TR 95/16 - Income tax: employee hairdressers - allowances, reimbursements and work-related deductions

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Generated on: 20 November 2026, 11:58:41 PM

Taxation Ruling
Income tax: employee hairdressers - allowances, reimbursements and work-related deductions

other Rulings on this topic

IT 26; IT 85; IT 112; IT 299; IT 327; IT 2062; IT 2084; IT 2198; IT 2199; IT 2416; IT 2452; IT 2477; IT 2481; IT 2493; IT 2543; IT 2614; IT 2641; IT 2673; IT 2685; MT 2027; TR 92/8; TR 92/15; TR 93/24; TR 93/30; TR 94/3; TR 94/22; TR 96/16; TD 92/142; TD 92/154; TD 92/157; TD 93/108; TD 93/113; TD 93/115; TD 93/145; TD 93/159; TD 93/195; TD 93/228; TD 93/232; TD 93/244

contents para

What this Ruling is about 1
Class of person/arrangement 1
Date of effect 10
Previous Rulings 11
Ruling 12
Allowances 12
Reimbursements 17
Deductions 21
Explanations 24
Deductibility of work-related expenses 24
Common work-related expense claims 37
Alternative views 204
Index of explanations 206

*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 employee hairdressers. Hairdressing salons sometimes provide beautician services. This Ruling does not apply to beauticians.

2. Some hairdressers enter into an agreement with a salon owner to use the salon's facilities for a fixed fee or a percentage of the hairdresser's daily turnover. This Ruling applies to hairdressers who enter into such agreements and the true nature of the activities carried on under the arrangement indicate the hairdresser is an employee of the salon owner. Taxation Determination TD 93/228 provides information on whether or not an employment relationship exists under these arrangements.

3. This Ruling deals with:

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

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

4. 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).

5. 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 51AE, 51AGA, 51AH, 51AL, 53, 54, 55, 57AF, 61, or 82A of the Act.

6. The tax treatment of allowances and reimbursements received is examined at paragraphs 12 to 20 in the **Ruling** section.

7. The common work-related expenses incurred by hairdressers and the extent to which they are allowable deductions are discussed, in alphabetical order, at paragraph 23 in the **Ruling** section. The substantiation provisions are not discussed in depth in this Ruling.

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

9. 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 returns of employee hairdressers. Where there is a tax shortfall, any penalties imposed will be in terms of Taxation Ruling TR 94/3 on the basis that the views of the ATO on the correct operation of the law have been expressed in a public ruling.

Date of effect

10. This Ruling applies to years commencing both before and after its date of issue. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20). If a taxpayer has a more favourable private ruling, whether legally or administratively binding, this Ruling applies to that taxpayer to the extent of the inconsistency only from and including the 1994-1995 year of income.

Previous Rulings

11. This Ruling was previously released as Taxation Ruling TR 94/19. 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 94/19. This Ruling withdraws Taxation Ruling TR 94/19.

Ruling

Allowances

12. The receipt of an allowance does not automatically entitle a hairdresser to a deduction. The term 'allowance' does not include a reimbursement (see paragraphs 17 to 20).

13. Allowances fall into the following categories:

(a) fully assessable to the employee with a possible deduction allowable, depending upon individual circumstances (paragraph 14);

(b) fully assessable to the employee with no deduction allowable even though an allowance is received (paragraphs 162 to 167);

(c) fully assessable to the employee with a deduction allowable for expenses incurred subject to special substantiation rules (paragraphs 15 and 16);

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

Allowances - possible deduction

14. A transport or motor vehicle allowance is commonly paid to hairdressers. This allowance is fully assessable. A deduction may be allowable for the work-related portion of motor vehicle expenses (see ***Motor vehicle and other transport expenses***, paragraphs 128 to 149).

Reasonable allowances

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

(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 hairdresser 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 hairdresser 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 of the hairdresser 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 128 to 149).

19. If the reimbursement by the employer is for the cost of a depreciable item (e.g., tools and equipment), a deduction is allowable to the hairdresser for depreciation (see Taxation Determination TD 93/145 and ***Depreciation of equipment***, paragraphs 86 to 94).

20. If a payment is received for an **estimated** expense, the amount received by the hairdresser is considered to be an allowance (not a reimbursement) and is fully assessable to the hairdresser (see **Allowances**, paragraphs 12 to 16).

Deductions

21. A deduction is only allowable if an expense:

(a) is actually incurred (paragraph 25);

(b) meets the deductibility tests (paragraphs 26 to 34); and

(c) satisfies the substantiation rules (paragraphs 35 and 36).

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 hairdressers and the extent to which they are allowable deductions are discussed below, in alphabetical order.

Answering machines, mobile phones, pagers, beepers and other telecommunications equipment: A deduction is allowable for the work-related portion of the rental cost or for depreciation on the

purchase price of these items. A deduction is not allowable if these items are supplied by the employer (see paragraph 37).

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

Child care: A deduction is not allowable for child care expenses (paragraphs 38 to 40).

Clothing, uniforms and footwear: A deduction is allowable for the cost of buying, hiring or replacing clothing, uniforms or footwear 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 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 for clothing approved under the transitional arrangements; or

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

Expenditure on clothing, uniforms and footwear must satisfy the deductibility tests in subsection 51(1) of the Act and must not be capital, private or domestic in nature (paragraphs 41 to 75).

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 52A; also see Taxation Ruling TR 96/16).

Laundry and maintenance: A deduction is allowable for the cost of cleaning and maintaining clothing that falls into one of the categories listed above (paragraphs 74 and 75).

Conventional clothing: In most cases, a deduction is not allowable for the cost of conventional clothing for hairdressers. Generally, they will not satisfy the deductibility tests as explained in Taxation Ruling TR 94/22 (paragraphs 58 to 64).

Shoes: A deduction is not allowable for the cost of conventional shoes, including dress shoes, casual shoes, running shoes and sports shoes (paragraphs 72 and 73).

Competitions, conferences, seminars, shows and training courses: A deduction is allowable for the cost of attending competitions, conferences, seminars, shows and training courses. There must be a relevant connection with the current income-earning activities of the hairdresser (paragraphs 76 to 83).

Computers and software: A deduction is allowable for depreciation on the cost of computers and related software, if purchased together, 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 84 and 85).

Depreciation of equipment: A deduction is allowable for depreciation to the extent of the work-related use of the equipment. 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 (paragraphs 86 to 94).

Driver's licence: A deduction is not allowable for the cost of acquiring or renewing a driver's licence (paragraphs 95 to 97).

Equipment: See ***Tools and equipment***, paragraphs 193.

Fares: See ***Motor vehicle and other transport expenses***, paragraphs 128 to 149.

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 100).

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

Glasses and contact lenses: A deduction is not allowable for the cost of buying prescription glasses or contact lenses (paragraph 101).

Grooming: A deduction is not allowable for the costs of grooming including cosmetics and skin care products (paragraphs 102 and 103).

Hairdressing expenses: A deduction is not allowable for costs incurred by hairdressers in maintaining their hairstyles (paragraphs 104 to 107).

Home office expenses: See paragraphs 108 to 119.

Place of business: A deduction is allowable for a portion of the running and occupancy expenses if an area of the home has the character of a place of business (paragraphs 111 and 113).

Private study: A deduction is allowable for the running expenses of a private study used for work performed at home (paragraphs 114 to 119).

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

Laundry and maintenance: See ***Clothing, uniforms and footwear***, paragraphs 41 to 75.

Magazines: See ***Technical or professional publications,*** paragraphs 178 to 183.

Meals: A deduction is not allowable for the cost of meals eaten during a normal working day (paragraphs 122 to 127). A deduction may be allowable if an award overtime meal allowance has been paid (paragraphs 151 to 154). A deduction may be allowable if meal costs are incurred by a hairdresser who travels for work-related purposes (see ***Travel expenses***, paragraphs 194 to 198).

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 the cost of accommodation, meals and incidental expenses (see ***Travel expenses***, paragraphs 194 to 198). The treatment of motor vehicle and other transport expenses incurred by a hairdressers 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 place of work, 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 129 to 133).

Travel between home and work - transporting bulky equipment: A deduction is allowable if the cost of travel can be attributed to the transportation of bulky equipment rather than to private travel between home and work. A deduction is not allowable if the equipment is transported to and from work by the hairdresser as a matter of convenience. A deduction is not allowable if a secure area

for the storage of equipment is provided at the workplace (paragraphs 134 and 135).

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 (paragraph 136 and 137).

Travel from the normal work place to an alternative work place while still on duty and back to the normal work place or directly home: A deduction is allowable for the cost of travel from the normal work place to other work places. A deduction is also allowable for the cost of travel from the alternative work place back to the normal work place or directly home. This travel is undertaken in the course of gaining assessable income and is allowable as a deduction (paragraphs 138 and 139).

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 140 and 141).

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. If the hairdresser lives at one of the places of employment or business, a deduction may not be allowable as the travel is between home and work (paragraphs 142 to 146).

Travel in connection with self education: See ***Self education expenses***, paragraphs 168 to 177.

Newspapers: A deduction is not allowable for the cost of newspapers (paragraph 150).

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 151 to 154).

Parking fees and tolls: A deduction is allowable for bridge and road tolls and parking fees paid by an employee hairdresser while travelling in the course of employment, e.g., between normal place of employment and client's premises (paragraphs 155 and 156).

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 157 to 161).

Removal and relocation expenses: A deduction is not allowable for expenses incurred to take up a transfer in existing employment or to take up an appointment with a new employer (paragraphs 162 to 167).

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 168 to 177).

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 173 to 177).

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 the hairdressing industry and are not general in nature. Generally, a deduction is not allowable for the cost of lifestyle magazines and general fashion magazines (paragraphs 178 to 183).

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

Cost of calls: A deduction is allowable for the cost of work-related calls (paragraphs 184 to 186).

Installation and connection costs: A deduction is not allowable for the cost of installing or connecting a telephone, etc., (paragraphs 187 and 188).

Rental costs: A deduction is allowable for a proportion of telephone/equipment rental costs if the hairdresser can demonstrate that he or she is 'on call', or required to telephone his or her employer on a regular basis (paragraphs 189 and 190).

Silent telephone numbers: A deduction is not allowable for the cost of obtaining a silent telephone number (paragraph 191).

Tolls: See ***Parking fees and tolls***, paragraphs 155 and 156.

Tools and equipment: A deduction is allowable for depreciation of the cost of tools and equipment. Items bought after 1 July 1991 can be depreciated at a rate of 100% if the cost of a particular item is $300 or less, or its effective life is less than three years. A deduction is allowable for the cost of repairs to tools and equipment to the extent of their work-related use (paragraph 193).

Travel expenses: A deduction is allowable for the cost of travel expenses (fares, accommodation, meals and incidentals) incurred by a

hairdresser when travelling in the course of employment, e.g., travel interstate to attend a seminar (paragraph 194). Special substantiation rules apply (paragraphs 195 to 198).

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 generally not allowable for levies. A deduction is not allowable for contributions to staff social clubs or associations (paragraph 199).

Watches: A deduction is not allowable for the cost of buying or repairing watches (paragraphs 200 to 203).

Explanations

Deductibility of work-related expenses

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

(a) is actually incurred;

(b) meets the deductibility tests; and

(c) satisfies the substantiation rules.

Expense actually incurred

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 18 and 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).

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 either:

(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:** Carla's employer supplies her with a portable kit of hairdressing supplies which she uses when visiting clients in their own

home. Carla voluntarily buys spare rollers for the kit. The cost of the spare rollers 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.

34. 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

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

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

Common work-related expense claims

Answering machine, telephone, mobile phone, pager, beeper and other telecommunications equipment

37. A deduction is allowable for depreciation of the work-related portion if these items are used by employees for work-related purposes. See also ***Depreciation of equipment***, paragraphs 86 to 94 and ***Telephone expenses***, paragraphs 184 to 191.

Child care

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

39. 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).

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

Clothing, uniforms and footwear

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

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

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

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

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

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

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

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

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

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

(iii) the expenditure is not of a private nature;

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

42. 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, footwear and other protective items

43. Hairdressers may be provided with protective clothing by their employer (e.g., an apron for the protection of their conventional clothing and rubber gloves to protect hands when using chemicals). Hairdressers may also buy additional items of protective clothing and the cost of the additional items is an allowable deduction under subsection 51(1) of the Act.

44. A deduction is allowable for the cost of laboratory coats worn by apprentice hairdressers at some technical colleges of further education.

45. A deduction is not allowable for the cost of conventional footwear such as running shoes, sports shoes, aerobics shoes and casual shoes. We consider that the cost of this footwear is a private expense and not an allowable deduction (see also *Shoes*, paragraphs 72 and 73). A deduction is only allowable for expenditure on footwear specifically designed to provide protection to the wearer at work, e.g., steel-capped boots.

46. A deduction is not generally allowable for the cost of items that provide protection from the natural environment (e.g., sunglasses, sunhats, sunscreen, wet weather gear and thermal underwear). The cost of these items is considered to be a private expense. This view is supported in *Case Q11* 83 ATC 41; 26 CTBR (NS) *Case 75* and in *Case N84* 81 ATC 451; 25 CTBR (NS) *Case 43* (see also Taxation Ruling IT 2477 and Taxation Determination TD 93/244).

47. In *Case Q11* the taxpayer was a self-employed lawn mowing contractor. Amongst other things, he claimed the cost of transistor batteries and sun screen 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 26 to 34 applied.

Occupation Specific Clothing

48. 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.

49. It is not considered that hairdressers would wear occupation specific clothing.

Compulsory uniform or wardrobe

50. 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.

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

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

> '...conventional clothing of a particular colour or style does not necessarily, because of those factors alone, assume the character of a uniform. Likewise, ordinary clothing is not converted into a uniform by the simple process of asserting that it fills that role or by the wearing of a name plate, etc. attached to clothing.'

52A. 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 50 and 51). In addition, the employer's uniform guidelines should stipulate the characteristics of the shoes, socks and stockings that qualify them as being an integral 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).

53. 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'

54. 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'

Non-compulsory uniform or wardrobe

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

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

57. **Example:** Ron is a hairdresser who works in a salon where staff may wear co-ordinated shirts and trousers monogrammed with the salon's logo. It is not compulsory for the staff member to wear the clothing but the staff are encouraged to do so. A deduction is allowable for the cost of buying and maintaining the outfit if the design is 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. It is the employer who seeks registration of the clothing.

Conventional clothing

58. 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 28 to 29).

59. 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.

60. 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.

61. 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.'

62. 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.'

63. If conventional clothing is damaged in an accident at work it does not convert the cost of clothing nor the repair cost into an allowable deduction.

64. **Example:** Rachel stains her floral dress with hair dye while colouring a client's hair. A deduction is not allowable for the cost of buying, cleaning, repairing or replacing the dress.

Stockings

65. The cost of stockings will only be deductible in limited circumstances. These circumstances are described in paragraph 52A (also see Taxation Ruling TR 96/16.)

66. [Deleted]

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

> 'Stockings, by their very nature, are part of conventional attire - whether worn under protest or otherwise...'

68. 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 procedures and methods relating to the performance of her duties...'

69. 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.'

70. Wearing stockings to prevent health problems does not alter the private nature of the expense.

71. In *Case P117* 82 ATC 591; 26 CTBR (NS) *Case 43*, an employee claimed the cost of stockings described as 'supphose' on the grounds that a medical practitioner had prescribed them to assist in overcoming a medical condition. The deduction was not allowed as it was considered the expenditure on the stockings was clearly of a private nature and it was not incurred in gaining or producing assessable income.

Shoes

72. A deduction is not allowable for the cost of shoes such as dress shoes, casual shoes, running shoes or sports shoes. These shoes are conventional in nature and we consider that their cost is a private expense. They are not worn by people in only one occupation. They are not specifically designed to give protection at work. The fact that these shoes may be a specific colour or style required by the employer does not alter the private nature of the expense (see also *Protective clothing, footwear and other protective items*, paragraph 45 and paragraph 52A).

73. In *Case V78* 88 ATC 548, a sales tax officer claimed a deduction for the cost of buying and maintaining shoes described as conservative. He stated that he would not have worn shoes of this nature if it was not a condition of his employment. It was held that a deduction was not allowable as the shoes were not distinctive or unique to the taxpayer's employment and the expense was private in nature.

Laundry and maintenance

74. A deduction is allowable for the cost of cleaning and maintaining clothing that falls into one or more of the categories of deductible clothing listed in paragraph 41 and that satisfies the deductibility tests in subsection 51(1) of the Act (see paragraphs 26 to 34). This applies whether the clothing is purchased by the hairdresser or supplied by the employer.

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

Competitions, conferences, seminars, shows and training courses

76. A deduction is allowable for the cost of attending competitions, conferences, seminars, shows and training courses designed to

maintain or increase knowledge, ability or skills required by a hairdresser. The competitions, conferences, seminars, shows and training courses may be held in Australia or overseas. There must be a relevant connection between the competition, conference, seminar, show or training course and the current income-earning activities of the employee hairdresser.

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

> '...a taxpayer who gains income by the exercise of his skill in some profession or calling and who incurs expenses in maintaining or increasing his learning, knowledge, experience and ability in that profession or calling necessarily incurs those expenses in carrying on his profession or calling...'

78. A deduction is allowable for travel expenses (fares, accommodation and meal expenses), registration and material costs incurred in attending work-related competitions, conferences, seminars, shows and training courses.

79. If part of the cost of a competition, conference, seminar, show 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.

80. **Example:** Carol is a hairdresser who attends a training camp organised by a hairdressing association at a venue located away from her workplace. The camp registration fee of $150 paid by Carol includes an amount for morning and afternoon tea and a light lunch. The registration fee is an allowable deduction.

81. **Example:** Paula attends an industry organised competition. She is granted paid leave by her employer to attend the competition. Her employer considers Paula's attendance at the competition will make her a more proficient hairdresser and create a positive impression of the salon's quality of service. A deduction is allowable for Paula's costs in attending the competition.

82. If the dominant purpose in incurring the cost is the attendance at the competition, conference, seminar, show 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 competition, conference, seminar, show or training course is only incidental to a private activity (e.g., a holiday) then only the costs directly attributable to the competition, conference, seminar, show 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.

83. Information on ***Self education expenses*** can be found in Taxation Ruling TR 92/8 and in paragraphs 168 to 177 of this Ruling.

Computers and software

84. A deduction is allowable under subsection 54(1) of the Act for depreciation of computers and related software used for work-related purposes. If you buy the software separately from the computer, a deduction is allowable in full in the year you buy it. The deduction must be apportioned between work-related and private use (paragraphs 86 to 94 of this Ruling provide further information on ***Depreciation of equipment***.)

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

Depreciation of equipment

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

87. A deduction is allowable under subsection 54(1) of the Act for depreciation of equipment owned and used by a hairdresser 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.

88. There are two methods to calculate 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.

89. Any item of equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less, or if its effective life is less than three years (section 55 of the Act). This means an immediate deduction is available for the cost of each item in the year in which it is purchased. However, the item may be depreciated at a rate less than 100% if the taxpayer so elects

(subsection 55(8) of the Act). The current depreciation rates are set out in Taxation Ruling IT 2685.

90. **Example:** Peter buys a pair of electric clippers for $250 and uses them solely in his work as a hairdresser. As the clippers cost less than $300, he is entitled to depreciate the clippers at 100% and can claim $250 in the year of purchase.

91. 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).

92. **Example:** Chantal, a hairdresser, estimates 10% of her computer use relates to the advanced hair cutting course she is undertaking. The rest of the time, the computer is used for private purposes, i.e., Chantal uses it to record the mortgage payments she makes on her home and her children use it for their schoolwork and to play games. A deduction is allowable for 10% of the depreciation of the computer.

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

94. 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).

Driver's licence

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

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

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

Equipment

98. See ***Tools and equipment***, paragraph 193.

Fares

99. A deduction is allowable for the cost of using public transport for work-related travel (see ***Motor vehicle and other transport expenses***, paragraphs 128 to 149).

Fines

100. 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 (see subsection 51(4) of the Act).

Glasses and contact lenses

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

Grooming

102. 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, etc., 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 (See *Cooper's* case, paragraph 33).

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

Hairdressing expenses

104. A deduction is not allowable for a hairdresser's personal hairdressing expenses as they are considered to be an expense of a private nature. The fact that a hairdresser is required by his or her employer to maintain a particular hairstyle does not alter the private nature of the expense.

105. 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.

106. In *Case L61* 79 ATC 488; 23 CTBR (NS) *Case 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.

107. **Example:** Karen is required by her employer to colour and set her hair using the product brand sold in her salon. A deduction is not allowable to Karen for the cost of the hair products as it is a private expense, even though her employer specifies the products to be used and irrespective of whether Karen normally uses those products outside work hours.

Home office expenses

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

109. 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 home, municipal and water rates and house insurance premiums.

(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 to furniture and furnishings in the home office.

110. A deduction is not allowable for the cost of occupancy expenses for hairdressers 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.

Place of business

111. Whether an area of a home has the character of a 'place of business' is a question of fact. If a home has the character of a 'place of business', a deduction is allowable for a portion of 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. It is not considered that hairdressers, in their capacity as employees, would use part of their home as a 'place of business'. However, a hairdresser may also conduct business from home.

112. **Example:** Tanya is an employee hairdresser who also caters for a number of private paying clients in her home, in a room that she uses exclusively for this purpose. The room is 10% of the home, based on floor area. Tanya is entitled to a deduction for a portion of the running expenses and 10% of the occupancy expenses, provided the room has the character of a place of business. If the room is also used for private or domestic purposes, a deduction is only allowable for a portion of the running expenses.

113. If the area set aside has the character of a 'place of business', then a capital gain may accrue or capital loss may be incurred on the disposal of the dwelling by the taxpayer. The amount of the capital gain or capital loss will depend on the extent to which, 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')

114. Hairdressers may maintain an office or study at home. For example, a hairdresser may keep books or make out orders for distributing hair care products.

115. A deduction is not allowable for running expenses if the hairdresser 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 hairdresser uses the room for work-related purposes at a time when others are not present, a deduction for running expenses is allowable.

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

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

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

119. Deductibility of other expenses related to home offices such as depreciation are set out in paragraphs 86 to 94 of this Ruling.

Laundry and maintenance

120. See ***Clothing, uniforms and footwear***, paragraphs 74 to 75.

Magazines

121. See ***Technical or professional publications***, paragraphs 178 to 183.

Meals

122. A deduction is not allowable for the cost of meals consumed by hairdressers 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 26 to 34.

123. 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 119-200; 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.'

124. 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.

125. 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 26 to 34, and are considered to be private in nature.

126. 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.

127. 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 26 to 34 (see also paragraphs 151 to 154).

Motor vehicle and other transport expenses

128. 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 194 to 198). The treatment of motor vehicle and transport expenses incurred by a hairdresser when travelling is considered below.

Travel between home and work

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

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

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

131. 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.

132. **Example:** Alana is required to take part in a hairdressing demonstration at 8.00 pm at the salon where she works. She returns home after her normal shift. After dinner, she drives back to her place of employment to attend the demonstration. She is not entitled to a deduction for her travelling costs in attending the demonstration. This is because the costs relate to travel to and from her regular place of work. The fact that the travel is outside normal working hours or involves a second or subsequent trip does not change this situation.

133. **Example:** Josie works regularly at one salon on Tuesdays and Wednesdays and another salon on Thursdays, Fridays and Saturday mornings. As both salons are considered to be her normal place of employment, a deduction is not allowable for the cost of travel between home and either salon.

Travel between home and work - transporting bulky equipment

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

135. **Example:** Jason is a hairdresser who takes his scissors and blades home with him at the end of each day. Jason is not considered to be transporting bulky equipment and no deduction is allowed.

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

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

137. **Example:** Dorothy, a hairdresser, travels directly from the hairdressing salon where she is employed to a technical college to teach two nights a week. A deduction is allowable for the cost of her travel between the salon and the college.

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

138. A deduction is allowable for the cost of travel from a hairdresser'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 hairdresser's duties. It is incurred in the course of gaining assessable income and is allowable as a deduction.

139. **Example:** The Green and Blue Hair Salon has a contract with the Donbrook Nursing Home to cut the hair of its residents. Rosa is sent out from the salon to the nursing home to do this. She then travels back to the salon. The cost of each journey is an allowable deduction to Rosa.

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

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

141. **Example:** The Bayside Nursing Home occasionally asks the Specialty Hair Salon to send a hairdresser for the residents. On a

particular day, salon employee Katie is asked to travel from her home to the nursing home to cut the residents' hair. She then travels to the salon. Katie is allowed a deduction for the cost incurred in travelling from home to the nursing home and from the nursing home to the salon. However, a deduction is not allowable for the cost of travelling home from the salon (the normal workplace).

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

142. 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.

143. If the hairdresser 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 work-related 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 hairdresser's home is used in association with employment or business conducted elsewhere will not be sufficient to establish entitlement to a deduction for travel between two places of work (see Taxation Ruling IT 2199).

144. 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.

145. In *Case N44* 81 ATC 216; 24 CTBR (NS) *Case 114*, a qualified accountant, employed by a firm of accountants, conducted a limited private practice from his home. He set up a separate room in his home as an office. The taxpayer claimed a deduction for car expenses incurred in travelling between his residence/office and his place of employment. The fact that the taxpayer's home was, incidentally, used in the production of income was insufficient to make the travel between his home and his place of employment an outgoing incurred in the production of assessable income. The travel retained its essential character of travel between home and work and therefore, it was not an allowable deduction.

146. 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

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

Depreciation cost limit for motor vehicles

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

Calculation of motor vehicle balancing adjustment

149. 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

150. A deduction is not allowable under subsection 51(1) of the Act for the cost of newspapers as it is a private expense. Even though a hairdresser 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 allowance

151. 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 26 to 34.

152. 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.

153. 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 hairdresser 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.

154. 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

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

(a) between two separate places of work;

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

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

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

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

156. A deduction is not allowable for parking fees and tolls incurred when hairdressers 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* (paragraphs 134 and 135).

Professional library

157. A deduction is allowable under section 54 of the Act for depreciation of a professional library. If an individual reference book is purchased after 1 July 1991, and its cost does not exceed $300 or its

effective life is less than 3 years, it may be depreciated at 100% in the year of purchase under section 55 of the Act (see Taxation Determination TD 93/159).

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

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

> 'No doubt the illustrations and anecdotes which he was able to use did serve as useful teaching aids but in my view these activities were not plant or articles within the meaning of section 54 of the Act, as they were not used or installed ready for use for the purposes of producing assessable income.'

160. If the cost of a textbook has been claimed as a deduction previously, its cost may not subsequently be added to the value of a professional library and depreciated. For example, a hairdresser may have claimed a deduction for the cost of a textbook as part of his or her self education expenses. The cost of this textbook cannot be included in the value of a professional library for depreciation purposes.

161. Paragraphs 86 to 94 of this Ruling provide further information on depreciation.

Removal and relocation expenses

162. A deduction is not allowable under subsection 51(1) of the Act for removal or relocation expenses incurred by a hairdresser 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 hairdresser receives an allowance or a reimbursement, a deduction for these expenses is still not allowable.

163. If a hairdresser transfers employment from one locality to another and incurs expenses in moving his or her residence to take up the duties of the new position, we consider the expenses are not incurred in gaining or producing assessable income. These expenses come at a point too early to be regarded as being incurred in gaining or producing assessable income. The hairdresser is travelling to his or her work and not between two places of employment.

164. In *Fullerton v. FC of T* (1991) 32 FCR 486; 91 ATC 4983; (1991) 22 ATR 757, the taxpayer worked for the Queensland Forest Service (QFS) as a professional forester for over 20 years. In that time, QFS transferred him to a number of different locations. As a result of a reorganisation his position ceased to exist. He had no choice but to accept a transfer as he may have been retrenched. The QFS reimbursed a portion of the relocation expenses and the taxpayer claimed the remainder 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.

165. 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.

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

167. In some instances, hairdressers are paid an allowance by their employer as compensation for depreciation, disturbance, removal and storage expenses. This allowance is assessable in full under subsection 25(1) or paragraph 26(e) of the Act and deductions are not allowable under subsection 51(1) of the Act. It is considered that the expense is not incurred in deriving assessable income and/or is of a private or domestic nature. If a reimbursement is received for the actual expenses incurred by the hairdresser, the amount is not assessable and deductions are not allowable under subsection 51(1) of the Act.

Self education expenses

168. 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 hairdresser'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 hairdresser's income from his or her current income-earning activities.

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

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

170. 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

171. **Example:** Lina is an apprentice hairdresser who travels to a technical college in another town to undertake her hairdressing apprenticeship course for two consecutive days each fortnight. She is allowed a deduction for the cost of travel to and from her place of education, overnight accommodation, meals and incidentals less $250 (see paragraph 173).

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

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

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

Limit on deductibility

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

174. '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.

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

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

177. **Example:** Lina, an apprentice hairdresser, incurs self education expenses totalling $1,650 in connection with her apprenticeship course at a technical college. The costs fall within the definition of 'expenses of self-education' in section 82A of the Act and Lina cannot claim the first $250 of the costs. She is allowed a deduction for the remaining $1,400.

Technical or professional publications

178. 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 hairdresser's work and are not general in nature.

179. Lifestyle magazines and general fashion magazines are considered to be too general in nature and a private expense. The proportion of the cost of such magazines that relates directly to keeping up to date with hairdressing trends is usually incidental to the private expense.

180. However where the main reason for buying a magazine is to use it in the course of employment as a hairdresser, a deduction is allowable for the work-related portion of the cost of that magazine.

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

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

182. 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 nexus between the expense and the accountant's occupation was established, as the publications contained current technical information that related to her day-to-day work. She was, however, not allowed a deduction for the cost of daily newspapers and periodicals.

183. **Example:** Cheryl, a hairdresser, subscribes to an overseas magazine specialising in developments in hair design. A deduction is allowable for the cost of the subscription.

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

Cost of calls

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

185. **Example:** After work, Shane calls his employer from home to advise he has forgotten to lock up the hair salon. A deduction is allowable for the cost of the call.

186. 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

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

188. 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

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

190. If the telephone is not used 100% for work-related purposes, 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

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

Tolls

192. See ***Parking fees and tolls***, paragraphs 155 and 156.

Tools and equipment

193. A deduction is allowable for depreciation of the cost of tools and equipment used for work. An individual tool or piece of equipment bought after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less, or its effective life is less than three years (see ***Depreciation of equipment***, paragraphs 86 to 94). A deduction is allowable under section 53 of the Act for the cost of repairs to tools and equipment to the extent to which the tools and equipment are used for income-earning activities.

Travel expenses

194. A deduction is allowable for the costs incurred by a hairdresser in undertaking work-related travel. An example is where a hairdresser attends a seminar interstate. Travel expenses include the costs of

accommodation, fares, meals and incidentals (see also ***Motor vehicle and other transport expenses***, paragraphs 128 to 149).

195. Receipt of an allowance does not automatically entitle a hairdresser to a deduction for travel expenses. A work-related travel expense must be incurred and only the amount actually spent is allowable as a deduction.

196. The general rule is that no deduction is allowed for travel expenses unless written evidence, such as a receipt, is obtained. However, special substantiation rules apply to travel expenses if a hairdresser receives a travel allowance.

197. 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.

198. 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

199. A deduction is allowable for the annual cost of 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 contributions to staff social clubs or associations. Taxation Rulings IT 299, IT 327, IT 2062 and IT 2416 provide further information on the deductibility of union and professional association fees.

Watches

200. A deduction is not allowable for the cost of buying or repairing ordinary wristwatches, including waterproof watches, as it is a private expense.

201. 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 (83 ATC at 40; 26 CTBR (NS) at 521):

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

202. In *Case S82* 85 ATC 608; 28 CTBR(NS) *Case 87*, a qualified nurse was denied the costs associated with the replacement of a conventional wrist watch. Regardless of statements made by the

taxpayer, that the watch (which had a second hand) was specifically purchased for, and used constantly, in her work, as well as being worn at other times, it was determined that the expenditure was private in nature.

203. This view is also supported by the following cases: *Case P71* 82 ATC 338; 26 CTBR (NS) *Case 3* and *Case N84* 81 ATC 451; 25 CTBR (NS) *Case 43*.

Alternative views

TAFE Clothing

204. During the course of consultation on Taxation Ruling TR 94/19, an alternative view was expressed that a deduction is allowable for the white uniform worn at TAFE by apprentice hairdressers because it is protective.

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

Index of explanations

206. The following index refers to the paragraph references in the Explanation section of the Ruling.

paragraph

Answering machine, beeper, mobile phone, pager and other telecommunications equipment **37**

Car expenses **128**

Child care expenses **38**

Clothing, uniforms and footwear **41**

Protective clothing and other protective items 43

Occupation specific clothing 48

Compulsory uniform or wardrobe 50

Non-compulsory uniform or wardrobe 55

Conventional clothing 58
Stockings 65
Shoes 72
Laundry and maintenance 74
Competitions, conferences, seminars, shows and training courses 76
Computers and software 84
Depreciation of equipment 86
Driver's licence 95
Equipment 193
Fares 128
Fines 100
Glasses and contact lenses 101
Grooming 102
Hairdressing expenses 104
Home office expenses 108
Place of business 111
Private study 114
Laundry 74
Magazines 178
Meals 122
Motor vehicle and other transport expenses 128
Travel between home and work 129
Carrying bulky equipment to and from work 134
Travel between work places (different employers) 136
Travel between normal and alternative work places 138
Travel between home and alternative work place 140
Work-related activity carried on at home 141
Automotive Association/Club membership fees 147
Depreciation cost limit for motor vehicles 148
Motor vehicle balancing adjustment 149
Newspapers 150
Overtime meal allowance 151

Parking fees and tolls **155**
Professional library **157**
Removal and relocation expenses **162**
Self education expenses **168**
Substantiation 35
Technical and professional publications **178**
Telephone, mobile phones, pagers, beepers and other telecommunications equipment expenses **184**
Cost of calls 184
Installation and connection costs 187
Rental Costs 189
Silent numbers 191
Tolls 155
Tools and equipment **193**
Travel expenses **194**
Union fees and professional association fees **199**
Watches **200**

Commissioner of Taxation

8 June 1995

ISSN 1039 - 0731

ATO references
NO NAT 94/4969-8
BO

Previously released as TR 94/19
(which is now withdrawn)

Price $4.50

FOI index detail
reference number
I 1016494

subject references
- allowable deductions
- allowances
- apportionment
- apprentices
- car expenses
- child care expenses
- clothing
- competitions
- conferences and seminars
- conventional clothing
- corporate wardrobe
- deductible expenses
- depreciation
- driver's licence
- fares
- fines
- first aid courses
- footwear
- glasses
- grooming
- home office expenses
- magazines

- meals
- motor vehicles
- newspapers
- parking fees and tolls
- private or domestic expenses
- professional associations
- protective clothing
- reimbursement
- removal and relocation expenses
- self eduction expenses
- stockings
- substantiation
- publications
- telephone
- tools
- transport expense
- travel expenses
- uniforms
- union fees
- watches

legislative references
- ITAA 25
- ITAA 26(e)
- ITAA 26(eaa)
- ITAA 51(1)
- ITAA 51(4)
- ITAA 51(6)
- ITAA 51AE
- ITAA 51AGA
- ITAA 51AH
- ITAA 51AL
- ITAA 51AL(26)
- ITAA 53
- ITAA 54
- ITAA 54(1)
- ITAA 55
- ITAA 55(8)
- ITAA 57AF
- ITAA 61
- ITAA 82A

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- FC of T v. Faichney (1972) 129 CLR 38; 3 ATR 435; 72 ATC 4245
- FC of T v. Finn (1961) 106 CLR 60; 12 ATD 348
- FC of T v. Forsyth (1981) 148 CLR 203; 81 ATC 4157; 11 ATR 657
- FC of T v. Hatchett (1971) 125 CLR 494; 71 ATC 4184; 2 ATR 557
- FC of T v. Maddalena 71 ATC 4161; 2 ATR 541
- FC of T v. Vogt 75 ATC 4073; 5 ATR 274
- Fullerton v. FC of T (1991) 32 FCR 486; 91 ATC 4983; (1991) 22 ATR 757
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- Jayatilake v. FC of T 91 ATC 4516; (1991) 22 ATR 125; 101 ALR 11
- Lodge v. FC of T (1972) 128 CLR 171; 72 ATC 4174; 3 ATR 254
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- Roads and Traffic Authority of NSW v. FC of T (1993) 43 FCR 233; 93 ATC 4508; (1993) 26 ATR 76
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- Thomas v. FC of T 72 ATC 4094; 3 ATR 165
- Case T47 18 TBRD (NS) 242; 14 CTBR (NS) Case 56
- Case H32 76 ATC 280; 20 CTBR (NS) Case 85;
- Case K68 78 ATC 667; 22 CTBR (NS) Case 86
- Case L38 79 ATC 208; 23 CTBR (NS) Case 44
- Case L61 79 ATC 488; 23 CTBR (NS) 73
- Case M53 80 ATC 357; 24 CTBR (NS) Case 29
- Case N44 81 ATC 216; 24 CTBR (NS) Case 114
- Case N84 81 ATC 451; 25 CTBR (NS) Case 43
- Case N97 81 ATC 521; 25 CTBR (NS) Case 50
- Case P26 82 ATC 110; 25 CTBR (NS) Case 90
- Case P30 82 ATC 139; 25 CTBR (NS) Case 94
- Case P71 82 ATC 338; 26 CTBR (NS) Case 3

- Case P114 82 ATC 586; 26 CTBR (NS) Case 47
- Case P117 82 ATC 591; 26 CTBR (NS) Case 43
- Case P124 82 ATC 629; 26 CTBR (NS) Case 55
- Case Q10 83 ATC 38; 26 CTBR (NS) Case 74
- Case Q11 83 ATC 41; 26 CTBR (NS) Case 75
- Case R49 84 ATC 387; 27 CTBR (NS) Case 104
- Case R55 84 ATC 411; 27 CTBR (NS) Case 109
- Case R62 84 ATC 454; 27 CTBR (NS) Case 113
- Case R70 84 ATC 493; 27 CTBR (NS) Case 124
- Case S82 85 ATC 608; 28 CTBR (NS) Case 87
- Case T103 86 ATC 1182;
- Case U80 87 ATC 470; 18 CTBR (NS) Case 66
- Case U91 87 ATC 525
- Case U95 87 ATC 575
- Case U216 87 ATC 1214
- Case U217 87 ATC 1216
- Case V78 88 ATC 548
- Case Y8 91 ATC 166: AAT Case 6587 (1991) 22 ATR 3037
- Case Y43 91 ATC 412; AAT Case 7273 (1991) 22 ATR 3402
- Case 48/94 94 ATC 422; AAT Case 9679 (1994) 29 ATR 1077
- Case 49/94 94 ATC 429; AAT Case 9749 (1994) 29 ATR 1138