TR 95/13 - Income tax: employee police officers - allowance, reimbursements and work-related deductions

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Taxation Ruling
Income tax: employee police officers - allowance, 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 2261; 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; TR 96/16; TD 92/142; TD 92/154; TD 93/108; TD 93/112; TD 93/113; TD 93/114; 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.*

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

What this Ruling is about

Class of person/arrangement

1. This Ruling applies to police officers. A 'police officer' is a person who is employed either by the Australian Federal Police or the State/Territory Police Departments. Support staff employed by Police Departments (e.g., accountants, clerical staff, forensic scientists, etc.) are not covered by this Ruling.

2. This Ruling deals with:

   (a) the assessability of allowances and reimbursements received by police officers; and

   (b) deductions for work-related expenses generally claimed by police officers.

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 51AB, 51AE, 51AF, 51AGA, 51AH, 51AL, 53, 54, 55, 57AF, 59, 60, 61, 82A, 82KZL or 82KZO of the Act.

5. The tax treatment of allowances and reimbursement received by police officers is discussed at paragraphs 11 to 19 in the **Ruling** section.

6. The common work-related expenses incurred by police officers, and the extent to which they are allowable deductions, are discussed in alphabetical order at paragraph 22 in the **Ruling** section. 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 employee police officers. Where there is a tax shortfall, any penalties will be imposed 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). 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.

Previous Rulings

10. This Ruling was previously released as Taxation Ruling TR 94/20. There have been no substantial changes to the technical views contained in that Ruling. The Ruling has been re-drafted to clarify some issues and to revise commentary on the substantiation rules which were amended subsequent to the issue of TR 94/20. This Ruling withdraws Taxation Ruling TR 94/20.

Ruling

Allowances

11. The receipt of an allowance does not automatically entitle a police officer to a deduction. The term 'allowance' does not include a reimbursement (see paragraphs 16 to 19).

12. If received, allowances fall into the following categories:

(a) fully assessable to the employee with a possible deduction allowable, depending upon individual circumstances (paragraph 13);

(b) fully assessable to the employee with no deduction allowable even though an allowance is received (paragraph 14);

(c) fully assessable to the employee with a deduction allowable for expenses incurred subject to special substantiation rules (paragraph 15);

(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 (paragraph 16).

Allowances - possible deduction

13. The following allowances commonly received by police officers are paid to recognise that expenses may be incurred by police officers in doing their jobs. These allowances are fully assessable and deductions may be allowable depending on individual circumstances.

Allowance -Possible allowable deduction (see Explanations section)

Allowance	**Possible deduction**
At sea	Travel expenses
Bandsmen	Clothing - uniform/laundry expenses Depreciation of equipment
Boot	Clothing - protective footwear expenses
Bush Patrol	Depreciation of equipment

Camp	Travel expenses - overtime meal expenses Depreciation of equipment
Detective	Informant expenses
Excess Fares and Travelling	Transport expenses
Incidental Expenses	Travel expenses
Kilometre	Transport expenses
Meal Expense	Overtime meal expenses
Meal Money	Overtime meal expenses
Motor Vehicle	Transport expenses
Out of Pocket	Telephone, answering machines, mobile phone, pager, beeper and other telecommunication equipment expenses Informant expenses
Overnight expense	Travel expenses
Overtime meal	Overtime meal expenses
Passive Duty	Travel expenses
Relieving	Travel expenses
Special Expenses	Informant expenses
Spending	Informant expenses
Travel	Travel expenses
Travel expenses	Travel expenses
Uniform and Boot	Clothing - uniform/laundry, protective footwear expenses
Uniform, footwear and maintenance	Clothing - uniform/laundry protective footwear expenses
Water Police Overnight	Travel expenses

Allowances - no deduction allowable

14. The following allowances commonly received by police officers are paid for carrying out work that may be considered unpleasant, special or dangerous, in recognition of holding special skills, for accepting additional responsibility, or to compensate for

industry peculiarities. The allowances are fully assessable and no deduction is allowable. (see table on next page)

Allowances - no deduction allowable

Airwing	Locality
Civilian clothing	Lodging
Clothing	Night duty
Consolidated	Northern Territory
Depreciation disturbance	On call
Dislocation, depreciation and education	One person station
District	Out of uniform
Diving	Plain clothes
Dog handler's	Relocation expenses
Fingerprint Section	Sea going
First aid	Search, attendance and escort
Freight of perishables	Sea victualling
Housing	Special emergency response team
In charge	Specialist
In lieu of quarters	Stockings
In lieu of uniform	Temperate clothing
Isolated area expenses	Transfer expenses
Isolated establishment	Whyalla living
Living	

Reasonable allowance amounts

15. The Commissioner of Taxation publishes a Taxation Ruling annually that indicates 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.

Reimbursements

16. If a police officer 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 police officer receives a reimbursement, the amount is not required to be included in his or her assessable income and a deduction is not allowable (Taxation Ruling TR 92/15).

17. However, if motor vehicle expenses are reimbursed by the employer on a cents per kilometre basis, the amount is included as assessable income of the police officer under paragraph 26(eaa) of the Act. A deduction may be allowable in relation to motor vehicle expenses incurred (see ***Transport expenses***, paragraphs 199 to 234).

18. If the reimbursement by the employer is for the cost of a depreciable item (e.g., diving equipment), a deduction is allowable to the police officer for depreciation (see Taxation Determination TD 93/145 and ***Depreciation of tools and equipment***, paragraphs 90 to 98).

19. If a payment is received for an **estimated** expense, the amount received by the police officer is considered to be an allowance (not a reimbursement) and is fully assessable to the police officer (see **Allowances**, paragraphs 11 to 15).

Deductions

20. A deduction is only allowable if an expense:

(a) is actually incurred (paragraph 24);

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

(c) satisfies the substantiation rules (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 police officers and the extent to which they are allowable deductions are discussed below, in alphabetical order.

Ammunition: A deduction is allowable for the cost of additional ammunition used for work-related or training purposes (paragraph 35).

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 a police officer's bank account(s). A deduction is not allowable for any other bank fees as a work-related expense (Taxation Ruling IT 2084).

Briefcases: A deduction is allowable for depreciation on the cost of a briefcase for a police officer to the extent of its work-related use (paragraphs 36 and 37).

Bulletproof jackets/vests or body armours: A deduction is allowable for the cost of bulletproof jackets/vests or body armours (paragraph 38).

Child care: A deduction is not allowable for child care expenses (paragraphs 39 to 41).

Clothing, uniforms and footwear: A deduction is allowable for the cost of buying, hiring or replacing clothing, uniforms or footwear ('clothing') 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 (paragraphs 42 to 73).

Expenditure on shoes, socks and stockings may give rise to a deduction where they form an integral part of a compulsory and distinctive uniform, the components of which are set out by the employer in its expressed uniform policy or guidelines. The employer's uniform policy or guidelines should stipulate the characteristics of the shoes, socks and stockings that qualify them as

being a distinctive part of the compulsory uniform, e.g., colour, style, type, etc. The wearing of the uniform must also be strictly and consistently enforced with breaches of the uniform policy giving rise to disciplinary action. These latter factors reflect the fact that image is of critical importance to the particular employer (paragraph 53A; also see Taxation Ruling TR 96/16).

Club membership fees: A deduction is not allowable for club membership fees as they are expenses of a private nature (paragraphs 76 and 77).

Computers and software: A deduction is allowable for depreciation on the cost of computers and 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 (paragraphs 78 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 a police officer's knowledge, skills or ability to perform his or her duties. There must be a relevant nexus with the current work activities of the police officer (paragraphs 82 to 89).

Depreciation of tools and equipment: A deduction is allowable for depreciation on the cost of tools and equipment to the extent of the work-related use of tools and equipment. An item of equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less or its effective life is less than three years (paragraphs 90 to 98).

Driver's licence: A deduction is not allowable for the cost of acquiring or renewing a driver's licence. A deduction is allowable for the cost of a premium that is paid in addition to the cost of a standard licence required for work purposes (paragraphs 99 to 102).

Entertainment: A deduction is not allowable for the cost of entertainment expenses. Entertainment expenses include the cost of food, drinks, recreation and amusement (paragraphs 103 to 105).

Equestrian related equipment: These items are normally supplied and replaced by the Police Department. A deduction is allowable for the cost of additional and/or more sophisticated equipment used for income-earning activities (paragraphs 106 and 107).

Fares: See ***Transport expenses***.

Fines: A deduction is not allowable for fines imposed under a law of the Commonwealth, a State, a Territory, a foreign country, or by a court (paragraph 108).

First aid courses: A deduction is allowable if it is necessary for a police officer, as a designated first aid person, to undertake first aid training. If the cost of the course is met by the employer, or is reimbursed to the police officer, no deduction is allowable.

Fitness expenses: A deduction may be allowable for expenses incurred in maintaining a high degree of fitness (paragraphs 109 to 114).

Gauntlets, holsters, hand grips, handcuffs, holders, pouches, utility belts, etc.: These items are normally supplied and replaced by the Police Department. A deduction is allowable for the cost of additional and/or more sophisticated equipment used for work-related purposes.

Glasses/contact lenses: A deduction is not allowable for the cost of buying prescription glasses or contact lenses. The cost of safety glasses is an allowable deduction (see ***Protective equipment***, paragraph 166).

Guard dogs and security systems: A deduction is not allowable for expenses incurred in maintaining guard dogs or installing security systems for the protection of police officers and their families (paragraphs 115 to 117).

Guns and related equipment: These items are normally supplied and replaced by the Police Department. A deduction is allowable for the cost of additional and/or more sophisticated equipment used for income-earning purposes (paragraph 118).

Gun cleaning materials: These items are normally supplied and replaced by the Police Department. A deduction is allowable for the cost of additional gun cleaning materials used for income-earning purposes.

Hairdressing and grooming expenses: A deduction is not allowable for hairdressing and grooming expenses (paragraphs 119 to 121).

Home office expenses:

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 (paragraphs 127 to 130)

Place of business: A deduction is allowable for a portion of the running and occupancy expenses of a home if an area of the home has the character of a place of business (paragraphs 131 to 133).

Informant expenses: A deduction is allowable for payments made to informants by police officers during the course of their duties, provided that:

- the payments are made within the guidelines of the Police Department in relation to such payments; and

- the relevant guidelines do not allow for the reimbursement of the payments (paragraphs 134 to 136).

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*** (paragraph 42).

Licences and certificates: A deduction is allowable for the cost of renewing licences and certificates held by a police officer in respect of his or her employment. A deduction is not allowable for the cost of obtaining the initial licence or certificate.

Meals: A deduction is not allowable for the cost of meals eaten during a normal working day (paragraphs 137 to 142). If an award overtime meal allowance has been received, a deduction may be allowable (see paragraphs 144 to 146). A deduction may be allowable if meal costs are incurred by a police officer who travels for work-related purposes (see ***Travel expenses***, paragraphs 235 to 240).

Motor vehicle expenses: See ***Transport expenses***.

Newspapers**:** A deduction is not allowable for the cost of newspapers (paragraph 143).

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 144 to 146).

Parking fees and tolls: A deduction is allowable for parking fees and tolls paid by a police officer while travelling in the course of employment, e.g., between work places (paragraphs 147 and 148).

Physical training clothing: A deduction is allowable for the cost of physical training clothing which is unique and distinctive to the Police Department. Where this physical training clothing is a non-compulsory uniform, a deduction for its cost may be allowable (paragraph 59). The cost of conventional physical training clothing is not an allowable deduction (paragraphs 56, 57 and 61).

Pistol club membership fees: A deduction is allowable for membership fees paid to the Federal Police pistol clubs. A deduction is not allowable for membership fees paid to other pistol clubs (paragraphs 149 to 152).

Police Academy: A deduction is allowable for self education expenses incurred in attending training courses held at the Police Academy (paragraphs 153 to 156).

Police Citizens Youth Welfare Association: A deduction is allowable for donations of $2 or more to the Queensland Police Citizens Youth Welfare Association.

Police dogs: A deduction is allowable for expenses incurred in maintaining and training police dogs (paragraphs 157 to 160).

Police Legacy scheme: A deduction is allowable for donations of $2 or more to all State Police Legacy schemes except in Tasmania.

Police Widows scheme: A deduction is allowable for donations of $2 or more to the Victorian Police Widows scheme.

Professional library: A deduction is allowable for depreciation on the cost of a professional library to the extent of its work-related use. The content of reference material must be directly relevant to the income-earning activities (paragraphs 161 to 165).

Protective equipment: A deduction is allowable for the cost of safety equipment such as gloves, safety glasses, goggles and breathing masks etc., (paragraph 166). A deduction is not allowable for the cost of sunglasses, sunhats, sunscreens and wet weather gear that are worn or used to provide protection from the natural environment (paragraphs 47 to 49).

Relocation expenses: A deduction is not allowable for storage, removal and depreciation expenses incurred by police officers when transferring from one district to another (paragraphs 167 to 170).

Repairs to tools and equipment: A deduction is allowable for repairs to tools and equipment to the extent that the tools and equipment are used in income-producing activities (paragraph 171).

Self education: A deduction is allowable for the cost of self education if there is a direct connection between the self education and the police officer's current income-earning activities. Self education costs can include fees, travel, books and equipment (paragraphs 172 to 181).

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 (paragraphs 182 to 185).

Sick leave bank: A deduction is not allowable for contributions made towards a sick leave bank (paragraphs 186 to 188).

Stationery: A deduction is allowable for the cost of stationery, diaries etc., to the extent to which they are used for income-earning purposes.

Technical or professional publications: A deduction is allowable for the cost of buying or subscribing to journals, periodicals and magazines that have a content specifically related to police officers and are not general in nature (paragraphs 189 to 191).

Telephone, answering machine, mobile phone, pager, beeper and other telecommunications equipment 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 (paragraphs 192 and 193).

Installation or connection costs: A deduction is not allowable for the cost of installing or connecting a telephone, etc., (paragraphs 194 and 195).

Rental costs: A deduction is allowable for a proportion of telephone/ equipment rental costs if the police officer can demonstrate that he or she is 'on call', or required to telephone their employer on a regular basis (paragraphs 196 and 197).

Silent telephone numbers: A deduction is not allowable for the cost of obtaining a silent telephone number (paragraph 198).

Tools and equipment: A deduction is allowable for depreciation on 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 (paragraphs 90 to 98). A deduction is allowable for the cost of repairs to tools to the extent of their work-related use (paragraph 171).

Transport expenses: Transport expenses include public transport fares and the running costs associated with using motor vehicles, motor cycles, bicycles, etc., for work-related travel. They do not include accommodation, meals and incidental expenses (see ***Transport expenses*** at paragraphs 199 to 234). The treatment of transport expenses incurred by a police officer when travelling is considered below:

Travel between home and work: A deduction is not allowable for the cost of travel between home and the normal work place as it is generally considered to be a private expense. The fact that travel is outside normal working hours or involves a second or subsequent trip does not change this principle. This principle is not altered by the performance of incidental tasks en route (paragraphs 200 to 203).

Travel between home and work - transporting bulky equipment: A deduction is allowable if the transport expenses can be attributed to the transportation of bulky equipment rather than to private travel

between home and work. A deduction is not allowable if the equipment is transported to and from work by the police officer 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 (paragraph 205).

Travel between home and work where home is a base of operations and work is commenced at home: A deduction is allowable for transport expenses if they can be attributed to travelling **on** work, as distinct from travelling **to** work, i.e., where the police officer's home is used as a base of operations and his or her work has commenced before leaving home (paragraphs 206 to 208).

Travel between home and shifting places of work: A deduction is allowable for the transport expenses incurred in travelling between home and shifting places of work, where the police officer is required by the nature of the job itself to do the job in more than one place. The mere fact that a police officer may choose to do part of the job in a place separate from that where the job is located, is not enough (paragraphs 210 to 216).

Travel between two separate work places where there are two separate employers involved: A deduction is allowable for the cost of travelling directly between two places of employment (paragraphs 217 to 219).

Travel from the normal work place to an alternative work place while still on duty and back to the normal work place or directly home: A deduction is allowable for the cost of travel from the normal work place to other work places. A deduction is also allowable for the cost of travel from the alternative work place back to the normal work place or directly home. This travel is undertaken in the course of gaining assessable income and is an allowable deduction (paragraphs 220 and 221).

Travel from home to an alternative work place for work-related purposes and then to the normal work place or directly home: A deduction is allowable for the cost of travel from home to an alternative work place and then on to the normal work place or directly home (paragraphs 222 and 224).

Travel between two places of employment or between a place of employment and a place of business: A deduction is allowable for the cost of travelling directly between two places of employment or a place of employment and a place of business, provided that the travel is undertaken for the purpose of carrying out income-earning activities (paragraphs 225 to 231).

Travel in connection with self education: See ***Self education*** (paragraph 172).

Travel expenses: A deduction is allowable for travel expenses (accommodation, fares, meals and incidentals) incurred by a police officer when travelling in the course of employment, e.g., travel interstate to a meeting (paragraphs 235 to 240). Special substantiation rules apply (paragraphs 238 and 240).

Union/professional association 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 (paragraphs 241 to 245). A deduction is not allowable for contributions to staff social clubs or associations.

Watches**:** A deduction is not allowable for the cost of conventional watches. A deduction is allowable for depreciation on the cost of watches with special characteristics used for work-related purposes (paragraphs 246 to 249).

Explanations

Deductibility of work-related expenses

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

(a) is actually incurred;

(b) meets the deductibility tests; and

(c) satisfies the substantiation rules.

Expense actually incurred

24. The expense must actually be incurred by the police officer to be considered for deductibility. A deduction is not allowable for expenses not incurred by a police officer, 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 17 and 18 for exceptions to this rule).

Expense meets deductibility tests

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

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

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

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

(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 233; 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 where 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 diving equipment); 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 police officer does not preclude it from being an allowable deduction (Taxation Ruling IT 2198).

30. **Example:** Vince is a police officer who purchases additional ammunition for target practice. The cost of the ammunition is an allowable deduction.

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

32. 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 that he would not lose weight during the football season. The character of the expense was private.

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 police officer 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.

Common work-related expense claims

Ammunition

35. Police officers are issued with ammunition in the normal course of duty. They may also attend official testing courses or train during their own time to improve firearm proficiency, but only sufficient practice rounds are issued to enable them to maintain their validation for operational purposes. The cost of additional ammunition purchased by police officers for work-related training purposes is an allowable deduction (see Taxation Ruling IT 2198).

Briefcases

36. A deduction is allowable for depreciation on the cost of a briefcase under subsection 54(1) of the Act to the extent that the briefcase is used for work-related purposes (see Taxation Ruling IT 2261 and paragraphs 90 to 98 of this Ruling).

37. **Example:** Michael is a police prosecutor who purchases a briefcase to carry confidential material and legal documents to court. A deduction is allowable for depreciation on the cost of the briefcase.

Bulletproof jackets/vests or body armours

38. A deduction is allowable for the cost of lightweight bulletproof jackets/vests or soft body armours bought for work, as they are considered to be protective equipment.

Car expenses: See ***Transport expenses***.

Child care

39. A deduction is not allowable for child care expenses, even if it is a prerequisite for a police officer 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 police officer to undertake studies relevant to his or her employment.

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

41. Taxation Determination TD 92/154 provides further information about the treatment of these expenses.

Clothing, uniforms and footwear

42. 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 Taxation Ruling 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)).

43. 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

44. Police officers may be provided with protective clothing by their employer (e.g., safety jackets, vests for traffic control). Police officers 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.

45. 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. The cost of this footwear is a private expense and is not an allowable deduction.

46. A deduction is not generally 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. 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.

47. An exception to this general rule can arise if the nature of the work (rather than the natural environment) creates conditions that make it necessary for the police officer to provide protection to his or her person or clothing.

48. For example, a deduction would be allowable to a motorcycle patrol officer for the cost of sunglasses which are equipped with additional safety features to protect his or her eyes from the effects of wind or from foreign bodies such as insects, debris and other materials (*Case 10/94* 94 ATC 168).

49. 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 (ATC at 43; CTBR at 525):

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

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

Occupation specific clothing

50. Occupation specific clothing is defined in subsection 51AL(26) of the Act. It distinctly identifies the employee as belonging to a particular profession, trade, vocation, occupation or calling. It is not clothing that can be described as ordinary clothing of a type usually worn by men and women regardless of their occupation. Examples of clothing that are considered to be occupation specific are female nurses' traditional uniforms, chefs' checked pants and a religious cleric's ceremonial robes.

Compulsory uniform or wardrobe

51. 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.

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

uniform. Police officers normal uniforms will normally meet the tests in IT 2641.

53. 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.'

53A. Expenditure on shoes, socks and stockings is essentially of a private nature and, even when these items are worn at the request of the employer, their cost will only be deductible in limited circumstances. To qualify for deduction, the items must firstly form an integral part of a distinctive and compulsory uniform the components of which are set out by the employer in its expressed uniform policy or guidelines (see paragraphs 51 and 52). In addition, the employer's uniform policy or guidelines should stipulate the characteristics of the shoes, socks and stockings that qualify them as being a distinctive part of the compulsory uniform, e.g., colour, style, type, etc. The wearing of the uniform must also be strictly and consistently enforced, with breaches of the uniform policy giving rise to disciplinary action. It is only in strict compulsory uniform regimes that expenditure on shoes, socks and stockings is likely to be regarded as work-related rather than private in nature (see Taxation Ruling TR 96/16).

54. 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 are to be worn.'

55. 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 wearer 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 drink or food waiting staff.'

56. Where it is a condition of employment or compulsory for police cadets/recruits/students to purchase and wear a particular style of physical training clothing which is unique and distinctive to the Police Department, then such clothing is considered to be a compulsory uniform. For a deduction to be allowable, that sports uniform must meet the tests in IT 2641.

57. **Example:** George is a student police officer in New South Wales. He is required to purchase and wear physical training clothing (e.g., tracksuit, shorts, T-shirts) which is of a specific colour scheme with a distinctive police logo and design as per IT 2641. These items form part of the compulsory uniform worn by student police officers and a deduction is allowable for their purchase and maintenance costs.

Non-compulsory uniform or wardrobe

58. A deduction is not allowable for the purchase and maintenance costs of non-compulsory uniform or wardrobe clothing **unless** the conditions outlined in section 51AL of the Act are met. Section 51AL of the Act 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.

59. If police officers 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. This is unless the uniform satisfies the requirements of section 51AL of the Act. Certain police squads have designed their own physical training clothing with the logo or emblem of their particular squad. These items of clothing are not compulsory and do not form part of the traditional or normal police officer's uniform. Their cost will only be an allowable deduction if they meet the requirements of section 51AL of the Act.

Conventional clothing

60. 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. This 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 20 and 21). This will apply to plain clothes police officers. It is the ATO view that the cost of conventional clothing worn by plain clothes police officers is not an allowable deduction.

61. 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.

62. 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 *Edwards* case.

63. Senior Member Barbour distinguished this case from *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 would find that the nature of the expense is essentially private.'

64. In *Case U80* 87 ATC 470; 18 CTBR (NS) Case 66, 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.'

65. A police officer who is required to wear conventional clothing e.g., suits, shirts, ties, jeans and shoes, is not entitled to a deduction for the cost of purchasing, cleaning and maintaining such items. Expenses on this kind of everyday clothing are considered to be private. This principle is not altered by the fact that the nature of a police officer's work can cause excessive wear or damage to his or her clothing.

66. In *Case U219* 87 ATC 1221; 12 CTBR *Case 23*, the taxpayer was a plain clothes policeman who was provided with a uniform, but was also required to wear a suit and tie. The taxpayer was paid an allowance for plain clothes, and he claimed a deduction for purchasing conventional clothing. The claim was disallowed by the Tribunal. The expenditure on plain clothes was considered to be of a private nature.

67. In *Case K2* 78 ATC 13; *Case 21* 22 CTBR (NS) 178, 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.

68. A deduction may be allowable for the cost of additional clothing bought by police officers who are required to perform undercover work. For a deduction to be allowable, the police officer will have to establish that there is a sufficient nexus between his or her income-earning activities and the expenses incurred (Taxation Ruling TR 94/22).

69. **Example:** Jill is an undercover police officer who is required as part of her duties to wear clothing of a kind she doesn't normally wear to enable her to pose (in costume) as a criminal. Jill wears other clothing to and from work. Jill's expenditure on clothing worn in these activities, even though it may be conventional clothing, has a direct nexus with her income-producing activities as an undercover police officer. A deduction is allowable for the purchase and maintenance costs of the clothing used as a costume to the extent of their work-related use.

70. A deduction is not allowable under subsection 51(1) of the Act for the cost of conventional footwear (Taxation Ruling IT 2641).

71. The cost of stockings will only be deductible in limited circumstances. These circumstances are described in paragraph 53A (also see Taxation Ruling TR 96/16).

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

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

73. In *Case H32* 76 ATC 280; 20 CTBR (NS) *Case 85*, the expense for stockings damaged at work was not allowed. In that case it was stated (ATC at 282; CTBR at 909):

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

Laundry and maintenance

74. 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 42. This applies whether the clothing is purchased by the police officer or supplied by the employer.

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

Club membership fees

76. A deduction is not allowable for club membership fees as they are expenses of a private nature. Subsection 51AB(4) of the Act specifically denies a deduction for the cost of club membership or the right to enjoy the facilities of a club.

77. **Example:** George is a police officer who is a member of the Commissioned Officers Corp in the Northern Territory. He is not entitled to a deduction for his membership fees.

Computers and software

78. A deduction is allowable under subsection 54(1) of the Act for depreciation of computers owned and used by police officers for work-related purposes (paragraphs 90 to 98).

79. For example, a police officer may use a computer at home to prepare submissions, reports or for self education purposes. If the computer is also used for private purposes, the deduction for depreciation is allowable only to the extent of the work-related use (paragraphs 94 and 95).

80. If software is purchased as part of a computer system, the total cost of the system is depreciable (Taxation Ruling IT 26).

81. 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 relates to use for work-related purposes (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 required by a police officer. There must be a relevant connection with the current income-earning activities of the police officer.

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 (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. 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) of the Act. The police officers were able to demonstrate that the knowledge obtained during the overseas tour improved their performance in critical areas of their work.

85. **Example:** Benjamin, a member of the Tactical Response Group, attends a training course in Germany dealing with the use of special weapons and tactical responses for use in emergency or rescue operations. The costs of attending this course are an allowable deduction under subsection 51(1) of the Act.

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

87. If the dominant purpose in incurring the costs 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.

88. If part of the costs 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).

89. Information on ***Self education expenses*** can be found in Taxation Ruling TR 92/8 and in paragraphs 172 to 185 of this Ruling.

Depreciation of tools and equipment

90. 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.

91. A deduction is allowable under subsection 54(1) of the Act for depreciation on the cost of tools and equipment owned and used by a police officer 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.

92. 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 cost of the equipment and thereafter as a percentage of the written down value.

93. 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 item 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.

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

95. **Example:** Alison works for the diving squad and uses her own wet suit for work purposes. She also wears this wet suit on dives with her local scuba diving club. She is entitled to a deduction for a proportion of the depreciation based on the work-related use of the wet suit.

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 (see Taxation Determination TD 92/142).

98. A deduction is allowable for depreciation on the cost of the following items, to the extent of their work-related use:

- a kit of tools purchased by a police officer attached to the Police Department motor pool;
- diving equipment purchased by a police officer attached to the Water Police squad and used during work dives;
- marine charts and associated navigation equipment (i.e., dividers, compass parallel rules);
- bags to carry weapons and other items;
- protective boxes with safety locks for issued weapons;
- torches and batteries; and
- sheet music and musical instruments (including spare parts, repairs and cleaning materials) purchased by police officers attached to the Police Band.

Driver's licence

99. A deduction is not allowable for the cost of obtaining or renewing a driver's licence. The cost associated with obtaining a

driver's licence is a capital or private expense. The cost of renewing a licence is a private expense.

100. 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 was therefore not deductible under subsection 51(1) of the Act.

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

102. Some police officers may need an endorsed licence to perform their duties. In some states, these types of endorsements do not add to the cost of the licence. However, a deduction is allowable for the cost of a premium that is paid for an endorsed licence, in addition to the cost of a standard licence, if the endorsed licence is required for work-related purposes.

Entertainment

103. Police officers may incur expenses in purchasing food and drinks during official functions, or for entertaining guests in an official or informal capacity. While it is recognised that police officers may be expected to incur these types of expenses as a part of their duties, subsection 51AE(4) of the Act denies a deduction for entertainment expenses.

104. In *Case Y11* 9 1 ATC 184; 22 ATR 3063, a senior Australian Defence Force officer involved in negotiations to buy defence equipment was denied a deduction for expenditure incurred in attending a range of lunches, cocktail parties, dinners and other forms of social contact relevant to the performance of his duties. Direct business was done on many of those occasions. It was held that section 51AE(4) of the Act operated to deny the claim. It did not matter that the expenditure was directly relevant to employment related transactions.

105. Subscription fees and related expenses for membership of the Commissioned Officers Corps in the Northern Territory are entertainment expenses and section 51AE of the Act denies a deduction for these expenses.

Equestrian related equipment

106. Police officers who work in the Mounted Police Unit are generally supplied with standard saddles and other accessories by the Police Department.

107. However, police officers may purchase equestrian equipment, protective gear (e.g., back protectors, knee and shin pads), boot pullers and boot trees. A deduction is allowable under subsection 54(1) of the Act for depreciation on the cost of this equipment, to the extent that it is used for work-related purposes (see ***Depreciation of tools and equipment*** at paragraphs 90 to 98 and Taxation Ruling IT 2198).

Fares: See ***Transport expenses***.

Fines

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

Fitness expenses

109. A deduction is not allowable for fitness expenses as they are considered to be of a private nature. An exception to this general rule applies if a police officer's income-earning activities involve strenuous physical activities on a regular basis.

110. For example, members of special emergency squads, a diving squads, and police officers who work regularly with police dogs and train them, may be able to demonstrate that their income-producing activities demand a high level of physical fitness. Similarly, Police Academy physical training instructors may be able to prove that fitness expenses they incur are directly related to their income-producing activities.

111. A deduction is not allowable for gymnasium membership fees (section 51AB of the Act). A deduction is also not allowable for the cost of conventional clothing and footwear such as tracksuits, shorts, T-shirts and sports shoes (see paragraphs 60 to 73). Expenses which may be claimed if fitness expenses are deductible include depreciation on the cost of sporting equipment and the cost of travelling directly from work to engage in a fitness activity (e.g., attending an aerobics class).

112. In *Case N72* 81 ATC 383; 25 CTBR (NS) *Case 26*, an airline pilot was denied a deduction for a fitness course he undertook to lose weight in order to pass his six monthly medical examination. The expense was not incidental or relevant to the duties performed by the pilot and was considered to be private in nature. In *Case P17* 82 ATC 72; 25 CTBR (NS) *Case 81*, the cost of gymnasium fees was denied to a commercial pilot for similar reasons.

113. Taxation Determination TD 93/112 sets out the ATO view that expenses incurred on weight reduction are not an allowable deduction.

114. Taxation Determination TD 93/114 provides further information on the treatment of fitness-related expenses.

Guard dogs and security systems

115. A deduction is not allowable for expenses incurred in maintaining guard dogs for the protection of police officers and their families, as the expense is private in nature.

116. A deduction is not allowable for the cost of installing a security system at a police officer's residence, as it is both a capital and a private expense.

117. In *Case T20* 86 ATC 211; 29 CTBR (NS) *Case 23* and *Case V114* 88 ATC 906, the taxpayers were Family Court judges who were advised to improve the security of their private residences for safety reasons. In both instances, it was held that the expenses incurred in installing a security system and maintaining a guard dog were essentially private in nature and no deduction was allowable.

Guns and related equipment

118. A deduction is allowable for depreciation on the cost of gun-related equipment, such as a speed loader, a sighting device and a sling weapon grip, to the extent that these items are used for work-related purposes (see ***Depreciation of tools and equipment*** at paragraphs 90 to 98 and Taxation Ruling IT 2198).

Hairdressing and grooming expenses

119. A deduction is not allowable for hairdressing and grooming expenses as they are private in nature.

120. In *Case U217* 87 ATC 1216, a police officer 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.

121. This view is also supported by the following cases: *Case N34* 81 ATC 178; 24 CTBR (NS) *Case 104*; *Case L61* 79 ATC 488; 23 CTBR (NS) *Case 680* and *Case R54* 84 ATC 408; 27 CTBR (NS) *Case 108*.

Home office expenses

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

123. Generally, expenses associated with a police officer's home are of a private or domestic nature. However, a proportion of expenses associated with a police officer's home may be an allowable deduction if either:

(a) part of the home is used in connection with the police officer's income-earning 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-earning activities and has the character of a 'place of business'.

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

- ***Occupancy expenses*** relating to ownership or use of a home that are not affected by the taxpayer's income-earning activities. 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 home office.

125. A deduction is not allowable for the cost of occupancy expenses for police officers who maintain 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; (1981) 11 ATR 644 and *Forsyth v. FC of T* (1981) 148 CLR 203; 81 ATC 4157; (1981) 11 ATR 657.

Private study

126. A deduction is allowable for the work-related proportion of running expenses if a police officer uses an office or study at home for income-earning purposes (e.g., carrying out research). For the running expenses to be allowable, the area of a police officer's home set aside as a private study must be used exclusively for these purposes (*FC of T v. Faichney* (1972) 129 CLR 38; 72 ATC 4245; 3 ATR 435;).

127. A deduction for a proportion of running expenses will also be allowable to a police officer who is undertaking work-related self education. Paragraphs 172 to 185 provide further information on the treatment of self education expenses.

128. A deduction may be allowable for **additional** heating/cooling and lighting expenses, even though an area of the home has not been set aside as a private study. The circumstances when this may occur are where the police officer uses a room at a time when others are not present or uses a separate room.

129. **Example:** Jim is a police officer. He works in his 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 an allowable deduction. However, if he uses the room at a time when others are not present or uses a separate room, he is entitled to a deduction for additional running expenses associated with work activities. This applies even if the room is not set aside solely as a private study.

130. The amount that Jim 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. Taxation Ruling TR 93/30 provides a formula for calculating the additional expense for an appliance such as a heater.

Place of business

131. 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'. Currently, some Federal police officers are performing their duties from their home-based offices. This program has been approved by the management of the Australian Federal Police.

132. Under these circumstances, police officers may be entitled to deduct a proportion of both the running and occupancy expenses which are not reimbursed. The amount of occupancy expenses allowable is based on the ratio of the exclusive business area to the total floor area of the home.

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

Informant expenses

134. A deduction is allowable for payments made by police officers to informants to obtain evidence or information, whether or not an allowance has been received by the police officers when:

- the payments are made within the guidelines of the Police Department, and
- the guidelines do not provide for reimbursements of payments made under them.

Such payments may take the form of cash or goods such as cigarettes and light meals.

135. If the non-cash payment is in the form of a meal, a deduction will only be allowable if the meal is light, such as a sandwich or salad. More elaborate meals are usually considered to be entertainment expenses and not an allowable deduction (see Taxation Rulings IT 2675 and TR 97/17). The provision of alcohol with or without meals is usually entertainment and not an allowable deduction (see Taxation Rulings IT 2675 and TR 97/17).

136. Informant expenses are out of pocket expenses paid by a police officer to another person for the provision of information relating to specific police matters in which the officer is involved. Each Police Department has guidelines in relation to the making of these payments and their reimbursement.

Meals

137. A deduction is not allowable for the cost of meals eaten by police officers 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 activities 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.

138. The Full Federal Court considered the treatment 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 an allowable deduction. Hill J said (FCR at 199-200; ATC at 4414; ATR at 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 at 1638):

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

139. 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.

140. 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 of this Ruling, and are considered to be private in nature.

141. In *Case Y8* 91 ATC 166; AAT *Case 6857* (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.

142. A deduction is allowable for the cost of meals bought while working overtime, where an award overtime meal allowance has been paid (paragraphs 144 to 146).

Motor vehicle expenses: See ***Transport expenses***.

Newspapers

143. A deduction is not allowable under subsection 51(1) of the Act for the cost of newspapers and magazines, as it is a private expense. Even though a police officer may be able to use part of the information in the course of his or her work, the benefit gained is usually remote and the proportion of the expense that relates directly to their work is incidental to the private expenditure. This view is supported by *Case P30* 82 ATC 139; 25 CTBR (NS) *Case 94* and *Case P114* 82 ATC 586; 26 CTBR (NS) *Case 47*.

Overtime meal expenses

144. A deduction is allowable for the cost of meals bought while working overtime if an award overtime meal allowance is received. 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.

145. 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 police officer 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.

146. 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

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

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

148. A deduction is not allowable for parking fees and tolls incurred when police officers are travelling between their home and their normal place of employment. The cost of that travel is a private expense and the parking fees and tolls therefore have that same private character. A deduction is allowable for parking fees and tolls if the travel is not private, e.g., where travel between home and work is attributable to transporting bulky equipment (paragraphs 204 to 205).

Pistol club membership fees

149. A deduction is allowable under subsection 51(1) of the Act for membership fees paid to Australian Federal Police pistol clubs and for the cost of ammunition, to the extent that these expenses are incurred for work-related purposes.

150. A deduction is not allowable for fees paid to pistol clubs other than those run by the Australian Federal Police, as these are clubs that come within section 51AB of the Act (paragraphs 76 and 77).

151. **Example:** Leonie is a Federal Police officer who joined an Australian Federal Police pistol club and purchased ammunition for training at the club. These expenses are allowable under subsection 51(1) of the Act.

152. **Example:** Thomas is a State police officer who joins his local pistol club. His membership fees are not deductible as this is a club as defined in subsection 51AB(1) of the Act.

Police Academy

153. A Police Academy is an establishment where police cadets/ recruits/students and sworn police officers undertake structured training programs. It provides basic recruit training, on-going in-house training, skill maintenance courses and firearms training for police officers. It is therefore considered to be a place of education. Officers attending the Police Academy are on duty and can be called away from the Academy to perform other duties.

154. Where police recruits are required to travel some distance from their normal place of residence to attend a Police Academy, deductions are allowable for:

(a) travelling expenses between home and the Police Academy at the commencement of the course and back again at the conclusion of the course. Travelling expenses incurred for private purposes during the course, including return trips home, are not allowable deductions. Where public transport is used for this travel, the student police officers are reimbursed for these expenses and no deduction is allowable(see **Reimbursements** paragraph 16); and

(b) meals and accommodation expenses where they are not provided while staying at the Police Academy.

155. Paragraphs 172 to 185 and Taxation Ruling TR 92/8 provide further information on the treatment of self education expenses. Paragraphs 182 to 185 provide information concerning the limit on deductibility of Police Academy self education expenses.

156. Paragraphs 235 to 240 provide information on travel expenses.

Police dogs

157. A deduction is allowable for expenses incurred by police officers in maintaining, feeding, grooming, exercising and training police dogs (but not privately owned dogs). A deduction is not allowable for expenses which are reimbursed (see **Reimbursements** paragraph 16 and Taxation Ruling IT 2198).

158. Other allowable expenses would include motor vehicle expenses to convey police dogs to the veterinary surgeon and exercise areas, when departmental vehicles are not available. A deduction is also allowable for additional expenses incurred on electricity for refrigerators and freezers used for the storage of dog food and supplies.

159. A deduction is not allowable for the cost of installing security fences at a police officer's private residence for the security of police dogs, as the expense is both of a capital and private nature.

160. Some police officers buy their own dogs and train them to become police dogs. However, there is no guarantee that the police officers will be allowed to join the relevant squad with their own dogs. These expenses are incurred prior to joining the relevant squad and prior to the derivation of the related assessable income. Under these circumstances, the related expenses are not allowable deductions under subsection 51(1) of the Act.

Professional library

161. A deduction is allowable under section 54 of the Act for depreciation of the cost of a professional library. If an individual reference book is purchased after 1 July 1991, and its cost does not exceed $300 or its effective life is less than 3 years, it may be depreciated at 100% in the year of purchase (see paragraphs 90 to 98 and Taxation Determination TD 93/159).

162. For depreciation purposes, reference books may only be included in the professional library if their content is directly relevant to the duties performed by police officers, e.g., legal reference books such as *Carter's Criminal Code (Qld).*

163. In *Case P26* 82 ATC 110; 25 CTBR (NS) *Case 90,* a university lecturer was allowed a deduction for depreciation on the cost of legal books, but was denied a deduction for depreciation on the cost of 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).

164. Where the cost of a reference book has been claimed as a deduction, its cost cannot be added to the value of a professional library and depreciated.

165. **Example:** Victoria is a senior police officer who has claimed a deduction for the cost of a reference book as part of her self education expenses. As she has already claimed a deduction for this reference book, she is not entitled to include it in the value of a professional library for depreciation purposes.

Protective equipment

166. A deduction is allowable for the cost of protective equipment used at work. Protective equipment includes gloves, harnesses, goggles, safety glasses and breathing masks. A deduction is not allowable for the cost of prescription glasses or contact lenses, as the expense relates to a personal medical condition and is private in nature.

Relocation expenses

167. A deduction is not allowable under subsection 51(1) of the Act for expenses incurred when a police officer transfers from one district to another (whether voluntarily or compulsorily) as they are private expenses (e.g., removal and storage expenses). This principle applies to transfers in existing employment or to take up a new employment (see Taxation Rulings IT 2406, IT 2481, IT 2566, and IT 2614).

168. In some circumstances, police officers are paid an allowance from the Police Department as compensation for depreciation, disturbance, removal and storage expenses. This allowance is assessable in full and no deduction is allowable under subsection 51(1) of the Act.

169. 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. His position ceased to exist as a result of a reorganisation and 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 was not an allowable deduction under subsection 51(1) of the Act, even though the expenses had a causal connection with the earning of income.

170. 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.

Repairs to tools and equipment

171. 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 work-related purposes.

Self education

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

(a) A deduction is allowable for self education expenses if the education is directly relevant to the taxpayer's current income-earning activities. This particularly applies if a police officer'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 police officer's income from his or her current income-earning activities.

(c) A deduction is not allowable if the education is designed to enable a police officer 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.

173. In *Case 48/93* 93 ATC 520, a police officer in the Criminal Investigation branch was allowed a deduction for expenses incurred in obtaining a commercial helicopter pilot's licence. The police officer had incurred the expenses to become eligible for transfer to the Police Air Wing squad and the transfer took place twelve months after starting the course. Evidence was given that training for a commercial helicopter pilot's licence leads to a very good appreciation of helicopter use and navigation which would make the police officer a very valuable asset. It was also stated that the additional qualification would enhance a police officers' chances of promotion within the force. Accordingly it was held that by obtaining such a licence, the police officer had increased her efficiency and chances of promotion in her existing occupation.

174. This can be contrasted with *Case V7* 88 ATC 142 where a police constable studied to obtain an unrestricted private pilot's licence, as well as beginning a course from which a commercial pilot's licence could be obtained. The police officer aspired to be attached to the Police Air Wing squad, a position which he considered would be more remunerative. However, the study only had a small influence upon his duties as a constable, e.g., map reading. It was held that the outgoings were incurred to equip him to obtain employment in a new and more remunerative position totally discrete from the one he occupied. On that basis the expenses were incurred in getting, not in doing, work as an employee and therefore came at a point too soon to be properly regarded as incurred in gaining assessable income.

175. Therefore, for a police officer to claim self education expenses in a field in which they are not currently employed, it must be established that the course of self education increases the police officer's efficiency or chances of promotion in their existing occupation.

176. **Example:** Bruce is a constable for the Police Department who is studying hospitality management. He is not allowed a deduction for the cost of this course as the course is not related to his current income-earning activities.

177. **Example:** Jane is a detective for the Police Department who is studying criminology. She is allowed a deduction for the cost of this course as there is sufficient connection with her current income-earning activities and the study would enhance her promotion prospects.

178. A deduction is allowable for transport costs in connection with a course of education (see exception in paragraphs 179 and 180) 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

179. In Queensland it is a condition of employment that all new police recruits undertake tertiary studies. During the first twelve months, and before being sworn, police recruits receive a student allowance in lieu of wages while studying full time at university. These police recruits are entitled to claim self education expenses as

there is a direct nexus between the assessable income derived and the expenses incurred.

180. For the first twelve months, the university is considered to be the police recruits' regular place of employment as they have not been appointed to a particular police station. Any travel undertaken between the police recruits' place of residence and the university is considered to be private in nature, i.e., travel to work, and deductions are not allowable under subsection 51(1) of the Act.

181. 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);

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

Limit on deductibility

182. 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.

183. '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 of the Act 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.

184. A Police Academy is considered to be a place of education to which section 82A of the Act applies. This view is supported by the decision of the Board of Review in *Case M11* 80 ATC 78; 23 CTBR (NS) *Case 97*. Any expenses allowable for attendance at a Police Academy for training purposes must be reduced by any amount reimbursed by the Police Department. As these expenses also form part of self education expenses, the total amount allowable under subsection 51(1) of the Act is then reduced by $250.

185. If police officers are undertaking external studies at another place of education (i.e., a university) as well as attending training

courses at a Police Academy, section 82A only applies once to the total self education expenses incurred by police officers.

Sick leave bank

186. In some States, police officers are required under their award to contribute part of their annual leave towards a pool of sick leave days. This pool is commonly referred to as the 'sick leave bank'.

187. Police officers who have used all of their annual sick leave entitlements are able to obtain further sick leave from this particular bank for injuries incurred as a result of duties performed as police officers.

188. Such contributions do not represent expenses incurred by police officers for work-related purposes. Deductions are not allowable under subsection 51(1) of the Act for contributions made towards a sick leave bank.

Technical or professional publications

189. 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 police officer's work and are not general in nature.

190. 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.'

191. 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 that related to her day-to-day work. She was, however, not allowed a deduction for the cost of daily newspapers and periodicals.

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

Cost of calls

192. A deduction is allowable for the cost of telephone calls made by a police officer in the course of carrying out his or her duties.

193. 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

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

195. In *Case M53* 80 ATC 357; 24 CTBR (NS) *Case 29*, it was held that (ATC at 359; CTBR at 236):

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

Rental costs

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

197. 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

198. 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).

Transport expenses

199. Transport costs include public transport fares and the running costs associated with using motor vehicles, motor cycles and bicycles, etc., for work-related travel. They do not include accommodation, meals and incidental expenses (see ***Travel expenses***, paragraphs 235 to 240). The treatment of transport costs incurred by a police officer when travelling is considered below:

Travel between home and work

200. A deduction is not allowable for the cost of travel by a police officer between home and his or her normal work place as it is generally considered to be a private expense. This principle is not altered by the performance of incidental tasks en route (paragraph 34 of Taxation Ruling MT 2027).

201. The High Court considered travel expenses incurred between home and work in *Lunney's* case. Williams, Kitto and Taylor JJ stated that (CLR 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.'

202. 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.

203. **Example:** Stephen is a police officer who works in a city police station on Mondays and Tuesdays and in a suburban police station from Wednesday to Friday. Travel from his home to either police station is normal home to work travel, and no deduction is allowable.

Travel between home and work - transporting bulky equipment

204. 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 police officer as a matter of convenience, it is considered that the transport costs are private and no deduction is allowable.

205. 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).

Travel between home and work where home is a base of operations and work is commenced at home

206. A deduction is allowable for transport costs incurred where a police officer is travelling **on** his or her work, as distinct from travelling **to** his or her work. In other words, the police officer's home is a base of operations, in that some part of the work is done at home, or the work is commenced at or before the time of leaving home to travel to work.

207. There have been a number of cases considered by courts and tribunals where deductions for transport expenses were allowed on the basis that the taxpayer's home was a base of operations. The characteristics recognised in these cases as contributing to the conclusion that the taxpayers were travelling on work were:

(a) the taxpayer undertakes tasks at home that cannot be done at the work site (*Vogt's* case);

(b) the performance of the duties of the job commences before leaving home. The obligation is more than just being on stand-by duty at home (*Owen v. Pook* [1970] AC 244 (*Owen & Pook's* case); *FC of T v. Collings* 76 ATC 4254; (1976) 6 ATR 476 (*Collings'* case));

(c) the taxpayer does not choose to do part of the work in two separate places. The two places of work are a necessary obligation arising from the nature of the special duties of the job (*Collings'* case; *FC of T v. Ballesty* 77 ATC 4181; (1977) 7 ATR 411);

(d) the home takes on the characteristics of being a base of operations on occasions, since work has to be commenced there (*Collings'* case);

(e) The taxpayer commences the task at home and the responsibility for completing it is not discharged until the

taxpayer attends at the work site (*Owen & Pook's* case; *Collings'* case).

208. **Example**: Jim is a Federal police officer who is taking part in the trial of home based officers. He travels to the scene of a Federal police operation from his home. He is entitled to a deduction for the cost of travel under subsection 51(1) of the Act as his home is his base of operations.

209. In *Case R61* 84 ATC 454; 27 CTBR (NS) *Case 118*, the taxpayer was a part-time teacher employed at three colleges. There were no facilities available to accommodate part-time staff for the storage of materials, preparation of tutorials or marking of student assignments. P M Roach (Member) said (ATC at 454; CTBR at 947):

> '...the taxpayer is in a situation of having several distinct employments in relation to each of which she chose to store materials and carry out preparatory and other incidental work at her home rather than her place of employment.'

The transport costs incurred by the taxpayer in travelling between her home and work were not allowed as 'the taxpayer was not travelling on her work', per T J McCarthy (Member) (ATC at 451; CTBR at 945). None of the characteristics detailed in paragraph 207 were present in this case.

Travel between home and shifting places of work

210. A deduction is allowable for the cost of travelling between home and work if a police officer has shifting places of work. Shifting places of work can be shown to exist if a police officer regularly works at more than one work place on any given day. Occasionally staying at a particular work place for several days or even a few weeks, will not mean a police officer ceases to have a pattern of shifting work places, providing the usual pattern of work involves regularly working at more than one work place on any given day.

211. Another term for shifting places of work is itinerancy. It would be unusual for a police officer to be involved in itinerant work, i.e., to have shifting places of work.

212. Some of the cases that refer to shifting places of work (or itinerancy) are *Horton v. Young* [1972] Ch 157; 47 TC 60 (*Horton v. Young*); *Taylor v. Provan* [1975] AC 194; *FC of T v. Weiner* 78 ATC 4006; (1978) 8 ATR 335; *Case R8* 84 ATC 157; 27 CTBR (NS) *Case 59*; *Case T106* 86 ATC 1192; *AAT Case 17* 18 ATR 3093; *Case U29* 87 ATC 229; *AAT Case 32* 18 ATR 3181; *Case U97* 87 ATC 584; *AAT Case 68* (1987) 18 ATR 3491; *FC of T v. Genys* 87 ATC 4875; (1987) 19 ATR 356.

213. The characteristics supporting the allowance of a deduction for the cost of travelling between home and work that emerged from these cases were:

(a) there was more than one work place attended each day (*Weiner's* case and *Case T106*);

(b) travel was a fundamental part of the employees' work (*Taylor v. Provan*);

(c) there was no 'fixed place (or places) of work' (*Horton v. Young*);

(d) there was no 'home station' (*Case U97*);

(e) there was a 'web of workplaces' (*Case U97*);

(f) there was continual movement by the worker from one work place to another (*Horton v. Young*);

(g) any break in the pattern of continual movement of the worker from one workplace to another was 'on a purely temporary basis' (*Horton v. Young).*

214. The characteristics present in these cases but which were not found to support the allowance of a deduction for travel between home and work on the basis of itinerancy were:

(a) being on stand-by or short notice contact for work (*Genys'* case);

(b) having a settled pattern of employment (*Case U97*);

(c) being a casual employee working regularly for different employers (*Genys'* case);

(d) the incurring of 'additional expenditure' to travel to work (*Case U29*);

(e) the taxpayer had a principal place of duty as a matter of routine, even though that may have changed at intervals of several months (*Case U29*);

(f) the obtaining of work from an agency on a regular basis so that one regularly has different employers on different days (*Genys'* case).

215. In *Case U97*, the taxpayer was a relief fireman who was nominally attached to a fire station in a Sydney suburb but was commonly sent to other fire stations in the Sydney fire district ('outer stations'). Some of the relevant facts established about his employment were:

(a) he was employed by the same employer in the same class of employment every day;

(b) he travelled to one outer station regularly for a number of days then to another outer station for another period and so on;

(c) on occasions, he was telephoned at home with instructions to proceed to a particular outer station the next day. By and large however, he was aware of his commitments well in advance - he would certainly know the day before.

216. In *Case U97*, B J McMahon (Senior Member), in commenting on *Case T106*, said (ATC at 588; ATR at 3495):

> '...several observations were made [in that case] to illustrate the web of workplaces that one would expect to find, particularly in a casual rather than a semi-permanent pattern, in order to categorise employment as itinerant.'

Senior Member McMahon went on to say:

> 'In my view, the circumstances of the present applicant are such that his settled pattern of employment cannot be regarded as itinerant, even though he is not required to serve at the same station for every day...There is not the web of workplaces ...There is not the constant unsettled dispatch from one workplace to another, the element of uncertainty...'

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

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

218. **Example:** Susan is a police officer who has a part time job as a security officer for a car yard. The cost of any travel undertaken directly between the car yard and her regular place of employment is an allowable deduction.

219. **Example:** Greg is a police officer who normally travels from his regular place of employment to university where he lectures. Sometimes he returns home to change his clothes before travelling to the university. On these occasions he would not be entitled to a deduction for the cost of travel.

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

220. A deduction is allowable for the cost of travel from a police officer'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 an allowable deduction. This travel is

undertaken in the performance of a police officer's duties. It is incurred in the course of gaining assessable income and is allowable as a deduction.

221. **Example:** Michelle is a police officer who is required to travel from her regular place of employment to a district court for work-related purposes. The cost of any travel undertaken from the regular place of employment to the district court and then back to the regular place of employment or directly home from the district court is an allowable deduction.

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

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

223. **Example:** Oscar works for the Drug Squad and is required to attend a meeting at Police Headquarters. He normally works in a police station in another suburb. The cost of any travel undertaken from his home to the Police Headquarters and then on to the regular police station is an allowable deduction. The cost of travel from his regular police station to home is not an allowable deduction.

224. **Example:** Jane is a police officer who is on call. She is called out to co-ordinate the handling of a siege. She has to immediately contact police negotiators over the telephone, and then travel to the site of the siege. A deduction is allowable for her transport costs as Jane is travelling to an alternative work place.

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

225. 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.

226. **Example:** Zoe works for the Diving Squad. She travels to her regular police station to report for duty and then travels to the scene of a boating accident. She reports back to her regular police station at the end of the day. The cost of any travel undertaken between the two locations is an allowable deduction.

227. Where the police officer 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 police officer'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).

228. 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 which is directly related to the part-time activity.

229. 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 an allowable deduction.

230. **Example:** Jack is a police officer who teaches guitar at his home on Monday evenings. The cost of travelling from the workplace to home is not an allowable deduction. It is a private expense rather than an expense incurred in deriving assessable income.

231. 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

232. 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

233. Section 57AF of the Act imposes a limit on the depreciable cost base of motor vehicles (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 (Taxation Ruling TR 93/24).

Calculation of motor vehicle balancing adjustment

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

Travel expenses

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

236. **Example:** Vera attends a seminar interstate on fingerprinting techniques. A deduction is allowable for her travel expenses.

237. Receipt of an allowance does not automatically entitle a police officer 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.

238. 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 travel expenses if a police officer receives a travel allowance.

239. 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.

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

Union or professional association fees and levies

241. 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 treatment of union and professional association fees.

242. IT 2062 sets out our views on the treatment of levies paid to unions and associations. It says:

> '...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.' (IT 2062 paragraphs 2 and 3).

243. 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 (IT 2416).

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

245. In some States, police officers are able to prepay their union or association fees 12 months in advance. Under sections 82KZL to 82KZO of the Act, prepaid expenses are allowable deductions in the year the expense is incurred if the service is provided within 13 months of the prepayment or the amount paid is less than $1,000. If union fees are shown on the police officer's group certificate, it will be sufficient evidence of the expense for substantiation purposes (Schedule 2B subsection 5-8 of the Act).

Watches

246. A deduction is not allowable for the cost of purchasing or repairing ordinary wrist watches, including waterproof watches, as it is considered to be of a private nature.

247. In *Case S82* 85 ATC 608; 28 CTBR (NS) *Case 87*, a nursing sister was not allowed a deduction for the cost of a watch that was used in the course of her employment. The Board of Review's decision was that the watch was (ATC at 612; CTBR at 682):

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

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

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

249. A deduction is allowable for the cost of repairs, batteries and watch bands, and for depreciation on the cost of scuba diving watches used by police officers in the Diving Squad. The deduction is allowable to the extent of the work-related use of the watch. Paragraphs 90 to 98 provide further information on depreciation of equipment.

Alternative views

Telephone installation or connection costs

250. 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

251. 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 police officer to provide protection to his or her person or clothing.

Electricity and fire wood expenses

252. The view was expressed that a deduction should be allowable for electricity and fire wood costs incurred by police officers situated on islands off Tasmania. The Commissioner's view is that the expense is private (paragraphs 25 to 28).

Grooming expenses

253. The view was expressed that a deduction should be allowable for the cost of haircuts. The Commissioner's view is that the expense is private (paragraphs 119 to 121).

Fitness and gymnasium expenses

254. The view was expressed that a deduction should be allowable for expenses incurred in maintaining a certain standard of fitness. The Commissioner's view is that these expenses are generally considered to be essentially private in nature and deductions are not allowable (see paragraphs 109 to 114).

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