TR 95/17 - Income tax: employee work-related deductions of employees of the Australian Defence Force

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Taxation Ruling
Income tax: employee work-related deductions of employees of the Australian Defence Force

other Rulings on this topic

IT 26; IT 85; IT 112; IT 299; IT 327: IT 2062; IT 2084; IT 2198; IT 2199; IT 2406; IT 2416; IT 2452; IT 2477; IT 2481; IT 2493; IT 2543; IT 2566; IT 2614; IT 2641; IT 2673; IT 2685; MT 2027; TR 92/8; TR 92/15; TR 93/30; TR 94/3; TR 94/22; TR 96/16; TD 92/142; TD 92/154; TD 92/157; TD 93/108; TD 93/112; TD 93/113; TD 93/114; TD 93/115; TD 93/145; TD 93/159; TD 93/195; TD 93/232; TD 93/244

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*This Ruling, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Ruling is a public ruling and how it is binding on the Commissioner.*

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

What this Ruling is about

Class of person/arrangement

1. This Ruling applies to members of the Australian Defence Force ('ADF members') (the three arms being the Army, Navy and Air Force). Support staff employed by the Department of Defence (e.g., accountants, clerical staff, stores officers, etc.) are not covered by this Ruling.

2. This Ruling deals with:

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

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

3. The Ruling discusses the assessability of allowances and reimbursements received under section 25 and paragraphs 26(e) and 26(eaa) of the *Income Tax Assessment Act 1936* (the Act). The Ruling also sets out which allowances are exempt under subparagraph 23(t)(iii) of the Act.

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

5. The tax treatment of allowances and reimbursements received is examined at paragraphs 12 to 21 in the **Ruling** section.

6. The common work-related expenses incurred by ADF members and the extent to which they are allowable deductions are discussed, in alphabetical order, at paragraph 24 in the **Ruling** section. The substantiation provisions are not discussed in depth in this Ruling.

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

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

Date of effect

9. This Ruling applies to years commencing both before and after its date of issue. However, our views in relation to the cost of compulsory mess subscriptions and the costs of attending compulsory mess functions apply only to the 1994/1995 income year and later income years. For the 1993/1994 income year and earlier income years, we accept that compulsory Mess subscriptions and the costs of attending compulsory Mess functions are allowable deductions.

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

Previous Rulings

11. This Ruling was previously released as Taxation Ruling TR 94/16. The Ruling has been re-drafted to clarify some issues and to revise commentary on the substantiation rules which were amended subsequent to the issue of TR 94/16. This Ruling withdraws Taxation Ruling TR 94/16.

Ruling

Allowances

12. The receipt of an allowance does not automatically entitle an ADF member to a deduction. The term 'allowance' does not include a reimbursement (see paragraphs 18 to 21).

13. If received allowances fall into the following categories:

(b) 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 (paragraph 15);

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

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

Allowances - possible deduction

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

Allowance	**Possible allowable deduction (see Explanations section)**
Flying	Self education expenses
Language Proficiency	Self education expenses
Special Action Forces	Self education expenses Fitness expenses
Uniform Maintenance	Replacement of Uniform Repair of Uniform Laundry of Uniform
Vehicle Allowance	Transport expenses

Allowances - no deduction allowable

15. The following allowances commonly received by ADF members are paid for carrying out work that may be considered unpleasant, special or dangerous, in recognition of holding special skills, or to compensate for industry peculiarities. The allowances are fully assessable and no deduction is allowable.

Arduous Conditions Allowance	Post Allowance
Clearance Diving Allowance	Seagoing Allowance
Common Duties Allowance	Service Allowance
District Allowance	Special Royal Navy Allowance
Diving Allowance	Submarine Escape Training Facility Allowance
Field Allowance	Submarine Service Allowance
Flight Duties Allowance	Trainees Dependant Allowance
Hard Lying Allowance	Trainee Leaders Allowance
Isolated Establishment Allowance	Unpredictable Explosives Allowance
Parachutist Allowance	

Reasonable allowances

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

(a) overtime meal expenses;

(b) domestic travel expenses; and

(c) overseas travel expenses.

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

Allowances - non-taxable allowances

17. The following allowances are exempt income under subparagraph 23(t)(iii) of the Act (no deductions are allowable for expenses connected with tax exempt income):

- Child Education Allowance

- Deployment Allowance
- Disturbance allowance
- Education Allowance
- Education Assistance Overseas Allowance
- Living Out Allowance
- Living Out Away From Home Allowance
- Re-engagement Allowance
- Scholarship Allowance
- Separation Allowance
- Transfer Allowance.

Reimbursements

18. If an ADF member 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 an ADF member 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).

19. 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 ADF member under paragraph 26(eaa) of the Act. A deduction may be allowable in relation to motor vehicle expenses incurred (see ***Transport expenses***, paragraphs 219 to 259).

20. If the reimbursement by an employer is for the cost of a depreciable item (e.g., tools and equipment), a deduction is allowable to the ADF member for depreciation (see Taxation Determination TD 93/145 and ***Depreciation of tools and equipment***, paragraphs 92 to 100).

21. If a payment is received for an **estimated** expense, the amount received by the ADF member is considered to be an allowance (not a reimbursement) and is fully assessable (see **Allowances**, paragraphs 12 to 17).

Deductions

22. A deduction is only allowable if an expense:

(a) is actually incurred (paragraph 29);

(b) meets the deductibility tests (paragraphs 30 to 37); and

(c) satisfies the substantiation rules (paragraphs 38 and 39).

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

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

Bank fees: A deduction is allowable, as a work-related expense, for Financial Institutions Duty that relates to the direct depositing of salary and wages in the ADF member'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 40 to 42).

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

(a) protective;

(b) occupation specific;

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

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

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

Expenditure on clothing, uniforms and footwear must satisfy the deductibility tests in subsection 51(1) of the Act and must not be private or domestic in nature (paragraphs 43 to 80).

Expenditure on shoes, socks and stockings may give rise to a deduction where these items 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 56A; also see Taxation Ruling TR 96/16).

***Computers and software*:** A deduction is allowable for depreciation on the cost of computers and software, if purchased together, that are used for work-related purposes. If the software is bought separately from the computer, a deduction is allowable in full in the year of purchase. The deduction must be apportioned between work-related and private use (paragraphs 81 to 84).

***Conferences, seminars and training courses*:** A deduction is allowable for the cost of attending conferences, seminars and training courses to maintain or increase an ADF member's knowledge, skills or ability to perform his or her duties. There must be a relevant connection with the current work of the ADF member or to the next likely promotion of that member as planned by the ADF (paragraphs 85 to 91).

Depreciation of tools and equipment: A deduction is allowable for depreciation to the extent of the work-related use of tools and equipment. An item of equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less or its effective life is less than 3 years (paragraphs 92 to 100).

Driver's licence: A deduction is not allowable for the cost of acquiring or renewing a driver's licence. A deduction is allowable for the cost of a premium that is paid in addition to the cost of a standard licence required for work purposes (paragraphs 101 to 104).

Extra Regimental Duties (ERD): A deduction is allowable where the ERD forms part of the ADF member's income-earning activity and the expense is not of a private or domestic nature (paragraphs 105 to 109).

Fares: See ***Transport expenses*** (paragraphs 219 to 259).

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 110).

Fitness related expenses:

Expenses for maintaining fitness: Expenditure incurred to maintain the general standard of fitness expected of an ADF member is not an allowable deduction. A deduction is allowable for an ADF member who can demonstrate that his or her income-earning activity is the maintenance of a very high level of fitness (paragraphs 111 to 125).

Expenses for sporting activities: Expenditure incurred in participating in sporting activities is not an allowable deduction unless the ADF member is on duty and is either participating as an official ADF

representative or is required to participate as part of the ADF member's normal income earning activities (paragraphs 126 to 131).

Glasses/contact lenses: A deduction is not allowable for the cost of buying prescription glasses or contact lenses. The cost of safety glasses is an allowable deduction (see ***Protective equipment***, paragraph 177).

Grooming: A deduction is not allowable for the costs of grooming, including cosmetics, hair and skin care products (paragraph 132).

Haircuts: A deduction is not allowable for the cost of haircuts (paragraphs 133 to 135).

Home office expenses:

Place of business: A deduction is allowable for a proportion of the running and occupancy expenses if an area of the home has the character of a 'place of business' (paragraphs 141 to 144).

Private study: A deduction is allowable for the running expenses of a private study to the extent that the private study is used for work performed at home (paragraphs 145 to 148).

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

Laundry and maintenance of clothing, uniforms and footwear*:** A deduction is allowable for the cost of laundry and maintenance of supplied or purchased clothing, uniforms or footwear if these items are of a kind described under ***Clothing, uniforms and footwear (see also paragraphs 76 and 77).

Meals*:** A deduction is not allowable for the cost of meals eaten during a normal working day (paragraphs 147 to 151). A deduction is allowable for the cost of meals incurred by an ADF member when travelling in the course of employment (see ***Travel expenses, paragraphs 260 to 264).

Messing and related expenses:

Compulsory mess subscriptions: A deduction is allowable for that portion of compulsory mess subscriptions which is attributable to work-related activities (paragraphs 154 to 160).

Attendance at mess functions: A deduction is not allowable for costs incurred in attending compulsory or non-compulsory mess functions (paragraphs 161 to 168).

Motor vehicle expenses: See ***Transport expenses*** (paragraphs 219 to 259).

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

Parking fees: A deduction is allowable for parking fees paid by an ADF member while travelling in the course of employment, e.g., between bases (paragraphs 170 and 171).

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 172 to 176).

Protective equipment: A deduction is allowable for the cost of safety equipment such as safety glasses, goggles, breathing masks, helmets, etc., (paragraph 177). A deduction is not allowable for the cost of sunglasses, sunhats, sunscreens and wet weather gear that are worn or used to provide protection from the natural environment (paragraphs 49 to 51).

Relocation expenses: A deduction is not allowable for storage, removal and depreciation expenses incurred by ADF members when transferring from one district to another (paragraphs 178 to 184).

Rifles, ammunition, cleaning and related equipment: These items are normally supplied and replaced by the ADF. A deduction is allowable for the cost of additional and/or more sophisticated equipment used for income-earning purposes (paragraph 185).

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 ADF member's current income-earning activities. Self education costs can include fees, travel, books and equipment (paragraphs 186 to 205).

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 206 to 208).

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 an ADF member's work and are not general in nature (paragraphs 209 to 211).

Telephone, mobile phone, pager, beeper and other telecommunications equipment expenses: A deduction is not allowable if 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 212 and 213).

Installation or connection costs: A deduction is not allowable for the cost of installing or connecting a telephone, mobile phone, pager, beeper or other telecommunications equipment (paragraphs 214 and 215).

Rental costs: A deduction is allowable for a proportion of telephone rental costs if a ADF member can demonstrate that he or she is 'on call', or required to telephone his or her employer on a regular basis (paragraphs 216 and 217).

Silent telephone numbers: A deduction is not allowable for the cost of obtaining a silent telephone number (paragraph 218).

Tolls: A deduction is allowable for bridge and road tolls paid by an ADF member when travelling in the course of employment, e.g., between bases (paragraphs 170 and 171).

Transport expenses: Transport expenses include public transport fares and the running costs associated with using motor vehicles, motor cycles, bicycles, etc., for work-related travel. They do not include accommodation, meals and incidental expenses (see ***Travel expenses***, paragraphs 260 to 264). The deductibility of transport expenses incurred by an ADF member when travelling is considered below:

Travel between home and work: A deduction is not allowable for the cost of travel between home and the normal work place as it is generally considered to be a private expense. This principle is not altered by the performance of incidental tasks en route (paragraphs 220 to 223).

Travel to work when living on base: A deduction is not allowable when travelling from a residence on the Base to the place where normal duties are performed (paragraph 224).

Travel to work when living off base: A deduction is not allowable for travel to work when living off base (paragraphs 225 to 228).

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

A deduction is not allowable if a secure area for the storage of equipment is provided at the work place (paragraphs 229 and 230).

Travel between home and work where home is a base of operations and work is commenced at home: A deduction is allowable for transport expenses if they can be attributed to travelling **on** work, as distinct from travelling **to** work, i.e., where the ADF member's home

is used as a base of operations and his or her work has commenced before leaving home (paragraphs 231 to 234).

Travel between two separate work places if there are two separate employers involved: A deduction is allowable for the cost of travelling directly between two places of employment (paragraphs 235 and 236).

Travel from the normal work place to an alternate 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 alternate 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 237 and 238).

Travel from home to an alternate 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 alternate work place and then on to the normal work place or directly home (paragraphs 239 and 240).

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 travel 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 work-related activities (paragraphs 241 to 247).

Travel in connection with self education: See ***Self education*** (paragraphs 199 and 200).

Travel on and between bases: The cost of travelling on and between bases for work purposes is an allowable deduction (paragraphs 248 to 252).

Travel for Extra Regimental (or Service) Duties: Expenditure on travel in relation to ERD or Service duties is allowable, provided the ERD forms part of income-earning activity and the expense is not of a private or domestic nature (paragraphs 253 and 254).

Travel for medical appointments: A deduction is allowable for expenses incurred in travelling to and from base for official medical appointments. A deduction is not allowable for expenses of travelling to personal medical appointments (paragraphs 255 to 257).

Travel expenses: A deduction is allowable for the cost of travel expenses (fares, accommodation, meals and incidentals) incurred by an ADF member when travelling in the course of employment, e.g., travel interstate to attend a work-related conference (paragraphs 260 and 261). Special substantiation rules apply (paragraphs 262 to 264).

Union/professional association fees and levies: A deduction is allowable for annual fees paid to unions or professional associations, although a deduction is not allowable for joining fees. A deduction is not generally allowable for levies (paragraphs 265 to 268). A deduction is not allowable for contributions to staff social clubs or associations.

Watches: A deduction is not allowable for the cost of conventional watches. A deduction is allowable for depreciation of the cost of watches with special characteristics used for work-related purposes (paragraphs 269 to 274).

Weight loss expenses: A deduction is not allowable for expenses relating to losing weight (paragraphs 275 to 278).

Wet weather gear: A deduction is not allowable if this clothing is worn to provide conventional protection from the natural environment. A deduction is allowable if the nature of the work creates conditions that make it necessary for an ADF member to provide protection to his or her person or clothing (paragraphs 49 to 51).

Explanations

ADF members subject to military regulations

25. ADF members experience conditions of employment that are very different from other occupations. The number of variations in occupation is so diverse that it is not possible to describe them all in this Ruling.

26. When an ADF member gains employment in the ADF he or she is subject to Military Regulations at all times. When an ADF member is actually deriving income was considered in *Case J21* 77 ATC 193; 21 CTBR (NS) *Case 43* where the Board considered the question of an Army officer being on 24 hour duty. M B Hogan and N Dempsey stated (ATC at 193; CTBR at 462):

> 'In our view, irrespective of the fact that he is subject to the *Defence Act* and regulations at all times, he actually earns his income when he is physically in attendance at the base to perform his duties. This being so, he is in no different a position than any other employee...'

27. The Tax Office does not consider that ADF members are generally on call for 24 hours a day.

Deductibility of work-related expenses

28. 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

29. The expense must actually be incurred by the ADF member to be considered for deductibility. A deduction is not allowable for expenses not incurred by an ADF member, e.g., if items are provided free of charge. Under section 51AH of the Act, a deduction is not generally allowable if expenses are reimbursed (see paragraphs 19 and 20 for exceptions to this rule).

Expense meets deductibility tests

30. 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.'

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

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

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

(c) it is necessary to determine the connection between the particular outgoing and the operations or activities by which the taxpayer most directly gains or produces his or her assessable income (*Charles Moore & Co (WA) Pty Ltd v. FC of T* (1956) 95 CLR 344; 11 ATD 147; 6 AITR

379; *FC of T v. Cooper* (1991) 29 FCR 177; 91 ATC 4396; (1991) 21 ATR 1616 (*Cooper's* case); *Roads and Traffic Authority of NSW v. FC of T* (1993) 43 FCR 223; 93 ATC 4508; (1993) 26 ATR 76; *FC of T v. Hatchett* (1971) 125 CLR 494; 71 ATC 4184; 2 ATR 557).

32. A deduction will be denied under the exception provisions of subsection 51(1) 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).

33. Private or domestic expenditure includes costs of living such as food, drink and shelter. In *Case T47* 18 TBRD 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...'

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

35. **Example:** Margaret's employer (the Army) has supplied her with a mobile telephone. Margaret voluntarily buys a spare battery for the telephone. The cost of the spare battery is an allowable deduction.

36. 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.

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

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

Expense satisfies the substantiation rules

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

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

Common work-related expense claims

Child care

40. A deduction is not allowable for child care expenses, even if it is a prerequisite for an ADF member 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 an ADF member to undertake studies relevant to his or her employment.

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

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

Clothing, uniforms and footwear

43. 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 IT 2641;

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

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

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

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

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

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

(iii) the expenditure is not of a private nature

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

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

Protective clothing

44. Expenditure on protective clothing must satisfy the deductibility tests in subsection 51(1) and must not be private or domestic in nature.

45. ADF members may be provided with protective clothing by their employer (e.g., overalls for the protection of their conventional clothing). ADF members may also buy additional items of protective clothing and the cost of this clothing is an allowable deduction under subsection 51(1).

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

47. A deduction is allowable for expenditure on footwear specifically designed to provide protection to the wearer at work, e.g., steel-capped boots.

48. A deduction is not allowable for the cost of conventional footwear such as running shoes, sports shoes and casual shoes, as it is not normally considered to be protective. We consider that the cost of this footwear is a private expense and is not an allowable deduction. The only exception is for protective sports footwear worn by ADF members such as physical training instructors and those in special combat squads who derive their income by performing a range of regular strenuous physical activity.

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

50. An exception to this general rule can arise if the nature of the work (rather than the natural environment) creates conditions that make it necessary for the ADF member to provide protection to his or her person or clothing (e.g., wet weather gear worn when using chemicals or high pressure water hoses).

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

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

Although this taxpayer was self-employed, the same deductibility tests as set out in paragraphs 30 to 37 applied.

Occupation specific clothing

52. 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 religious clerics' ceremonial robes.

53. It is not envisaged that ADF members would wear clothing that is occupation specific. Military service uniforms worn by ADF members are compulsory uniforms and are not considered to be occupation specific clothing.

Compulsory uniform or wardrobe

54. A 'corporate' uniform or wardrobe (as detailed in Taxation Ruling IT 2641) is a collection of inter-related items of clothing and accessories which are unique and distinctive to a particular organisation.

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

56. 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.'

56A. 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 54 and 55). In addition, the employer's uniform policy or guidelines should stipulate the characteristics of the shoes, socks and stockings that qualify them as being a distinctive part of the compulsory uniform, e.g., colour, style, type, etc. The wearing of the uniform must also be strictly and consistently enforced, with breaches of the uniform policy giving rise to disciplinary action. It is only in strict compulsory uniform regimes that expenditure on shoes, socks and stockings is likely to be regarded as work-related rather than private in nature (see Taxation Ruling TR 96/16).

57. 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'.

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

> '...nothing distinctive or unique about the combination of clothing that 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.'

59. Expenditure on a military uniform is an allowable deduction. We consider that a military uniform includes such items as military white, blue or khaki shirts with rank or other embellishments; standard matching trousers; regulation jumpers and jackets; official mess uniform; hats or caps with rank or other embellishments; Service Dress shoes; Service handbags and clutch bags; socks and stockings; and camouflage shirts and trousers. However, it does not include items or accessories of a conventional nature, e.g., underwear, ordinary fashion shoes, hair accessories or T-shirts.

Non-compulsory uniform or wardrobe

60. A deduction is not allowable for the purchase and maintenance costs of non-compulsory uniform or wardrobe clothing **unless** the conditions outlined in section 51AL of the Act are met. Section 51AL provides that expenditure on a non-compulsory uniform or wardrobe will be allowable under subsection 51(1) 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 for clothing approved under the transitional arrangements. A deduction is not allowable for the costs of shoes, short socks or stockings worn as part of a non-compulsory uniform. The 'Approved Occupational Clothing Guidelines' under section 51AL preclude the registration of these items as part of a non-compulsory uniform.

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

Conventional clothing

62. The views of the ATO on the treatment of costs of buying and maintaining conventional clothing are set out in Taxation Ruling TR 94/22. This Ruling sets out our views on the implications of the

decision of the Full Federal Court of Australia in *Edwards* case. Ms Edwards was the personal secretary to the wife of a former Queensland Governor. She was able to establish that her additional clothing expenses were allowable in her particular circumstances. In most cases, expenses for conventional clothing will not meet the deductibility tests of subsection 51(1) as they are of a private nature (see also paragraphs 22 and 23).

63. 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).

64. 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.

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

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

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

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

66. 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.'

67. In *Case K2* 78 ATC 13; 22 CTBR (NS) *Case 21*, an employee solicitor was required as part of his duties to appear in various courts. It was not his practice to wear a suit. On one occasion a barrister called him as a witness and, although he was neatly dressed, the judge admonished him for not wearing a suit. From that date he wore a suit when involved in litigation work. On the days that he wore a suit, he wore it to and from the office and while at the office. It was held that the expenditure in respect of the suit was not incurred in gaining or producing assessable income and that it was of a private nature.

68. An ADF member is not entitled to claim a deduction for clothing purchased by or for his or her partner to attend the mess or other official functions. The purchase of this clothing is of a private nature, and a deduction is not allowable.

Special items

69. Some special items that are worn with or as part of a uniform, and are unconventional in nature, are allowable deductions.

70. **Example:** Louis purchases a Ceremonial Sword for $720 that he wears during parades. He can claim depreciation on the sword. For further information on ***Depreciation of equipment*** see paragraphs 92 to 100.

Physical training clothing

71. ADF members are required to wear suitable sports attire, such as shorts, T-shirts and sports shoes when participating in physical training. Some Army units are required to wear clothing of a particular colour, or clothing which displays the unit logo or emblem.

72. This clothing is conventional, does not form part of a compulsory uniform/wardrobe as set out in Taxation Ruling IT 2641 and does not comply with the requirements of section 51AL of the Act. No deduction is allowable for the cost of these items. See ***Fitness related expenses*** paragraphs 120 to 124 for instances when the cost of physical training clothing may be an allowable deduction.

Stockings

73. Generally, the cost of stockings is not an allowable deduction as the expense is considered to be private in nature and not incurred in gaining or producing assessable income. Where stockings form an integral part of a distinctive and compulsory military uniform, whose characteristics are set out in a uniform policy or guidelines, and where the wearing of the uniform is strictly and consistently enforced, a female ADF member may claim the cost of the stockings as an allowable deduction (see paragraph 56A and Taxation Ruling TR 96/16).

74. [Deleted]

75. [Deleted]

Laundry and maintenance

76. 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 43. This applies whether the clothing is purchased by the employee or supplied by the employer.

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

Uniform maintenance allowance

78. ADF members are paid a Uniform Maintenance Allowance to purchase, repair and maintain their uniforms and accessories. This allowance must be included as income. No 'contra deduction' is allowable. (A contra deduction refers to the automatic claiming of a deduction to the value of an allowance received.)

79. An ADF member may claim actual expenses incurred in the purchase, repair and maintenance of military uniform subject to the substantiation provisions.

80. **Example:** Greg receives a Uniform Maintenance Allowance of $500. He purchases compulsory military uniform items such as shirts and trousers costing $120, and also purchases Service Dress shoes ($45), underwear ($30), and khaki socks ($10) from the Army stores.

The cost of dry cleaning his uniform shirts and trousers is $135. Greg must include $500 as income in his taxation return, and provided appropriate written evidence is kept, he is entitled to a deduction of $310 (i.e., uniform - $120, laundering of uniform - $135, socks - $10 and Service Dress shoes - $45). He cannot claim a deduction for the purchase or laundering of underwear.

Computers and software

81. A deduction is allowable under subsection 54(1) of the Act for depreciation of computers and related software owned and used by ADF members for work-related purposes (paragraphs 92 to 100).

82. For example, an ADF member may use a computer at home to prepare submissions, reports or for self education purposes. If the computer is also used for private purposes, the deduction for depreciation is allowable only to the extent of the work-related use (paragraphs 97 and 98). If software is purchased as part of a computer system, the total cost of the system is depreciable (see Taxation Ruling IT 26 and paragraphs 92 to 100 of this Ruling for further information on depreciation of equipment).

83. 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.

84. A deduction is allowable under subsection 51(1) of the Act if the related software is purchased separately from the computer, to the extent that it relates to use for work-related purposes (see Taxation Ruling IT 26).

Conferences, seminars and training courses

85. A deduction is allowable for the cost of attending conferences, seminars and training courses to maintain or increase the knowledge, ability or skills required by an ADF member. There must be a relevant connection with the current income-earning activities of the ADF member.

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

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

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

88. **Example:** Brent, a Squadron Leader, attends a training course in Canada dealing with the use of special weapons systems in fighter aircraft. He flies to Canada in a RAAF transport plane and pays for accommodation and meals while attending the course. His costs for

accommodation and meals are allowable deductions under subsection 51(1) of the Act.

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

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

91. Information on ***Self education expenses*** can be found in Taxation Ruling TR 92/8 and in paragraphs 186 to 205 of this Ruling.

Depreciation of tools and equipment

92. 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.

93. A deduction is allowable under subsection 54(1) of the Act for depreciation of equipment owned and used by an Army officer for income-producing purposes. In addition, a deduction is also allowable for depreciation of 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.

94. 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.

95. Any item of equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is not more than $300, or if its effective life is less than three years (section 55 of the Act). This means an immediate deduction is available for the cost of the item in the year 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). Taxation Ruling IT 2685 lists the current depreciation rates.

96. **Example:** Fiona purchases a brief case for $250 which she uses only for work purposes to carry reference books and reading material. The amount of $250 is allowable as an immediate deduction.

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

98. **Example:** John purchases equipment costing $430 for an upcoming field exercise, including a knapsack ($220), a sleeping bag ($180) and shovel ($30). John estimates the private usage of this equipment to be 50%. He is entitled to a deduction of $215.

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

100. 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

101. 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.

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

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

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

Extra regimental duties (ERD)

(ERD is also referred to as ***Service Duties***)

105. ADF members are required to perform extra duties as directed. There are numerous positions filled on an annual basis. Examples of these include a position on the Mess Committee, coaching a sporting team, organising a social function and a role as a public relations officer. In some instances, expenses may be incurred in performing these duties, such as the Treasurer of the Mess purchasing stationery to assist with his or her bookkeeping.

106. In determining the tax treatment of any claims in relation to ERD, each case should be examined individually. It is necessary to look at the nature of the activity undertaken in the context of section 51AE and subsection 51(1) of the Act.

107. Although some ERD may be of general benefit to the ADF and may have a valuable effect on staff morale, for an expense to be an allowable deduction there must be a nexus between the activity and deriving assessable income. As discussed in paragraphs 36 and 37, a 'condition of employment' is not of itself a test for deductibility.

108. If an ADF member wishes to claim expenses for performing ERD, the expense must not be of a domestic or private nature, e.g., for food, drink or entertainment.

109. **Example:** Sharon is the President of the Mess Committee (PMC). In this position it is necessary for her to attend more functions than she would otherwise attend. Sharon is charged for food and drink consumed at these functions. The cost incurred would not be an allowable deduction as it is a private expense. On the other hand, if Sharon purchased her own stationery in her role as PMC, then her claim for the cost of stationery would be an allowable deduction.

Fares: See ***Transport expenses*** (paragraphs 219 to 259).

Fines

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

Fitness related expenses

111. ADF members are required to maintain a high standard of general physical fitness. Training may be undertaken whilst either on or off duty. Activities may include running, circuit training and

aerobic fitness. The extent to which these activities will be undertaken whilst on duty varies within the three arms of the ADF.

112. Expenses incurred in maintaining this standard of fitness are considered to be essentially private in nature and deductions are not allowable under subsection 51(1) of the Act.

113. Some ADF members are required to maintain a very high level of fitness, well above the ADF general standard. ADF members, such as physical training instructors and those in special combat squads, who can demonstrate that they derive their income by performing a range of duties designed to keep them physically and mentally prepared, can claim a deduction for expenses as detailed below.

Fitness courses/gymnasium fees

114. Costs associated with attending fitness courses or membership of a gymnasium are generally private in nature and no deduction is allowable under subsection 51(1) of the Act. However, a deduction is allowable for these costs if the ADF member can demonstrate that strenuous physical activity is an essential and regular element of his or her income-earning activities and that the these costs were incurred to maintain a level of fitness well above the ADF general standard.

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

116. In *Case P17* 82 ATC 72; 25 CTBR (NS) *Case 81*, the cost of gymnasium fees was denied to a commercial pilot for similar reasons.

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

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

119. **Example:** David is an infantryman and is required to undertake fitness training for two hours per day three times per week whilst on duty. He also attends his local gymnasium once a week in his own time. No deduction is allowable for any cost incurred in attending the gymnasium.

119A. **Example:** John is a member of the Special Air Services Regiment (SAS). He is paid to maintain the very highest level of fitness. To maintain his fitness level, John's fitness program includes weight training three times a week at a city gymnasium. His costs for attending the gymnasium such as gymnasium fees, transport costs,

protective sports shoes, shorts and T-shirts expenses are allowable deductions (paragraphs 120 to 124).

Clothing

120. The cost of conventional clothing such as tracksuits, shorts, T-shirts, socks and running/sports shoes are not allowable deductions. Paragraphs 62 to 68, 71 and 72 provide further information on the deductibility of conventional clothing.

121. Where clothing which forms part of a compulsory uniform/ wardrobe is worn (as outlined in paragraphs 54 to 59), such as official monogrammed shirts, shorts and tracksuits, costs incurred are an allowable deduction. The identifier should be in the form of an official monogram, such as a Regimental Crest, in a contrasting colour, of sufficient size to be plainly visible to the casual observer and clearly identify to the public that the wearer is an ADF member (see also Taxation Ruling IT 2641 - *Corporate Wardrobes*). Where the clothing does not form part of a compulsory uniform but is a non-compulsory uniform/wardrobe, it will not be allowable unless it is entered on the Register of Approved Occupational Clothing.

122. Certain ADF units have designed their own physical training clothing with the logo or emblem of their particular unit. These items of clothing do not form part of a compulsory uniform but is a non-compulsory uniform/wardrobe, and are not part of the traditional ADF uniform. Their cost will only be deductible if the clothing meets the requirements of section 51AL of the Act (i.e., that they are entered on the Register of Approved Occupational Clothing).

123. **Example:** Mark is a Physical Training Instructor and is required to maintain a very high level of fitness in order to carry out his income-earning activities. He buys shorts and T-shirts which display his unit logo and protective sports shoes for this purpose. Mark's shorts and T-shirts are not compulsory and are not entered on the Register of Approved Occupational Clothing. Mark can claim a deduction for the work-related proportion of the cost of the protective sports shoes but a deduction is not allowable for the shorts and T-shirts.

124. A unique situation exists with members of the Special Air Services Regiment. Members of this Regiment are paid to maintain a very high level of fitness, part of which involves physical training activities both on and off the Army base. For reasons of security these members wear conventional clothing while undertaking physical training activities off the base. Where these particular facts are present, a deduction is allowable for the work-related portion of expenditure on protective sports shoes and conventional clothing, such as tracksuits, shorts and T-shirts.

Other costs

125. A deduction is allowable for the transport costs incurred in attending a gymnasium or fitness classes if a deduction is allowable for the cost of those classes (see paragraph 114). A deduction for depreciation is allowable under subsection 54(1) of the Act to these ADF members on items of equipment, e.g., weights, etc., used to maintain their very high level of fitness. However, these deductions are allowable only to those ADF members who are required as part of their income-earning activities, to maintain a level of fitness well above the ADF general standard.

Expenses for sporting activities

126. The ADF places a high emphasis on sporting activities to promote physical fitness, team building and leadership skills. ADF members may choose to participate in a sporting activity based on their personal interest and preferences. These activities include individual, team and representative sports at local, national and international levels and may be undertaken whilst the ADF member is on or off duty.

127. A deduction is allowable for expenses incurred by an ADF member in participating in a sporting activity if the member is considered to be on duty while participating in the activity and:

- the member is participating as an official ADF representative at inter service or combined service competitions; or
- the member is required to participate in the activity as part of his/her normal income earning activities.

Note: a member is considered not to be 'on duty' once they have been dismissed.

128. A deduction is not allowable where the member is required to participate in a particular sporting activity but is not on duty. This is confirmed in *FC of T v. Cooper* (1991) 29 FCR 177; 91 ATC 4396; (1991) 21 ATR 1616 where 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...'

129. **Example:** Doug is a soldier in the Army. He is required to participate in rugby football on his weekly sports afternoon and on

those occasions he is considered to be on duty. He also plays with the same ADF team in the local civilian competition on weekends. Doug would be allowed a deduction for transport expenses in respect of his sports afternoon but not for his weekend sport.

130. **Example:** Karen is a clerk in the RAAF and is a member of the national RAAF hockey team which plays in inter-service competitions. Karen is provided with transport, accommodation and official ADF monogrammed skirt and T-shirt to wear during the competition, but must provide her own hockey stick. She is allowed a deduction for depreciation of her hockey stick to the extent that it is used in inter-service competitions.

131. In *Case T74* 86 ATC 1064; 17 ATR 1208 a physical training instructor was allowed a deduction for expenses incurred when participating in inter-service ski championships. We consider this to be an exceptional case in which the expenses incurred by the taxpayer were held (by a majority of the Tribunal) to be incidental and relevant to the taxpayer's income-producing occupation as a physical training instructor. We do not see this decision as one which has application outside its own particular facts.

Grooming

132. A deduction is not allowable under subsection 51(1) of the Act for the cost of personal items such as makeup, shaving equipment, deodorant, hair products, hair nets, clips, bobby pins and sun screen, as they are private in nature. The character of these expenses is not altered by any requirement to replace service-issue items, nor by any order or regulation to purchase or wear such items (see *Cooper's* case discussed in paragraph 37).

Haircuts

133. ADF members are required by Australian Military Regulations and orders to keep their hair short (optional for women as it may be tied back). A deduction is not allowable under subsection 51(1) of the Act for the cost of haircuts as they are a private expenses.

134. 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.

135. 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.

Home office expenses

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

137. Costs associated with an ADF member's home are normally of a private or domestic nature. However, a deduction may be allowable for a proportion of the expenses associated with an ADF member's home, if either:

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

(b) part of the home is used in connection with the ADF member's income-earning activities and does not constitute a 'place of business', i.e., an area of the home is a private study.

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

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

(b) ***Running expenses*** relating to the use of facilities in the home. These include heating/cooling and lighting expenses, cleaning costs, depreciation, leasing charges and the cost of repairs to furniture and furnishings in the home office.

139. A deduction is not allowable for the cost of occupancy expenses for ADF members 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 (*Handley's* case) and *FC of T v. Forsyth* (1981) 148 CLR 203; 81 ATC 4157; 11 ATR 657. In *Handley's* case, the High Court decided that Mr Handley's outgoings on mortgage interest, rates and insurance premiums were related to the building and/or home as a whole, and they would remain the same whether or not he worked at home.

140. This principle is based on the proposition that occupancy expenses are related to the building's primary function as a house, and this is not changed even if a room is set aside exclusively for work-

related purposes (see *Thomas v. FC of T* (1972-73) ALR 368; 72 ATC 4094; 3 ATR 165).

Place of business

141. A deduction is allowable for a proportion of both occupancy and running expenses if an area of the home has the character of a 'place of business'.

142. Whether an area of a home has the character of a 'place of business' is a question of fact. Paragraphs 5, 7, 11, 12 and 13 of TR 93/30 provide information on whether or not an area set aside has the character of a 'place of business'.

143. 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* ATC 429; *AAT Case 9749* (1994) 29 ATR 1138, a sales representative claimed a deduction for home office expense. 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 an ADF member, in his or her capacity as an employee, would use part of their home as a place of business. However, an ADF member may also conduct a business from home.

144. If an area of the home set aside has the character of a 'place of business', then a capital gain may accrue or a capital loss may be incurred on the disposal of the home by the ADF member. 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 home is not a 'place of business')

145. A deduction is allowable for work-related running expenses if an ADF member maintains an office or study at home (e.g., carrying out research, reading reports, preparing submissions, etc.). For the running expenses to be deductible, the area of an ADF member's home set aside as a private study must be used exclusively for these activities (see *FC of T v. Faichney* (1972) 129 CLR 38; 72 ATC 4245; 3 ATR 435).

146. Additional running costs (e.g., lighting, heating and cooling) may be an allowable deduction even though an area of the home has not been set aside as a private study. The circumstances when this may occur are where the ADF member uses a room at a time when others are not present or uses a separate room.

147. **Example:** Jim is an Army officer. He works in his lounge room where other family members are able to watch television. The expenditure for lighting and heating/cooling retains its private or domestic character and is not deductible. If he uses the room at a time when others are not present, or uses a separate room, he is entitled to a deduction for additional running expenses associated with the work activities. This applies even if the room is not set aside solely as a home office.

148. The amount that Jim is entitled to claim is the difference between what was actually paid for heating, cooling and lighting, and what would have been paid had he not worked from home. TR 93/30 provides a formula for calculating the additional expense for an appliance such as a heater.

Meals

149. A deduction is not allowable for the cost of meals consumed by an ADF member 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-producing activity and, in any case, the cost is a private expense and fails to meet the tests of deductibility described in paragraphs 30 to 37.

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

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

Hill J went on to say (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.'

151. 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.

152. 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 30 to 37, and are considered to be private in nature.

153. 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.

Messing and related expenses

Compulsory Mess subscriptions

154. A deduction is allowable for compulsory Mess subscriptions to the extent to which they are incurred for income-producing purposes.

155. The 'Messing System' is unique to the ADF. It serves two functions within the services:

(a) It is necessary for the maintenance of professional military competence, training and discipline and essential to those entitled to membership. Such an organisation has general expenses which can be distinguished as providing facilities for the carrying out of work activities, professional education, training and representational activities. Costs incurred in the administration of the Mess for items such as computer hardware and software, bookkeeping services, stationery, some furnishings and repairs, and insurance on mess property used for work-related purposes are an allowable deduction under subsection 51(1) of the Act. This is supported by *Case G89* 7 TBRD 486; 7 CTBR (NS) *Case 5*.

(b) The Mess also provides a venue for both formal and informal dining and accommodation facilities for serving ADF members and their guests. Some of these occasions are designated compulsory by commanding officers. Expenses related to this aspect of the Mess are private and are for the provision of food, drink and entertainment. These are not an allowable deduction under subsection

51(1) and are expressly denied under section 51AE of the Act.

156. An ADF member can obtain details of the amount paid for Mess subscriptions from Mess accounts provided by his or her Mess Committee.

157. The view has been expressed that periodic Mess subscriptions to defray Mess expenses such as food, drink, recreation, newspapers, accommodation and entertainment should be allowable as the costs are compulsory, necessarily incurred and cannot be apportioned. It is further suggested the Mess system is integral to the operation of the Service, that it caters for the individual development, education and indoctrination to Service traditions and customs.

158. A deduction was previously allowed for Mess subscriptions under subsection 51(1) of the Act by the Board of Review in *Case G89* 7 TBRD 486; 7 CTBR (NS) *Case 5*. However, in that case, the Board found that none of the expenditure was used to provide food, drink or entertainment.

159. It is our view that the costs of food, drink and accommodation are costs of a private nature and are not allowable deductions under subsection 51(1) of the Act (see *Lunney's* case and *Cooper's* case).

160. We consider that a proportion of Mess subscription is incurred to defray entertainment expenses (food, drink and recreation) for ADF members and their guests.

Charges for attendance at Mess functions

161. Expenses incurred by an ADF member in attending compulsory and non-compulsory Mess functions are not allowable deductions.

162. ADF members may incur expenses in attending functions, such as dinners, dances and cocktail parties. It is recognised that many of these functions are compulsory, behaviour at such functions may be taken into account for promotion, and it is the means by which ADF members learn Mess function etiquette.

163. Expenses may include food and drink in the Mess, entertaining guests in an official or informal capacity and transport to and from the mess. However, subsection 51AE(4) of the Act states that:

> 'A deduction is not allowable under section 51 in respect of losses or outgoings incurred after 19 September 1985 to the extent to which they are in respect of the provision of entertainment.'

164. Subsection 51AE(3) defines the 'provision of entertainment' as:

'A reference in this section to the provision of entertainment is a reference to the provision (whether to the taxpayer or to another person and whether gratuitously, pursuant to an agreement or otherwise) of:

(a) entertainment by way of food, drink or recreation; or

(b) accommodation or travel in connection with, or for the purpose of facilitating, entertainment to which paragraph (a) applies...whether or not-

(c) business discussions or business transactions occur;

(d) in connection with the working of overtime or otherwise in connection with the performance of the duties of any office or employment;

(e) for the purposes of promotion or advertising; or

(f) at or in connection with a seminar.'

165. Subsection 51AE(1) defines recreation as including -

'(a) amusement;

(b) sport or similar leisure-time pursuits; and

(c) recreation or amusement provided on, or by means of, a vehicle, vessel or aircraft.'

166. In *Case Y11* 91 ATC 184; *AAT Case 6641* (1991) 22 ATR 3063, a senior ADF officer involved in negotiations to buy defence equipment was denied a deduction for expenditure incurred in attending a range of lunches, cocktail parties, dinners and other forms of social contact relevant to the performance of his duties. Direct business was done on many of those occasions. It was held that section 51AE(4) operated to deny the claim. It did not matter that the expenditure was directly relevant to employment related transactions.

167. The expenses of Mess functions are excluded from deductibility under subsection 51(1) as they are private in nature.

168. As discussed at paragraph 36, the fact that expenditure is incurred as a condition of employment or as the result of a command, does not automatically make it an allowable deduction. The essential character remains private.

Motor vehicle expenses: See ***Transport expenses*** (paragraphs 219 to 259).

Newspapers

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

Parking fees and tolls

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

(a) between two separate places of work;

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

171. A deduction is not allowable for parking fees and tolls incurred when an ADF member is travelling between his or her home and 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 when transporting bulky equipment (see paragraphs 229 and 230).

Professional library

172. Depreciation on a professional library may be claimed as a deduction under section 54 of the Act. If an individual reference book is purchased on or after 1 July 1991, and the cost does not exceed $300 or its effective life is less than 3 years, it may be depreciated at 100% in the year of purchase (Taxation Determination TD 93/159).

173. For depreciation purposes, reference books may only be included in an ADF member's professional library if their content is directly relevant to his or her current duties.

174. In *Case P26* 82 ATC 110; 25 CTBR (NS) *Case 90*, a university lecturer was allowed a deduction for depreciation on legal books but denied a deduction for depreciation on general reading and fiction books (ATC at 112; CTBR at 661).

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

175. Where the cost of a reference book has been claimed as a deduction previously, its cost may not be subsequently added to the value of a professional library and depreciated.

176. Paragraphs 92 to 100 of this Ruling provide further information on depreciation.

Protective equipment

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

Relocation expenses

178. When ADF members are transferred from one base to another, deductions are not allowable for expenses incurred as the result of the transfer (e.g., removal and storage expenses).

179. Where an ADF member transfers from one locality to another, expenses incurred in moving to a new residence to take up duties of the new position, are not incurred in gaining or producing assessable income and are not an allowable deduction under subsection 51(1) of the Act. The ADF member is travelling to work and not between two places of employment.

180. Relocation expenses incurred by ADF members to take up a transfer in existing employment are not allowable under subsection 51(1). This applies whether the transfer of employment is voluntary or at the employer's request.

181. This principle would be equally applicable to compulsory transfers in lieu of disciplinary actions or to transfer as part of a member's employment conditions.

182. This decision is supported by the following two cases. In *Fullerton v. FC of T* 91 ATC 4983; (1991) 22 ATR 757, the taxpayer worked for the Queensland Forest Service (QFS) as a professional forester for over 20 years. In that time, QFS transferred him to a number of different locations. His position ceased to exist as

a result of a reorganisation. 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 expenses on the taxpayer's domestic or family arrangements are not allowable under subsection 51(1), even though the expenses had a causal connection with the earning of income.

183. 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.

184. Taxation Rulings IT 2406, IT 2481, IT 2566 and IT 2614 confirm that expenses incurred on relocation expenses are not deductible.

Rifles, ammunition, cleaning and related equipment

185. Rifles, ammunition and related equipment are normally supplied and replaced by the ADF as a matter of course. An expense incurred voluntarily for work-related purposes may still be allowed as a deduction if the expense has a direct connection with the income-earning activities. The voluntary purchase of additional and/or better or more sophisticated weapon-related equipment, is an allowable deduction under subsection 51(1) to the extent that these items are used for income-earning purposes (see Taxation Ruling IT 2198).

Self education expenses

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

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

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

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

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

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

187. The ADF view employment within their organisation as being a career and that the purpose in undertaking any course of self education is a necessary step in achieving promotion. To this end the pursuit of secondary and tertiary qualifications which an ADF member's commanding officer considers will be of benefit to the service is actively encouraged. Financial support through a series of scholarships or release from duty to attend courses is provided in a limited number of cases. In determining which ADF members will be granted financial assistance or release from duty, consideration is given to available funding and operational efficiency of the unit.

188. The basis of remuneration received by ADF members recognises that employment within the Defence Forces involves conditions which are not common in civilian employment.

189. The Defence Force Remuneration Tribunal (DFRT) has recognised for example, that payment of the service allowance:

> 'compensates for the special demands and exigencies of service life to the extent that they are not fully compensated by the payment of on-occurrence allowances, additional leave and other benefits.'

190. For operational efficiency all ADF members are posted, at least every two years, to various locations which may result in deployment to other work activities requiring different and/or new skills. Commanding officers have a responsibility to ensure that ADF members are able to carry out any tasks allocated to them. It is therefore necessary for ADF members to train and develop to meet these requirements.

191. The ATO recognises the unique conditions of service which apply to ADF members. For example, the ADF maintains a managed career pattern for ADF members which involves the rotation of ADF members between jobs throughout their careers. This is intended to

provide each ADF member with a range of service experience to meet ADF service requirements.

192. Where an ADF member undertakes a course of education which results in, or is objectively likely to result in, the gaining of the next promotion under the ADF's service career path for that ADF member, then these circumstances would need to be considered when determining the relevant nexus between the course and the gaining of assessable income of the ADF member.

193. Where an ADF member undertakes a specific self education course on the recommendation of the ADF member's commanding officer, this recommendation would be indicative, but not determinative of the nexus of the outgoing on the course to the ADF member's income-earning activity.

194. If the ADF member did not secure the intended promotion, the expenses of self education may also be considered in the context of maintaining or improving the ADF member's skill or knowledge exercised in the current income-earning activities (see paragraphs 5 and 6 of TR 92/8).

195. The particular facts of each case need to be considered in the context of the principles that apply to self education expenses.

196. A deduction is not allowable for expenses incurred where an ADF member undertakes a self education course for the purpose of gaining employment outside the ADF. Such an expense is incurred prior to the earning of assessable income and there is no nexus with the current income-earning activity.

197. **Example:** Melissa is a nurse in the Air Force. She is studying for a Bachelor of Business, majoring in accountancy, with a view to receiving a promotion. Melissa is not entitled to a deduction for self-education costs as they are incurred at a point too soon in time, and are not related to her current income-earning activities. However, if Melissa was an ADF member employed in the accounts area, and her commanding officer recommended that such tertiary qualifications would facilitate a pay increment or her next promotion, the deduction would be allowable.

198. **Example:** Shaun is a steward in the Royal Australian Navy. His duties include assisting the chef and waiting on tables. He is currently undertaking a Hospitality Course. As there is a direct connection between this course of self education and his current income-earning activity, a deduction is allowable for the expenses incurred.

Travel for self education

199. 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.

200. 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

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

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

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

Language course expenses

202. The requirement of ADF members to become proficient in another language is dependent on the nature of their current duties and those duties that the ADF member may undertake in the near future. ADF members may learn languages at a military school where there may be little expense incurred by the taxpayer. Alternately, expenses may be incurred by the ADF member in arranging private lessons. Self-education principles need to be examined to determine the tax treatment of the expenses.

Language proficiency expenses

203. The ADF pays a Language Proficiency Allowance to 'encourage ADF members to become proficient in an approved foreign language and to obtain aids to assist in maintaining that proficiency'. This allowance is available for any ADF member who has attained a proficient level of skill in another language. Examinations are conducted prior to an ADF member qualifying for the allowance.

204. The allowance is paid to maintain already existing skills, not to learn new skills. Once the allowance is approved it is paid for as long as those skills are maintained.

205. General self-education principles need to be considered when determining the deductibility of expenses incurred in maintaining a language proficiency.

Limit on deductibility

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

207. '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.

208. **Example:** While employed as a trainee accountant in the Army, Joan enrolled in the Associate Diploma in Accounting at the local university with a view to obtaining her Accounting Certificate. Joan has also completed several short courses run by the Australian Society of Certified Practising Accountants specifically for trainee accountants. She is able to claim the full cost of the short courses under subsection 51(1) of the Act. The costs incurred for the Associate Diploma fall within the definition of 'expenses of self-education' in section 82A of the Act and therefore Joan cannot claim the first $250 of this cost.

Technical or professional publications

209. 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 an ADF member's work and are not general in nature.

210. 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.'

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

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

Cost of calls

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

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

Installation or connection costs

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

215. In *Case M53* 80 ATC 357; 24 CTBR (NS) *Case 29*, Dr P Gerber (Member) stated (ATC at 359; CTBR at 236):

> '...on payment of the connection fee, this taxpayer 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

216. The situations where telephone rental will be an allowable deduction, especially for employees, are identified in 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.

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

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

Silent telephone number

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

Transport expenses

219. Transport costs include public transport fares and the running costs associated with using motor vehicles, motor cycles and bicycles etc., for work-related travel. They do not include accommodation, meals and incidental expenses (see ***Travel expenses***, paragraphs 260 to 264). The treatment of transport costs incurred by an ADF member when travelling is considered below.

Travel between home and work

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

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

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

222. 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.

223. **Example:** An officer of the Military Police is phoned at his home outside normal working hours as the perimeter fence of his Army Base has been vandalised. He travels between his home and the base in response to this emergency. The cost of travel to and from the base is not an allowable deduction.

Travel to work when living on base

224. Some ADF members live 'on Base'. Travel from the place of residence 'on Base' to the place where normal duties are performed is travel to and from work and related expenditure is not an allowable deduction.

Travel to work when living off base

225. The cost of travel to and from work is not ordinarily an allowable deduction. If no accommodation is available on base, or through the ADF member's own choice he or she lives some distance away (thus necessitating use of a private vehicle to go to work), this does not change the character of the expense, which is essentially private. See *Case J21* 77 ATC 193; 21 CTBR (NS) *Case 43*, and *Case V131* 88 ATC 838.

226. Further, the receipt of an allowance (e.g., the Isolated Establishment Allowance) to cover these costs does not change the private nature of the expenses. No deduction is allowed (see *Lunney's* case, *Case U156* 87 ATC 908 and *Case R22* 84 ATC 212; 27 CTBR (NS) *Case 76).*

227. In *Case V131* 88 ATC 838, the taxpayer was an officer in the Royal Australian Air Force. He lived in a capital city and worked on a RAAF base 40 km away. He was forced to live off the base as no married quarters were available at the time. He was compulsorily posted to the base and had no say as to where he was sent. Due to the unavailability of public transport, the taxpayer drove to work each day and claimed a deduction for the expense.

228. The Tribunal held that he was not entitled to a deduction and stated that, although the taxpayer was forced to live a great distance from the base, the matter had been conclusively dealt with by the High Court in *Lunney's* case.

Travel between home and work - transporting bulky equipment

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

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

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

231. It would be unusual for an ADF member to commence work before leaving home. In circumstances where an ADF member's home is a base of operations and work is commenced at home, a deduction is allowable for the cost of travelling between home and work. The ADF member would be considered to be travelling **on** his or her work as distinct from travelling **to** work.

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

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

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

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

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

(e) the taxpayer commences the task at home and the responsibility for completing it is not discharged until the taxpayer attends at the work site (*Owen & Pook's* case; *Collings'* case).

233. In *Collings'* case, the taxpayer was a specially trained computer consultant who was on call 24 hours a day. She was frequently called upon out of ordinary hours to rectify problems. This often necessitated travel because the problem was incapable of being rectified on the terminal at her home. Rath J said (ATC at 4268 ; ATR at 491-492):

> 'Her double work-location is not only not merely colourable, but the two places of work are a necessary obligation arising from the nature of her special duties...When called at her home, the

> taxpayer immediately had the responsibility of correcting the malfunction...In my opinion in this case the taxpayer's expenses in respect of her travelling between her home and work, outside the normal daily journey, were in the special circumstances of this case...allowable deductions...'

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

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

The transport costs incurred by the taxpayer in travelling between her home and work were not allowed as 'the taxpayer was not travelling on her work', per T J McCarthy (Member) (ATC at 451; CTBR at 945).

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

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

236. **Example:** David, an Accountant in the RAAF, travels from his Air Base directly to a technical college to give night lectures. The cost of this travel is an allowable deduction.

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

237. A deduction is allowable for the cost of travel from an ADF member's normal base to other bases. The cost of travel from the alternate base back to the normal base or directly home is also an allowable deduction. This travel is undertaken in the performance of an ADF member's duties. It is incurred in the course of gaining assessable income and is allowable as a deduction.

238. **Example:** Susan, an Army Stores officer, travels from her normal Army Base to Corps Headquarters to attend a meeting. After the meeting she travels directly home. The cost of each journey is an allowable deduction to Susan.

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

239. A deduction is allowable for the cost of travel from home to an alternate work place. The cost of travel from the alternate 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).

240. **Example:** Janet, a writer in the Navy, is required to travel from home to present a verbal briefing report to her Commanding Officer at RAN Fleet Base, Sydney. She then travels to her normal Naval Base at HMAS Penguin. The cost of travelling from home to the Fleet Base and then on to the normal Naval Base is an allowable deduction. However, the cost of travelling home from the normal Naval Base is not an allowable deduction.

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

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

242. **Example:** Graeme, an aircraft mechanic, works in at least two different aircraft hangers each day. These hangers are located on the same base but are a number of kilometres apart. Graeme is required to use his own car to travel between hangers. The cost of travel from one hanger to another is an allowable deduction as the cost is incurred in travelling between two places of employment (see Taxation Ruling IT 2199).

243. If the ADF member 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 ADF member's home is used in association with employment or business conducted elsewhere will not be sufficient to establish entitlement to a deduction for travel between two places of work (IT 2199).

244. A deduction is not allowable for the cost of travel between a person's home at which a part-time work-related 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.

245. 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.

246. **Example:** Peter, a radio operator in the Army, teaches guitar at his home on Monday evenings. The cost of travelling from his base to home is not an allowable deduction. It is a private expense rather than an expense incurred in deriving assessable income.

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

Travel on and between bases

248. ADF members may be required to travel in their own vehicle in the course of their employment either on or between bases. Travel expenses may be allowable where the ADF member incurs an expense that is not reimbursed.

249. Travel in the course of employment is an allowable deduction under subsection 51(1). Travel from the normal place of duty to another point at that base (or another base) which is connected with the taxpayer's official responsibility would normally be considered to be work-related travel.

250. **Example:** Craig works in the RAAF Catering Division. He commences duties at 6 am. At 8am he travels to an adjoining base to 'report in' and then returns to his normal place of work. If Craig does not report in at this time then he is 'absent without leave'. In this instance his travel costs would be an allowable deduction as he is travelling in the course of his employment.

251. **Example:** Rosemary travels from home and reports at the Army Administration Office to pick up some documents and then goes on to the motor pool where her daily duties are actually performed. The costs of travel between home and the Administration Office, and between the Administration Office and the motor pool, are not allowable deductions as she has not actually commenced duties.

252. **Example:** Philip works at Army Base A but is attached to Base B. He must travel from Base A to Base B, usually twice a week, for a meeting with his Commanding Officer. The cost of Philip's travel between bases is an allowable deduction as he is travelling in the course of his duties.

Travel for extra regimental duties(ERD)

253. As outlined in paragraphs 105 to 109, expenses relating to ERD may be an allowable deduction based on the facts of each case.

254. If the ERD being undertaken involve travelling to the normal place of work this is regarded as private expenditure and is not an allowable deduction. Where the activity requires travel to the normal place of work after hours this is also not considered to be work-related travel.

Travel for medical appointments

255. ADF members are subject to regular medical check ups. They may also be ordered to attend the Medical Corps for consultations, e.g., fitness assessments.

256. The expense of travelling to official medical appointments is an allowable deduction where the expense has not been reimbursed or where ADF transport is not used.

257. Travel for any other medical appointments which are needed due to personal ailments (e.g., driving to the in service dentist for treatment) is private.

Automobile Association/Club membership fees

258. 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 ADF 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 the joining fee or for any additional fees paid to gain entitlement to benefits other than road service.

Calculation of motor vehicle balancing adjustment

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

Travel expenses

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

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

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

263. 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 indicates the amount of reasonable expenses covered by a travel allowance.

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

Union or professional association fees and levies

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

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

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

> strike or having been laid off by their employers are not considered to be allowable deductions under subsection 51(1) - they are not sufficiently connected with the activities by which the assessable income is produced to meet the requirements of the subsection' (IT 2062 paragraphs 2 and 3).

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

268. A deduction is allowable for a levy if it is paid into a separate fund and it can be clearly shown that the monies in that fund are solely for protecting the interests of ADF members and their jobs, and for the obtaining of legal advice or the institution of legal action, etc., on their behalf (see IT 299). A deduction is not allowable for payments to staff social clubs (subsection 51AB(4) of the Act).

Watches

269. The costs of purchasing and repairing ordinary wrist watches, including water proof watches, is considered to be of a private nature and no deduction is allowed under subsection 51(1) of the Act.

270. In *Case Q10* 83 ATC 38; 26 CTBR (NS) *Case 74*, an army officer was not allowed a deduction for 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.'

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

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

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

> 'The evidence does not provide any basis either for concluding that the taxpayer's employment would be threatened by his

failure to own a watch and use it for official purposes, or that the level of income was improved by using it for that purpose...'

273. In *Case N84* 81 ATC 451; 25 CTBR (NS) *Case 43*, a television cameraman was not allowed a deduction for the purchase of a watch which was used for work. The deduction was denied on the grounds that the watch did not possess any special attributes 'and although it was used for work, this fact did not change their essential character as private expenditures' (ATC at 453; CTBR at 309).

274. Special watches such as a dedicated stop-watch used by a fitness instructor, are items which can be directly related to income-producing activities. Deductions for the cost of repairs, batteries and watch bands for special watches are allowable under subsection 51(1) of the Act. A deduction is allowable under section 54 of the Act for depreciation on the cost of special watches. Any deduction in respect of special watches may need to be apportioned between private and work-related use. See paragraphs 92 to 100 for further information on depreciation.

Weight loss expenses

275. Expenses incurred in losing weight are private in nature and not allowable under subsection 51(1) of the Act, even though ADF members are required to meet specified fitness levels as a condition of employment. Weight loss expenses do not have the essential character of an income producing expense, and have been held to be private in nature.

276. The character of the expense is not altered by any order or ADF Regulation (see *Cooper's* case at paragraph 37 above.

277. In *Case N71* 81 ATC 383; 25 CTBR (NS) *Case 25*,a commercial pilot was denied a deduction for a fitness course undertaken to lose weight. It was held that the expenditure was not relevant to the duties by which he earned his income and in any event was private in nature.

278. See Taxation Determination TD 93/112 - *Expenditure incurred by a police officer to lose weight*.

Alternative views

Compulsory Mess functions

279. The view was expressed that the costs of attending compulsory mess functions such as dinners, dances and cocktail parties should be allowed as a deduction. It is the Commissioner's view that the

expenses are not allowable. Expenses for food, drink and recreation are considered to be entertainment expenses and are not allowable deductions under section 51AE. In any case, the essential character of these expenses is private and they are therefore not allowable deductions under subsection 51(1).

Protective clothing and equipment

280. The view was expressed that allowable deductions for '*Protective clothing*' and '*Protective equipment*' should include sunglasses, sunhats, sunscreens, wet weather gear, etc., that provide protection against the natural environment. The view of the Commissioner is that the expense is a personal or living expense, similar to the cost of travel between home and work, conventional clothing and daily meals. A deduction is allowable for the cost of protective clothing and equipment where the conditions of the work (rather than the natural environment) make it necessary for an ADF member to provide protection to his or her person or clothing.

Self education

281. The view was expressed that self education expenses, not directly relevant to the performance of a ADF member's existing duties are an allowable deduction where the studies are undertaken to improve the ADF member's ability in his or her occupation as an ADF member. The view was expressed that the income-earning activity is as an ADF member, not the current duties performed.

282. The Commissioner considers that there must be a direct connection between the course of education undertaken and the activities by which a taxpayer currently derives his or her assessable income. The Commissioner considers an ADF member's occupation is his or her current job. The factors to be considered in establishing a connection are set out in TR 92/8 and paragraphs 189 to 194 of this Ruling.

Telephone installation or connection costs

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

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