TR 95/11 - Income tax: hospitality industry employees - allowances, reimbursements and work-related deductions

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Taxation Ruling
Income tax: hospitality industry employees - allowances, reimbursements and work-related deductions

other Rulings on this topic

IT 26; IT 85; IT 112; IT 299; IT 327; IT 2062; IT 2084; IT 2197; IT 2198; IT 2199; IT 2406; IT 2416; IT 2452; IT 2477, IT 2481; IT 2493; IT 2543; IT 2566; IT 2614; IT 2641; IT 2673; IT 2685; MT 2027; TR 92/8; TR 92/15; TR 93/24; TR 93/30; TR 94/3; TR 94/22; TD 92/142; TD 92/154; TD 92/157; TD 93/108; TD 93/113; TD 93/115; TD 93/145; TD 93/159; TD 93/195; TD 93/232; TD 93/244

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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

Class of person/arrangement

1. This Ruling applies to employees in the hospitality industry (hospitality employees). For the purposes of this Ruling hospitality employees are chefs (and other cooks), waiters and bartenders. Every reference in this Ruling to the term 'waiter' should be read to cover men and women.

2. This Ruling deals with:

   (a) the assessability of allowances and reimbursements received by hospitality employees; and

   (b) deductions for work-related expenses generally claimed by hospitality employees.

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

4. The Ruling also discusses whether deductions are allowable or are specifically excluded (or limited) under subsections 51(1), 51(4) or 51(6), or sections 51AGA, 51AH, 51AL, 53, 54, 55, 61 or 82A of the Act.

5. The tax treatment of allowances and reimbursements received is examined at paragraphs 11 to 18 in the **Ruling** section.

6. The common work-related expenses incurred by hospitality employees and the extent to which they are allowable deductions are discussed at paragraph 22 in the **Ruling** section in alphabetical order. The substantiation provisions are not discussed in depth in this Ruling.

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

8. Each year the Australian Taxation Office (ATO) carries out audits of taxpayers' returns. This Ruling will be used by the ATO when it undertakes audits of the returns of hospitality industry employees. Where there is a tax shortfall, any penalties imposed will be in terms of Taxation Ruling TR 94/3 on the basis that the views of the ATO on the correct operation of the law have been expressed in a public ruling.

Date of effect

9. This Ruling applies to years commencing both before and after its date of issue. 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).

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

Ruling

Allowances

11. The receipt of an allowance does not automatically entitle hospitality employees to a deduction. The term 'allowance' does not include a reimbursement (see paragraphs 15 to 18).

12. Allowances fall into the following categories:

(a) fully assessable to the employee with a possible deduction allowable, depending upon individual circumstances (not normally paid to hospitality industry employees);

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

(c) fully assessable to the employee with a deduction allowable for expenses incurred subject to special substantiation rules (paragraphs 13 and 35);

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

Reasonable allowance amounts

13. The Commissioner of Taxation publishes annually a Taxation Ruling that indicate amounts considered reasonable in relation to the following expenses:

(a) overtime meal expenses;

(b) domestic travel expenses; and

(c) overseas travel expenses.

Allowances received in relation to these expenses are fully assessable. If an allowance is received and the amount of the claim for expenses **incurred** is no more than the reasonable amount, substantiation is not required. If the deduction claimed is more than the reasonable amount, the whole claim must be substantiated, not just the excess over the reasonable amount.

14. Allowances commonly received by hospitality employees are listed below:

Fares Allowance: A deduction is allowable for work related transport expenses incurred in connection with the allowance (paragraph 35 to 40).

Overtime Meal Allowance: A deduction is allowable for expenses incurred where an overtime meal allowance is paid under a law or industrial award for the purpose of enabling an employee to buy food and drink at meal or rest breaks while working overtime (paragraphs 121 to 124).

Tool Allowance: This allowance is paid to hospitality employees employed on a weekly basis who are required to provide their own tools under an industrial award. A deduction for the depreciation of the cost of tools is allowed immediately if the cost of each tool is $300 or less, or its effective life is less than three years (paragraphs 160).

Reimbursements

15. If a hospitality employee receives a payment from his or her employer for **actual** expenses incurred, the payment is a reimbursement and the employer may be subject to Fringe Benefits Tax. Generally, if a hospitality employee receives a reimbursement,

the amount is not required to be included in his or her assessable income and a deduction is not allowable (see Taxation Ruling TR 92/15).

16. However, if motor vehicle expenses are reimbursed by an employer on a cents per kilometre basis, the amount is included as assessable income of the hospitality employee under paragraph 26(eaa) of the Act. A deduction may be allowable in relation to motor vehicle expenses incurred (see ***Transport expenses***, paragraph 161 to 178).

17. If the reimbursement by an employer is for the cost of a depreciable item (e.g., tools and equipment), a deduction is allowable to the hospitality employee for depreciation (see Taxation Determination TD 93/145 and ***Depreciation of tools and equipment***, paragraphs 88 to 97).

18. If a payment is received for an **estimated** expense, the amount received by the hospitality employee is considered to be an allowance (not a reimbursement) and is fully assessable to the hospitality employee (see **Allowances**, paragraphs 11 to 14).

Tips

19. The receipt of 'tips' by a hospitality employee is assessable income under paragraph 26(e) of the Act (see paragraphs 41 to 44).

Deductions

20. A deduction is only allowable if an expense:

(a) is actually incurred (see paragraph 24);

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

(c) satisfies the substantiation rules (see paragraphs 33 and 34).

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

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

Bank fees: A deduction is allowable, as a work-related expense, for Financial Institutions Duty that relates to the direct depositing of salary and wages into the hospitality employee's bank account(s). A

deduction is not allowable for any other bank fees as a work-related expense (Taxation Ruling IT 2084).

Calculators and electronic organisers: A deduction is allowable for the work-related portion of depreciation on the purchase price of these items (see paragraphs 45 to 47).

Child care expenses: A deduction is not allowable for child care expenses (see paragraphs 48 to 50).

Clothing, uniforms and footwear: A deduction is allowable for the cost of buying, hiring or replacing clothing, uniforms or footwear if these items are:

(a) protective;

(b) occupation specific;

(c) compulsory and meet the requirements of Taxation Ruling IT 2641;

(d) non-compulsory and entered on the Register of Approved Occupational Clothing or approved in writing by the ATO before 1 July 1995. These transitional arrangements cease to have effect from 1 July 1995. A deduction will not be allowable for expenditure incurred after 30 June 1995 in relation to clothing approved under the transitional arrangements; or

(e) conventional, but satisfy the deductibility tests as explained in Taxation Ruling TR 94/22.

Expenditure on clothing, uniforms and footwear must satisfy the deductibility tests in subsection 51(1) of the Act and must not be private or domestic in nature (see paragraphs 51 to 76).

Computers and software: A deduction is allowable for depreciation of computers and related software, if purchased together, that are used for work-related purposes. If the software is bought separately from the computer, a deduction is allowable in full in the year of purchase. The deduction must be apportioned between work-related and private use (see paragraphs 79 to 81).

Conferences seminars and training courses: A deduction is allowable for the cost of attending conferences, seminars and training courses to maintain or increase hospitality employees' knowledge, ability or skills in the hospitality industry. There must be a relevant nexus with the current work-related activities of hospitality employees (see paragraphs 82 to 87).

Depreciation of equipment: A deduction is allowable for depreciation to the extent of the work-related use of the equipment. An item of equipment bought after 1 July 1991 can be depreciated at a

rate of 100% if its cost is $300 or less, or its effective life is less than three years (see paragraphs 88 to 97).

Driver's licence: A deduction is not allowable for the cost of acquiring or renewing a driver's licence (see paragraphs 98 to 100).

Fares: A deduction is allowable for the cost of public transport used for travelling for work related purposes (see paragraph 101).

Fines: A deduction is not allowable for fines imposed under any law of the Commonwealth, a State, a Territory or a foreign country, or by a court (see paragraph 102).

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

Gaming licence: A deduction is allowed for costs incurred in renewing a special employee's licence. A deduction is not allowable for the cost of obtaining the initial licence (see paragraph 103).

Glasses/contact lenses: A deduction is not allowable for the cost of buying prescription glasses or contact lenses. A deduction is allowable for the cost of safety glasses (see paragraph 104).

Grooming: A deduction is not allowable for costs incurred on grooming, including cosmetics and skin care (see paragraphs 105 and 106).

Home office expenses: See paragraphs 107 to 114.

Private study: A deduction is allowable for the running expenses of a private study to the extent that the private study is used for work-related activities (see paragraphs 110 to 114).

Place of business: A deduction is allowable for a portion of running and occupancy expenses if an area of the home has the character of a 'place of business' (see paragraphs 108 and 109).

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

Laundry and maintenance of clothing, uniforms and footwear: A deduction is allowable for the cost of laundry and maintenance of supplied or purchased clothing, uniforms or footwear if these items are of a kind described under ***Clothing, uniforms and footwear*** (see paragraphs 77 and 78).

Meals: A deduction is not allowable for the cost of meals eaten during a normal working day (see paragraphs 115 to 120). A

deduction may be allowable if meal costs are incurred by a hospitality employee who travels for work-related purposes (see paragraphs 179 to 184).

Overtime meal expenses: A deduction is allowable for the cost of meals bought while working overtime if an award overtime meal allowance is received. Special substantiation rules apply (paragraphs 121 to 124).

Parking fees and tolls: A deduction is allowable for parking fees (but not fines), bridge and road tolls paid by a hospitality employee while travelling in the course of employment, e.g., between work places (see paragraphs 125 and 126).

Professional library: A deduction is allowable for depreciation of a professional library to the extent of its work-related use. The content of the reference books must be directly relevant to the income-earning activities (see paragraphs 127 to 133).

Removal and relocation expenses: A deduction is not allowable for costs incurred in taking up a transfer in existing employment or in taking up new employment with a different employer (see paragraphs 134 to 138).

Repairs to tools and equipment: A deduction is allowable for the cost of repairs to tools and equipment to the extent that the items are used in work-related activities (see paragraphs 139 and 140).

Self education expenses: A deduction is allowable for the cost of self education if there is a direct connection between the self education and the hospitality employees current income-earning activities. Self education costs include fees, travel, books and equipment (see paragraphs 141 to 145).

If self education expenses are allowable but also fall within the definition of 'expenses of self education' in section 82A of the Act, the first $250 is not an allowable deduction (see paragraphs 146 to 148).

Technical or professional publications: A deduction is allowable for the purchase or subscription cost of journals, periodicals and magazines that have a content specifically related to a hospitality employee's work and are not general in nature (see paragraphs 149 to 151).

Telephone, mobile phone, pager, beeper and other telecommunications expenses: A deduction is not allowable where these items are supplied by the employer. If they are not supplied, a deduction is allowable for the rental cost or for depreciation on the purchase price to the extent of the work-related use of the item.

Cost of calls: A deduction is allowable for the cost of work-related calls (see paragraphs 152 and 153).

Installation or connection costs: A deduction is not allowable for the cost of installing a telephone, mobile phone, pager, beeper or other telecommunication equipment., as it is a capital expense (see paragraphs 154 and 155).

Rental costs: A deduction is allowable for a proportion of telephone/equipment rental costs if a hospitality employee can demonstrate that he or she is 'on call', or required to telephone their employer on a regular basis (see paragraphs 154 to 156).

Silent telephone numbers: A deduction is not allowable for the cost of obtaining a silent telephone number (see paragraph 159).

Tools: A deduction is allowable for depreciation of the cost of tools. Tools bought after 1 July 1991 can be depreciated at a rate of 100% if the cost of a particular item is $300 or less, or its effective life is less than three years (paragraph 91). A deduction is allowable for the cost of repairs to tools to the extent of their work-related use (paragraph 160).

Transport expenses: Include public transport fares, and the costs associated with using a motor vehicle, motor cycle, bicycle, etc., for work-related travel. They do not include meals, accommodation and incidental expenses (see ***Travel expenses*** at paragraphs 179 to 183). The treatment of motor vehicle and transport expenses incurred by a hospitality employee when travelling is considered below.

Travel between home and work: A deduction is not allowable for the cost of travel from home to the normal work place as it is generally considered to be a private expense (see paragraphs 162 to 164). The principle is not altered by the performance of incidental tasks en route.

Travel to and from normal work place - transporting bulky equipment: A deduction is allowable if the transport expenses can be attributed to the transportation of bulky equipment rather than to private travel from home to work. A deduction is not allowable if the equipment is transported to and from work by the hospitality employee as a matter of convenience.

A deduction is not allowable if a secure area for the storage of equipment is provided at the work place (see paragraphs 165 to 167).

Travel between two separate work places if there are two separate employers involved: A deduction is allowable for the cost of travelling directly between two places of employment (see paragraph 168).

Travel from the normal work place to an alternative work place while still on duty and back to the normal work place or directly home: A deduction is allowable for the cost of travel from the normal work place to other work places (other than the hospitality employee's

home). A deduction is also allowable for the cost of travel from the alternative work place back to the normal work place or directly home. This travel is undertaken in the course of gaining assessable income and the cost is allowable as a deduction (see paragraph 169).

Travel from home to an alternative work place for work related purposes and back to the normal work place or directly home: A deduction is allowable for the cost of travel from home to an alternative work place and then onto the normal work place or directly home (see paragraph 170).

Travel between two places of employment or between a place of employment and a place of business: A deduction is allowed for the cost of travelling directly between two places of employment or a place of employment and a place of business provided that the person does not live at either of the places and the travel is undertaken for the purpose of engaging in income-earning activities (see paragraphs 171 to 175).

Travel to a place of education: The cost of travel between home and the place of education and back home again is deductible. The cost of travel between work and the place of education and back to work again is deductible. If the hospitality employee travels from home to the place of education and then on to work, only the first leg of the trip is deductible. If the hospitality employee travels from work to the place of education and then home, only the first leg of the trip is deductible (see ***Self education expenses*** paragraph 143).

Depreciation cost limit for motor vehicles: Section 57AF of the Act imposes a limit on the depreciable cost base of motor cars (including station wagons and four-wheel drive vehicles) if the acquisition cost is greater than a specified amount. The depreciable cost base limit applies to both new and second hand vehicles (see Taxation Ruling TR 93/24).

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

Travel expenses: A deduction is allowable for the cost of travel (fares, accommodation, meals and incidentals) incurred by hospitality employees when travelling in the course of employment, e.g. travel interstate (see paragraphs 179 to 183). Special substantiation rules apply.

Travel accompanied by a relative: Section 51AG of the Act may affect the deductibility of expenses if relatives accompany a hospitality employee on work-related travel (see paragraph 184).

Unions/professional associations fees and levies: A deduction is allowable for annual fees paid to unions and professional associations, although a deduction is not allowable for joining fees. A deduction is not generally allowable for levies (see paragraph 185 to 189).

Explanations

Deductibility of work-related expenditure

23. In short, a deduction is allowable if an expense:

(a) is actually incurred;

(b) meets the deductibility tests; and

(c) satisfies the substantiation rules.

Expense actually incurred

24. The expense must actually be incurred by the hospitality employee to be considered for deductibility. A deduction is not allowable for expenses not incurred by a hospitality employee, e.g., if items are provided free of charge. Under section 51AH of the Act, a deduction is not generally allowable if expenses are reimbursed (see paragraphs 16 to 17 for exceptions to this rule).

Expenses meet deductibility tests

25. The basic tests for deductibility of work-related expenses are in subsection 51(1) of the Act. It says:

> 'All losses and outgoings to the extent to which they are incurred in gaining or producing the assessable income, or are necessarily incurred in carrying on a business for the purpose of gaining or producing such income, shall be allowable deductions except to the extent to which they are losses or outgoings of capital, or of a capital, private or domestic nature, or are incurred in relation to the gaining or production of exempt income.'

26. A number of significant court decisions have determined that, for an expense to satisfy the tests in subsection 51(1) of the Act:

(a) it must have the **essential character** of an outgoing incurred in gaining assessable income or, in other words, of an income-producing expense (*Lunney v. FC of T; Hayley v. FC of T* (1958) 100 CLR 478; (1958) ALR 225; 11 ATD 404 (*Lunney's* case));

(b) there must be a **nexus** between the outgoing and the assessable income so that the outgoing is **incidental and relevant** to the gaining of assessable income (*Ronpibon Tin NL v. FC of T* (1949) 78 CLR 47; 8 ATD 431); and

(c) it is necessary to determine the **connection** between the particular outgoing and the operations or activities by which the taxpayer most directly gains or produces his or her assessable income (*Charles Moore & Co (WA) Pty Ltd v. FC of T* (1956) 95 CLR 344; 11 ATD 147; 6 AITR 379; *FC of T v. Cooper* (1991) 29 FCR 177; 91 ATC 4396; (1991) 21 ATR 1616 (*Cooper's* case); *Roads and Traffic Authority of NSW v. FC of T* (1993) 43 FCR 223; 93 ATC 4508; (1993) 26 ATR 76; *FC of T v. Hatchett* (1971)125 CLR 494; 71 ATC 4184; 2 ATR 557 (*Hatchett's* case)).

27. A deduction will be denied under the exception provisions of subsection 51(1) of the Act if the expense is incurred for an item that is:

(a) private or domestic in nature (e.g., sunscreen or driver's licence);

(b) capital, or capital in nature (e.g., purchase of a computer); or

(c) incurred in earning tax exempt income (e.g., expenses related to income from membership of the Army Reserve).

28. Private or domestic expenditure is considered to include costs of living such as food, drink and shelter. In *Case T47* 18 TBRD (NS) 242; 14 CTBR (NS) *Case 56*, J F McCaffrey (Member) stated (TBRD at 243; CTBR at 307):

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

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

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

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

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

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

Expense satisfies the substantiation rules

33. The income tax law requires substantiation of certain work-related expenses. If the total of these expenses is $300 or less, the hospitality employee can claim the amount without getting written evidence (except for certain car, travel allowance and meal allowance expenses), although a record must be kept of how the claim was calculated.

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

Award transport (fares) allowances

35. Award transport (fares) allowances are allowances paid to employees under an award that recognises that employees may incur transport costs for travel undertaken in the course of performing the duties of employment. Award transport (fares) allowances do not cover the cost of meals, accommodation and incidentals incurred when travelling (see ***Travel expenses***, paragraphs 179 to 183).

36. The receipt of an allowance, whether paid under an award or not, does not mean that a hospitality employee is automatically entitled to claim a deduction. Regardless of the level of the claim, the tests of deductibility in subsection 51(1) of the Act must be met.

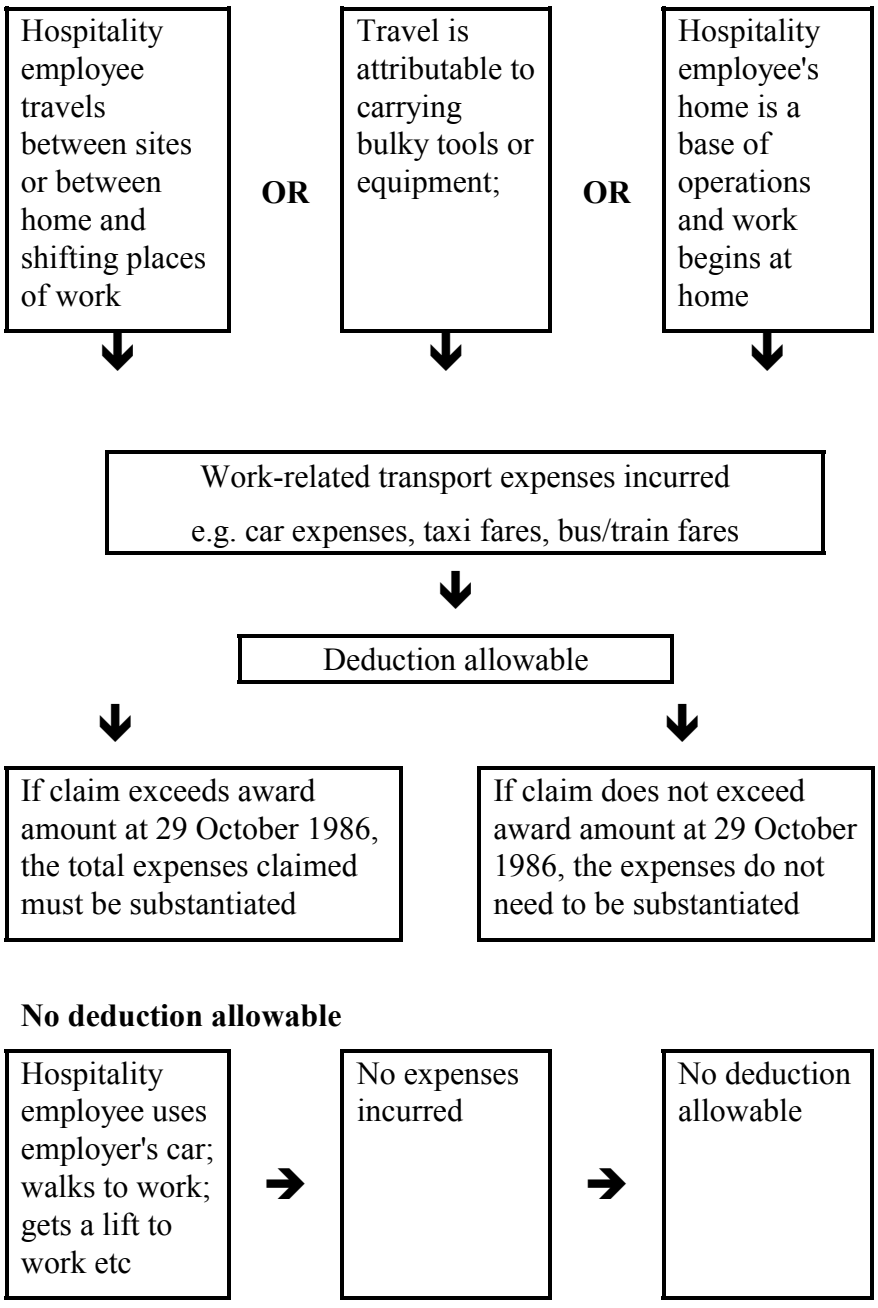
37. A deduction is allowable to the extent to which the expenses are incurred by the hospitality employee in earning assessable income. Taxation law does not authorise a deduction for amounts that have not been incurred, or for expenditure that is not incurred in earning assessable income.

38. In addition to the tests in subsection 51(1) of the Act, the rules of substantiation must be met in relation to claims made against award transport (fares) allowances.

39. Hospitality employees who claim deductions in excess of the amount of the award transport allowance payable as at 29 October 1986 must substantiate the whole of the claim, not just the excess. Deductions claimed that do not exceed the award rate as at 29 October 1986 are excluded from the substantiation requirements.

40. The following diagram illustrates the tests of deductibility and the substantiation rules as they apply to claims for transport expenses. For further explanation, see ***Transport expenses*** at paragraphs 161 to 176.

Deduction allowable



No deduction allowable

Hospitality employee uses own car; pays taxi fares, bus fares, etc	➔	Travel is between home and work; no bulky equipment carried; routine place of work; home is not a base of operations	➔	Private expenses incurred; No deduction allowable

Tips

41. Tips paid to hospitality employees are treated as gratuities under paragraph 26(e) of the Act and are assessable income.

42. It is immaterial whether a payment is made by the employer or a third party, provided that it is incidental to the employment.

43. In *FC of T v. Dixon* (1953) 86 CLR 540; 10 ATD 82, Dixon CJ and William J said (CLR at 556; ATD at 85):

> 'Indeed, it is clear that if payments are really incidental to an employment, it is unimportant whether they come from the employer or from somebody else and are obtained as of right or merely as a recognised incident of the employment or work.'

44. Thus, the following tips received from persons other than the employer, have been held to be assessable income:

- amounts received by a railway dining car waiter: *Penn v. Spiers & Pond Ltd* [1908] 1 KB 766;
- amounts received by a railway porter: *Great Western Railway Co v. Helps* [1918] AC 141; and
- amounts received by a taxi driver: *Calvert v. Wainwright* (1947) 27 TC 475.

Common work-related expense claims

Calculators and electronic work organisers

45. A deduction is allowable for the work-related portion of depreciation of the cost of calculators and electronic work organisers, used for work-related purposes. If the cost of the item is less than $300, or the effective life of the item is less than three years, an outright deduction is allowable. If the cost of the item is more than $300, or the effective life of the item is more than three years, the item may be depreciated (see ***Depreciation of Equipment***, paragraphs 88 to 97).

46. A deduction is allowable for costs incurred in purchasing batteries, and for repairs and maintenance to calculators or electronic work organisers.

47. A deduction is allowable if a hospitality employee chooses to purchase a calculator or work organiser that the hospitality employee finds more functional than the one supplied by the employer.

Child care

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

49. The High Court held in *Lodge v. FC of T* (1972) 128 CLR 171; 72 ATC 4174; 3 ATR 254, that child care expenditure was neither relevant nor incidental to gaining or producing assessable income and therefore not an allowable deduction. The expenditure was also of a private or domestic nature (see also *Jayatilake v. FC of T* (1991) 101 ALR 11; 91 ATC 4516; (1991) 22 ATR 125).

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

Clothing, uniforms and footwear

51. A deduction is allowable for the cost of buying, hiring or replacing clothing, uniforms and footwear ('clothing') if:

(a) the clothing is **protective** in nature;

(b) the clothing is **occupation specific** and not conventional in nature;

(c) the clothing is a **compulsory uniform** and satisfies the requirements of Taxation Ruling IT 2641;

(d) the clothing is a **non-compulsory uniform** or wardrobe that has been either:

(i) entered on the Register of Approved Occupational Clothing; or

(ii) approved in writing by the ATO under the transitional arrangements contained in *Taxation Laws Amendment Act No 82 of 1994*. These transitional arrangements cease to have effect from 1 July 1995. A deduction will not be allowable for expenditure incurred after 30 June 1995 in relation

to clothing approved under the transitional arrangements; or

(e) the clothing is **conventional** and the taxpayer is able to show that:

(i) the expenditure on the clothing has the essential character of an outgoing incurred in gaining or producing assessable income;

(ii) there is a nexus between the outgoing and the assessable income so that the outgoing is incidental and relevant to the gaining of assessable income; and

(iii) the expenditure is not of a private nature

(see TR 94/22 covering the decision in *FC of T v. Edwards* (1994) 49 FCR 318; 94 ATC 4255; (1994) 28 ATR 87 (*Edwards* case)).

52. Expenditure on clothing, uniforms and footwear must satisfy the deductibility tests in subsection 51(1) of the Act and must not be private or domestic in nature.

Protective clothing

53. Hospitality employees may be provided with protective clothing by their employer (e.g., aprons for the protection of their conventional clothing). Hospitality employees may also buy additional items of protective clothing and the cost of this clothing is an allowable deduction under subsection 51(1) of the Act.

54. It is considered that heavy duty conventional clothing such as jeans, drill shirts and trousers is not protective. We consider that the cost of these items is a private expense and is not an allowable deduction (see Taxation Determination TD 92/157).

55. A deduction is not allowable for the cost of conventional footwear such as running shoes, sports shoes and casual shoes, as it is not considered to be protective. We consider that the cost of this footwear is a private expense and is not an allowable deduction. A deduction is allowable for expenditure on protective footwear such as steel-capped boots.

56. A deduction is not allowable for the cost of items that provide protection from the natural environment (e.g., sunglasses, sunhats, sunscreen, wet weather gear and thermal underwear). The cost of these items is considered to be a private expense.

57. This view is supported in *Case Q11* 83 ATC 41; 26 CTBR (NS) *Case 75* and in *Case N84* 81 ATC 451; 25 CTBR (NS) *Case 43* (see also Taxation Ruling IT 2477 and Taxation Determination TD 93/244).

58. In *Case Q11* the taxpayer was a self-employed lawn mowing contractor. Amongst other things, he claimed the cost of transistor batteries and sunscreen lotions. Dr G W Beck (Member) said (at ATC 43; CTBR at 525):

> '...a man catering for his desire to listen to music and protecting himself from skin damage is acting in a private capacity and the expenditure is thus of a private nature and excluded by sec. 51...'

Although this taxpayer was self-employed, the same deductibility tests as set out in paragraphs 25 to 32 applied.

Occupation specific clothing

59. Occupation specific clothing is defined in subsection 51AL(26) of the Act. It distinctly identifies the employee as belonging to a particular profession, trade, vocation, occupation or calling.

60. It is not clothing that can be described as ordinary clothing of a type usually worn by men and women regardless of their occupation. Examples of clothing that are considered to be occupation specific are nurses' traditional uniforms, **chefs' checked pants** and a religious cleric's ceremonial robes.

61. Clothing that 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 black trousers. While black trousers (or a black skirt) and white shirt may indicate that the wearer belongs to the hospitality industry, it is not sufficiently distinctive in design or appearance to readily identify the specific or particular occupation of the wearer.

62. Expenditure on a traditional chef's uniform (for example, a set of clothing consisting of a chef's hat, chef's checked pants, a chef's white jacket (long sleeved, double breasted with the traditional number of white buttons, and double cuffed) and a white neckerchief (neck tie)) is an allowable deduction under subsection 51(1) of the Act. This is because the clothing is considered to be peculiar to, and incidental and relevant to, the gaining of assessable income from the specific occupation of cooking.

63. A waiter's uniform (e.g., consisting of a white shirt worn with black trousers, pants or skirt) is not considered to be occupation specific clothing (for the reasons mentioned in paragraph 61).

However, the cost of the items may be an allowable deduction under subsection 51(1) of the Act if:

(a) it is a compulsory uniform or wardrobe that satisfies the requirements of Taxation Ruling IT 2641; or

(b) it is a non-compulsory uniform or wardrobe that has been registered or approved (see paragraphs 69 and 70).

Compulsory uniform or wardrobe

64. A 'corporate' uniform or wardrobe (as detailed in Taxation Ruling IT 2641) is a collection of inter-related items of clothing and accessories that are unique and distinctive to a particular organisation. It is not sufficient that clothing be compulsory, it must still qualify as a uniform. It must possess that level of uniqueness and distinctiveness to fall within the ordinary meaning of the word uniform. It is not considered that a hospitality employee's black pants or skirt and white shirt would qualify as an uniform.

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

66. In *Case R55* 84 ATC 411; 27 CTBR (NS) *Case 109*, it was concluded that (ATC at 416; CTBR at 874):

> '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.'

67. In *Case U95* 87 ATC 575, a shop assistant employed by a retail merchant was required to dress according to the standard detailed in the staff handbook. The prescribed dress standards were as follows (ATC at 577):

> '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.'

The deduction for clothing was denied because there was (ATC at 580):

> '...nothing distinctive or unique about the combination of clothing which would identify the wearers as a [name of employer] shop assistant or even a shop assistant from another department store. The colour combination of the clothing would be included in the range of acceptable street dress unassociated

with business or employment, as well as a combination of colours sometimes worn by female or food waiting staff.'

68. If a uniform is provided free of charge to a hospitality employee by their employer and the uniform remains at the employer's premises where it is laundered and maintained, a deduction is not allowable. The employer is generally not subject to Fringe Benefits Tax in these circumstances as there is no private usage. The same principle would apply if the clothing, provided free of charge and remaining at the employer's premises, was not a uniform.

Non-compulsory uniform or wardrobe

69. A deduction is not allowable for the purchase and maintenance costs of a non-compulsory uniform or wardrobe **unless** the conditions outlined in section 51AL of the Act are met. Section 51AL provides that expenditure on a non-compulsory uniform or wardrobe will be allowable under subsection 51(1) of the Act, only if the design of the clothing has been entered on the Register of Approved Occupational Clothing, or if the design of the clothing is approved in writing by the ATO under the transitional arrangements. These transitional arrangements cease to have effect from 1 July 1995. A deduction will not be allowable for expenditure incurred after 30 June 1995 in relation to clothing approved under the transitional arrangements.

70. If hospitality employees are provided with uniforms by their employers, that bear the employer's logo, and it is not compulsory to wear the uniform, no deduction is allowable for maintenance costs unless the uniform satisfies the requirements of section 51AL of the Act.

Conventional Clothing

71. The views of the ATO on the treatment of costs of buying and maintaining conventional clothing are set out in Taxation Ruling TR 94/22. That Ruling sets out our views on the implications of the decision of the Full Federal Court of Australia in *Edwards* case. Ms Edwards was the personal secretary to the wife of a former Queensland Governor. She was able to establish that her additional clothing expenses were allowable in her particular circumstances. In most cases, expenses for conventional clothing will not meet the deductibility tests of subsection 51(1) of the Act as they are of a private nature (see also paragraphs 27 and 28).

72. There are a number of cases that support the general principle that the costs of conventional clothing do not meet the deductibility tests of subsection 51(1) of the Act.

73. In *Case 48/94* 94 ATC 422; *AAT Case 9679* (1994) 29 ATR 1077, a self-employed professional presenter and speaker was denied a deduction for the cost of conventional clothing. The taxpayer gave evidence that she maintained a separate wardrobe to meet her work requirements, and that she used this wardrobe exclusively in relation to her work. Sometimes, a client would request that she dress in a specific manner when performing a presentation. Her image was of vital importance in both securing and performing her duties, and her clothes were an aspect of her image. The taxpayer submitted to the Tribunal that her matter could be paralleled to the facts in the *Edwards* case.

74. Senior Member Barbour distinguished this case from the *Edwards* case on the basis of the emphasis placed by the Tribunal and Court on Ms Edwards' additional changes of clothes throughout a work day - a fact not present in this one - and found the essential character of the expense to be private, saying (ATC at 427; ATR at 1083):

> 'While the A list clothes [those used exclusively for work] assisted in creating an image compatible with the applicant's perceptions of her clients' and audiences' expectations, her activities productive of income did not turn upon her wearing A list clothes, however important the applicant may have perceived these clothes to be in her presentation activities. There is not the requisite nexus between her income-earning activities and the A list clothing expenses.'

Senior Member Barbour went on to say (ATC at 428; ATR at 1084):

> 'For it was essential that the applicant wear something to her income producing activities...the applicant's clothing needed to be suitable for the purpose of wearing to that presentation, but this does not change its character to a business expense, and I find the nature of the expense is essentially private.'

75. In *Case U80* 87 ATC 470, a shop assistant was denied a deduction for the cost of black clothes. Senior Member McMahon stated (ATC at 472):

> 'The fact that the employer requires garments of a particular colour to be worn and would even terminate the employment if another colour was substituted, does not in any way detract from the character of the garments as conventional attire, the cost of which must be regarded as a private expense.'

76. In *Case K2* 78 ATC 13; 22 CTBR (NS) *Case 21*, an employee solicitor was required as part of his duties to appear in various courts. It was not his practice to wear a suit. On one occasion a barrister called him as a witness and, although he was neatly dressed, the judge

admonished him for not wearing a suit. From that date he wore a suit when involved in litigation work. On the days that he wore a suit, he wore it to and from the office and while at the office. It was held that the expenditure in respect of the suit was not incurred in gaining or producing assessable income and that it was of a private nature.

Laundry and maintenance of clothing, uniforms and footwear

77. A deduction is allowable for the cost of cleaning and maintaining clothing that falls into one or more of the categories of deductible clothing listed in paragraph 51. This applies whether the clothing is purchased by the hospitality employee or supplied by the employer.

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

Computers and software

79. A deduction is allowable under subsection 54(1) of the Act for depreciation of computers and related software owned and used by hospitality employees for work-related purposes (paragraphs 88 to 97).

80. For example, chefs may use computers to prepare menus at home or in relation to self education. Paragraphs 141 to 148 of this Ruling provide further information on the deductibility of self education expenses.

81. If software is purchased as part of a computer system, the total cost of the system is depreciable (see Taxation Ruling IT 26). A deduction is allowable under subsection 51(1) of the Act if the related software is purchased separately from the computer, to the extent that it is used for work-related purposes (see IT 26).

Conferences, seminars and training courses

82. A deduction is allowable for the cost of attending conferences, seminars and training courses to maintain or increase the knowledge, ability or skills of a hospitality employee. There must be a relevant connection with the current income-earning activities of the hospitality employee. The conferences, seminars and training courses may be held in Australia or overseas.

83. In *FC of T v. Finn* (1961) 106 CLR 60; 12 ATD 348, an architect voluntarily studied architectural development overseas. The High Court held that (CLR at 70; ATD at 352):

> '...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...'

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

85. If part of the cost of a conference, seminar or training course represents the cost of food and drink that is provided, the cost is an allowable deduction according to the terms of section 51AE of the Act. Taxation Determination TD 93/195 explains the extent to which a seminar registration fee is an allowable deduction, according to section 51AE of the Act, in circumstances where part of the fee represents the cost of food and drink provided at the seminar.

86. If the dominant purpose in incurring the cost is the attendance at the conference, seminar or training course then the existence of any private activity would be merely incidental and the cost would be fully deductible. If the attendance at the conference, seminar or training course is only incidental to a private activity (e.g., a holiday) then only the costs directly attributable to the conference, seminar or training course are an allowable deduction. The cost of accommodation, meals and travel directly relating to the private activity is not allowable under subsection 51(1) of the Act.

87. Information on ***Self education expenses*** can be found in Taxation Ruling TR 92/8 and in paragraphs 141 to 148 of this Ruling.

Depreciation of tools and equipment

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

89. A deduction is allowable under subsection 54(1) of the Act for depreciation of tools and equipment owned and used by hospitality employees during the year for income-producing purposes. In addition, a deduction for depreciation is allowable on the cost of tools and equipment that are not actually used during the year for income-producing purposes but are installed ready for use for that purpose and held in reserve.

90. There are two methods to calculate a deduction for depreciation. These are the prime cost method and the diminishing value method. Depreciation using the prime cost method is calculated as a percentage

of the cost of the equipment. Depreciation using the diminishing value method is calculated initially as a percentage of the equipment's cost and thereafter as a percentage of the written down value.

91. Any item of equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less, or if its effective life is less than three years (section 55 of the Act). This means an immediate deduction is available for the cost of each item in the year in which it is purchased. However, the article may be depreciated at a rate less than 100% if the taxpayer so elects (subsection 55(8) of the Act). The current depreciation rates are set out in Taxation Ruling IT 2685.

92. **Example:** A chef purchases a bag for $250 that is used only for work purposes to carry knives and other utensils. The amount of $250 is an allowable deduction in the year of purchase.

93. **Example:** A waiter is required to provide his own 'waiter's friend' (corkscrew) at a cost of $90. The amount of $90 is an allowable deduction in the year of purchase.

94. If equipment is used partly for work related purposes and partly for other purposes, then the depreciation should be apportioned based on an estimate of the percentage of work-related use (section 61 of the Act).

95. **Example:** A chef uses a computer partly for work and partly for private purposes. The depreciation should be appropriately apportioned between the private and work-related use.

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

97. An arbitrary figure is not acceptable when determining the value of equipment for depreciation purposes (*Case R62* 84 ATC 454; 27 CTBR (NS) *Case 113*). In determining the value of an item to be depreciated, its opening value is the original cost to the taxpayer less the amount of any depreciation that would have been allowed if the unit had been used, since purchase, to produce assessable income (Taxation Determination TD 92/142).

Driver's licence

98. A deduction is not allowable for the cost of obtaining or renewing a driver's licence. The cost associated with obtaining a driver's licence is a capital or private expense. The cost of renewing a licence is also a private expense.

99. In *Case R49* 84 ATC 387; 27 CTBR (NS) *Case 104*, it was held that even though travel was an essential element of the work to be

performed by the taxpayer, a driver's licence was still an expense that was private in nature and therefore not deductible under subsection 51(1) of the Act.

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

Fares

101. A deduction is allowable for the cost of using public transport for work-related travel (see paragraphs 161 to 178 relating to ***Transport expenses***).

Fines

102. A deduction is not allowable for fines imposed under any law of the Commonwealth, a State, a Territory or a foreign country, or by a court (see subsection 51(4) of the Act).

Gaming Licence

103. A deduction is allowable for the cost of renewing a special employee's licence (gaming licence). A deduction is not allowable for the cost of obtaining this licence with the view to gaining employment if a hospitality employee is not currently employed in income-earning activities relating to gaming.

Glasses and/or contact lenses

104. A deduction is not allowable for the cost of buying prescription glasses or contact lenses as the expense relates to a personal medical condition and is private in nature.

Grooming

105. A deduction is not allowable for the cost of items bought for personal use, such as cosmetics, shaving equipment, deodorant, hair products, hair nets, clips and bobby pins, stockings and sunscreen. These expenses 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 paragraphs 31 and 32).

106. In *Case U216* 87 ATC 1214, a food and drink waiter claimed cosmetic expenses as it was an express condition of her employment that she use such cosmetics. This claim was not allowed because it

was private expenditure under subsection 51(1) of the Act. The Tribunal referred to *FC of T v. D P Smith* 81 ATC 4114; 11 ATR 538 where it was decided that the expenditure must be both incidental and relevant to the regular activities carried out in the production of income. The Tribunal found however, that the cosmetic expenses were:

> '...neither relevant nor incidental to the very acts or operations directly engaged in by the applicant in the gaining of her assessable income as a waitress' (ATC at 1215). The Tribunal added '...I regard the purchase of cosmetics by the applicant as a classic example of private expenditure incurred as part of her day to day living expenses' (ATC at 1216).

Home office expenses

107. A comprehensive explanation of the deductibility of home office expenses is contained in Taxation Ruling TR 93/30. Key points include:

(a) Costs associated with the home are normally of a private or domestic character (*Thomas v. FC of T* 72 ATC 4094; 3 ATR 165 and *FC of T v. Faichney* (1972) 129 CLR 38; 72 ATC 4245; 3 ATR 435 (*Faichney's* case)).

(b) There are two exceptions. A deduction is allowable if:

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

  (ii) part of the home is used in connection with the taxpayer's income earning activities and does not constitute a 'place of business'.

(c) There are two types of expenses associated with the home:

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

  (ii) ***Running expenses*** relate to the use of facilities in the home and may be affected as a result of income-earning activities. These include heating/cooling and lighting expenses, cleaning costs, depreciation, leasing charges and the cost of repairs to furniture and furnishings in the home office.

A deduction is not allowable for the cost of occupancy expenses for a hospitality employee who maintains an office or study at home, if they

carry out income-earning activities at home as a matter of convenience. This is clearly established by the High Court decisions in *Handley v. FC of T* (1981) 148 CLR 182; 81 ATC 4165; 11 ATR 644 (Handley's case) and *Forsyth v. FC of T* (1981) 148 CLR 203; 81 ATC 4157; 11 ATR 657. In Handley's case, the High Court decided that Mr Handley's outgoings on mortgage interest rates and insurance premiums were related to the building and/or home as a whole, and they would remain the same whether or not he worked at home.

Place of business

108. Whether an area of a home has the character of a 'place of business' is a question of fact. If a home has the character of a 'place of business', a deduction is allowable for a portion of both the running and occupancy expenses. Paragraphs 5, 7, 11, 12 and 13 of Taxation Ruling TR 93/30 provide information on whether or not an area set aside has the character of a 'place of business'. It is not considered that a hospitality employee in their capacity as an employee would use part of their home as a place of business. However, a hospitality employee may also conduct a business from home.

109. If an area of the home set aside has the character of a 'place of business' then a capital gain may accrue or capital loss may be incurred on the disposal of the home by the taxpayer. The amount of capital gain or capital loss will depend on the extent to which, and the period for which, the home was used for the purposes of gaining or producing assessable income (see Taxation Ruling IT 2673).

Private study

110. Hospitality employees may maintain an office or study at home, e.g., a chef may prepare rosters or menus in his or her study at home.

111. A deduction is not allowable for running expenses if the taxpayer merely shares a room with his or her family (e.g., the lounge room) and at the same time does some work-related activity. Running expenses retain their private or domestic character (*Faichney's* case). If the taxpayer uses the room at a time when others are not present, a deduction for running expenses is allowable.

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

113. To calculate additional running expenses resulting from using the home study/office for work-related purposes see paragraphs 19 to 25 of Taxation Ruling TR 93/30.

114. **Example:** Pierre is an employee chef who prepares his menu's in the lounge room of his home when the room is not used by other members of his family. Pierre is entitled to a deduction for additional running expenses associated with the work activities. The amount that Pierre is entitled to claim is the difference between what was actually paid for heating, cooling and lighting, and what would have been paid had he not worked from home.

Meals

115. A deduction is not allowable for the cost of meals consumed by hospitality employees in the normal course of a working day. It is our view that the cost of meals will not have sufficient connection with the income-earning activity and, in any case, the cost is a private expense and fails to meet the tests of deductibility described in paragraphs 25 to 32 of this Ruling.

116. The Full Federal Court considered the deductibility of food costs in *Cooper's* case. In that case, a professional footballer had been instructed to consume large quantities of food during the off-season to ensure his weight was maintained. By majority, the Full Federal Court found that the cost of additional food to add to the weight of the taxpayer was not allowable. Hill J said (FCR at 199-200; ATC at 4414; ATR 1636):

> 'The income-producing activities to be considered in the present case are training for and playing football. It is for these activities that a professional footballer is paid. The income-producing activities do not include the taking of food, albeit that unless food is eaten, the player would be unable to play. Expenditure on food, even as here "additional food" does not form part of expenditure related to the income-producing activities of playing football or training.'

Hill J went on to say (FCR at 201; ATC at 4415; ATR 1638):

> 'Food and drink are ordinarily private matters, and the essential character of expenditure on food and drink will ordinarily be private rather than having the character of a working or business expense. However, the occasion of the outgoing may operate to give to expenditure on food and drink the essential character of a working expense in cases such as those illustrated of work-related entertainment or expenditure incurred while away from home.'

117. 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.

118. A deduction is generally not allowable for the cost of food or meals consumed while on duty. These costs fail to meet the tests of deductibility described in paragraphs 25 to 32, and are considered to be private in nature.

119. In *Case Y8* 91 ATC 166; *AAT Case 6587* (1991) 22 ATR 3037, a police officer claimed deductions for the cost of meals while performing special duties away from his normal place of residence. It was held that the cost of these meals was private in nature and no deduction was allowable under subsection 51(1) of the Act.

120. A deduction is allowable for the cost of meals bought while working overtime, if an award overtime meal allowance has been paid (see paragraphs 121 to 124).

Overtime meal expenses

121. A deduction is allowable for the cost of meals bought while working overtime if an award overtime meal allowance is received and the expenditure meets the deductibility tests in paragraph 25 to 32.

122. An overtime meal allowance is paid under a law or industrial award for the purpose of an enabling an employee to buy food and drink at meal or rest breaks while working overtime.

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

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

Parking fees and tolls

125. A deduction is allowable for parking fees (but not fines) and tolls if the expenses are incurred while travelling:

(a) between two separate places of work;

(b) to a place of education for self education purposes (if the self education expenses are deductible); or

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

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

Note: A deduction is denied to a hospitality employee for certain car parking expenses where the conditions outlined in section 51AGA of the Act are met.

126. A deduction is not allowable for parking fees and tolls incurred when hospitality employees are travelling between their home and their normal place of employment. The cost of that travel is a private expense and parking fees and tolls retain that character. A deduction is allowable for parking fees and tolls if the travel is not private, i.e., travel between home and work - transporting bulky equipment.

Professional library

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

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

129. 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. The Board of Review stated (ATC at 116; CTBR at 666):

> 'No doubt the illustrations and anecdotes which he was able to use did serve as useful teaching aids but in my view these activities 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.'

130. If an individual reference book is purchased after 1 July 1991 and its cost is $300 or less, or its effective life is less than three years, it may be depreciated at 100% in the year of purchase (see Taxation Determination TD 93/159).

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

purchase, providing there is a nexus between the study and the earning of assessable income.

132. If the cost of a textbook has been claimed as a deduction previously, its cost may not later be added to the value of a professional library and depreciated. For example, a chef may have claimed a deduction for cost of a textbook as part of her self education expenses. The cost of this textbook is not able to be included in the value of a professional library for depreciation purposes.

133. Paragraphs 88 to 97 of this Ruling provide further information on depreciation.

Removal and relocation expenses

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

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

136. In *Fullerton v. FC of T* (1991) 32 FCR 486; 91 ATC 4983; (1991) 22 ATR 757, the taxpayer worked for the Queensland Forest Service (QFS) as a professional forester for over 20 years. In that time, QFS transferred him to a number of different locations. As a result of a reorganisation his position ceased to exist. He had no choice but to accept a transfer as he may have been retrenched. The QFS reimbursed a portion of the relocation expenses and the taxpayer claimed the remainder of his expenses as a tax deduction. It was held that the expenditure on the taxpayer's domestic or family arrangements was not an allowable deduction under subsection 51(1) of the Act, even though the expenditure had a causal connection with the earning of income.

137. 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.

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

Repairs to tools and equipment

139. A deduction is allowable under section 53 of the Act for repairs to tools and equipment, to the extent to which the tools and equipment are used for income-producing activities.

140. **Example:** Steve, a chef, takes his knives, that are used solely for work-related purposes, to a knife sharpener to be sharpened every Saturday morning. A deduction is allowable for the cost of sharpening these knives.

Self education expenses

141. A comprehensive explanation of the deductibility of self education expenses is contained in TR 92/8. Key points include:

(a) A deduction is allowable for self education expenses if the education is directly relevant to the taxpayer's current income-earning activities. This particularly applies if a hospitality employee's income-earning activities are based on skill/knowledge and the education enables him or her to maintain or improve that skill/knowledge.

(b) A deduction is allowable if the education is likely to lead to an increase in the hospitality employee's income from his or her current income-earning activities.

(c) A deduction is not allowable if the education is designed to enable a hospitality employee to get employment, to obtain new employment or to open up a new income earning activity (*FC of T v. Maddalena* 71 ATC 4161; 2 ATR 541).

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

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

142. **Example:** Kenneth is currently employed as a cleaner at a local restaurant. He has been attending bar school at night, to enable him to work behind the bar either at his current place of employment or with

a new employer. The expenses incurred in undertaking this training are considered to be incurred at a point too soon to be regarded as incurred in gaining or producing assessable income and no deduction is allowed.

143. A deduction is allowable for transport costs in connection with a course of education in the following situations:

(a) the cost of travel between home and the place of education and then back home;

(b) the first leg of the trip, if a taxpayer travels from home to the place of education and then on to work (the cost of travelling from the place of education to work is not a self education expense);

(c) the first leg of the trip, if a taxpayer travels from work to a place of education and then home (the cost of travelling from the place of education to home is not a self education expense);

(d) the cost of travel between work and the place of education and then back to work.

A summary of items (a) to (d) is contained in the following table:

	Deductible as self education expense?		Deductible as self education expense?	
Home	YES ➔	Place of Education	YES ➔	Home
Home	YES ➔	Place of Education	NO ➔	Work
Work	YES ➔	Place of Education	NO ➔	Home
Work	YES ➔	Place of Education	YES ➔	Work

144. **Example:** Katrina is an apprentice chef who travels to a technical college in another city to undertake her apprenticeship course for two consecutive days each fortnight. She is allowed a deduction for the cost of travel to and from her place of education, overnight accommodation, meals and incidentals (less $250 - see paragraph 146).

145. The following expenses related to self education are not allowable under subsection 51(1) of the Act:

(a) a Higher Education Contribution Scheme (HECS) payment (subsection 51(6) of the Act); and

(b) meals purchased by a taxpayer while attending a course at an educational institution other than as part of travel expenses.

Limit on deductibility

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

147. 'Expenses of self education' are defined in section 82A of the Act as all expenses (other than HECS payments, Open Learning charges and debt repayments under the Tertiary Student Financial Supplement Scheme) necessarily incurred by a taxpayer in connection with a prescribed course of education. 'A prescribed course of education' is defined in section 82A as a course provided by a school, college, university or other place of education and undertaken by the taxpayer to gain qualifications for use in the carrying on of a profession, business or trade, or in the course of any employment.

148. **Example:** Katrina, an apprentice chef, incurs self education expenses totalling $1,650 in connection with her apprenticeship course at a technical college. Katrina is allowed a deduction for the remaining $1,400.

Technical or professional publications

149. A deduction is allowable under subsection 51(1) of the Act for the cost of buying or subscribing to journals, periodicals and magazines that have a content specifically related to a hospitality employee's work and are not general in nature.

150. In *Case P124* 82 ATC 629; 26 CTBR (NS) *Case 55*, an air traffic controller was not allowed a deduction for the purchase of aviation magazines. Dr G W Beck (Member) said (ATC at 633-634; CTBR at 422):

> 'There might be some tenuous connection between the cost of aviation magazines and the maintenance of knowledge necessary for holding a flying licence...but it seems to me that the possible connection is altogether too remote.'

151. This can be contrasted with *Case R70* 84 ATC 493; 27 CTBR (NS) *Case 124*, in which an accountant employed with the Public Service was allowed a deduction for the cost of publications produced by a business and law publisher. The nexus between the expense and the accountant's occupation was established, as the publications contained current technical information which related to her day-to-day work. She was, however, not allowed a deduction for the cost of daily newspapers and periodicals.

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

Cost of calls

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

153. Work-related calls may be identified from the itemised telephone account. If such an account is not provided, a reasonable estimate of call costs, based on diary entries of calls made over a period of one month, together with relevant telephone accounts, will be acceptable for substantiation purposes.

Installation or connection costs

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

155. In *Case M53* 80 ATC 357; 24 CTBR (NS) *Case 29*, Dr. P. Gerber (Member) stated (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...It follows that it is "like" an expenditure of a capital nature.'

Rental costs

156. The situations where telephone rental will be an allowable deduction are identified in Taxation Ruling IT 85. It states that taxpayers, who are either 'on call' or required to contact their employer on a regular basis, may be entitled to a deduction for some portion of the cost of telephone rental.

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

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

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

Silent telephone number

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

Tools

160. A deduction is allowable for depreciation on the cost of tools bought by a hospitality employee to the extent of their work-related use. Tools bought after 1 July 1991 are able to be depreciated at a rate of 100% if the cost of a particular item is $300 or less, or its effective life is less than three years (see paragraphs 88 to 97). A deduction is allowable for the cost of repairs to tools to the extent of their work-related use (paragraph 160). Any amount received as a tool allowance is considered to be assessable income (see paragraph 14).

Transport expenses

161. Transport expenses include public transport fares, and the costs associated with using motor vehicles, motor cycles, bicycles, etc., for work-related travel. They do not include accommodation, meals and incidental expenses (see ***Travel expenses*** at paragraphs 179 to 183). The treatment of motor vehicle and transport expenses incurred by a hospitality employee when travelling is considered below.

Travel between home and work

162. A deduction is not allowable for the cost of travel by hospitality employees from home to their normal work place as it is generally considered to be a private expense. This principle is not altered by the performance of incidental tasks en route (see paragraph 34 of Taxation Ruling MT 2027).

163. The High Court considered travel expenses incurred between home and work in *Lunney's* case. A joint judgment by Williams, Kitto and Taylor JJ stated that (CLR at 498-499; ATD at 412-413):

> '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 expenditure on fares is a prerequisite to the earning of a taxpayer's income is not to say that such expenditure is incurred in or in the course of gaining or producing his income.'

164. The fact that the travel is outside normal working hours or involves a second or subsequent trip does not change this principle. For more information see paragraph 6 of Taxation Ruling IT 2543, Taxation Ruling IT 112 and Taxation Determination TD 93/113.

Travel to and from normal work place - transporting bulky equipment

165. A deduction is allowable if the transport costs can be attributed to the transportation of bulky equipment rather than to private travel between home and work (see *FC of T v. Vogt* 75 ATC 4073; 5 ATR 274). If the equipment is transported to and from work by the hospitality employee as a matter of convenience, it is considered that the transport costs are private and no deduction is allowable.

166. A deduction is not allowable if a secure area for the storage of equipment is provided at the work place (see *Case 59/94* 94 ATC 501; *AAT Case 9808* (1994) 29 ATR 1232).

167. **Example:** Jane is a chef who takes her knives home with her in a bag at the end of each day. Jane is not considered to be transporting bulky equipment and no deduction is allowed.

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

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

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

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

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

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

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

171. A deduction is allowable for the cost of travelling directly between two places of employment or between a place of employment and a place of business. This is provided that the travel is undertaken for the purpose of engaging in income producing activities.

172. If the hospitality employee lives at one of the places of employment or business a deduction may not be allowable as the travel is between home and work. It is necessary to establish whether the income-producing activity carried on at the person's home qualifies the home as a place of employment or business. The fact that a room in the hospitality employee's home is used in association with employment or business conducted elsewhere will not be sufficient to establish entitlement to a deduction for travel between two places of work (see Taxation Ruling IT 2199).

173. A deduction is not allowable for the cost of travel between a person's home, at which a part-time income-producing activity is carried on, and a place of full-time employment unless there is some aspect of the travel that is directly related to the part-time activity.

174. In *Case N44* 81 ATC 216; 24 CTBR (NS) *Case 114*, a qualified accountant, employed by a firm of accountants, conducted a limited private practice from his home. He set up a separate room in his home as an office. The taxpayer claimed a deduction for car expenses incurred in travelling between his residence/office and his place of employment. The fact that the taxpayer's home was, incidentally, used in the production of income was insufficient to make the travel

between his home and his place of employment an outgoing incurred in the production of assessable income. The travel retained its essential character of travel between home and work and therefore, it was not deductible.

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

Automobile Association/Club membership fees

176. A deduction is allowable for the annual fee for road service if either the log book method or one-third of actual expenses method of claiming work-related car expenses is used. Membership of an Automobile Association/Club usually entitles members to additional benefits such as a magazine and legal advice. These benefits are considered to be incidental to the main purpose of membership, which is the provision of roadside or breakdown service. The entitlement to a deduction for the annual subscription fee is not affected by this arrangement. A deduction is not allowable for a joining fee or for any additional fees paid to gain entitlement to benefits other than road service.

Depreciation cost limit for motor vehicles

177. Section 57AF of the Act imposes a limit on the depreciable cost base of motor cars (including station wagons and four-wheel drive vehicles) if the acquisition cost is greater than a specified amount. The depreciable cost base limit applies to both new and second hand vehicles (see Taxation Ruling TR 93/24).

Calculation of motor vehicle balancing adjustment

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

Travel expenses

179. A deduction is allowable for costs incurred by a hospitality employee in undertaking work-related travel. An example is where a hospitality employee attends a seminar interstate. Travel expenses include the costs of accommodation, fares, meals and incidentals.

180. Receipt of an allowance does not automatically entitle a hospitality employee to a deduction for travel expenses. A work-

related travel expense must be incurred and only the amount actually spent is allowable as a deduction.

181. The general rule is that no deduction is allowed for work-related travel expenses unless written evidence, such as a receipt, is obtained. However, special substantiation rules apply to travel expenses if a hospitality employee receives a travel allowance.

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

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

Accompanying relatives travel expenses

184. A deduction is not allowable for the expenses of a relative accompanying a hospitality employee whilst travelling (see section 51AG of the Act). This rule applies whether or not the accompanying relative is a fellow employee (if that employee performs no substantive duties during the trip).

Union or professional associations fees

185. A deduction is allowable for the cost of annual union or professional association fees. A deduction is not allowable for a fee paid to join a union or professional association as it is a capital expense. Taxation Rulings IT 299, IT 327, IT 2062 and IT 2416 provide further information on the deductibility of union and professional association fees.

186. IT 2062 sets out our views on the deductibility of levies paid to unions and associations. It says (at paragraphs 2 and 3):

> '...where levies are paid by employees to a trade union or professional association it is necessary to have regard to the purposes for which the payments are made in order to determine whether they satisfy the terms of subsection 51(1). It is not decisive that the levies may be compulsory. What is important is the connection between the payment of the levy and the activities by which the assessable income of the employee is produced.
>
> Levies made specifically to assist families of employees suffering financial difficulties as a result of employees being on

strike or having been laid off by their employers are not considered to be allowable deductions under subsection 51(1) - they are not sufficiently connected with the activities by which the assessable income is produced to meet the requirements of the subsection.'

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

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

189. A deduction is not allowable for payments to staff social clubs or associations under subsection 51AB(4) of the Act .

Alternative views

Telephone installation or connection costs

190. The view was expressed that deductions for telephone installation or connection costs should be allowable based on the Commissioner's stated policy in Taxation Ruling IT 2197. The view of the Commissioner is that IT 2197 only applies when the telephone installation costs or connection fees have a revenue nature. Where these expenses are incurred by an employee, they are not on revenue account but are of a capital or private nature.

Protective clothing and equipment

191. The view was expressed that allowable deductions for 'Protective clothing' and 'Protective equipment' should include sunglasses, sunhats, sunscreens, wet weather gear, etc., that provide protection against the natural environment. This view is not supported by the Commissioner as the expense is a personal or living expense, similar to the cost of travel between home and work, conventional clothing and daily meals. A deduction is allowable for the cost of protective clothing and equipment where the conditions of the work (rather than the natural environment) make it necessary for a hospitality employee to provide protection to his or her person or clothing.

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