TR 95/15 - Income tax: nursing industry employees - allowances, reimbursements and work-related deductions

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

other Rulings on this topic

IT 85; IT 112; IT 299; IT 327; IT 2062; IT 2084; IT 2129; IT 2197; IT 2198; IT 2199; IT 2273; 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 93/30; TR 94/3; TR 94/17; TR 94/22; TD 92/142; TD 92/154; TD 92/157; TD 93/108; TD 93/113; TD 93/121; 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 employees in the nursing industry (nursing employees). For the purposes of the Ruling, a nursing employee does not include ward helpers, cleaners and kitchen workers employed in hospitals and nursing homes and hostels.

2. This Ruling deals with:

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

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

3. The Ruling discusses the assessability of allowances and reimbursements received 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, 51AG, 51AGA, 51AH, 51AL, 53, 54, 55, 61 or 82A of the Act.

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

6. The common work-related expenses incurred by nursing employees and the extent to which they are allowable deductions are discussed, in alphabetic order, at paragraph 22 in the **Ruling** section. The substantiation provisions are not discussed in depth in the 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 nursing employees. 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 correct operation of the law have been expressed in a public ruling.

Date of effect

9. The Ruling applies to years commencing both before and after the date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20). If a taxpayer has a more favourable private ruling (whether legally or administratively binding), this Ruling applies to that taxpayer to the extent of the inconsistency only from and including the 1994-95 year of income.

Previous Rulings

10. This Ruling was previously released as Taxation Ruling TR 94/17. 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 the commentary on the substantiation rules which were amended subsequent to the issue of TR 94/17. This Ruling withdraws Taxation Ruling TR 94/17.

Ruling

Allowances

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

12. 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 and paragraphs 184 to 190);

(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 the allowance (not normally paid to nursing employees).

Allowances - possible deduction

13. The following allowances are commonly received by nursing employees. These allowances are fully assessable and deductions may be allowable depending on individual circumstances.

(a) *Motor vehicle allowance:* The allowance is paid to a nursing employee who is required to use his or her own motor vehicle for work-related duties. A deduction is allowable for the work-related portion of car expenses (see ***Motor vehicle and other transport expenses*****,** paragraphs 141 to 168).

(b) *Telephone allowance:* The allowance is paid to a nursing employee for being on call. A deduction is allowable for the work-related portion of telephone expenses (see ***Telephone, mobile phone, pager, beeper and other telecommunications equipment costs,*** paragraphs 203 to 210).

(c) *Travelling allowance:* The allowance is paid under an award for motor vehicle and other transport expenses incurred in travelling between two places of work. A deduction is allowable for the work-related portion of car expenses or transport expenses (see ***Motor vehicle and other transport expenses***, paragraphs 141 to 168).

(d) *Uniform and maintenance allowance:* The allowance is paid to compensate for costs associated with purchasing and maintaining a nursing employee's uniform. A deduction is allowable for costs incurred on a uniform which is of a deductible type (see ***Clothing, uniforms and footwear***, paragraphs 60 to 94)

Allowances - no deduction allowable

14. The following allowances commonly received by nursing employees are fully assessable and no deduction is allowable.

(a) *District allowance or Living out allowance:* These allowances are paid to compensate nursing employees for inconvenience, isolation and discomfort encountered during the course of employment. A deduction is not allowable as the additional living expenses are private.

(b) *On call allowance:* The allowance is paid to compensate a nursing employee who is on call when off-duty. A deduction is not allowable as the allowance does not relate to any expenditure a nursing employee would incur while on call.

(c) *Shift allowance:* The allowance is paid when a nursing employee is required to work ordinary duty hours outside what is considered to be standard working hours. A deduction is not allowable as the allowance does not relate to any expenditure a nursing employee would incur while undertaking shift hours.

(d) *Stocking Allowance*: The allowance is paid to compensate for the purchase of stockings worn during the course of work. A deduction is only allowable for the cost of stockings in limited circumstances (see paragraph 75A).

Reasonable allowances

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

(a) overtime meal expenses;

(b) domestic travel expenses; and

(c) overseas travel expenses.

16. 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

17. If a nursing employee receives a payment from his or her employer for **actual** expenses incurred, the payment is a reimbursement and the employer may be subject to Fringe Benefits Tax. Generally, if a nursing employee receives a reimbursement, the amount is not required to be included in his or her assessable income and a deduction is not allowable (see Taxation Ruling TR 92/15).

18. However, if motor vehicle expenses are reimbursed by the employer on a cents per kilometre basis, the amount is included as assessable income under paragraph 26(eaa) of the Act. A deduction may be allowable in relation to motor vehicle expenses incurred (see ***Motor Vehicle and other transport expenses***, paragraphs 141 to 168).

19. If the reimbursement by the employer is for the cost of a depreciable item (e.g., tools and equipment), a deduction is allowable for depreciation (see Taxation Determination TD 93/145 and ***Depreciation of equipment***, paragraphs 105 to 114).

20. If a payment is received from an employer for an **estimated** expense, the amount received by the nursing employee is considered to be an allowance (not a reimbursement) and is fully assessable to the nursing employee (see **Allowances,** paragraphs 11 to 16).

Deductions

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

(a) is actually incurred (paragraph 25);

(b) meets the deductibility tests (paragraphs 26 to 33); and

(c) satisfies the substantiation rules (paragraphs 34 and 35).

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

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

Agency commissions: A commission payment to a nursing agency is usually met by the hospital, clinic, etc and a deduction is not allowable to the nursing employee. If the nursing employee actually incurs the cost then a deduction is allowable (paragraphs 35 to 38).

Agency fees: A deduction is not allowable for upfront fees, joining fees or search fees paid to a nursing agency (paragraph 39).

Agency nurses: A deduction is not allowable for the cost of obtaining employment through an agency, including preparation of resumes,

calls to the agency as well as telephone/mobile rental, beepers, pagers and answering machines used for contacting the agency. A deduction is also not allowable for the cost of travel to and from employer hospitals, clinics, etc. A deduction may be allowable in the rare circumstances that a nursing employee is actually employed by the agency (paragraphs 40 to 53).

Annual practicing certificate fees: A deduction is allowable for the cost of an Annual Practicing Certificate (paragraph 54).

Bank fees: A deduction is allowable, as a work-related expense, for Financial Institutions Duty that relates to the direct depositing of salary and wages into the nursing employee's bank account(s). A deduction is not allowable for any other bank fees as a work-related expense (see also Taxation Ruling IT 2084).

Calculators and electronic organisers: A deduction is allowable for the work-related portion of depreciation on the purchase price of these items (paragraphs 55 and 56). (See also ***Depreciation of equipment***, paragraphs 105 to 114).

Child care: A deduction is not allowable for child care expenses (paragraphs 57 to 59).

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 either:

(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; (paragraphs 60 to 94).

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.

A female nurse's traditional uniform is the only type of clothing worn by a nursing employee which is considered to be occupation specific.

It is our understanding that the female nurse's traditional uniform is no longer commonly used. Therefore, a deduction is generally not allowable for a nursing employee's uniform under occupation specific clothing (paragraphs 67 to 72).

A deduction is not allowable for the cost of conventional shoes (e.g., running or aerobic shoes, sport shoes, dress shoes and casual shoes). A deduction is allowable for the cost of special non-slip nursing shoes (paragraphs 63 and 64).

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 75A; also see Taxation Ruling TR 96/16).

Computers and software: A deduction is allowable for depreciation of computers and related software if purchased together that are used for work-related purposes. If the software is bought separately from the computer a deduction is allowable in full in the year of purchase. The deduction must be apportioned between work-related and private use (paragraphs 95 to 97).

Conferences, seminars and training courses: A deduction is allowable for the cost of attending conferences, seminars and training courses to maintain or increase a nursing employee's knowledge, ability or skills in the nursing industry. There must be a relevant connection with the current work activities of the nursing employee (paragraphs 98 to 104).

Depreciation of equipment: A deduction is allowable for depreciation only to the extent of the work-related use of the 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 105 to 114).

Driver's licence: A deduction is not allowable for the cost of acquiring or renewing a driver's licence. A deduction is allowable only for the cost of a premium, if any, paid in addition to the cost of a standard licence required for work purposes (paragraphs 115 to 118).

Fares: See ***Motor vehicle and other 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 119).

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

Glasses/contact lenses: A deduction is not allowable for the cost of buying prescription glasses or contact lenses (paragraph 120).

Grooming: A deduction is not allowable for the costs of grooming, including cosmetics, hair and skin care products (paragraphs 121 to 125).

Home office expenses:

Place of business: A deduction is allowable for a portion of running and occupancy expenses if an area of the home has the character of a place of business (paragraphs 127 and 128).

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 performed at home (paragraphs 129 to 134).

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

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 94).

Meals: A deduction is not allowable for the cost of meals eaten during a normal working day (paragraphs 136 to 140). If an award overtime meal allowance has been paid, a deduction may be allowable (paragraphs 170 to 172). A deduction may be allowable if meal costs are incurred by a nursing employee who travels for work-related purposes (see *Travel expenses*, paragraphs 211 to 215).

Motor vehicle and other 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 ***Travel expenses***, paragraphs 211 to 215). The treatment of motor vehicle and other transport expenses incurred by a nursing employee 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. This principle is not altered by the performance of incidental tasks en route and the principle is not changed if the travel is outside normal working hours or includes a second or subsequent trip (paragraphs 142 to 145).

Travel between home and work - transporting bulky equipment: A deduction is allowable if the motor vehicle and other transport expenses can be attributed to the necessary 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 nursing employee as a matter of convenience.

A deduction is not allowable if an employer provides a secure area for the storage of equipment at the workplace (paragraphs 146 and 147).

Travel between home and shifting places of work: A deduction is allowable for the cost of travelling between home and shifting places of work, where the nursing employee is required by the nature of the job itself to do the job in more than one place. The mere fact that a nursing employee may choose to do part of the job in a place separate from that where the job is located, is not enough (paragraphs 148 to 153).

Travel between two separate work places if there are two separate employers involved: A deduction is allowable for the cost of travelling directly between two places of employment (paragraphs 154 and 155).

Travel from the normal work place to an alternative work place while still on duty and back to the normal work place or directly home: A deduction is allowable for the cost of travel from the normal work place to other work places. A deduction is also allowable for the cost of travel from the alternative work place back to the normal work place or directly home. This travel is undertaken in the course of gaining assessable income and the cost of the travel is allowable as a deduction (paragraphs 156 and 157).

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 158 and 159).

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 160 to 166).

Travel in connection with self education: See ***Self education*** (paragraphs 192 to 199).

Newspapers: A deduction is not allowable for the cost of newspapers (paragraph 169).

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 170 to 172).

Parking fees and tolls: A deduction is allowable for parking fees (but not fines), bridge and road tolls paid by a nursing employee while travelling in the course of employment, e.g., between work places (paragraphs 173 and 174).

Professional library: A deduction is allowable for depreciation 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 175 to 183).

Removal and relocation expenses: A deduction is not allowable for the cost in taking up a transfer in existing employment or in taking new employment with a different employer (paragraphs 184 to 190).

Repairs to equipment: A deduction is allowable for the cost of repairs to equipment, to the extent that the equipment is used in income-producing activities (paragraph 191).

Self education expenses: A deduction is allowable for the cost of self education if there is a direct connection between the self education and the current income-earning activities. Self education costs can include fees, travel, books and equipment (paragraphs 192 to 199).

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 196 to 199).

Stationery: A deduction is allowable for the cost of buying log books, diaries, etc., to the extent to which they are used for work-related 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 a nursing employee's employment and are not general in nature (paragraphs 200 to 202).

Telephone, mobile phone, pager, beeper and other telecommunications equipment costs:

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 (see also ***Depreciation of equipment***, paragraphs 105 to 114).

Cost of calls: A deduction is allowable for the cost of work-related calls (paragraphs 203 and 204).

Installation or connection costs: A deduction is not allowable for the cost of installing or connecting a telephone, etc., (paragraphs 205 and 206).

Rental costs: A deduction is allowable for a proportion of telephone/equipment rental costs if a nursing employee can demonstrate that he or she is 'on call', or required to telephone their employer on a regular basis, or frequently required to contact clients while away from the work place (paragraphs 207 to 209).

Silent telephone numbers: A deduction is not allowable for the cost of obtaining a silent telephone number (paragraph 210).

Travel expenses: A deduction is allowable for the cost of travel (accommodation, fares, meals and incidentals) incurred by a nursing employee when travelling in the course of employment (e.g., travel interstate to a seminar) (paragraphs 211 to 215). Special substantiation provisions apply (paragraphs 213 to 215).

Union fees and professional association fees: A deduction is allowable for annual fees paid to unions or professional associations, although a deduction is not allowable for joining fees. A deduction is not generally allowable for levies. A deduction is not allowable for contributions to staff social clubs or associations (paragraph 216).

Vaccinations: A deduction is not allowable for the cost of vaccinations as a precaution for nursing employees against contracting infectious diseases (paragraph 217).

Watches: A deduction is allowable for depreciation and maintenance of a nurses' fob watch to the extent of the work-related use of the watch. A deduction is not allowable for the cost and maintenance of a conventional wrist watch (paragraphs 218 to 224).

Explanations

Deductibility of work-related expenses

24. 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

25. The expense must actually be incurred by the employee to be considered for deductibility. A deduction is not allowable for expenses not incurred by an employee, e.g., items provided free of charge. Under section 51AH of the Act, a deduction is not generally allowable if expenses are reimbursed (see paragraphs 16 to 19 for exceptions to this rule).

Expense meets deductibility tests

26. 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.'

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

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

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

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

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

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

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

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

29. Private or domestic expenditure is considered to include costs of living such as food, drink, shelter and clothing. 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...'

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

31. **Example:** Maria's employer has supplied her with a mobile telephone to use for work. Maria voluntarily buys a spare battery for the telephone. The cost of the spare battery is an allowable deduction.

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

33. In *Cooper's* case a professional footballer was denied the cost of purchasing food and drink. His coach had instructed him to consume additional food, so he would not lose weight during the football season. The character of the expense was private. In *Cooper*'s case, Hill J said (FCR at 200; ATC at 4414; ATR at 1636):

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

Expense satisfies the substantiation rules

34. The income tax law requires substantiation of certain work-related expenses. If the total of these expenses is $300 or less, the nursing employee can deduct the amount without getting written

evidence (except for certain car, travel and meal allowance expenses), although a record must be kept of how the claim was calculated.

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

Common work-related expense claims

Agency commission

36. Where a hospital, clinic, etc., engages the services of a nursing employee through an agency, the agency is paid by way of commission. A deduction is not allowable for the cost of paying the commission unless the nursing employee actually incurs the expense.

37. **Example:** Geoff works one night at a hospital and is paid $100. Geoff must pay $8 commission to the agency. Geoff's assessable income will include the $100 but the $8 commission is an allowable deduction.

38. **Example:** In the above example the hospital pays Geoff $100 and then pays the agency its commission of $8. In this situation Geoff cannot claim the $8 as an allowable deduction because the amount is not included in Geoff's assessable income. The expense has been incurred by the hospital and not by Geoff. Geoff has not sacrificed any of his pay to the agency as he has received the full $100.

Agency fees

39. A deduction is not allowable for upfront fees, joining fees or search fees paid to an agency. These expenses are incurred too soon to be regarded as incurred in the production of assessable income. They are costs incurred in obtaining employment rather than costs incurred in the course of employment (see paragraph 46).

Agency nurses

40. For the purposes of this Ruling, an agency nurse is a nursing employee who seeks and obtains employment (whether full time, part time or casual) through the services of a nursing agency.

41. While an agency nurse is generally employed by the organisation for which he or she works (e.g., hospital, clinic, etc.), there is a view within the industry that some nurses are actually employed by the agency itself. On the basis of discussions, we understand that the latter situation would be less common than the former. The following paragraphs deal with the tax treatment of work-related expenses under these two arrangements.

Agency not the employer

42. Under this arrangement, where an agency nurse works for a hospital, nursing home or other place where their services are required, they will be employed by that particular place. This will be the case even where the agency pays the nurses salary and deducts the tax.

43. On occasions agency nurses will perform duties at a private residence. If this is organised through the agency by the Department of Veterans' Affairs (DVA), then DVA will be the employer. If the work is not organised through DVA, the nurse will have no employer in respect of that shift even though it may be the practice of the agency to deduct tax from those particular earnings.

44. In *FC of T v. Genys* 87 ATC 4875; (1987) 19 ATR 356 (*Genys'* case) an agency nurse who was required to work at a number of different locations claimed that her home was her base of operations. This argument was rejected. It is considered that agency nurses who are employed by hospitals, clinics, etc., cannot treat their home as a base of operations.

45. A deduction is not allowable for the following expenses where an agency nurse is not employed by the agency:

- travel to and from work;
- preparation of resume for agency;
- costs of telephone calls to the agency as well as phone/mobile rental, beepers, pagers and answering machines used for contacting the agency.

46. The above expenses are incurred at a point too soon to be regarded as necessarily incurred in the production of assessable income. See *FC of T v. Maddalena* 71 ATC 4161; 2 ATR 541 where Barwick CJ stated (ATC at 4162; ATR at 548):

> 'The costs to an employee of obtaining his employment does not form an outgoing in the course of earning the wages payable in the employment.'

47. A deduction is allowable for the cost of travel between home and work if a nurse's employment is itinerant. Nurses who are not employed by an agency will generally not be regarded as itinerant. This view is supported in *Genys'* case. However, if a nurse is regularly required to work at several different locations within a single shift, he or she may be an itinerant employee (see also paragraphs 148 to 153).

Agency as the employer

48. In the nursing industry, some agency nurses are actually employed by the agency. By the very nature of the employer/employee relationship it is rare for agencies to be employers. Normally, nursing employees who are placed by agencies are employed by the organisation for which they perform duties (e.g, hospitals, clinics, etc.).

49. The following paragraphs detail the characteristics that would be necessary if the nurse and the agency were engaged in an employer/employee relationship.

50. Further information can be found in Taxation Ruling IT 2129, particularly Appendix B.

51. ***Control test:*** Generally, the master/servant or employer/employee relationship exists where the 'control test' is satisfied. For agency nurses this would mean that the agency possessed the right to control how, where and when the work is carried out. The greater the obligation the nurse has to obey the orders of the agency as to the performance of the work, the greater the weight attached to the control test and the more likely they are to be an employee of the agency.

52. It is our view that nursing agencies predominantly act as a 'go-between' and simply assist nurses in obtaining short term or casual employment. They do not normally control how, where or when the work is carried out. These decisions will be made by the nurse in the sense that they control which days they work, whether they work days or nights and which hospitals they work at, obviously subject to shift availability. Once they obtain a shift they are then controlled by the organisation for whom they are performing duties. The agency merely advises the nurse that a shift is available. Nevertheless, it is open to individual taxpayers to provide evidence that they meet the control test and are in fact employed by the agency.

53. A deduction is generally not allowable for the cost of travel between home and work. However, a deduction is allowable if a nurse is employed by an agency and performs itinerant duties (see also paragraphs 148 to 153). Other deductions are allowable on the same basis as a nursing employee who is not employed by an agency.

Annual Practicing Certificate

54. A deduction is allowable under subsection 51(1) of the Act for the cost of renewing an Annual Practicing Certificate.

Calculators and electronic organisers

55. A deduction is allowable for depreciation and must be apportioned between work-related and private use. If the cost of the item is less than $300, or its effective life is less than three years, an outright deduction is allowable. If the cost of the item is more than $300 or its effective life is more than three years, the item should be depreciated (see ***Depreciation of equipment***, paragraphs 105 to 114).

56. A deduction is allowable for the cost of buying batteries and repairing and maintaining calculators and electronic organisers.

Child care

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

58. 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 an allowable deduction. The expenditure was also of a private or domestic nature (see also *Jayatilake v. FC of T* (1991) 101 ALR 11; 91 ATC 4516; (1991) 22 ATR 125).

59. Taxation Determination TD 92/154 provides further information about child care expenses.

Clothing, uniforms and footwear

60. A deduction is allowable for the cost of buying, renting 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 of the TCFDA; 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)).

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

Protective clothing

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

63. A deduction is allowable for expenditure on footwear specifically designed to provide protection to the nursing employee at work, e.g., special non-slip nursing shoes.

64. A deduction is not allowable for the cost of ordinary footwear such as running shoes, sports shoes and casual shoes, as it is considered ordinary footwear is not protective. We consider that the cost of this footwear is a private expense and is not an allowable deduction.

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

66. 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

67. 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.

68. A deduction is allowable for the cost of a female nurse's traditional uniform (for example a set of clothing consisting of a cap, white uniform (dress), cardigan and special non-slip nursing shoes). A female nurse's traditional uniform is considered to be peculiar to, and incidental and relevant to, the gaining of assessable income from the occupation of nursing (see Taxation Determination TD 93/121). It is our understanding that the female nurse's traditional uniform is no longer commonly used. Therefore, a deduction is generally not allowable for a nursing employee's uniform under occupation specific clothing.

69. **Example:** Tara is a nursing employee who wears a uniform consisting of a white dress (nurses' traditional uniform - short sleeves, action back, zip front, front pockets, front pleat), white cap, navy blue cardigan with long sleeves and special non-slip nursing shoes.

The uniform distinctively identifies Tara as a member of the nursing profession and fulfils the requirements of occupation specific clothing. A deduction is allowable for the cost and maintenance of the uniform.

70. **Example:** Tania is a nursing employee who wears a uniform consisting of a floral blouse, plain culottes, green cardigan with long sleeves and special non-slip nursing shoes.

The uniform does not fulfil the requirements of occupation specific clothing. A deduction may still be allowable if the clothing satisfies the tests for deductibility in subsection 51(1) of the Act and is:

(a) a compulsory uniform or wardrobe that satisfies the requirements of Taxation Ruling IT 2641 (see paragraphs 73 and 74); or

(b) a non-compulsory uniform or wardrobe that has been registered or approved in accordance with paragraph 79.

71. A male nurse's uniform is not considered to be occupation specific clothing. The clothing does not satisfy the requirements in paragraph 67.

72. **Example:** Joe is a nursing employee who wears a uniform consisting of a white jacket and white trousers. The uniform is not occupation specific clothing. A deduction may still be allowable if the clothing satisfies the tests for deductibility in subsection 51(1) of the Act and is:

(a) a compulsory uniform or wardrobe that satisfies the requirements of Taxation Ruling IT 2641 (see paragraphs 73 and 74); or

(b) a non-compulsory uniform or wardrobe that has been registered or approved in accordance with paragraph 79.

Compulsory uniform or wardrobe

73. 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.

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

75. In *Case R55* 84 ATC 411; 27 CTBR (NS) *Case 109*, the Tribunal 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.'

75A. 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 73 and 74). 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).

76. 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.'

77. 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.'

78. **Example:** Bryan is a nursing employee who is required to wear a compulsory uniform. The uniform is purchased from an authorised supplier and consists of a white jacket and white trousers. The jacket and trousers conform with the design, style, fabric and colour specification detailed in Taxation Ruling IT 2641, e.g., short sleeved medical jacket with zip front/side opening fastened with studs or buttons and patch pockets and plain front trousers.

Bryan's uniform is worn as a compulsory condition of employment. The uniform is not conventional in nature and conforms with the accepted design, style, fabric and colour specifications of the hospital, and further meets the requirements of IT 2641. A deduction is allowable for the cost and maintenance of the uniform.

Non-compulsory uniform or wardrobe

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

80. **Example:** Peter is a nursing employee who wears a non-compulsory uniform consisting of a white shirt and trousers and a navy vest. A deduction for the cost of buying and maintaining the clothing is allowable if the design is entered on the Register of Approved Occupational Clothing. It is the employer who seeks registration of the clothing.

81. If a nursing employee is provided with a uniform by his/her employer, that bears the employer's logo, and it is not compulsory to wear the uniform, no deduction is allowable for maintenance costs unless the uniform satisfies the requirements of Section 51AL of the Act.

Conventional clothing

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

83. 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.

84. In *Case 48/94* 94 ATC 422; *AAT Case 9679* (1994) 29 ATR 1077, a self-employed professional presenter and speaker was denied a deduction for the cost of conventional clothing. The taxpayer gave

evidence that she maintained a separate wardrobe to meet her work requirements, and that she used this wardrobe exclusively in relation to her work. Sometimes, a client would request that she dress in a specific manner when performing a presentation. Her image was of vital importance in both securing and performing her duties, and her clothes were an aspect of her image. The taxpayer submitted to the Tribunal that her matter could be paralleled to the facts in the *Edwards* case.

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

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

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

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

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

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

87. 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.

Stockings

88. The cost of stockings will only be deductible in limited circumstances. These circumstances are described in paragraph 75A (also see Taxation Ruling TR 96/16).

89. [Deleted]

90. [Deleted]

91. In *Case P117* 82 ATC 591; 26 CTBR (NS) *Case 43*, an employee claimed the cost of 'supphose' stockings on the grounds that they were prescribed by a medical practitioner to assist in overcoming a medical condition. It was determined that the expenditure incurred by the taxpayer in the purchase of these stockings was clearly of a private nature and it was not incurred in gaining or producing assessable income.

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

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

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

Laundry and maintenance

94. 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 60. This applies whether the clothing is purchased by the nursing employee or supplied by the employer. Further information can be found in Taxation Ruling IT 2452 and Taxation Determination TD 93/232.

Computers and software

95. A deduction is allowable under subsection 54(1) of the Act for depreciation of computers and related software owned and used by a

nursing employee for work-related purposes. If a nursing employee purchases the software 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 105 to 114 provide further information on ***depreciation of equipment***).

96. A deduction is allowable under section 53 of the Act for the cost of repairs to the extent that the equipment is used for work-related purposes.

97. A deduction is allowable for interest on money borrowed to finance the purchase of a computer. The deduction must be apportioned to the extent that the computer is used for private purposes.

Conferences, seminars and training courses

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

99. 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...'

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

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

102. **Example:** Mary, a nursing employee, attends a training seminar at a venue located away from her workplace. The seminar registration fee of $150 paid by Mary includes an amount for morning and afternoon tea and a light lunch. The registration fee is an allowable deduction.

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

104. Information on ***Self education expenses*** can be found in Taxation Ruling TR 92/8 and in paragraphs 192 to 199 of this Ruling.

Depreciation of equipment

105. A deduction is not allowable under subsection 51(1) of the Act for the cost of equipment, as it is capital expenditure.

106. A deduction is allowable under subsection 54(1) of the Act for depreciation on equipment owned and used by a nursing employee during the year for income-producing purposes. In addition, a deduction for depreciation is allowable on items of 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.

107. There are two methods to calculate a deduction for depreciation. These are the prime cost method and the diminishing value method. Depreciation using the prime cost method is calculated as a percentage of the cost of the equipment. Depreciation using the diminishing value method is calculated initially as a percentage of the equipment's cost and thereafter as a percentage of the written down value.

108. 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 the item in the year 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.

109. **Example:** Hilary, a clinical teacher, pays $250 for a briefcase that is used only for work-related purposes, e.g., carrying reference books, notes and student assignments. The amount of $250 is an allowable deduction in the year of purchase.

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

of the Act). For example, this principle would apply to equipment such as computers, printers, word processors, typewriters and answering machines that are used both for income-producing and private purposes.

111. **Example:** Jessica is a nursing employee who owns a laptop computer. Jessica uses the computer at work during the week and at home on weekends for writing personal letters. She is entitled to a deduction for a proportion of the depreciation based on the work use of the laptop computer. A reasonable apportionment might be 5/7 work-related use.

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

113. 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).

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

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

Driver's licence

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

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

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

118. Some nursing employees 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 only for the cost of the premium, if any, paid in addition to the cost of a standard licence required for work purposes.

Fares: See ***Motor vehicle and other transport expenses***.

Fines

119. 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).

Glasses and contact lenses

120. A deduction is not allowable under subsection 51(1) of the Act for the cost of buying prescription glasses or contact lenses as the expense relates to a personal medical condition and is private in nature.

Grooming

121. A deduction is not allowable for the cost of items bought for personal use such as cosmetics, shaving equipment, deodorant, hair products, clips and bobby pins, as they are private in nature. The character of these expenses is not altered by any requirement of the employer that these items be purchased as a condition of employment (see *Cooper's* case discussed in paragraph 32).

122. In *Case U216* 87 ATC 1214, a food and drink waiter was required by her employer to wear makeup while at work. The Tribunal found that the makeup was neither relevant nor incidental to the earning of her assessable income and the deduction was not allowed.

123. A deduction is not allowable for hairdressing expenses incurred by employees as they are considered to be an expense of a private nature.

124. In *Case U217* 87 ATC 1216, a policeman who claimed 50% of the cost of his haircuts was denied a deduction. It was a condition of his employment that he was required to keep his hair short. The fact that he only claimed half the cost of his haircuts (representing what

was above his 'normal' expenditure) was not the issue. The outgoing was private in nature.

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

Home office expenses

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

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

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

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

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

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

(i) ***Occupancy expenses*** relate to ownership or use of a home and are not affected by the taxpayer's income-producing activities. These include rent, mortgage interest, repairs to the home, municipal and water rates and house insurance premiums. A deduction is not allowable for the cost of occupancy expenses for nursing employees 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; 11 ATR 644 and *FC of T v. Forsyth* (1981) 148 CLR 203; 81 ATC 4157; 11 ATR 657.

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

Place of business

127. Whether an area of a home has the character of a 'place of business' is a question of fact. If a home has a character of a 'place of business', a deduction is allowable for a portion of running and occupancy expenses. Paragraphs 5, 7, 11, 12 and 13 of Taxation Ruling TR 93/30 provide information on whether or not an area set aside has the character of a 'place of business'. Whether or not an area of a home was a 'place of business' was also looked at in a recent case. In *Case 49/94* 94 ATC 429; *AAT Case 9749* (1994) 29 ATR 1138, a sales representative claimed deductions for home office expenses. The Tribunal found that there was no evidence that the space used was dedicated to the business and separated from the rest of the home.

128. If the area of the home set aside has the character of a 'place of business', then a capital gain may accrue or capital loss may be incurred on the disposal of the home by the taxpayer. The amount of 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 (see Taxation Ruling IT 2673).

Private study (if a home is not a 'place of business')

129. Nursing employees may maintain an office or study at home (e.g., so he or she can carry out work at home normally done at the place of employment).

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

131. A deduction is allowable for the additional running expenses associated with the use of a separate room/study used for income-earning activities.

132. This reflects the fact that additional running costs of that part of the home result from the taxpayer carrying out work at home. The extra expenditure must relate to facilities provided exclusively for the taxpayer's benefit while he or she works.

133. To calculate additional running expenses resulting from using the home study/office see paragraphs 19 to 25 of TR 93/30.

134. The treatment of other expenses related to home offices such as depreciation are set out in paragraphs 105 to 114 of this Ruling.

Meals

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

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

> 'The income-producing activities to be considered in the present case are training for and playing football. It is for these activities that a professional footballer is paid. The income-producing activities do 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.'

137. 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.

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

139. In *Case Y8* 91 ATC 166; *AAT Case 6587* (1991) 22 ATR 3037, a police officer claimed deductions for the cost of meals while performing special duties away from his normal place of residence. It

was held that the cost of these meals was private in nature and no deduction was allowable under subsection 51(1) of the Act.

140. A deduction is allowable for the cost of meals bought while working overtime if an award overtime meal allowance has been received and the expenditure is not private in nature (paragraphs 170 to 172).

Motor vehicle and other transport expenses

141. Transport expenses include public transport fares and the running costs associated with using motor vehicles, motor cycles and bicycles, etc., for work-related travel. They do not include accommodation, meals and incidental expenses (see ***Travel Expenses***, paragraphs 211 to 215). The treatment of motor vehicle and other transport expenses incurred by a nursing employee when travelling is considered below:

Travel between home and work

142. A deduction is not allowable for the cost of travel by a nursing employee from home to 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 Taxation Ruling MT 2027).

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

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

144. 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.

145. **Example:** Phillip works in a hospital and is required to attend a staff meeting outside his normal working hours. He returns home

after his normal shift. Later on, he drives back to his place of employment to attend the meeting. A deduction is not allowable for the travelling costs of attending the meeting. This is because they relate to travel to and from his regular place of work. The fact that the travel is outside of normal working hours or involves a second or subsequent trip does not change this position.

Travel between home and work - transporting bulky equipment

146. 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 nursing employee as a matter of convenience, it is considered that the transport costs are private and no deduction is allowable.

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

Travel between home and shifting places of work

148. The question of whether a nursing employee's work is itinerant is one of fact, to be determined according to individual circumstances. It is the nature of each individual's duties and not their occupation that determines if they are an itinerant nursing employee. Further, itinerant work may be a permanent or temporary feature of an employee's duties. There have been a number of cases considered by Courts and Tribunals where deductions for transport expenses were allowed on the basis of the taxpayers' shifting places of work (see *Taylor v. Provan* [1975] AC 194; *Case T106* 86 ATC 1192; *AAT Case 17* (1986) 18 ATR 3093). Characteristics recognised in these cases as contributing to deductions for transport expenses being allowable where the taxpayer has shifting places of work were:

(a) the taxpayer does not work according to any regular pattern as to work location (*Case T106*).

(b) there is no long term plan by which the taxpayer can predict what is required of him or her in the future (*Case T106*).

(c) there is no certainty as to the range of work locations he or she may be called upon to attend over a period (*Case T106*).

(d) the taxpayer is required by the nature of the job itself to do the job in more than one place (*Taylor v. Provan*). The taxpayer does not choose to do part of the work in more

than one place. The separate places of work are a necessary obligation arising from the nature of the special duties of the job (*FC of T v. Collings* 76 ATC 4254; 6 ATR 476).

149. In *Case T106*, the taxpayer worked at sites 'at many different compass points'. On any one day it was not unusual for him to attend at two sites and often he was required to attend at different sites on successive days. P M Roach (Senior Member) said (ATC at 1194; ATR at 3095):

> 'In each case the question to be determined is how the travelling between the place of residence and place of duty is to be characterised...He does not work to any regular pattern as to work site; there is no long-term plan by which he can predict what will be required of him in the future; and there is no certainty as to the range of work sites he may be called on to attend over a period. In my view his occupation is that of an itinerant worker...As such his travelling is to be distinguished from the travel of "ordinary people to enable them to go day by day to their regular places of employment or business and back to their homes.'

150. In cases where no deduction was allowed for the cost of travel between home and work, the following characteristics were noted:

(a) the taxpayer knew in advance where he or she was going to work (*Case U97* 87 ATC 584; *AAT Case 68* (1987) 18 ATR 3491);

(b) the taxpayer had 'a home station' (*Case U97*);

(c) 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* 87 ATC 229; *AAT Case 32* (1987) 18 ATR 3181);

(d) there was a settled pattern of employment (*Case U97*);

(e) there was not 'a web of work places' (*Case U97*);

(f) there is not the constant unsettled transition from one workplace to another, the element of uncertainty, the official recognition by the employer of the essential nature of the travel, or even the requirement to carry tools of trade (*Case U97*).

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

> '[S]everal 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...'

152. **Example:** Rebecca, a nursing employee who is employed by a nursing agency, is regularly dispatched by her employer to a new location each day. On occasions she may stay at a location for a few days, but quite frequently she has to travel to more than one location on a given day. The work locations are all at varying distances from her home and she often receives only short notice of the location of her next job. A deduction is allowable for Rebecca's travelling costs as she has shifting places of work.

153. The reasons for this view are:

(i) Rebecca does not work to any regular pattern;

(ii) There is no long term plan by which she can predict what will be required of her in the future;

(iii) There is no certainty as to the range of work locations she will attend over a period.

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

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

155. **Example:** Bruce is a nursing employee who travels directly from the hospital where he is employed to a hotel two nights a week, where he works behind the bar. A deduction is allowable for the cost of his 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

156. A deduction is allowable for the cost of travel from a nursing employee's normal work place to other work places. The cost of travel from the alternative work place back to the normal work place or directly home is also an allowable deduction. This travel is undertaken in the performance of a nursing employee's duties. It is

incurred in the course of gaining assessable income and is allowable as a deduction.

157. **Example:** Patrick, a nursing employee in a regional clinic, travels from the clinic to his employer's head office to attend a meeting. After the meeting he travels directly home. The cost of each journey is an allowable deduction to Patrick.

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

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

159. **Example:** Louise, a nursing employee in a clinic, travels from her home to a medical supplier to pick up medical supplies and then on to the clinic. A deduction is allowable for the expense incurred in travelling from home to the supplier and then to the clinic. A deduction is not allowable for the cost of travelling from the clinic to home.

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

160. 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 work-related activities.

161. **Example:** Kirsten, a nursing employee, works at her employer's two clinics. The cost of travel from one clinic to the other is an allowable deduction as the cost is incurred in travelling between two places of employment (see Taxation Ruling IT 2199).

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

163. A deduction is not allowable for the cost of travel between a person's home, at which a part-time income-producing activity is

carried on, and a place of full-time employment unless there is some aspect of the travel that is directly related to the part-time activity.

164. 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, the cost of the travel was not an allowable deduction.

165. **Example:** Virginia, a nursing employee in a hospital, teaches guitar at her home in the evenings. The cost of travelling from the hospital to home is not an allowable deduction. It is a private expense rather than an expense incurred in deriving assessable income.

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

Automobile Association/Club membership fees

167. 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 basic road service.

Calculation of motor vehicle balancing adjustment

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

Newspapers

169. 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 nursing employee 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 work is incidental to the private expenditure. This view is supported in *Case P30* 82 ATC 139; 25 CTBR (NS) *Case 94* and *Case P114* 82 ATC 586; 26 CTBR(NS) *Case 47*.

Overtime meal expenses

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

171. 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.

172. 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 nursing employee receives an overtime meal allowance paid under an industrial award. A deduction is allowable without substantiation for expenses incurred, provided the claim does not exceed the amount considered reasonable by the Commissioner of Taxation. Reasonable amounts are published annually by the Commissioner in a Taxation Ruling. 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

173. A deduction is allowable for parking fees (but not fines) and tolls if the expense is 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 an allowable deduction);

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

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

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

174. A deduction is not allowable for parking fees and tolls incurred when nursing employees 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., *Travel between home and work - transporting bulky equipment*; *Travel between home and shifting places of work* (paragraphs 141 to 168)

Professional library

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

176. In *Munby v. Furlong (Inspector of Taxes)* [1976] WLR 410; [1976] 1 All ER 753, it was held that the word 'plant' was not confined to objects that were used physically by a professional man but extended to objects used by him intellectually in the course of carrying on his profession and therefore included books purchased by a barrister for the purpose of his practice.

177. Further, Lord Denning MR, in that case, indicated that the cost of textbooks having a life of four to nine years was capital expenditure. A deduction is therefore allowable for depreciation on the cost of books in a professional library, to the extent that they are used for work-related purposes.

178. For depreciation purposes, reference books may only be included in the professional library if their content is directly relevant to the duties performed. For example, encyclopaedias and general reference books would not be included, as they are too general in nature.

179. In *Case P26* 82 ATC 110; 25 CTBR (NS) *Case 90*, a university lecturer was allowed a claim for depreciation on legal books, but was denied a deduction for depreciation on general reading and fiction books. The Board of Review (ATC at 116; CTBR at 666) stated:

> '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.'

180. If an individual reference book is purchased after 1 July 1991, and its cost is $300 or less, or its effective life is less than 3 years, it

may be depreciated at 100% in the year of purchase (see Taxation Determination TD 93/159).

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

182. If the cost of a textbook has been claimed as a deduction, its cost may not later be added to the value of a professional library and depreciated. For example, a nursing employee may have claimed a deduction for the cost of a textbook as part of her self education expenses. The cost of that textbook cannot be included in the value of a professional library for depreciation purposes.

183. Paragraphs 105 to 114 of this Ruling provide further information on depreciation.

Removal and relocation expenses

184. A deduction is not allowable for removal or relocation expenses incurred by a nursing employee to take up a transfer in existing employment or to take up an appointment with a new employer. This applies whether the transfer of employment is voluntary or at the employer's request. Even if the nursing employee receives an allowance or a reimbursement a deduction for these expenses is still not allowable.

185. In some instances, nursing employees are paid an allowance from their employer as compensation for depreciation, disturbance, removal and storage expenses. This allowance is assessable in full and a deduction is not allowable under subsection 51(1) of the Act. If a reimbursement is received for the actual expenses incurred by a nurse, the amount is not assessable and deductions are not allowable under subsection 51(1) of the Act.

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

187. If a nursing employee transfers employment from one locality to another and incurs expenses in moving from one place of residence to a new place to take up duties of the new position, those expenses are not incurred in gaining or producing assessable income and is not deductible under subsection 51(1) of the Act. The nursing employee

is travelling to his or her work and not between two places of employment.

188. Our view is supported by the following two cases:

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

189. 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.

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

Repairs to equipment

191. A deduction is allowable under section 53 of the Act for repairs to equipment to the extent to which the equipment is used for income-earning activities.

Self education

192. A comprehensive explanation of the treatment 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 taxpayer'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 taxpayer's income from his or her current income-earning activities.

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

193. **Example:** Jane is a nursing employee who would like to go into business for herself. She is doing a part-time course in Business Administration. Jane is not allowed any deduction for the costs of this course as the course is not related to her current income-earning activities.

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

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

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

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

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

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

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

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

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

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

Limit on deductibility

196. 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 an allowable deduction, i.e., the first $250 is not an allowable deduction.

197. '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.

198. **Example:** Emily is a nursing employee who holds a Diploma in Nursing. She decides to begin further studies to advance her career

prospects, by completing a Bachelor of Nursing Degree. She incurs $1,470 in costs in completing the course.

A deduction is allowable for the expenses associated with her study because completing a Bachelor of Nursing is likely to lead to an increase in her income. The expenses also fall within the definition of 'expenses of self education' under section 82A of the Act. A deduction is not allowable for the first $250 of the expenditure under section 82A of the Act. She is only entitled to a deduction of the remaining $1,220 as self education expenses.

199. **Example:** Kate is a nursing employee who attends a two day conference run by the Transplant Nurses' Association. The conference is designed to keep her up to date with developments in the field of transplant nursing. The cost of the conference is $500.

A deduction is allowable for the full cost of the conference under subsection 51(1) of the Act as the expenses do not fall within the definition of 'expenses of self-education' under section 82A of the Act.

Technical or professional publications

200. 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 nursing employee's work and are not general in nature.

201. 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 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.'

202. This can be contrasted with *Case R70* 84 ATC 493; 27 CTBR (NS) *Case 124*, where an accountant employed with the Public Service was allowed a deduction for the cost of publications produced by a business and law publisher. The connection 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, mobile phone, pager, beeper and other telecommunications equipment costs

Cost of calls

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

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

Installation or connection costs

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

206. 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

207. The situations where telephone rental will be an allowable deduction, especially for nursing 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.

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

209. 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

210. 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).

Travel Expenses

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

212. Receipt of an allowance does not automatically entitle a nursing employee to a deduction for travel expenses. A work-related travel expense must be incurred and only the amount actually spent can be claimed as a deduction.

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

214. 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.

215. 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 fees and professional association fees

216. 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. A deduction is not allowable for payments to staff social clubs or associations. Taxation Rulings IT 299, IT 327, IT 2062 and IT 2416 provide further information on the treatment of union and professional association fees.

Vaccinations

217. A deduction is not allowable for the cost of vaccinations to protect nursing employees against the risk of contracting infectious diseases in the work place as the expense relates to a personal medical expense, and is therefore of a private nature.

Watches

218. A deduction is not allowable for the cost of buying or repairing an ordinary wrist watch as the cost is a private expense.

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

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

220. In *Case S82* 85 ATC 608; 28 CTBR (NS) *Case 87*, a qualified nurse claimed a deduction for the cost of replacing a conventional wrist watch specifically purchased for and used in her work, although it was also worn at other times. It was held that the cost of the watch was private in nature and no deduction was allowable.

221. In *Case P71* 82 ATC 338; 26 CTBR (NS) *Case 3*, an ambulance officer claimed a deduction for the cost of a digital wrist watch. The Board of Review found that a deduction was not allowable under subsection 51(1) of the Act. It was held that the expense was essentially of a private nature and not incurred in gaining assessable income.

222. In *Case N84* 81 ATC 451; 25 CTBR (NS) *Case 43*, a television cameraman was not allowed a deduction for the cost of a normal digital watch that was used for work. It was held that a deduction was not allowable as the watch did not possess any special attributes to take it out of the category of a private expense and although the item was used by the taxpayer in his work, that fact did not change the essential character as private expenditure.

223. A deduction is allowable for depreciation and maintenance of specialist watches, such as a fob watch used by a nursing employee.

224. A deduction is allowable for the depreciation of a nurses' fob watch used for work-related purposes under subsection 54(1) of the Act. Where a fob watch is purchased after 1 July 1991 and the cost of the fob watch is less than $300, an immediate 100% deduction for depreciation is allowable. Paragraphs 105 to 114 provide further information on the depreciation of equipment. A deduction is also allowable for the cost of batteries and for repairs and maintenance of fob watches used for work-related purposes.

Alternative views

225. During industry consultation on Taxation Ruling TR 94/17 alternative views were expressed as follows:

Agency nurses: Should be treated similar to shearers (see Taxation Ruling IT 2273). See paragraphs 40 to 53 for our view on this matter.

Culottes: A deduction should be allowable for culottes and a white blouse as they are a traditional nurse's uniform. See paragraphs 60 to 94 for our view whether a deduction is allowable for clothing.

Driver's licence: A deduction should be allowable if a nurse is required to drive a car in the course of his/her employment. See paragraphs 115 to 118 for our view on this matter.

Motor vehicle: The cost of travelling to and from work should be an allowable deduction if it is the second or subsequent trip. See paragraphs 143 to 146 for our view on this matter.

Protective clothing: 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 nursing employee to provide protection to his or her person or clothing.

Telephone installation costs: 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.

Index of explanations

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

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