

# ***TR 94/19 - Income tax: employee work-related deductions within the hairdressing profession***



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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 within the hairdressing profession

#### other Rulings on this topic

IT 26; IT 85; IT 327; IT 2062; IT 2198; IT 2326; IT 2406; IT 2416; IT 2481; IT 2543; IT 2549; IT 2566; IT 2614; IT 2641; IT 2644; IT 2673; IT 2685; IT 2686; MT 2026; MT 2027; TR 92/8; TR 92/20; TR 93/30; TR 94/22; TD 92/142; TD 92/157; TD 92/163; TD 93/108; TD 93/113; TD 93/115; TD 93/145; TD 93/159

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*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 deductions for work-related expenses generally claimed by hairdressers. Hairdressing salons sometimes provide beautician services. This Ruling does not consider deductions available to beauticians.
2. The 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 expense claims.
4. Deductions for hairdressers' work related expenses are listed below in alphabetical order. For further explanation, refer to the paragraph references in brackets in the explanations section.

## Date of effect

5. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).
6. 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 1994-1995 year of income.

## Ruling

### Allowances and reimbursements

7. The receipt of an allowance does not normally entitle hairdressers to deductions for expenses in relation to the allowance.
8. 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.
9. If the expenses incurred are allowable, and the substantiation requirements are satisfied, the amount of deduction allowable is not limited by the amount of allowance received.
10. If an employee receives a reimbursement, the amount is not included in assessable income and a deduction is not allowable (see Taxation Ruling TR 92/15). 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 100 to 110).
11. Work-related expenses commonly incurred by hairdressers and their tax treatment are listed below in alphabetical order.

**Answering machines, beepers, pagers, mobile phones:** A deduction for the purchase cost or rental cost of answering machines, beepers, pagers and mobile phones is available to the extent these items are used for income producing purposes. Where a private usage exists, that proportion of the purchase cost is not an allowable deduction (paragraphs 59 to 61).

**Child care expenses:** Expenditure on child care is not an allowable deduction (paragraphs 62 to 65).

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

- (a) protective
- (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 66 to 86).

The cost of special non slip footwear is an allowable deduction, (paragraph 69).

**Computers and software:** A depreciation expense on computers and related software used for work-related purposes is allowable as 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 87 to 91).

**Conferences and seminars:** Expenses incurred to attend conferences, seminars and training courses to maintain or increase the knowledge, ability or skills in the hairdressing profession are allowable deductions provided there is a relevant nexus with the duties performed by a hairdresser (paragraphs 92 to 99)

**Depreciation of tools:** A deduction for depreciation is allowable only to the extent of the income-producing use of the equipment (paragraphs 100 to 110).

**Driver's licence:** Expenses incurred in obtaining or renewing a drivers licence are not an allowable deduction (paragraphs 111 to 114)

**Equipment:** Expenditure incurred on an item of equipment for use in performing employment related duties is an allowable deduction if the cost is \$300 or less or the effective life is less than three years. If these conditions are not satisfied then the item must be depreciated rather than claimed as a deduction. If the equipment is also used for private purposes, that proportion may not be claimed (paragraphs 115 to 117).

**Fines:** Deductions in respect of fines and penalties payable to a court or under a law of the Commonwealth, a State, Territory or a foreign country are not allowable (paragraph 118).

**First aid courses:** Expenditure incurred by an employee hairdresser in attending first aid training is an allowable deduction (paragraph 119).

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**Glasses and contact lenses:** The cost of purchasing prescription glasses or contact lenses is not deductible as the expense relates to a personal medical condition (paragraph 120).

**Grooming:** Costs incurred on grooming, including cosmetics and skin care, are not an allowable deduction (paragraphs 121 to 123).

**Hairdressing expenses:** Costs incurred by hairdressers in maintaining their personal hair-styles are not an allowable deduction (paragraphs 124 to 127).

**Home office expenses** (paragraphs 128 to 145)

***Private study:*** Deductions for the running expenses of a private study are allowable where work is performed at home (paragraphs 133 to 141).

***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 142 to 145).

**Meals:** Deductions for the cost of meals purchased and consumed whilst on duty are not allowable unless an award overtime meal allowance has been paid (paragraphs 146 to 152).

**Motor vehicle expenses**

***Travel from home to work:*** Deductions for the cost of travel between home and work are not allowable (paragraphs 153 to 155).

***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, for example, collecting the salon mail (paragraph 156).

***Travel to and from regular place of employment but transporting bulky equipment:*** Where the travel can be attributed to the transportation of bulky equipment rather than to travel from home to work, then the costs are allowable (paragraphs 157 to 158).

***Travel between two places of employment where there are two separate employers involved:*** Deductions for the cost of travel between two places of employment where there are two separate employers are allowable (paragraph 159).

***Travel 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:*** Deductions for costs of travel 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 are allowable. An example of deductible expenditure is the costs associated with an employee hairdresser travelling to and from an industry organised competition (paragraph 159).

***Travel from home to an alternative place of employment for work related purposes and then to the normal place of employment:*** Deductions for travel from home to an alternative place of employment for work related purposes and then to the normal place of employment are allowable (paragraph 159).

***Travel between two places of employment or venues:*** Deductions for travel between two places of employment or venues are allowable (paragraph 149).

***Travel to a place of education for self education purposes:*** Deductions for the cost of travel to a place of education for self education purposes are allowable as follows:

- the cost of travel between home and the place of education and back home again is deductible;
- the cost of travel between work and the place of education and back to work again is deductible;
- if the hairdresser travels from home to the place of education and then on to work, only the first leg of the trip is deductible;
- if the hairdresser travels from work to the place of education and then home, only the first leg of the trip is deductible (paragraph 159).

**Newspapers:** Costs incurred in purchasing newspapers are not an allowable deduction (paragraphs 161 to 163).

**Overtime meal allowances:** Provided the overtime meal allowance has been expended and is paid pursuant to an industrial award, a deduction is allowable equal to the amount of the allowance (paragraphs 164 to 165).

**Parking fees and tolls:** Deductions for the cost of parking fees (but not fines) and toll fees may be allowable (paragraphs 166 to 168).

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**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 (paragraphs 169 to 172).

**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 173 to 178).

**Self education:** Expenses incurred for self-education are deductible if there is a direct connection between the course of self education and the 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 179 to 198).

**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 hairdresser's work and are not general in nature. Lifestyle (and similar) magazines are only of incidental assistance to hairdressers in keeping up to date with hairdressing trends and the purchase cost is not an allowable deduction (paragraphs 199 to 202).

## Telephone expenses

**Telephone installation:** A deduction for the cost of installing a telephone is not allowable (paragraph 203).

**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. Hairdressers 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 204 to 206).

**Cost of calls:** The cost of work related telephone calls is an allowable deduction (paragraph 207).

**Telephone silent number:** The cost of obtaining a silent number listing is not an allowable deduction (paragraph 208 to 209).

**Union or professional association fees:** Deductions for union or professional association fees are allowable (paragraph 210).

**Watches:** Costs incurred on watches or timepieces are not an allowable deduction (paragraphs 211 to 215).

## Explanations

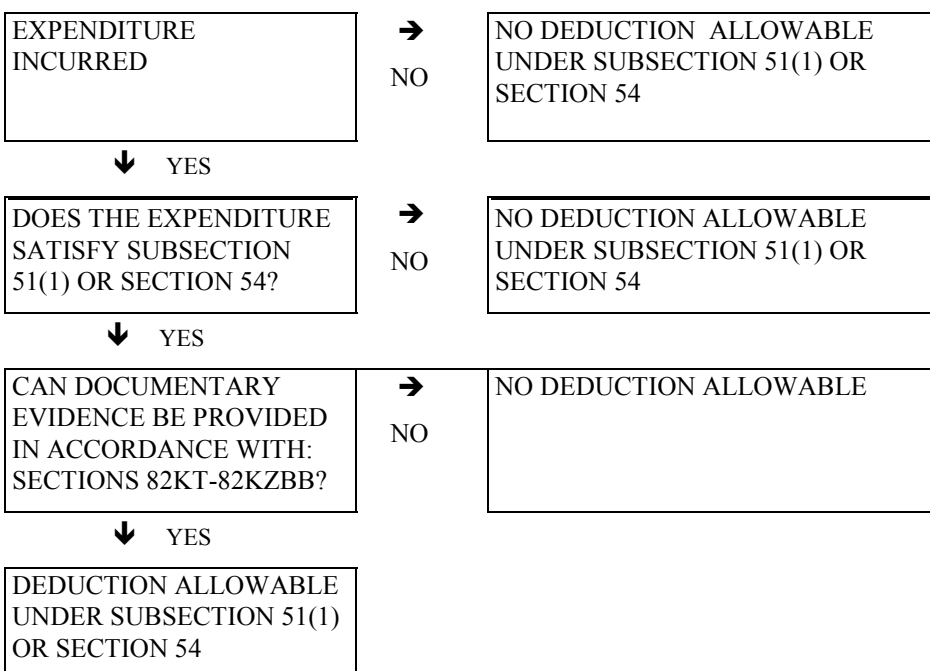
### Deductibility of work-related expenditure

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

13. 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 the gaining or producing of exempt income.



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

- actually be incurred;
- meet deductibility tests; and

- satisfy the substantiation rules under sections 82KT to 82KZBB of the ITAA.

**Expense actually incurred**

15. The expense must actually be incurred by the taxpayer to be allowable. A deduction cannot be claimed for expenses not incurred by the taxpayer, or expenses reimbursed by the employer. In addition, a deduction cannot be claimed by the taxpayer for items provided free of charge. For example it costs Sarah \$24 to travel to other premises of her employer. The expense is then reimbursed out of petty cash. Sarah cannot claim a deduction for this expense.

**Expense meets deductibility tests**

16. 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.'

17. 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.

18. 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 said (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.'

19. 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.

20. Hairdressers may consider that a deduction is available where an expense has been incurred either at the direction of their employer or as a condition of service. These factors do not change the 'essential character' of an item if it is not normally deductible.

21. 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.)

22. 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*.

23. 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 turn on a characterisation of the expense.

24. 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;
- capital or capital in nature; or
- incurred in earning tax exempt income.

25. 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 J.F. 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**

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

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

27. 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.

28. 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)].

29. 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***

30. 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.

31. 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***

32. 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***

33. 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***

34. 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***

35. 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 36 and 37 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***

36. 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)].

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

- the same details required for a receipt;
- the date of the entry; and

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

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

***Undocumentable expenses***

39. 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)].

40. 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***

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

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

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

***Definition of car***

42. 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)].

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

***Definition of car expenses***

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44. 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)].

45. Car expenses do not include:

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

## ***Elections***

46. 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.

47. 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.

48. 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)].

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

## ***Log books***

50. 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)].

51. 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)].

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

### **Retention periods for documents**

53. 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.

54. 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.

55. 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***

56. 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***

57. 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

- expense diaries.

58. 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)]

## **Answering machines, beepers, pagers, mobile phones (see also telephone expenses)**

59. These items may be used by hairdressers to contact, or be contacted by, their employer on a regular basis for work-related purposes. These items may be necessary for such contacts to be made quickly and effectively when hairdressers are not on duty or are working away from their normal salon.

60. Where this is the case, a proportion of the purchase cost of beepers, paging units and answering machines is an allowable deduction under subsection 54(1). 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. 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.

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

## **Child care expenses**

62. A deduction for child care expenses is not allowable under subsection 51(1), even if it is a prerequisite for a hairdresser 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 hairdresser to undertake studies relevant to his or her employment.

63. 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.

64. This view has been affirmed in later court decisions, most recently by the Full Federal Court in 1991 in *Jayatilake v. FC of T* 91 ATC 4516; 22 ATR 125; 101 ALR 11.

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

### **Clothing, uniforms and footwear**

66. 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

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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***

67. Protective clothing must satisfy the deductibility tests in subsection 51(1) and must not be private or domestic in nature. Expenditure on pinafores, aprons or smocks are considered protective in nature and deductible under subsection 51(1).

68. 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.

69. Expenditure on **special non-slip shoes** is deductible as expenditure on protective clothing under subsection 51(1).

70. 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).

71. 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*.

72. The purchase cost of normal sunglasses bought by hairdressers 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.

73. 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.

74. Taxation Ruling IT 2477 and Taxation Determination TD 93/244 provide information on the tax treatment of sunglasses.

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

75. 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)).

76. 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.

77. 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***

78. 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.

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

80. 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).

81. 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).

82. 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'.

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

83. 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***

84. The views of the Tax Office on the deductibility of costs of purchasing and maintaining conventional clothing are set out in Taxation Ruling TR 94/22. It is our view that in most cases, expenditure on conventional clothing will not be deductible.

***Laundry and dry-cleaning***

85. Hairdressers can claim the costs of laundering or dry-cleaning clothing where the cost of the clothing is an allowable deduction. To support home laundry claims, hairdressers 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 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.

86. Any claims for dry-cleaning costs must be supported by receipts. For further guidance refer to Taxation Ruling IT 2452.

**Computers and software**

87. Expenses incurred by employee hairdressers when purchasing computers and related software for work-related purposes are allowable deductions under either subsection 51(1) or section 54.

88. By way of example, an employee hairdresser who is also a hair product sales person may use computers to maintain inventory records. A hair product sales person sells hair products to other hairdressers and salons as an agent of a manufacturing or distributing company.

89. Hairdressers may also incur such expenses in relation to self-education expenses. Paragraphs 179 to 198 of this ruling provides further information on the deductibility of self-education expenses.

90. 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.

91. 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 and seminars (see also self education expenses)**

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

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

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

94. In *Case W73* 89 ATC 659; *Case 5260* (1989) 20 ATR 3848 the taxpayers were police officers who undertook a study tour overseas and visited various police stations and interviewed professors of law. It was held that the expenses incurred were allowable deductions under subsection 51(1). The police officers were able to demonstrate that the knowledge obtained during the overseas tour improved their performance in critical areas of their work.

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

96. Deductions would 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. Payments received by hairdressers from their employer as partial or full reimbursement of such expenses must be returned as assessable income.

97. 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.

98. If attendance at the conference, 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).

99. Taxation Ruling TR 92/8 provides further information on the deductibility of the cost of attending conferences.

### **Depreciation of tools**

100. 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.

101. 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.

102. Any equipment or articles purchased on or after 1 July 1991 is able to depreciated at a rate of 100% if the cost is not more than \$300, or if the effective life is less than three years (section 55(2)). 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 of less than 100% if the taxpayer so elects (subsection 55(8)).

103. **Example:** A salon manager purchases a brief case for \$250 which she uses only for work purposes to carry the cash book and daily banking. The amount of \$250 is allowable as an immediate deduction.

104. 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.

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

106. **Example:** A hair product salesperson purchases a computer to maintain inventory records in respect of sales of hair care products to

other salons. The hairdresser also uses the computer for private purposes. Thus, the depreciation expense should be appropriately apportioned between the private and work-related use.

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

108. 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. Refer to Taxation Determination TD 92/142.

109. **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.

110. 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.

### **Driver's licence**

111. 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.

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

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

114. 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.

**Equipment**

115. 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, expenses incurred voluntarily by hairdressers on tools and equipment used for work-related purposes and which are not reimbursed by the employer are allowable deductions under subsection 51(1). NB: If the tools or equipment are also used for private purposes then that proportion is not an allowable deduction.

116. By way of example, the purchase cost of the following items would be an allowable deduction:

- scissors,
- combs,
- hair-dryers, and
- hair products.

117. Expenses incurred in purchasing such items are allowable deductions under subsection 51(1). If 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. 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.

**Fines**

118. Deductions are not allowable in respect of fines and penalties payable to a court or under a law of the Commonwealth, a State, Territory or a foreign country under subsection 51(4).

**First aid courses**

119. Where a hairdresser undertakes first aid training to assist in emergency situations at the work place, the expenses of such training are an allowable deduction under subsection 51(1). If the cost of the course is reimbursed or paid for by the employer, then a deduction is not allowable.

**Glasses and contact lenses**

120. The cost of purchasing prescription glasses or contact lenses is not deductible under subsection 51(1) as the expense relates to a personal medical condition and is, therefore, private in nature.

**Grooming**

121. Costs of items acquired for personal use, such as cosmetics, shaving equipment, deodorant, hair products, hair nets, clips and bobby pins, 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 that the items be purchased as a condition of employment. See *Cooper's* case discussed in paragraph 21.

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

123. 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.

**Hairdressing expenses**

124. Where a hairdresser is required by their employer to maintain a particular hairstyle, the costs associated with meeting this requirement are not an allowable deduction under subsection 51(1). This is because the costs are a private expense.

125. 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.

126. 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.

127. It is possible to contrast between the cases mentioned above and *Case P90* 82 ATC 431; 26 CTBR(NS) *Case 24* in which a hairdressing deduction was allowed to a theatrical dancer. In this case the dancer's expenses were unique to her employment as she was

required to arrange her hair in a certain style in accordance with the theatrical role she was playing. That is, there was a sufficient connection with the dancer's income earning activities, and the expenses were not private in nature. It is not considered that hairdressers' hairstyles are unique to their occupation, nor that a sufficient connection exists between the costs and the income earning activities. Any expenses incurred are considered to be private in nature and not allowable.

### **Home office expenses**

128. The ATO policy on home office expenses has been consolidated in Taxation Ruling TR 93/30 and is summarised below.

129. 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'.

130. The Ruling 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.

131. 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 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.

132. 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***

133. If a hairdresser maintains an office or study at home where income-producing work can be performed more conveniently (e.g. updating financial statements for sales where the hairdresser is a hair product salesperson), deductions for the running expenses incurred as a result of the income-producing activities are allowable.

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

134. For the running expenses to be deductible, the area of a hairdressers home set aside as a private study must be used *exclusively* for these activities. (*FC of T v. Faichney* (1972) 129 CLR 38; (1972) 3 ATR 435; 72 ATC 4245). For example, if a hairdresser performs work related tasks 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.

135. A deduction may be allowable where *additional* heating/cooling and lighting expenses are incurred as a result of hairdressers performing income producing duties at home. The formula for calculating the additional expense for an appliance is: **A x B x 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.

136. 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***

137. Paragraphs 169 to 172 of this Ruling provide information on the deductibility of depreciation of a professional library.

***Equipment***

138. Equipment including computers, printers, word processors and typewriters used by a hair product salesperson to maintain financial statements, or by a hairdresser for self education purposes, are generally depreciable under subsection 54(1) of the Act. 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 100 to 110 of this Ruling provide information on the deductibility of depreciation of this equipment.

139. 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. Taxation Ruling IT 26 provides further information on the deductibility of software expenses.

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

141. 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***

142. 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'.

143. Where an area of a home is a place of business, the taxpayer may be entitled to deduct a portion of both the running and occupancy expenses. Paragraphs 122 to 124 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.

144. **Example:** Sandra runs a hairdressing business out of her private residence. The room used for the business purpose is 10% of the home, based on floor area. Sandra is entitled to claim a portion of the running expenses and 10% of the occupancy expenses.

145. Where the area set aside has the character of a place of business, a capital gain or loss may accrue on the disposal of the dwelling by the taxpayer. The amount of the capital gain or capital loss will depend upon the extent to which, and the period for which, the dwelling was used for the purpose of deriving assessable income (see Taxation Ruling IT 2673).

### **Meals**

146. Deductions for the cost of meals consumed while on duty are generally not allowable. These costs fail to meet the tests of

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deductibility described in paragraphs 16 to 25, and are considered to be private in nature.

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

148. The Full Federal Court considered the deductibility of food in *FC of T v. Cooper* 91 ATC 4396; (1990-91) ATR 1616. 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 expense. However, the occasion of the outgoing may operate to give expenditure on food and drink the essential character of a working expense in cases such as those illustrated of work-related entertainment or expenditure incurred while away from home.'

149. 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 hairdressers and is in any case a private expense.

150. 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.

151. 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).

152. Paragraph 62 of this Ruling provides further information on the deductibility of an overtime meal allowance.

**Motor vehicle expenses*****Travel from home to work***

153. The cost of travel by a hairdresser 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*, *Hayley v. FC of T* 100 CLR 478, 7 AITR 166.

154. 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;

'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 his income.' (at CLR 498-499).

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

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

156. Collecting mail and supplies and performing other comparable incidental tasks while travelling between the hairdresser's home and his or her 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.

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

157. A hairdresser 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.

158. **Example:** On a particular day, Sam, a hair product salesperson, drives from home to his regular place of employment with bulky merchandise to be distributed to clients (i.e. other salons) later in the day. Sam is unable to store the merchandise at his regular place of employment and is entitled to a deduction for his travelling costs.

***Other travel***

159. Deductions may be allowable when hairdressers use their private motor vehicle or public transport to travel:

- (a) between two separate places of employment where two separate employers are involved.

**Example:** Mick has a part-time bar job to which he commutes directly after finishing his hairdressing duties. Mick's travel expenses from the salon to the hotel are an allowable deduction.

- (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. In *Case M39* (1961) 12 TBRD(NS) 201, the Board held that a hairdresser's motor vehicle running costs which were attributable to his attendance at meetings of the professional institute, to his attendance at product demonstration sessions and to collecting salon supplies were deductible.

**Example:** Sandra travels from her hairdressing salon to a home for the aged to provide hairdressing services to residents. On completion of her duties, Sandra travels either back to the salon or directly home. Sandra's travel expenses to and from the home for the aged are an allowable deduction.

**Example:** Peter travels from his hairdressing salon to the venue of an industry organised competition. Peter is granted paid special leave by his employer to attend the competition. Peter's employer considers Peter's attendance at the competition to enhance his occupational proficiency and to also create a positive impression of the quality of service provided by the salon. Peter's travel costs to attend the industry organised competition are an allowable deduction.

**Example:** Michelle travels daily from her salon and return to perform the daily banking. Michelle's travel costs are an allowable deduction.

- (c) from home to an alternative place of employment for work-related purposes and then to the normal place of employment.

**Example:** Sandra travels directly from her home to the home for the aged. Sandra's travel expenses from her home to the home for the aged and on to the salon are an allowable deduction.

- (d) between two places of employment or venues.

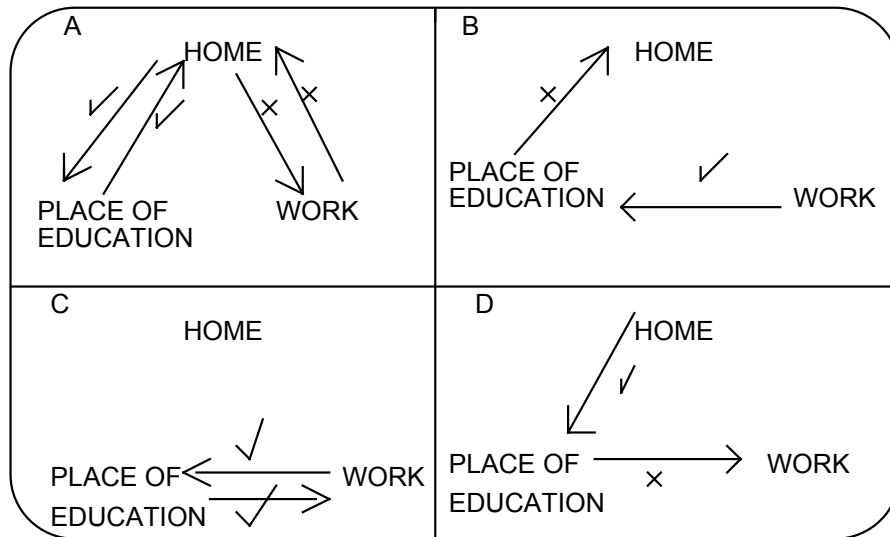
**Example:** Malcolm is the Manager of Joanne's Collins St salon. Joanne has another salon of which she is Manager at Elizabeth St. Malcolm often travels to the Elizabeth St salon to report to Joanne. Malcolm's travel expenses between these two places of employment are an allowable deduction.

- (e) between home and a place of employment while "on call".

**Example:** It is difficult to envisage a situation where a hairdresser would qualify as being "on call".

- (f) to a place of education. For self-education purposes:
  - the cost of travel between home and the place of education and back home again is deductible;
  - the cost of travel between work and the place of education and back to work again is deductible;
  - if the hairdresser travels from home to the place of education and then on to work, only the first leg of the trip is deductible;
  - if the hairdresser travels from work to the place of education and then home, only the first leg of the trip is deductible.

## Travel in relation to self-education



160. Paragraphs 179 to 198 of this Ruling provide information on the deductibility of self-education expenses.

**Newspapers**

161. 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 remote and the proportion of expenditure on newspapers that relates directly to the duties undertaken is incidental to the private expenditure.

162. This decision is supported by the following cases: *Case K68*, 78 ATC 667; (1978) 22 CTBR(NS) *Case 8*; *Case N67*, 81 ATC 349; (1981) 25 CTBR(NS) *Case 18*; *Case P30*, 82 ATC 139; (1982) 25 CTBR(NS) *Case 94*; *Case P114*, 82 ATC 586; (1982) 26 CTBR(NS) *Case 47* and *Case P124*, 82 ATC 629; (1982) 26 CTBR (NS) *Case 55*.

163. These cases can be contrasted with *Case R70*, 84 ATC 493; (1984) 27 CTBR(NS) *Case 124*, where a supervisor in the Commonwealth Auditor-General's Department was allowed 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 these specific publications. However, deductions for the cost of the local newspaper, *The Canberra Times*, were disallowed as the expense was essentially private in nature.

**Overtime meal allowance**

164. Deductions are allowable for the cost of overtime meals incurred by hairdressers where an overtime meal allowance is paid under an industrial award.

165. Taxation Rulings IT 2326, IT 2644 and IT 2686 provide additional information on the deductibility of overtime meal expenses.

**Parking fees and tolls**

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

167. Deductions for parking fees (but not fines) and toll fees 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. Paragraphs 137 to 143 of this Ruling provides further information on the deductibility of motor vehicle expenses.

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

**Professional library**

169. Depreciation on a professional library may be claimed as a deduction under section 54. 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.

170. 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.

171. In *Case P26*, 82 ATC 110; 25 CTBR(NS) *Case 90*, a university lecturer was allowed a claim for depreciation expenses on legal books but denied a deduction for depreciation on general reading and fiction books. 'No doubt the illustrations and anecdotes which he was able to use did serve as useful teaching aids but in my view these were not plant or articles within the meaning of section 54 of the Act, as they

were not used or installed ready for use for the purposes of producing assessable income' (ATC at 112; CTBR at 661).

172. 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, a hairdresser may have claimed a deduction for the cost of a textbook as part of her self-education expenses. The cost of this textbook is not able to be included in the value of a professional library for depreciation purposes.

### **Removal and relocation expenses**

173. 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 taxpayer receives an allowance or a reimbursement, a deduction for these expenses is still not allowable. 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.

174. The ATO view is 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.

175. This 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.

176. 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.

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

178. In some instances, hairdressers may be paid an allowance by their employer as compensation for depreciation, disturbance, removal and storage expenses. This allowance is assessable in full and no deductions are allowable under subsection 51(1).

### **Self-education**

179. 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.

180. 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. The ATO policy on the deductibility of self-education expenditure has been consolidated in Taxation Ruling TR 92/8.

181. 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.

182. 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.

183. 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 the 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.

184. The university fees were not deductible. There was no connection between these expenses and the 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.

185. In *FC of T v. Studdert* 91 ATC 5006; (1991) 22 ATR 762, the taxpayer, a Qantas 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.

186. 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.

187. 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.

188. 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.

189. 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.

190. 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. Where a hairdresser is planning an overseas study tour, he or she is encouraged to apply for a private ruling on the deductibility of the expenses prior to undertaking the trip.

191. 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 of attending an educational institution or of attending work-related conferences or seminars. These fees include student union fees.
- (ii) The cost of textbooks, of professional and trade journals, of technical instruments and equipment and of clerical activities (e.g. word-processing and photocopying).
- (iii) Fares, accommodation and meal expenses incurred on overseas study tours, 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).
- (v) Deductions for running expenses of a private study used in connection with self-education. (See paragraphs 116 to 124 of this Ruling.)

192. The following expenses related 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 in the course of normal travel to and from home.

193. Motor vehicle expenses in relation to self-education are allowable in the following circumstances:

- the taxpayer travels directly from work to the educational institution and directly back to work again: the cost of all the travel forms part of the cost of self-education.
- the taxpayer travels directly from home to the educational institution and directly back to home again: the cost of all the travel forms part of the cost of self-education.
- the taxpayer travels from home to the educational institution and then to work: the cost of travel from home to the educational institution forms part of the cost of self-education. However, the cost of travel from the educational institution to work is not deductible.
- the taxpayer travels from work to the educational institution and then to home: the cost of travel from work to the educational institution forms part of the cost of self-education. However, the cost of travel from the educational institution to home is not deductible.

***Limit on deductibility***

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

195. '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.

196. 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 in full.

197. In some states, apprentice hairdressers are required to undertake a course of study at a technical college of further education. A course of study at a technical college of further education falls within the definition of a 'prescribed course of education' for the purposes of section 82A of the ITAA. Therefore, the types of expenditures discussed above which are incurred by apprentice hairdressers in connection with their course of study at a technical college of further education, are an allowable deduction (excluding the first \$250).

198. Expenditure incurred by a senior hairdresser in attending an advanced hairdressing course conducted by a technical college of further education (or similar) also falls within the meaning of a 'prescribed course of education' for the purposes of section 82A of the ITAA.

### **Technical or professional publications**

199. 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 hairdresser'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.

200. Lifestyle (and similar) magazines are only of incidental assistance in keeping up to date with hairdressing trends. Where expenditure on this type of magazine is incurred, the expenditure is not an allowable deduction because it is not incurred in gaining or producing the assessable income or is a private expense.

201. In *Case P124*, 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;

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

202. 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 expenses*****Telephone installation***

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

188. 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 bought into existence an advantage for the enduring benefit of his newly established medical practice.'

***Telephone rental***

204. Generally, the use of a phone and hence the rental costs are of a private or domestic character and therefore not allowable deductions. However, in *Case N5* 81 ATC 35; 24 CTBR (NS) 682 the Board said that:

'...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.' (ATC at 37; CTBR at 684).

205. The situations where telephone rental will be deductible, especially in the employee context, is summarised at paragraph 3 of Taxation Ruling IT 85. 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.

206. Where a phone, beeper or answering machine 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:

$$\frac{\text{Business calls (incoming and outgoing)}}{\text{Total calls (incoming and outgoing)}}$$
***Cost of telephone calls***

207. The cost of work-related telephone calls is an allowable deduction under subsection 51(1).

**Example:** After work, a hairdresser calls her employer from home to advise she has forgotten to lock up the premises. The cost of her call is deductible.

***Telephone silent number***

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

209. Taxation Determination TD 93/115 provides further information on the tax treatment of the cost associated with obtaining a silent telephone number.

### **Union or professional association fees**

210. Union or professional associations fees are fully deductible under subsection 51(1). Income Tax Rulings IT 327, IT 2062 and IT 2416 provide further information on the deductibility of unions and professional associations fees.

### **Watches**

211. The cost of purchasing and repairing ordinary wrist watches, including waterproof watches is considered to be of a private nature and no deduction is allowed under subsection 51(1).

212. In *Case Q10* 83 ATC 38; 26 CTBR (NS) 74 an army officer was disallowed the cost of watch repairs. Dr G.W. 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.'

Expenditure on specialist watches, such as a fob watch used by a nurse or a dedicated stop-watch used by a fitness instructor, is allowable.

213. In *Case S82* 85 ATC 608; 28 CTBR(NS) *Case 87* a qualified nurse was denied the costs associated with the replacement of a conventional wrist watch. Regardless of statements made by the taxpayer, that the watch (which had a second hand) was specifically purchased for, and used constantly, in her work, as well as being worn at other times, it was determined that the expenditure was private in nature.

214. In *Case P71* 82 ATC 338; 26 CTBR (NS) *Case 3* an ambulance officer was denied a deduction for the cost of a digital wrist watch. It was determined that the expense was essentially of a private nature and not incurred in gaining assessable income. '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 that purpose...' (ATC at 341; CTBR at 17).

215. In *Case N84* 81 ATC 451; 25 CTBR (NS) *Case 43* a television cameraman was denied a deduction for the cost of a normal digital watch. It was determined that the watch did not possess any 'special attributes to take it out of the category of private outlays' and although the item was 'used by the taxpayer in his work, this fact did not change

the essential character as being a private expenditure' (ATC at 453; CTBR at 309).

## Alternate Views

216. **Clothing:** During the course of consultation on this Ruling, an alternative view was expressed that the white uniform worn at TAFE by apprentice hairdressers is protective and therefore deductible.

217. The ATO view on clothing which is both conventional and serves a protective purpose, is contained in TD 92/157.

218. The principle contained in TD 92/157 is that although some conventional clothing and footwear may be worn at work to prevent injury, or protect other conventional clothing from damage, this protective purpose does not change the essential character of the clothing from conventional. A deduction for conventional clothing is not available under subsection 51(1). The ATO stance on this issue is supported by the decision in *Case T103*, 86 ATC 1182.

219. The ATO view on conventional clothing costs is set out in TR 94/22.

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