or domestic kind, notwithstanding the expectation of the employer of a high dress standard.

127. An ADF member is not entitled to claim a deduction for clothing purchased by their partner to attend the Mess or other official functions. Besides the fact that the clothing is of a private nature, the cost is not allowable as the expense was not incurred by the taxpayer.

### ***Special Items***

128. Some special items that are worn with or as part of a uniform and are unconventional in nature are allowable.

129. **Example:** Louis purchases a Ceremonial Sword for \$720 that he wears during parades. He is entitled to claim depreciation on the sword. (For further information on depreciation of equipment in paragraphs 156 to 159).

***Physical training clothing- monogrammed/distinctively unique***

130. ADF members are required to wear sports attire when participating in physical training. In the case where certain clothing is compulsory, deductions are allowable for official military monogrammed shirts, shorts and tracksuits. The identifier should be in the form of an easily visible (official) monogram such as a Regimental Crest ( see also IT 2641-*Corporate Wardrobes* ). Where the clothing is not compulsory, it will not be allowable unless it is registered with the TCFDA, or approved in writing by the Tax Office.

***Physical training clothing - not distinctive***

131. ADF personnel may purchase sports clothing such as ordinary T-shirts, shorts and tracksuits, to participate in sporting or other field activities. There is nothing about this clothing which removes it from being essentially private in character, and not allowable under subsection 51(1). No deduction is allowable for socks or running shoes.

***Laundry and dry-cleaning expenses***

132. Expenses for dry cleaning and the laundering of uniforms are an allowable deduction. In order to claim a deduction, expenditure on the items being cleaned must be allowable in the first instance under subsection 51(1). Items of clothing considered to be uniform are outlined in paragraph 103.

***Uniform maintenance allowance***

133. ADF personnel are paid a Uniform Maintenance Allowance to purchase, repair and maintain their uniforms and accessories. This allowance must be included as income. No 'contra deduction' is allowable. (A contra deduction refers to the automatic claiming of a deduction to the value of an allowance received.)

134. For deductions to be allowable against this allowance, the costs of uniform maintenance must be actually incurred, and must be deductible in accordance with paragraphs 15 to 32 of this Ruling. The member must also be able to substantiate the deduction claim. No deduction is allowed for maintaining clothing, the cost of which is not allowable.

# TR 94/16

135. **Example:** Greg receives a Uniform Maintenance Allowance of \$500. He purchases uniform items such as shirts and trousers costing \$120 and also purchases underwear and socks from the army stores costing \$40. The cost of dry cleaning his uniform of shirts and trousers is \$135. Greg must include \$500 in his taxation return, and is entitled to a deduction of \$255 (i.e. uniform \$120 and laundering of uniform \$135), provided appropriate documentation is kept. He cannot claim a deduction for the purchase or laundering of underwear and socks.

136. To support home laundry claims, members must have -

- kept a diary for a minimum period of one month to establish pattern of usage of appliances etc, and
- kept the receipts for detergents, sprays and cleaning agents for the whole year. If it is impractical to get receipts, a diary to can be used to record cleaning agent expenses, so long as they individually do not exceed \$10, and in total do not exceed \$200 for the year.

137. Any claims for dry-cleaning costs must be supported by receipts.

## **Stockings**

138. Deductions are not allowable for the cost of purchasing stockings as the expense is considered to be private in nature and not incurred in gaining or producing assessable income.

139. It is our view that the fact that female ADF members are required to wear stockings of specific colours as part of their total uniform at all times while on duty does not alter the private nature of the expense.

140. In *Case N97 81* ATC 521; 25 CTBR(NS) *Case 50* (which involved a registered nurse) Dr Gerber (Member) stated (ATC at 524; CTBR at 369):

'Stockings, by their very nature, are part of conventional attire - whether worn under protest or otherwise...' and added later '... there is nothing unique about stockings which would single out a person wearing them as being a nurse...'

141. In *Case H32 76* ATC 280; 20 CTBR(NS) *Case 85*, the expense for stockings damaged at work was not allowed. FE Dubout (Chairman) stated (ATC at 282; CTBR at 909):

'True, it is damage that occurs to her stockings during her hours of duty, but that has nothing really to do with procedures and methods relating to the performance of her duties...'

142. In *FC of T v. Cooper* 91 ATC 4396; (1991) 21 ATR 1616 Justice Hill said (ATC at 4414; ATR at 1636):

'... 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. '

143. The fact that an employer prescribes a particular style or colour of clothing for employees does not necessarily mean that expenditure on clothing by employees becomes deductible. The clothing must still meet the deductibility tests under subsection 51(1).

144. In *Case U80* 87 ATC 470; 18 ATR *Case 66* a shop assistant was denied a deduction for black clothes. BJ McMahon (Senior Member) stated that (ATC at 472):

'The fact that an employer requires garments of a particular colour to be worn and would even terminate 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.

### **Computers and software**

145. Expenses incurred by members for computers and related software are allowable deductions under either subsection 51(1) or section 54, to the extent that they are used for work-related purposes.

146. ADF members may also incur such expenses in relation to self-education expenses. Paragraphs 295 to 316 of this Ruling provides further information on the deductibility of self-education expenses.

147. As a computer would normally cost more than \$300 and would have an effective life of more than three years, the portion of the cost that relates to use for work-related purposes is deductible as depreciation. The rate of depreciation depends on the effective life of the item. These items ordinarily have an effective life of 5 years.

148. If the related software is purchased separately from the computer, the portion of the cost that relates to use for work-related purposes is deductible in full in the year of purchase.

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

149. Expenses incurred by members in maintaining or increasing their knowledge, ability or skills in their particular profession are allowable deductions under subsection 51(1).

150. 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 (CLR at 70; ATD at 352):

# TR 94/16

'... 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...!'

151. Therefore costs incurred in attending conferences, seminars and training courses qualify as allowable deductions provided there is a close nexus with the duties performed by members. The conferences, seminars and training courses may be held in Australia or overseas.

152. Deductions may include travel expenses (such as fares accommodation, meals and incidentals), registration fees and other expenditure associated with the attendance at the conferences, seminars or training courses.

153. If the dominant purpose in incurring the expenses is the attendance at the conference, seminar or training course then the existence of any private activity would be merely incidental and the expenses would be fully deductible.

154. If the attendance to the conference, the seminar or training course was only incidental to a private activity (i.e. a holiday) then only the expenses directly attributable to the conference, the seminar or the training course are deductible. Expenses incurred on accommodation, meals and travel directly relating to the private activity are not allowable deductions under subsection 51(1).

155. Taxation Ruling TR 92/8 - *Deductibility of self education expenses*, and paragraphs 295 to 316 of this Ruling provide further information.

**Depreciation of equipment**

156. Members may choose to purchase a broad range of items to assist them with their duties. Certain items of a capital nature, used for income-producing purposes, are not deductible under subsection 51(1). Equipment that comes within the definition of plant or articles under section 54 may be depreciated. The type of equipment for which depreciation is allowable includes computers, furniture and fittings used in a home office and professional libraries.

157. A deduction for depreciation is allowable under subsection 54(1) on plant and articles used during the year for the purpose of producing assessable income. Also, a depreciation deduction is allowable on plant and articles which are not actually used during the year for income-producing purposes but are installed ready for use for that purpose and held in reserve.

158. 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.

159. Any equipment or articles purchased 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 [subsection 55(8)]. This means an immediate deduction is available for the cost of such items in the year in which they are purchased. However, the article may be depreciated at a rate less than 100% if the taxpayer so elects [subsection 55(8)].

160. **Example:** An officer purchases a brief case for \$250 which she uses only for work purposes to carry reference books and reading material. The amount of \$250 is allowable as an immediate deduction.

161. **Example:** John purchases equipment for an upcoming field exercise, including a knapsack (\$220), a sleeping bag (\$180) and shovel (\$30). The equipment is used 100% for work purposes. The cost of each of these items is allowable.

162. If the equipment or articles purchased on or after 1 July 1991 cost more than \$300 or the effective life is three years or more, then a deduction for depreciation is allowable based on the rates in subsection 55(5). However, the article may be depreciated at a rate less than this if the taxpayer so elects [subsection 55(8)]. The current depreciation rates are set out in Taxation Ruling IT 2685.

163. Where the property is used partly in the course of employment and partly for other purposes, then the depreciation expense should be



# TR 94/16

apportioned based on an estimate of the percentage of income-producing use (section 61).

164. **Example:** Bill, a full time member of a military band, purchases an trumpet that is used 60% for work purposes and 40% for private activities. Depreciation can only be claimed for the work related proportion.

165. Where the property used is purchased part way through the year, then the yearly depreciation expense should be reduced accordingly.

166. 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 expense that would have been allowed if the unit had been used, since purchase, to produce assessable income.

167. Refer to Taxation Determination TD 92/142 - *What is the opening value of a Unit of Property, for the purposes of calculating depreciation, if the unit was previously used for purposes other than producing assessable income?*

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

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

## Donations

170. Subsection 78(4) of the ITAA allows deductions for donations to approved funds, authorities or institutions. Any donations made to non public funds such as welfare funds, silver funds and social clubs are not allowable. This does not preclude donations to the 'Regular Defence Force Welfare Association'.

## Driver's licence

171. The expenses incurred in acquiring or renewing a driver's licence are not allowable under subsection 51(1). The cost associated

with obtaining a driver's licence is a capital expense. The cost of renewing such a licence is a private expense.

172. 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 university lecturer in social work), a driver's licence was still an expense private in nature and therefore not deductible under subsection 51(1).

173. Taxation Determination TD 93/108 confirms that no deductions are allowable for the cost of renewing a driver's licence even if the driver's licence is a condition of employment.

174. However where a premium is paid on top of the cost of a standard licence, this premium is allowable.

### **Extra Regimental Duties (ERD)**

(ERD is also referred to as Service Duties.)

175. ADF personnel are required to perform extra duties as directed. There are numerous positions filled on an annual basis. Examples of these include: a position on the Mess Committee, coaching a sporting team, organising a social function or a role as a public relations officer. In some instances, expenses may be incurred in performing these duties, such as the Treasurer of the Mess purchasing stationery to assist with his book keeping.

176. In determining the allowability of any claims in relation to ERD each case should be examined individually on its merits. It is necessary to look at the nature of the activity undertaken in the context of subsection 51(1) and section 51AE.

177. Although some ERD's may be of general benefit to the ADF and may have a valuable effect on staff morale, for an expense to be deductible there must be a nexus between the activity and deriving assessable income. As discussed in paragraph 28, a 'condition of employment' is not in itself a test for deductibility.

178. If a member wishes to claim expenses for performing ERD's that are outside their normal duties, it must not be of a domestic or private nature, e.g. for food, drink or entertainment.

179. **Example:** Sharon is the President of the Mess Committee (PMC). In this position it is necessary for her to attend more functions than she would otherwise. Sharon is charged for food and drink consumed at these functions. The cost incurred would not be allowable as food and drink are generally private expenses. If, on the other hand, Sharon purchased her own stationery in her role as PMC then her claim for stationery would be allowable.

## **Fines**

180. Fines imposed under any law of the Commonwealth, a State, a Territory or a foreign country or by a court are not allowable deductions. Subsection 51(4) expressly excludes these payments from deductibility under subsection 51(1)..

## **Fitness related expenses**

### ***Expenses for Physical Training (PT)***

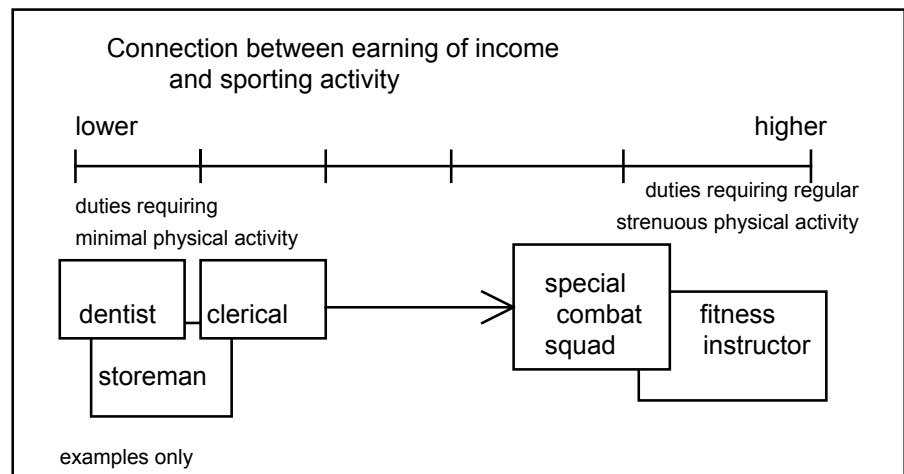
181. Many ADF members participate in regular strenuous physical training (typically running) as a part of their normal daily duties. Expenses in relation to PT are allowable as we consider there is a sufficient nexus between the activity and the earning of income, and they are not of a private or domestic nature (e.g. some clothing and footwear).

### ***Expenses for sporting activities - general***

182. The ADF places a high emphasis on sporting activities to promote physical fitness, team building and leadership skills. These activities range from individual sports, team sports and representative sports at both local, national and international levels. The degree of sporting activity a member undertakes will depend on the member's occupation within the ADF and their personal interests and preferences. The nature of the expenses incurred includes sports equipment, clothing and travel.

183. Expenses relating to sports activities will not be allowable if there is an insufficient nexus between the income earning activity and the outgoing. See paragraphs 23 to 31.

184. The nexus between sport and the income earning activity of the member will vary depending on the nature of the duties performed. Income earning activity which requires minimal physical exertion in performing those duties has a low nexus with sport. The following diagram illustrates the nexus.

**DIAGRAM**

185. The further along the right hand end of the scale in Diagram 2 the occupation lies, the greater the likelihood that the connection between a sporting expense and the earning of income can be established. We accept that in a minority of instances there will be a sufficient nexus to allow a deduction for the expense, e.g. a physical fitness instructor. See Taxation Determination TD 93/114 - *Expenses of keeping fit and police officers*. (Where the nexus is established, it is still necessary to consider the rules in relation to the deductibility of clothing - see paragraph 103)

186. However, it is emphasised that expenses do not become deductible simply as a result of a person's title or occupation. A fitness instructor who earns his income by designing training programs and instructing/examining course participants, but does not engage in any physical activities himself, will not be able to establish the required nexus.

187. Similarly, it is unlikely that occupations toward the left hand end of the Diagram will be able to establish a sufficient nexus.

188. **Example:** Natalie is a medical practitioner in the Navy. Her expenses in relation to travel to golf, golf equipment and playing golf are not allowable as they are not incidental and relevant to the activities by which she earns her income.

189. **Example:** Doug is currently working as a chef. He participates in rugby league on his weekly sports afternoon and is also an official participant in an ADF rugby league team that plays in the local town on Saturday afternoons. No deduction is allowable for equipment or travel in connection with either of these activities.

190. In *Case T74 86 ATC 1064* a physical training instructor was allowed expenses incurred when participating in inter-service ski

championships. We consider this to be an exceptional case in which the expenses incurred by the taxpayer were held (by a majority of the tribunal) to be incidental and relevant to the taxpayer's income producing occupation as physical training instructor. We do not see this decision as one which has application outside its own particular facts.

***Gym or sporting facility membership subscriptions***

191. ADF members may pay gym membership fees to lose weight and maintain or increase their fitness. Section 51AB of the ITAA denies a deduction for this expense. Section 51AB provides that:

'notwithstanding any other provisions in ITAA, a loss or outgoing is not an allowable deduction to the extent to which it is incurred by a taxpayer to secure or maintain, for the taxpayer or any person, membership of a social or sporting club or rights to enjoy member facilities.'

**Glasses/contact lenses**

192. The cost of purchasing glasses or contact lenses is not deductible as the expense relates to a personal medical condition and is, therefore, private in nature.

**Grooming and underclothes**

193. Costs for personal items such as makeup, shaving equipment, deodorant, hair products, hair nets, clips and bobby pins, underclothes, stockings and sun screen are not allowable deductions under subsection 51(1) as they are private in nature. The character of these expenses is not altered by any requirement to replace service-issue items. Nor is their character altered by any order or Regulation to purchase or wear such an item. See *Cooper's* case discussed in paragraph 28.

194. In *Case U216 87* ATC 1214 a food and drink waitress was required to wear makeup while at work. She claimed excess costs for makeup. It was found that the makeup was neither relevant nor incidental to the earning of the taxpayer's assessable income.

195. In *Case Q11 83* ATC 41; 26 CTBR (NS) 75 a lawn mowing contractor claimed the cost of sun screen. It was held that protecting his skin from sun damage was a private expense.

**Haircuts**

196. ADF personnel are required by Australian Military Regulations and orders to keep their hair short (optional for women as it may be

tied back). This expense is not allowable under subsection 51(1) as it is private in nature.

197. In *Case L61* 79 ATC 488; 23 CTBR (NS) 73 an army officer was denied a deduction for his haircuts. It was held that although it was a condition of employment to be well groomed, the expense related to lifestyle and was therefore private in nature.

198. In *Case U217* 87 ATC 1216 a policeman who claimed 50% of the cost of his haircuts was denied a deduction. It was a condition of his employment that he was required to keep his hair short. The fact that he only claimed half the cost of his haircuts (representing what was above his 'normal' expenditure) was not the issue. The outgoing was private in nature.

### **Home office expenses**

199. Our policy on home office expenses has been consolidated in Taxation Ruling TR 93/30 - *Deductions for home office expenses*, and is summarised below.

200. Generally, expenses associated with a taxpayer's home are of a non-deductible, private or domestic nature. However, a portion of expenses associated with a taxpayer's home are allowable deductions where either:

- (a) part of the home is used in connection with the taxpayer's income-producing activities but does not constitute a place of business, i.e., an area of the home is a private study; or
- (b) part of the home is used for income-producing activities and has the character of a 'place of business'.

201. Taxation Ruling TR 93/30 distinguishes between two broad categories of deductible expenses.

- *Occupancy expenses* relating to ownership or use of a home. These include rent, mortgage interest, municipal and water rates and house insurance premiums.
- *Running expenses* relating to the use of facilities in the home. These include heating/cooling and lighting expenses, cleaning costs, depreciation, leasing charges and the cost of repairs of furniture and furnishings in the office.

202. Where taxpayers maintain an office or study at home where they can do income-producing work which is not convenient to carry out at their normal place of work, the occupancy expenses referable to their home office are not deductible. This is clearly established by the High

# TR 94/16

Court decisions in *Handley v. FC of T* 81 ATC 4165; (1981) 11 ATR 644 and *Forsyth v. FC of T* 81 ATC 4157; (1981) 11 ATR 657.

203. However, where it is considered that an area of a home is a place of business, a portion of the expenses from both categories may be claimed as a deduction.

## ***Private study***

204. If a member maintains an office or study at home where income-producing work can be more conveniently carried out at home, deductions for the running expenses incurred as a result of the income-producing activities are allowable.

## ***Heating/cooling and lighting expenses***

205. For the running expenses to be deductible, the area of a member's home set aside as a private study must be used *exclusively* for these activities. (*FCT v. Faichney* 72 ATC 4245; (1972) 3 ATR 435) For example, if a member prepares a report in the lounge room where other family members are able to watch television, the expenditure for lighting and heating/cooling retains its private or domestic character and is not deductible. However, if the taxpayer uses the room at a time when others are not present or uses a separate room, he or she is entitled to a deduction. This applies even if the room is not set aside solely as a home office.

206. A deduction may be allowable where *additional* heating/cooling and lighting expenses are incurred as a result of duties performed at home. The formula for calculating the additional expense for an appliance is:  $A \times B \times C$

**A** is the cost per unit of power used;

**B** is the average units used per hour; and

**C** is the total annual hours used for income-producing purposes.

207. An estimate based on a reasonable percentage of the household annual bill will be acceptable. In determining a 'reasonable percentage', consideration must be given to the fact that the number of appliances in a private study and the total units used by these appliances is generally small in comparison to the total units used by all other appliances in the home.

## ***Depreciation of professional library***

208. Paragraph 283 to 286 of this Ruling provide information on the deductibility of depreciation on a professional library.

## ***Equipment***

209. Equipment including computers, printers, word processors and typewriters used in the course of a member's duties are generally

depreciable under subsection 54(1) of the ITAA. Where items used for income-producing purposes are also used for domestic or private purposes, the depreciation claim should be apportioned on the basis of an estimate of the percentage of income-producing use. Paragraphs 156 to 169 of this Ruling provide information on the deductibility of depreciation on this equipment.

210. **Example:** A training officer uses his personal computer to prepare lectures and exams. The computer is also used by his children to complete their school work and to play computer games. He is only entitled to a deduction for depreciation based on the income-producing use of the computer.

211. The purchase cost of software is an allowable deduction in the year of purchase. Where the software is used partly for producing income and partly for private purposes, the cost can be apportioned.

212. The cost of repairs to such equipment will generally be deductible under subsection 53(3) of the ITAA to the extent to which the equipment is used for income-producing purposes.

213. In addition, if money has been borrowed to finance the purchase of an item of equipment, for which depreciation is allowable, then the interest payments are deductible under subsection 51(1).

The deduction is to be apportioned on the basis of income-producing and private usage of the equipment.

### ***Place of business***

214. Whether an area of a home has the character of a place of business is a question of fact. Paragraphs 5, 11, 12 and 13 of Taxation Ruling TR 93/30 provide information on whether or not an area set aside has the character of a 'place of business'.

215. The member may be entitled to deduct a portion of both the running and occupancy expenses. Paragraphs 206 to 207 of this Ruling provide an explanation for the calculation of the running expenses. The amount of occupancy expenses allowable is based on the ratio of the business area to the total floor area of the dwelling.

216. **Example:** A band member gives lessons in a room at her home which she uses exclusively for this purpose. The room is 10% of the home, based on floor area. She receives tuition fees for these music lessons. She is entitled to claim a portion of the running expenses and 10% of the occupancy expenses provided the room is characterised as a place of business.

217. Where 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,



# TR 94/16

and the period for which, the dwelling was used for the purpose of gaining or producing assessable income (see Taxation Ruling IT 2673).

## Meals

218. Deductions for the cost of meals consumed while on duty are generally not allowable. These costs fail to meet the tests of deductibility described in paragraphs 15 to 31, and are considered to be private in nature.

219. Costs for meals will be allowed where an allowance (e.g. Overtime Meal Allowance) has been paid.

220. The Full Federal Court considered the deductibility of food in *FC of T v. Cooper* 91 ATC 4396. In that case, a professional footballer had been instructed to consume large quantities of food during the off-season to ensure his weight was maintained. By majority the Full Federal Court found that the cost of additional food to add to the weight of the taxpayer was not allowable. Hill J (at ATC 4414; ATR 1636 ) said:

'The income producing activities to be considered in the present case are training for and playing football. It is for these activities that a professional footballer is paid. The income producing activities do include the taking of food, albeit that unless that food is eaten, the player would be unable to play. Expenditure on food, even here as "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 (ATC 4415; ATR 1638):

'Food and drink are ordinarily private matters, and the essential character of expenditure on food will ordinarily be private rather than having the character of a working expenses in cases such as those illustrated of work-related entertainment or expenditure incurred while away from home.'

221. It is our view that expenditure on meals consumed in the normal course of a working day will not have sufficient connection with income-producing activities of ADF members and is in any case a private expense.

222. 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.

223. In *Case Y8* 91 ATC 166; *Case 6587* (1991) 22 ATR 3037, a police officer claimed deductions for expenditure incurred on meals

while performing special duties away from his normal place of residence. The expense incurred on these meals was held to be private in nature and no deduction was allowable under subsection 51(1).

### **Messing and related expenses**

#### ***Compulsory Mess subscriptions***

224. These expenses are not deductible. The Mess is predominantly used as a recreation and living area for ADF personnel. It is also a venue for formal and informal dinners, functions, meetings, training and the placement of notices. ADF personnel are required to pay a compulsory subscription to the Mess. (However, as discussed above at paragraphs 27 to 28, the fact that expenditure is incurred as a condition of employment or as the result of a command, does not automatically make it an allowable deduction. The essential character remains private.

225. Mess subscriptions are utilised in the day-to-day running and upkeep of the Mess. Expenses include such things as book keeping, insurance, and the purchase and maintenance of silverware.

226. As this expenditure is incurred in the maintenance of a place primarily used for recreation, dining and drinking, the expense is private in nature and not an allowable deduction under subsection 51(1).

227. The connection between the expense and the assessable income is insufficient to satisfy the first limb of subsection 51(1). ADF personnel earn their income by performing the tasks set out on their duty statements and job descriptions. There is no direct nexus between these duty statements and their subscriptions which fund a facility primarily used for eating, drinking and recreation.

#### ***Case 5 CTBR 7 (NS)***

228. In this case, an officer in a unit of the Citizen Military Forces claimed a deduction for his compulsory mess subscription. The subscription was required under Military Rules to defray the ordinary expenses of the Mess. The expenses of the Mess included: stationery, Christmas cards, postage, gratuities and timber for a tankard.

229. Before the Board, the taxpayer led evidence to the effect that the Mess to which he belonged was the normal officer's mess where officers congregated for messing and recreational purposes, and also for certain functions of a social character. It was held that the Mess subscription was an allowable deduction as it was a condition of service and therefore 'relevant and incidental' to the gaining or producing of assessable income.

230. Subsequent to this decision being handed down in 1957, the courts' interpretation of subsection 51(1) has changed. See *Lunney's* case (at paragraph 25) where the Full High Court held that the issue of whether an expense was relevant and incidental to gaining income, depended on the essential character of the expense.

231. In *Cooper's* case (as discussed above and at paragraph 28) the Federal Court held that an expense incurred as a term of employment, does not convert certain expenditure into a deductible outgoing.

### **Charges for compulsory attendance at Mess functions**

232. The charges for attending compulsory Mess functions are not allowable deductions.

233. ADF personnel are required to attend a number of functions in the Mess such as dinners, dances and cocktail parties. The expenses of compulsory Mess functions are excluded from deductibility under subsection 51(1) as they are private in nature.

234. In reaching this opinion, we have taken into consideration that many of these functions are compulsory; behaviour at such functions may be taken into account for promotion, and it is the means by which ADF personnel learn Mess function etiquette.

235. However, as discussed above, and at paragraph 27 to 28, the fact that expenditure is incurred as a condition of employment or as the result of a command, does not automatically make it an allowable deduction. The essential character remains private.

### ***Food, drink and entertainment***

236. ADF personnel may incur expenses in attending functions; purchasing food and drink in the Mess, or for entertaining guests in an official or informal capacity. While it is recognised that the member is expected to incur some of these expenses as part of their duties, section 51AE of the ITAA denies a deduction for entertainment expenses. Subsection 51AE(4) states that:

'A deduction is not allowable under section 51 in respect of losses or outgoings incurred after 19 September 1985 to the extent to which they are in respect of the provision of entertainment.'

237. Subsection 51AE(3) defines the 'provision of entertainment' as:

'A reference in this section to the provision of entertainment is a reference to the provision (whether to the taxpayer or to another person and whether gratuitously, pursuant to an agreement or otherwise) of-

- (a) entertainment by way of food, drink or recreation; or
- (b) accommodation or travel in connection with, or for the purpose of facilitating, entertainment to which paragraph (a) applies...

whether or not-

- (c) business discussions or business transactions occur;
- (d) in connection with the working of overtime or otherwise in connection with the performance of the duties of any office or employment;
- (e) for the purposes of promotion or advertising; or
- (f) at or in connection with a seminar.'

238. Subsection 51AE(1) defines recreation as including -

- '(a) amusement;
- (b) sport or similar leisure-time pursuits; and
- (c) recreation or amusement provided on, or by means of, a vehicle, vessel or aircraft;'

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

## **Motor Vehicle**

### ***Travel to and from work***

240. The cost of travel by ADF members from home to his or her normal place of employment is generally considered to be a private expense and is not deductible under subsection 51(1). This principle was established in *Lunney v FC of T*, *Haley v FC of T* 100 CLR 478, 7 AITR 166.

241. In each of these cases, travel expenses incurred in travel between home and work were claimed on the basis that the expenditure was incurred in producing income. A joint judgment on both cases by Williams, Kitto and Taylor JJ stated the following (ATC at 498; AITR at 179):

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

242. 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 Income Tax Ruling IT 2543 - *Deductibility of home/work travel*, Taxation Determination TD 93/113.

### ***Living on Base***

243. Some ADF members live 'on Base'. Travel from the place of residence 'on Base' to the place where normal duties are performed is travel to and from work and related expenditure is not allowable.

### ***Living off the Base***

244. Travel to and from work is not ordinarily a deductible expense. If no accommodation is available on base, or through the member's own choice he/she lives some distance away (thus necessitating use of their own vehicle to go to work), this is not sufficient to change the character of the expense which is essentially private. See *Case J21 77* ATC 193; 21 CTBR (NS) 43, and *Case V131 88* ATC 838 (discussed below).

245. Further, the receipt of an allowance to cover these costs (e.g. the Isolated Establishment Allowance) does not make these expenses deductible as they remain private in nature. See *Lunney's case*, *Case U156 87* ATC 908 and *Case R22 84* ATC 212; 27 CTBR (NS) 76. Paragraph 77 above discusses the Isolated Establishment Allowance.

246. In *Case V131 88* ATC 838, the taxpayer was an officer in the Royal Australian Air Force. He lived in a capital city and worked on a RAAF base 40 km away. He was forced to live off the base as no married quarters were available at the time. He was compulsorily posted to the base and had no say as to where he was sent. Due to no availability of public transport, the taxpayer drove to work each day and claimed a deduction for the expense.

247. The Tribunal held that he was not entitled to a deduction and stated that although the taxpayer was forced to live a great distance

from the base the matter had been conclusively dealt with by the High Court in *Lunney's* case.

***Incidental tasks on the way from home to regular place of employment***

248. Performing incidental tasks while travelling between the teacher's and the regular place of employment does not, of itself, transform private travel into work-related travel. The cost of this travel is not deductible under subsection 51(1). This is confirmed in paragraph 34 of Taxation Ruling MT 2027.

249. **Example:** A permit has to be dropped into the local council chambers. Rather than make a special trip into town, Peter's commanding officer asks him if he would mind dropping it off on the way home as he normally travels past the council chambers on the way home. The cost of this trip would not be an allowable deduction.

***Travel to and from regular place of employment but transporting bulky equipment***

250. A member is generally entitled to a deduction under subsection 51(1) for travel when transporting bulky equipment even if travelling from home to his or her regular place of employment. In this case, the costs are attributed to the transport of the bulky equipment rather than to the travel to and from work. See *FC of T v. Vogt* 75 ATC 4073; (1975) 5 ATR 274.

251. In order for a deduction to be allowable for travel to and from work when carrying tools or equipment, it must be proven that employment has created the necessity to transport items (*Vogt v. FC of T* 75 ATC 4073; 5 ATR 274 (*Vogt's* case)) and that it was impractical to keep them at work (*Case U29 87* ATC 229; 18 ATR 32).

252. In *Vogt's* case a musician transported his instruments between his place of residence and the various places where he performed. It was held that the essential character of the expenditure was such that it should be regarded as having been incurred in gaining or producing the assessable income. The costs were attributed to the transport of the bulky equipment rather than to the travel to and from work. Waddell J stated (ATC at 4078; ATR at 279):

'...the first step in determining whether the expenditure in the present case is deductible under s51(1) is to state what are the relevant aspects of the operations carried on by the taxpayer for the production of his income...

Secondly, it was essential to the carrying on of those operations. There was no other practical way of getting his instruments to the places where he was to perform. Thirdly, in a practical

sense, the expenditure should be attributed to the carriage of the taxpayer's instruments rather than his travel to the places of performance.'

253. In *Case U29 87 ATC 229*; 18 ATR 32 a carpenter successfully claimed travel between home and work sites. His place of work varied during the week and it was not secure to leave his tools at the sites. The Tribunal held that his employment created the need, as a matter of practical necessity, for him to transport his tools from his home where he was able to keep them safely. It was in practical terms necessary for him to transport them by car.

254. In *Case Z22 92 ATC 230*; 23 ATR 7944 an aircraft maintenance engineer was denied a deduction for transporting his tools from home to work for convenience. Larger tools were kept in a padlocked mesh cage but other tools were kept in a canvas bag that could be carried over the shoulder. The bag was taken home in the boot of the car each night.

255. The deduction was denied as it was possible that the tools could have been stored at work, they could be carried on public transport and they were taken home largely for convenience. It was not sufficient for instruments to be carried merely for convenience.

256. Deductions may be allowable when ADF members are required to use their private motor vehicles and travel:

- (a) between two separate places of work where there are two separate employers involved;
- (b) from the regular place of employment to an alternative location while still on duty and back to the regular place of employment or directly home;
- (c) from home to an alternative place of employment for work-related purposes and then to the normal place of employment or directly home;
- (d) between two places of employment or venues;
- (e) between home and a place of employment while 'on call';

and

- (f) to a place of education for the purposes of self-education.

257. Examples of these types of trips are set out below.

### ***On and between bases***

258. ADF members may be required to travel in their own vehicle in the course of their employment either on or between bases. Travel

expenses may be allowable where the member incurred an expense that was not reimbursed.

259. Travel in the course of employment is an allowable deduction under subsection 51(1). Travel from the normal place of duty to another point at that base (or another base) which is connected with the taxpayer's official responsibility would normally be considered to be work-related travel.

260. **Example:** Craig works in the Catering Division. He commences duties at 6 am. At 8 am he travels to an adjoining base where the Catering Corps is located, to 'report in' and then returns to the normal place of work. If Craig does not report in at this time then he is 'absent without leave'. In this instance, travel would be allowable as he is travelling in the course of his employment.

261. **Example:** Rosemary reports at point Y to sign on and then goes on to point Z where her daily duties are actually performed. Neither travel between home and point Y, nor between point Y and point Z, is allowable as she has not actually commenced duties.

262. **Example:** Philip works at Army Base A but is attached to Base B. During Philip's normal working day he must travel from Base A to Base B, usually twice a week, for a meeting with his Commanding Officer. This would constitute an allowable deduction as he is travelling in the course of his duties.

263. **Example:** Gabriel is in the Catering Corps. Most supplies are delivered. There are occasions when he has to drive from work to town or another Mess to collect supplies. Travel in this instance would be allowable.

***Performing duties on the way to and from work***

264. If a trip is made directly from home to a place where substantial employment duties are performed and which is not the normal place of work, expenditure on travel is allowable. Similarly, if the person travels from that place to home, the travel is also allowable.

265. **Example:** Graeme, a careers officer in the Navy, travels from the Careers Office, makes an external presentation at a local school and travels home after the presentation. The whole trip, in this instance would be allowable.

266. **Example:** On the way home from work, Jannine called into the city council's planning office to discuss alterations to an RAAF building plan that required amending. The trip was out of her normal way home. The cost of the trip from the normal place of employment to the council office and then home is allowable.

***Travel for extra regimental (or service) duties***



267. As outlined in paragraph 175 to 179 above, expenses relating to ERD may be allowable based on the facts of each case.

268. If the ERD's being undertaken involve travelling to the normal place of work this would be regarded as private expenditure and not allowable. Where the activity requires travel to the normal place of work after hours this is also not considered to be work-related travel.

***Travel for medical appointments***

269. ADF members are subject to regular medical check ups. They may also be ordered to attend the Medical Corps for consultations, e.g. fitness assessments.

270. The expense of travelling to official medical appointments is an allowable deduction where the expense has not been reimbursed or where ADF transport is not used.

271. Travel for any other medical appointments which are needed due to personal ailments (e.g. driving to the in service dentist with a toothache) would be a private expense and not allowable.

***Travel while 'on-call'***

272. ADF members may be contacted after regular 'on-duty' hours and as a result commence specified duties. Although a taxpayer may be required to travel to work, in response to a call while on standby, this would not ordinarily alter the character of that travel.

273. In *FC of T v. Genys* 87 ATC 4860; 19 ATR 356 a nursing sister was denied the cost of travelling to and from work. She worked relief shifts in intensive care and the shifts were arranged by telephone. It was held there was nothing about the case that distinguished it from normal travel to and from work.

274. In some instances duties commence upon receipt of the phone call. For example, in *FC of T v. Collings* 76 ATC 4254; 6 ATR 476 the taxpayer was engaged in the conversion of a computer facility and often used a personal computer at home that was connected by telephone to her employer's computer. If the problem could not be fixed through the telephone connection, the taxpayer was required to travel to the site. It was held that travel from home to the site was deductible as the performance of duties had commenced and the travel was effectively between two sites of work.

275. **Example:** Sam, who is an administrative officer rostered to be on call, had to travel after hours to the same office building where he normally works during the day to check reported fire damage. The cost of travel is not allowable as it is travel to and from work.

276. **Example:** Laurie's duties as Base Safety Officer require him to issue detailed instructions to a number of other ADF personnel, in an

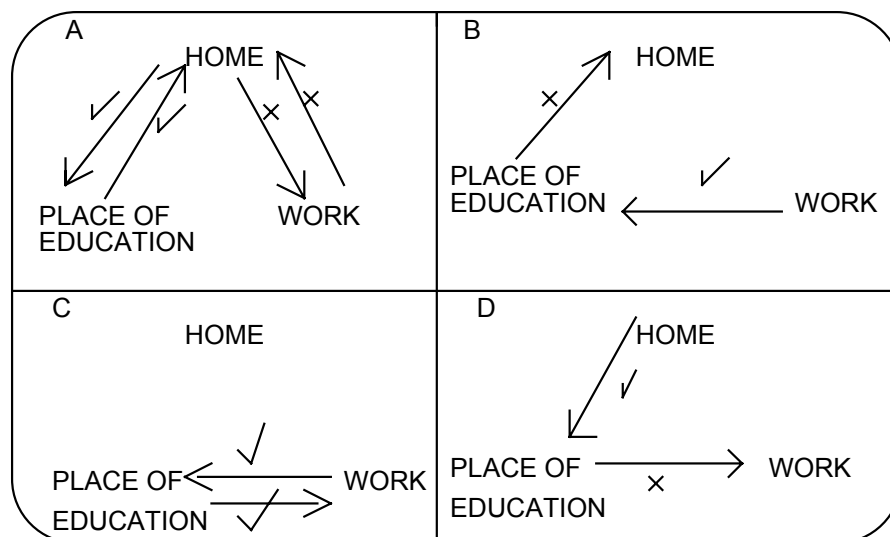
emergency, from his home phone before travelling to the location of the emergency. Laurie is entitled to claim his travel from home as his duties commenced at home.

***Travel for the purposes of self education***

277. Travel is only allowed in certain circumstances. See Diagram 1.

- travel from home to place of education and back home (A) - deductible
- travel from home to work and/or work to home (A) - not deductible
- travel from work to place of education and then home (B) - only travel from work to place of education is deductible
- travel from work to place of education and back to work (C) - deductible
- travel from home to place of education and then to place of work (D) - only travel from home to place of education is deductible.

**DIAGRAM** Travel in relation to self-education



**Newspapers**

278. The cost of daily newspapers is generally not allowable as a deduction under subsection 51(1). It is a private expense. A taxpayer may be able to use some part of the information derived in the course of his or her duties. However, in most circumstances the benefit gained is too remote to relate directly to the duties undertaken. This

view is supported in *Case P30*, 82 ATC 139; 25 CTBR(NS) *Case 94* and *Case P114*, 82 ATC 586; (1982) 26 CTBR(NS) *Case 47*; *Case K68* 78 ATC 667; 22 CTBR(NS) *Case 8*; *Case N67* 81 ATC 349; 25 CTBR(NS) *Case 18*; *Case P124* 82 ATC 629; 26 CTBR (NS) *Case 55*.

279. These cases can be contrasted with *Case R70* 84 ATC 493; 27 CTBR(NS) *Case 124* where a supervisor in the Commonwealth Auditor-General's Department was allowed deductions for the cost of specific issues of *The National Times* and *The Australian Financial Review* as there was a sufficient connection between the duties carried out by the taxpayer and the content of those specific publications . However deductions for the cost of the local newspaper, *The Canberra Times*, were disallowed as the expense was essentially private in nature.

### **Parking fees and tolls**

280. Parking fees (but not fines) and tolls are expenses which may form part of the travelling expenses incurred by members. This is supported by *Case Y43* 91 ATC 412; *Case 7273* (1991) 22 ATR 3402.

281. These expenses are generally considered to be private in nature when members are travelling between their normal place of residence and their regular place of employment and deductions are not allowable under subsection 51(1).

282. Deductions for parking fees (but not fines) and tolls are allowable if the expenses are incurred while travelling:

- (a) between two separate places of work,
- (b) to a place of education for self-education purposes,
- (c) in the normal course of duty and the travelling expenses are allowable deductions. Paragraph 240 to 277 of this Ruling provides further information on the deductibility of motor vehicle expenses.

### **Professional library**

283. Depreciation on a professional library may be claimed as a deduction under section 54 of the ITAA. If an individual reference book is purchased after 1 July 1991, and the cost does not exceed \$300 or its effective life is less than 3 years, it may be depreciated at 100% in the year of purchase under section 55. See Taxation Determination TD 93/159 - *If a purchase of depreciable plant comprises individual items costing \$300 or less each or having an effective life of less than*

*3 years, can the individual items be depreciated at a rate of 100% in terms of subsection 55(2) of the Income Tax Assessment Act 1936..*

284. For depreciation purposes, reference books may only be included in the professional library if their content is directly relevant to the duties performed. Encyclopaedias and general reference books are too general in nature to warrant a deduction.

285. 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. JR Harrowell (Member) said that (ATC at 112; CTBR at 661):

'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 ITAA, as they were not used or installed ready for use for the purposes of producing assessable income' .

286. Where the cost of a textbook has been claimed as a deduction previously, its cost may not be subsequently added to the value of a professional library and depreciated. For example if a member has claimed a deduction for cost of a textbook as part of his/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.

### **Removal and relocation expenses**

287. Removal or relocation expenses incurred by a taxpayer to take up a transfer in existing employment or to take up an appointment with a new employer are not deductible under subsection 51(1). This applies whether the transfer of employment is voluntary or at the employer's request. Even if the member receives an allowance or a reimbursement, a deduction for these expenses is still not allowable.

288. The non-deductible expenses that may be incurred include temporary board and lodging; freight to consign personal and educational items; insurance and hire of vehicles to transport items. These expenses come at a point of time too early to be regarded as being incurred in gaining or producing assessable income.

289. We consider that where 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 deductible under subsection 51(1). The taxpayer is travelling to his work and not between two places of employment.

290. Our view is supported in the following two cases:

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

291. 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.

292. Taxation Rulings IT 2406 - *House auction expenses of public servant moving at employer's request*; IT 2481 - *Travelling expenses of an employee moving to a new locality of employment*; IT 2566 - *Deductibility of travelling expenses of employee, spouse and family incurred by employer in relocating of the employee* and IT 2614 - *Employee expenses incurred in relocation of employment*, provide further information on the treatment of these expenses.

### **Rifles, ammunition and related equipment**

293. Rifles, ammunition and related equipment are normally supplied and replaced by the ADF as a matter of course. However, as per paragraph 10 of Taxation Ruling IT 2198, an expense incurred voluntarily for work-related purposes may still be deductible if the item purchased can be directly related to income-producing activities. Therefore, the voluntary purchase of additional and/or better or more sophisticated gun-related equipment, is an allowable deduction under subsection 51(1) to the extent that these items are used for work-related purposes.

### **Rifle cleaning materials**

294. Expenses incurred by ADF members on rifle cleaning materials to maintain weapons used for work-related purposes are allowable deductions under subsection 51(1).

**Self education**

295. Self-education expenses are deductible under subsections 51(1) and 54(1), if the self-education is directly relevant to the activities by which a taxpayer currently derives assessable income or is likely to lead to an increase in income from those activities. 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.

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

297. On occasions, it is difficult to determine whether self-education expenses have a sufficient connection with income production to justify a deduction. The following Court decisions outline the various principles that have emerged.

298. In *FC of T v. Finn* (1961) 106 CLR 60; 12 ATD 348, the High Court held that the expenditure incurred by a senior government architect on an overseas tour devoted to the study of architecture was allowable. Although the Full High Court recognised that the tour expenses were relevant to the activities by which the taxpayer was currently producing income and to the likelihood of his actually gaining more income in the future, the expenditure was also regarded as a professional obligation to keep up to date.

299. In *FC of T v. Hatchett* 71 ATC 4184; (1971) 2 ATR 557, a primary school teacher incurred expenditure in relation to the submission of a thesis to gain a Teacher's Higher Certificate and university fees for an Arts Degree. It was held that the Certificate expenses were allowable as they related to actual gaining of income. Possession of the Certificate entitled the taxpayer to earn more money in the future and entitled him to be paid more for doing the same work without any change in grade.

300. The university fees were not deductible. There was no connection between these expenses and activities by which the taxpayer gained his income as a primary school teacher. Even though, his employer contributed towards payment of the fees and it was accepted that the course was likely to make the taxpayer a better teacher in a general sense, this was not sufficient to make the fees deductible.

# TR 94/16

301. In *FC of T v. Studdert* 91 ATC 5006; (1991) 22 ATR 762, the taxpayer, a flight engineer, sought a deduction for expenses incurred on flying lessons leading to a private pilot's licence. The Administrative Appeals Tribunal (AAT) at first instance was prepared to accept that it was part of the taxpayer's duties to understand the overall workings of aircraft flight. The AAT allowed the expenditure on the basis that the lessons improved his proficiency in those duties.

302. The Federal Court upheld the AAT's decision allowing the deduction. His Honour, Hill J, relying on the decision in *Finn*, held that the cost of the flying lessons were deductible as they improved the taxpayer's proficiency as a flight engineer. This was sufficient on its own, without reference to the effect of the lessons on the taxpayer's opportunities for promotion in his current occupation.

303. A deduction is not allowable for self-education expenses if the study, viewed objectively, is designed to enable a taxpayer to get employment, to obtain new employment or to open a new field of income-producing activity. In this case, self-education expenses are incurred at a point too soon to be regarded as incurred in gaining or producing assessable income. This is supported by the decision of the High Court in *FC of T v. Maddalena* 71 ATC 4161; (1971) 2 ATR 541.

304. **Example:** Melissa is a nurse in the Air Force. She is studying for a Bachelor of Business majoring in Accountancy, with a view to being accepted into officers school or receiving a promotion. Melissa is not entitled to a deduction for self-education costs as they are incurred at a point too soon in time, and open up a new income earning activity.

305. The intention or purpose of a taxpayer in incurring the self-education expenses can be an element in determining deductibility. If the main purpose of a study tour or attendance at a conference or seminar is related to the gaining or producing of income and the private purpose is merely incidental, apportionment of the expenses is not appropriate.

306. If the self-education is undertaken equally for income-producing purposes and for private purposes, it is appropriate to equally apportion the self-education expenses between the purposes. If the income-producing purpose is merely incidental to the main private purpose, only those expenses directly attributable to the income-producing purpose are allowable.

307. Whether or not the particular self-education expense has the necessary connection with the production of assessable income depends upon the relevant facts and circumstances of each particular case.

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

- (i) Course or tuition fees for attending an educational institution or of attending work-related conferences or seminars. These fees include student union fees;
- (ii) The cost of textbooks, professional and trade journals, technical instruments and equipment and clerical activities (e.g. word-processing and photocopying);
- (iii) Fares, accommodation and meal expenses incurred on work-related conferences or seminars attended away from a taxpayer's home or attending an educational institution away from the taxpayer's home;
- (iv) Interest incurred on moneys borrowed to pay for the expenses listed above in subparagraphs (i) - (iii); and
- (v) Deductions for running expenses of a private study used in connection with self-education. See paragraph 204 to 213 of this Ruling.

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

- (i) A higher education contribution payment (subsection 51(6)).
- (ii) Meals purchased by a taxpayer, while attending a course at an educational institution

309. For motor vehicle expenses in relation to self-education, see paragraph 367.

***Limit on deductibility***

310. Where self-education expenses are allowable under subsection 51(1) as discussed in paragraph 295 of this Ruling, but also fall within the definition of 'expenses of self-education' in section 82A of the ITAA, only the excess of the expenses over \$250 is deductible, i.e., the first \$250 is not deductible.

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



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

***Language course expenses***

313. The requirement of ADF members to become proficient in another language is dependent on the nature of their current duties and those duties that the member may undertake in the near future. ADF members may learn languages at a military school where there may be little expense incurred by the taxpayer. Alternately, expenses may be incurred by the member in arranging private lessons. Self-education principles need to be examined to determine the deductibility of the expense.

***Language Proficiency Expenses***

314. The ADF pays a Language Proficiency Allowance to 'encourage members to become proficient in an approved foreign language and to obtain aids to assist in maintaining that proficiency'. This allowance is available for any member who has attained a proficient level of skill in another language. Examinations are conducted prior to an ADF member qualifying for the allowance.

315. The allowance is paid to maintain already existing skills, not to learn new skills. Once the allowance is approved it is paid for as long as those skills are maintained.

316. General self-education principles (as discussed in paragraphs 295 to 312) need to be considered when determining the deductibility of expenses incurred in maintaining a language proficiency.

**Technical or professional publications**

317. A deduction is allowable under subsection 51(1) for the purchase or subscription cost of journals, periodicals and magazines which have a content specifically related to a member's work and are not general in nature. For example, expenditure on magazines such as *Time*,

*The Bulletin*, *National Geographic* and *Readers Digest* are not allowable as a deduction as they are general interest publications.

318. In *Case P124 82 ATC 629*; 26 CTBR (NS) *Case 55 82 ATC 629*; (1982) 26 CTBR(NS) *Case 55*, an air traffic controller was not allowed a deduction for the purchase of aviation magazines. The members agreed that (ATC at 633-634; CTBR at 422):

'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'.

319. This can be contrasted with *Case R70*, 84 ATC 493; (1984) 27 CTBR(NS) *Case 123*, in which an accountant employed with the Public Service was allowed a deduction for the cost of publications produced by a business and law publisher. The nexus between the expense and the accountant's occupation was established as the publications contained current technical information which related to her day-to-day work. She was, however, not allowed a deduction for the purchase cost of daily newspapers.

### **Telephone**

320. From time to time, it may be necessary for some ADF members to make and receive work-related calls.

#### ***Installation costs***

321. Installation costs for telephones are not deductible under subsection 51(1) as they are considered to be a capital expense.

322. In *Case M53* 80 ATC 357; 24 CTBR (NS) 73 it was held that (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.'

#### ***Telephone rental***

323. Generally, the use of a phone and hence the rental costs would have a private or domestic character and not be allowable deductions. But consider *Case N5* 81 ATC 35; 24 CTBR (NS) 682 where the Board said that (ATC at 37; CTBR at 684):

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

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

# TR 94/16

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

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

### ***Telephone calls***

326. The cost of work-related telephone calls is an allowable deduction.

### ***Telephone silent number***

327. The cost of obtaining a silent number listing is considered to be private in nature and no deduction is allowed under subsection 51(1).

328. Taxation Determination TD 93/115 confirms that expenses incurred in obtaining a silent telephone number are not deductible.

### **Tools**

329. Where tools are used for income producing activities:

- items costing \$300 or less may be depreciated in full in the year of purchase;
- items over \$300 and having a life expectancy of more than 3 years should be depreciated as they are capital in nature. Depreciation rates are contained in Taxation Ruling IT 2685.

330. **Example:** Terry is a diesel mechanic in the Air Force. He is provided with tools but chooses to purchase a particular tool for work use. The cost of the tool was \$74. Terry is entitled to claim a deduction for this amount.

331. Items with a dual purpose should be apportioned between work and private usage. For example, Spencer has purchased electronic testing equipment for use at work, but frequently uses it at home. He should apportion his depreciation claim between work and private usage. (See Computers and Software paragraphs 145 to 148).

### **Watch expenses**

332. Members of the ADF may be involved in activities requiring them to wear a watch. The cost of purchasing and repairing ordinary wrist watches, including waterproof watches is considered to be of a private nature and no deduction is allowable under subsection 51(1).

333. Special watches such as a scuba diving watch; a fob watch for a nurse or a dedicated stop-watch used by a fitness instructor, are items

which can be directly related to income producing activities.

Deductions for the cost of purchase, repairs, batteries and watch bands for special watches are allowable deductions under subsection 51(1).

334. In *Case Q10* 83 ATC 38; 26 CTBR (NS) 74 an army officer was disallowed the cost of watch repairs. Dr GW Beck stated (83 ATC at 40; 26 CTBR (NS) at 521):

'...a wrist watch is essentially part of the personal equipment that individuals acquire to enable them to more easily function in their daily lives.'

335. In *Case S82* 85 ATC 608; 28 CTBR(NS) *Case 87* a nursing sister was not allowed a deduction for a wrist watch that was used in the course of her employment. PM Roach (Member) said that a watch was (ATC at 612; CTBR at 682):

'an item of a private nature...[and]...The use of a watch ...is important to most people in the community whether it be used...to ensure not commencing work too early or finishing too late, or to log time...'.

336. In *Case N84* 81 ATC 451; 25 CTBR(NS) *Case 43* a television cameraman was not allowed a deduction for the purchase of a watch which was used for work. (It was a normal digital watch, with a built in stop watch function that was used to time action shots.) In a joint judgement, the Tribunal held the deduction was not allowable as it did not possess any special attributes (ATC at 453; CTBR at 309):

' and although it was used for work, this fact did not change their essential character as private expenditures'.

337. This is supported by the following cases: *Case S82* 85 ATC 608; 28 CTBR(NS) *Case 87* & *Case P71* 82 ATC 338; 26 CTBR(NS) *Case 3*.

338. In *Case P71* 82 ATC 338; 26 CTBR(NS) *Case 3* an ambulance officer was not allowed a deduction for a watch he claimed under subsection 51(1), nor was he allowed the deduction under section 54. It was decided that the expense was essentially of a private nature and not incurred in gaining assessable income. (ATC at 341; CTBR at 17)

'The evidence does not provide any basis either for concluding that the taxpayer's employment would be threatened by his failure to own a watch and use it for official purposes, or that the level of income was improved by using it for that purpose...'

## Weight loss expenses

339. Expenses incurred in losing weight are private in nature and not allowable under subsection 51(1), even though ADF members are required to meet specified fitness levels as a condition of employment. Weight loss expenses do not have the essential character of an income producing expense, and have been held to be private in nature.

340. The character of the expense is not altered by any order or ADF Regulation. See *Cooper's* case at paragraph 28 above.

341. In *Case N71* 81 ATC 383; 25 CTBR (NS) 25 a commercial pilot was denied a deduction for a fitness course undertaken to lose weight. It was held that the expenditure was not relevant to the duties by which he earned his income and in any event was private in nature.

342. See Taxation Determination TD 93/112 - *Expenditure incurred by a police officer to lose weight*.

## Alternative views

During consultation on this Ruling, alternative views were expressed as follows-

### 343. *Clothing*

- gym shoes form part of a uniform.
- gym shoes are protective of the feet and ankles.
- underwear, socks and hose are protective.
- items of clothing included under UMA entitles a member to a deduction for those items.
- certain items are necessary as a condition of employment, e.g. bobby pins, hair nets.

The ATO view on clothing is at paragraphs 103 to 144.

### 344. *Driver's Licence*

- That a driver's licence is required by a member in order to perform the duties of his/her job.

The ATO view on driver's licence is at paragraphs 171 to 174.

### 345. *Extra Regimental Duties*

- If some ERD are disallowed, members may be disadvantaged as they are not compensated for out of pocket expenses.

The ATO view on Extra Regimental Duties is at paragraphs 175 to 179.

346. ***Haircuts***

- haircuts are a condition of employment.
- disciplinary action may be taken if regulations are not adhered to.
- hair must be short for hygienic reasons.

The ATO view on haircuts is at paragraphs 196 to 198.

347. ***Mess subscriptions***

- the Mess is an ethos of service.
- this expense is necessarily incurred.
- the use of the Mess is necessary for character building.
- it is a place to carry on a tradition/learn customs.
- it is a venue for debate amongst peers.
- the mess is a factor in unit efficiency.
- the mess is a place where new members are educated on central ethical team work precepts.
- a place of indoctrination and education of members.
- not a place for personal or recreational pursuits.
- the mess is a part of organisational structure.
- subs are paid whether a member uses the Mess or not.
- no connection between the money paid in subs and what the money is used for.
- same as subscriptions to ASCPA for accountants.
- Cases CTBR Case 5 1956, CTBR Case 89 1958, dealing with Mess subscriptions.

The ATO view on Mess Subscriptions is at paragraphs 224 to 231.

348. ***Compulsory Mess functions***

- they are compulsory, there is no choice.
- compulsory dinners are an ethos of service.
- these functions are a place of parade - mandatory.
- helps maintain esprit -de-corps / morale.
- enables effective operations.
- bonds of mateship.

# TR 94/16

- these functions develops members sense of history and purpose.

The ATO view on Mess Functions is at paragraphs 232 to 235.

## 349. *Sport*

- necessary for a sense of trust.
- esprit-de-corps.
- group cohesion.

The ATO view on sport is at paragraphs 181 to 191.

## 350. *Self Education*

- sometimes it is necessary to change career, e.g., injury or redundancy.
- self education should not be limited to current income earning activities.
- the four elements of employment effecting main self-education rule:
- career structure - members change jobs on average each two years - alternating primary and secondary employment.
- limited opportunity.
- uniqueness of employment.
- members are rotated through jobs.

The ATO view on self education is at paragraphs 295 to 316.

## 351. *Watches*

- needed to do the job properly, especially during practical exercises where accuracy is imperative.

The ATO view on watches is at paragraphs 332 to 338.

## **Index of Explanations**

352. The following index refers to the paragraph references in the Explanations section of this Ruling.

	paragraph
Deductibility	15-65
Taxable allowances	66
Arduous Conditions Allowance	67
Clearance Diving Allowance	68
Clearance Diving Allowance (Disability Element)	69
Common Duties Allowance	70
Diving Allowance	71
Field Allowance	72
Flight Duties Allowance	73
Flying Allowance (Qualification/Skills Element)	74
Flying Allowance (Disability Element)	75
Hard Lying Allowance	76
Isolated Establishment Allowance	77
Language Proficiency Allowance	78
Parachutist Allowance	79
Service Allowance	80
Special Action Forces Allowance (Qualification/Skills and Disabilities)	81
Special Royal Navy Allowance	82
Submarine Escape Training Facility Allowance	83
Submarine Service Allowance	84
Trainees Dependant Allowance	85
Trainee Leaders Allowance	86
Unpredictable Explosives Allowance	87
Non-taxable allowances	88
Separation Allowance	89
Living Out Allowance	90
Living Out Away From Home Allowance	91
Education Allowance	92
Child Education Allowance	93
Disturbance Allowance	94
Deductions	



**TR 94/16**

Beeper, Paging Units, Answering Machines	96-99
Child care	100-102
Clothing, Uniforms and Footwear	103-144
Protective clothing	104-113
Occupation Specific	114-116
Uniforms/Compulsory clothing	117-122
Non-Compulsory Uniforms	123
Conventional Clothing	124-127
Special Items	128-129
Physical Training clothing- distinctive	130
Physical Training clothing- not distinctive	131
Dry Cleaning/Laundry expenses	132-137
Stockings	138-144
Computers and software	145-148
Conferences, seminars and training courses	149-155
Depreciation of Equipment	156-169
Donations	170
Driver's Licence	171-174
Extra Regimental (or Service) Duties	175-179
Fitness related expenses	
Expenses for physical Training	181
Expenses for sporting activities in general	182-190
Gym or sporting facility membership subs	191
Haircuts	196-198
Home Office Expenses	199-217
Meals	218-223
Messing and related expenses	
Compulsory Mess subscriptions	224-231
Charges for compulsory functions	232-235
Food, drink and entertainment	236-239
Motor Vehicle	
To and from work	240-247
Living on the base	243
Living off the base	244-247
Carrying equipment to and from work	250-255
On and between bases	258-263
Performing duties on the way to and from work	264-266

Extra Regimental (or Service) Duties	267-268
Medical appointments	269-271
While 'on call'	272-276
Self Education Expenses	277
Newspapers	278-279
Parking fees and tolls	280-282
Professional library	283-286
Removal and relocation expenses	287-292
Rifles and Ammunition	293
Rifle Cleaning	294
Self education	295-316
Language course expenses	313
Language Proficiency Allowance	314-316
Telephone	
Installation costs	321-322
Rental	323-325
Telephone calls	326
Silent Numbers	327-328
Tools	329-331
Watches	332-338
Weight loss expenses	339-342

---

**Commissioner of Taxation**

23 June 1994

---

ISSN 1039 - 0731

ATO references

NO

BO ALB/94001

Previously released in draft form  
as TR 94/D16

Price \$6.60

FOI index detail  
*reference number*  
I 1014285*subject references*

- allowances
- answering machines
- beepers, pagers and clothing
- child care
- clothing
- conferences, seminars
- computers & software
- depreciation of equipment
- donations
- Extra Regimental Duties
- fines
- fitness related expenses
- guns & ammunition
- gun cleaning materials

# TR 94/16

- haircuts
- glasses
- meals
- Messing
- motor vehicle expenses
- newspapers
- parking fees & tolls
- personal grooming
- professional library
- removal & relocation expenses
- self-education
- sunglasses
- technical & professional publications
- telephone
- tools
- training courses
- watches
- weight loss

*legislative references*

- ITAA 23(t)(iii)
- ITAA 26(ea)
- ITAA 51(1)
- ITAA 51AB
- ITAA 51AE
- ITAA 54
- ITAA 78
- ITAA 82A
- ITAA 82KT-82KZBB

*case references*

- FC of T v. Collings 76 ATC 4254  
6 ATR 476
- FC of T v. Cooper 91 ATC 4396;  
21 ATR 1616
- FC of T v. Edwards 93 ATC 5162;  
27 ATR 293
- FC of T v. Finn (1961) 106 CLR 60;  
12 ATD 348
- FC of T v. Genys 87 ATC 4860;  
19 ATR 356
- FC of T v. Maddalena 71 ATC  
4161; (1971) 2 ATR 541
- Fletcher v. FC of T 91 ATC 4950;  
22 ATR 613
- Forsyth v. FC of T 81 ATC 4157  
(1981) 11 ATR 657
- Fullerton v. FC of T 91 ATC 4983;  
(1991) 22 ATR 757
- Handley v. FC of T 81 ATC 4165;  
(1981) 11 ATR 644
- Hatchett v. FC of T 71 ATC 4184;  
2 ATR 557

- Lodge v. FC of T (1972) 128 CLR  
171; 72 ATC 4174
- Lunney v. FC of T; Haley v.  
FC of T; (1958) 100 CLR 478; 7  
ATR 166
- Ronpibon Tin NL v. FC of T (1949)  
78 CLR 47; 8 ATD 431
- Studdert v. FC of T 91 ATC 5006;  
(1991) 22 ATR 762
- Vogt v. FC of T 75 ATC 4073;  
5 ATR 274
- Case H32 76 ATC 280; 20 CTBR  
(NS) Case 85
- Case J21 77 ATC 193; 21 CTBR  
(NS) 43
- Case K68 78 ATC 667; 22  
CTBR(NS) Case 8
- Case L61 79 ATC 488; 23 CTBR  
(NS) 73
- Case M53 80 ATC 357; 24 CTBR  
(NS) 29
- Case N5 81 ATC 35; 24 CTBR (NS)  
78
- Case N67 81 ATC 349; 25  
CTBR(NS) Case 18
- Case N71 81 ATC 383; 25 CTBR  
(NS) 25
- Case N84 81 ATC 451; 25 CTBR  
(NS) Case 43
- Case N97 81 ATC 521; 25 CTBR  
(NS) Case 50
- Case P26 ATC 110; 25 CTBR (NS)  
Case 90
- Case P30, 82 ATC 139; 25  
CTBR(NS) Case 94
- Case P71 82 ATC 338; 26 CTBR (NS)
- Case P114, 82 ATC 586; (1982) 26  
CTBR(NS) Case 47
- Case P124 82 ATC 629; 26 CTBR  
(NS) Case 55
- Case Q10 83 ATC 38; 26 CTBR  
(NS) 74
- Case Q11 83 ATC 41; 26 CTBR  
(NS) 75
- Case R22 84 ATC 212; 27 CTBR  
(NS) 76
- Case R49 84 ATC 387; 27 CTBR  
(NS) Case 104
- Case R62 84 ATC 454; (1984) 27  
CTBR (NS) Case 113
- Case R70 84 ATC 493; 27 CTBR  
(NS) Case 124
- Case S82 85 ATC 608; 28 CTBR  
(NS) Case 87

- Case T47 TBRD 1968 243;  
14 CTBR (NS) 56
- Case T74 86 ATC 1064
- Case T83 86 ATC 1114; 17 ATR  
1208
- Case U29 87 ATC 229; 18 ATR 32
- Case U89 87 ATC 470; 18 ATR  
Case 66
- Case U91 87 ATC 525
- Case U156 87 ATC 908
- Case U216 87 ATC 1214
- Case U217 87 ATC 1216
- Case V131 88 ATC 838
- Case Y11 91 ATC 184; 22 ATR  
3063
- Case Y43 91 ATC 412; Case 7223  
(1991) 22 ATR 3402
- Case Z22 92 ATC 230; 23 ATR  
7944
- Case 10 94 ATC 168