# *TR 95/18 - Income tax: employee truck drivers-allowances, reimbursements and work-related deductions*

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# Taxation Ruling
Income tax: employee truck drivers- allowances, reimbursements and work-related deductions

**other Rulings on this topic**

**IT 85; IT 112; IT 299; IT 327; IT 2062; IT 2084; IT 2197; IT 2198; IT 2199; IT 2416; IT 2452; IT 2477; IT 2493; IT 2543; IT 2579; IT 2641; IT 2645; IT 2685; IT 2686; MT 2027; TR 92/8; TR 92/15; TR 93/22; TR 93/24; TR 94/3; TR 94/22; TR 94/23; TD 92/142; TD 92/154; TD 92/157; TD 93/108; TD 93/113; TD 93/115; TD 93/145; TD 93/174; TD 93/232; TD 93/244**

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

## What this Ruling is about

### Class of person/arrangement

1. This Ruling applies to employee truck drivers ('truck drivers'). It does not apply to owner drivers.

2. This Ruling deals with:

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

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

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

4. The Ruling also discusses whether deductions are allowable, are specifically excluded, or are limited, under subsections 51(1), 51(4) or 51(6) or sections 51AB, 51AE, 51AG, 51AGA, 51 AH, 51AL, 53, 54, 55, 57AF, 61 or 82A of the Act.

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

6. The common work-related expenses incurred by truck drivers and the extent to which they are allowable deductions are discussed, in alphabetical order, at paragraph 23 in the **Ruling** section. The substantiation provisions are not discussed in depth in this ruling except in relation to claims for travel expenses.

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

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

# Date of effect

9. This Ruling applies to years commencing both before and after its date of issue. The only exception is in respect of the substantiation of meal expenses as part of a travel expense, which will have a date of effect of 1 July 1995 (see *Substantiation of travel expenses*, paragraphs 173 to 217 of this Ruling). However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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

# Previous Rulings

11. This Ruling was previously released as Taxation Ruling TR 94/18. There have been no substantial changes to the technical views contained in that Ruling. TR 94/18 has been re-drafted to clarify some issues and to revise commentary on the substantiation rules which were amended subsequent to the issue of that Ruling. This Ruling withdraws Taxation Ruling TR 94/18.

# Ruling

**Allowances**

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

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

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

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

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

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

The types of allowances mentioned at (a) and (d) are not normally received by truck drivers and are not discussed below.

***Allowances - no deduction allowable***

14. The following allowances commonly received by truck drivers 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 corresponding deduction is allowable.

| | |
|---|---|
| Camping out | Handling of diapers |
| Carrying money | HIAB cranes, etc. |
| Carrying salt | In charge of plant |
| Collecting butchers bones, fat, etc. | Leading hands |
| Collecting moneys | Long/wide loads |
| Delivery/placement of concrete | Obnoxious materials |
| Driving agitator trucks | Rear-end steering |
| Extra horses | Removal and delivery of furniture, etc. |
| First-aid | Weekend/holiday expense |
| Garaging | Working in forests |

***Reasonable allowance amount***

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

(a) overtime meal expenses;

(b) domestic travel expenses; and

(c) overseas travel expenses.

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

## Reimbursements

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

18. However, if motor vehicle expenses are reimbursed by the employer on a cents per kilometre basis, the amount is included as assessable income of the truck driver under paragraph 26(eaa) of the Act. A deduction may be allowable in relation to motor vehicle expenses incurred (see ***Transport expenses***, paragraph 133).

19. If the reimbursement by the employer is for the cost of a depreciable item (e.g., tools and equipment), a deduction is allowable to the truck driver for depreciation (see Taxation Determination TD 93/145 and ***Depreciation of equipment,*** paragraphs 68 to 75).

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

## Deductions

21. A deduction is only allowable if an expense:

(a) is actually incurred (paragraph 25);

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

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

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

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

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

***CB radios:*** A deduction is allowable for depreciation on the cost of a CB radio (paragraphs 36 and 37).

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

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

(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 41 to 65).

***Depreciation of tools and equipment:*** A deduction is allowable for depreciation to the extent of the work-related use of the tools and equipment. An item of equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less, or its effective life is less than three years (paragraphs 68 to 75).

***Driver's licence:*** A deduction is not allowable for the cost of acquiring or renewing a driver's licence. A deduction is allowable only for the cost of a premium if any, that is paid for an endorsed licence, in addition to the cost of a standard licence, if the endorsed licence is required for income-earning purposes (paragraphs 76 to 79).

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

***Fines:*** A deduction is not allowable for fines imposed under a law of the Commonwealth, a State, a Territory, a foreign country, or by a court (paragraphs 80 and 81).

***Fridges:*** A deduction is allowable for depreciation on the cost of portable fridges used by the truck driver for the storage of food and drink while on work-related travel (paragraphs 82 and 83). A fridge bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less, or its effective life is less than three years (paragraphs 71).

***Glasses, contact lenses, sunglasses and anti-glare glasses:*** A deduction is not allowable for the cost of buying prescription glasses, contact lenses, sunglasses and anti-glare glasses (paragraphs 84 to 90).

***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*** above (paragraphs 66 and 67).

***Meals:*** A deduction is not allowable for the cost of meals eaten during a normal working day (paragraphs 91 to 100). If an award overtime meal allowance has been paid, a deduction may be allowable (see paragraphs 102 to 105). A deduction may be allowable if meal costs are incurred by a truck driver who sleeps away from home while travelling for income-earning purposes (see ***Travel expenses***, paragraphs 157 to 172).

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

***Newspapers:*** A deduction is not allowable for the cost of newspapers (paragraph 101).

***Overtime meal expenses:*** A deduction is allowable for the cost of meals bought while working overtime if an award overtime meal allowance is received. Special substantiation rules apply (paragraphs 102 to 105).

***Parking fees and tolls:*** A deduction is allowable for parking fees and bridge or road tolls paid by a truck driver while travelling in the course of employment (paragraphs 106 and 107).

***Repairs to tools and equipment:*** A deduction is allowable for repairs to tools and equipment, to the extent that they are is used for income-earning purposes (paragraph 108).

***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 truck driver's current income-earning activities. Self education costs can include fees, travel, books and equipment (paragraphs 109 to 113). 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 (paragraph 114).

***Sleeping bags:*** A deduction is allowable for depreciation on the cost of a sleeping bag to the extent it is used for income-earning purposes (paragraph 116).

***Stationery:*** A deduction is allowable for the cost of log books, diaries etc., used for income-earning purposes (paragraph 117).

***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 truck drivers and are not general in nature (paragraphs 118 to 122).

***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 (paragraph 123).

*Cost of calls:* A deduction is allowable for the cost of work-related calls (paragraphs 124 and 125).

*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 126 and 127).

*Rental costs:* A deduction is allowable for a proportion of telephone/equipment rental costs if the truck driver can demonstrate that he or she is 'on call', or required to telephone their employer on a regular basis (paragraphs 128 and 129).

*Silent telephone numbers:* A deduction is not allowable for the cost of obtaining a silent telephone number (paragraph 130).

***Tools:*** A deduction is allowable for depreciation on the cost of tools. Tools bought on or after 1 July 1991 can be depreciated at a rate of 100% if the cost of a particular item is $300 or less, or its effective life is less than three years (paragraph 71). A deduction is allowable for the cost of repairs to tools to the extent that the tools and equipment are used in income-producing activities (paragraphs 132).

***Transport expenses:*** Transport expenses include public transport fares and the running costs associated with using motor vehicles, motor cycles, bicycles etc., for work. They do not include accommodation, meals and incidental expenses (see ***Travel expenses***, paragraphs 157 to 172). The treatment of transport expenses incurred by a truck driver 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 (paragraph 138).

*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 truck driver 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 139 and 140)

*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 141 and 142).

*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 an allowable deduction (paragraphs 143 and 144).

*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 145 and 146).

*Travel between two places of employment or between a place of employment and a place of business:* A deduction is allowable for the cost of travelling directly between two places of employment or a place of employment and a place of business, provided that the travel is undertaken for the purpose of carrying out income-earning activities (paragraphs 147 to 153).

*Travel in connection with self education:* See ***Self education*** (paragraphs 111 and 112).

***Travel expenses:*** A deduction is allowable for the cost of travel (accommodation, fares, meals and incidentals) incurred if a truck driver is required, because of his or her work, to sleep away from home (paragraphs 157 to 172). Special substantiation rules apply (paragraphs 173 to 217).

***Truck repairs:*** A deduction is allowable for the cost of repairs to trucks, provided there has been no reimbursement by the employer (paragraphs 218 and 219).

***Truck washing:*** A deduction is allowable for costs incurred in washing trucks, provided there has been no reimbursement by the employer (paragraphs 220 to 223).

***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 224 to 227). A deduction is not allowable for contributions to staff social clubs or associations (paragraph 228).

***Working dogs:*** A deduction is allowable to livestock carriers for depreciation on the cost of working dogs. A deduction is also allowable for their maintenance costs (paragraphs 229 and 230).

# Explanations

### Deductibility of work-related expenses

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

    (a) is actually incurred;

    (b) meets the deductibility tests; and

    (c) satisfies the substantiation rules.

### *Expense actually incurred*

25. The expense must actually be incurred by the truck driver to be considered for deductibility. A deduction is not allowable for expenses not incurred by a truck driver, e.g., if items are provided free of charge. Under section 51AH of the Act, a deduction is not generally allowable if expenses are reimbursed (see paragraphs 17 to 20 for exceptions to this rule).

### *Expense meets deductibility tests*

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

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

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

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

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

(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; 11ATD 147; 6 AITR 379; *FC of T v. Cooper* (1991) 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).

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

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

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

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

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

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

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

31. **Example:** Des, a truck driver, is supplied with protective overalls by his employer and also voluntarily buys another pair. The cost of the protective overalls bought by Des is an allowable deduction. A deduction is also allowable for the laundry costs of both pairs.

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

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

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

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

### *Expense satisfies the substantiation rules*

34. The income tax law requires substantiation of certain work-related expenses. If the total of these expenses is $300 or less, the truck driver 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.

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

## Common work-related expense claims

### *CB radios*

36. CB radios are used for contact between truck drivers to determine road conditions, etc. and/or for contact with the employer.

37. A deduction is not allowable for the cost of a CB radio as it is a capital expense. However, a deduction is allowable under section 54 of the Act for depreciation on the cost of the radio. A CB radio bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less, or its effective life is less than three years (paragraphs 68 to 75). A deduction is allowable for the cost of repairs to a CB radio to the extent of its work-related use.

### *Child care*

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

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

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

### *Clothing, uniforms and footwear*

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

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

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

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

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

(i) 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 for clothing approved under the transitional arrangements; or

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

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

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

(iii) the expenditure is not of a private nature

(see Taxation Ruling TR 94/22 covering the decision in *FC of T v. Edwards* (1994) 49 FCR 318; 94 ATC 4255; (1994) 28 ATR 87 (*Edwards'* case)).

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

*Protective clothing*

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

44. 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 (Taxation Determination TD 92/157).

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

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

47. 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.

48. 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 truck driver to provide protection to his or her person or clothing (e.g., wet weather gear worn when using chemicals or high pressure water hoses).

49. **Example:** Eric uses a high pressure hose to wash his truck, and wears heavy duty wet weather gear to protect himself and his clothing. Eric would be able to claim a deduction for the cost of buying and maintaining his protective wet weather gear to the extent to which it is used for work-related purposes.

50. 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 26 to 33 applied.

*Occupation specific clothing*

51. Occupation specific clothing is defined in subsection 51AL(26) of the Act. It distinctly identifies the employee as belonging to a particular profession, trade, vocation, occupation or calling. It is not clothing that can be described as ordinary clothing of a type usually worn by men and women regardless of their occupation. Examples of clothing that are considered to be occupation specific are female

nurses' traditional uniforms, chefs' checked pants and a religious cleric's ceremonial robes.

52. It is not considered that truck drivers would wear clothing that is occupation specific.

*Compulsory uniform or wardrobe*

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

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

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

> '...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.'

56. 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.'

57. 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.'

*Non-compulsory uniform or wardrobe*

58. A deduction is not allowable for the purchase and maintenance costs of non-compulsory uniform or wardrobe clothing **unless** the

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

59. If truck drivers 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*

60. The views of the ATO on the treatment of costs of buying and maintaining conventional clothing are set out in Taxation Ruling TR 94/22. That Ruling sets out our views on the implications of the decision of the Full Federal Court of Australia in *Edwards*' case. Ms Edwards was the personal secretary to the wife of a former Queensland Governor. She was able to establish that her additional clothing expenses were allowable in her particular circumstances. In most cases, expenses for conventional clothing will not meet the deductibility tests of subsection 51(1) of the Act as they are of a private nature (see also paragraphs 28 and 29).

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

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

63. Senior Member Barbour distinguished this case from *Edwards'* case on the basis of the emphasis placed by the Tribunal and Court on Ms Edwards' additional changes of clothes throughout a work day - a

fact not present in this one - and found the essential character of the expense to be private, saying (ATC at 427; ATR at 1083):

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

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

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

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

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

65. In *Case K2* 78 ATC 13; *Case 21* 22 CTBR (NS) 178, an employee solicitor was required as part of his duties to appear in various courts. It was not his practice to wear a suit. On one occasion a barrister called him as a witness and, although he was neatly dressed, the judge admonished him for not wearing a suit. From that date he wore a suit when involved in litigation work. On the days that he wore a suit, he wore it to and from the office and while at the office. It was held that the expenditure in respect of the suit was not incurred in gaining or producing assessable income and that it was of a private nature.

*Laundry and maintenance*

66. A deduction is allowable for the cost of cleaning and maintaining clothing that falls into one or more of the categories of deductible clothing listed in paragraph 41. This applies whether the clothing is purchased by the truck driver or supplied by the employer.

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

***Depreciation of tools and equipment***

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

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

70. There are two methods for calculating 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.

71. 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 each item in the year in which it is purchased. However, the item may be depreciated at a rate less than 100% if the taxpayer so elects (subsection 55(8) of the Act). The current depreciation rates are set out in Taxation Ruling IT 2685.

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

73. **Example:** Alison is a truck driver who owns a set of spanners. She uses these spanners at work during the week and at home on weekends to work on her car. She is entitled to a deduction for a proportion of the depreciation based on the work use of the spanners. A reasonable apportionment might be 5/7 business use.

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

75. 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*

76. 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.

77. 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 the cost was not an allowable deduction under subsection 51(1) of the Act.

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

79. Some truck drivers may need an endorsed licence to perform their duties. In some states, these types of endorsements do not add to the cost of the licence. However, a deduction is allowable only for the cost of a premium if any, that is paid for an endorsed licence, in addition to the cost of a standard licence, if the endorsed licence is required for income-earning purposes.

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

### *Fines*

80. 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).

81. Truck drivers may incur fines for parking, speeding and overloading of trucks. A deduction is not allowable for these costs.

### *Fridges*

82. A deduction is allowable for depreciation on the cost of a portable fridge purchased for the storage of food and drink while travelling for income-producing purposes.

83. A portable fridge bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less, or its effective life is less than three years (paragraph 71). A deduction is allowable

for the cost of repairs to a portable fridge to the extent of its work-related use.

***Glasses, contact lenses, sunglasses and anti-glare glasses.***

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

85. A deduction is not generally allowable for the cost of items that provide protection from the natural environment (e.g., sunglasses, sunhats and sunscreen). The cost of these items is considered to be a private expense (see Taxation Determination TD 93/244). This view is supported in *Case N84* 81 ATC 451; (1981) 25 CTBR (NS) *Case 43*, where a news cameraman was denied a deduction for the cost of sunglasses used in his work, due to the essentially private nature of the sunglasses.

86. This is in contrast to the decision in *Case 10/94* 94 ATC 168; *AAT Case 9254* (1994) 27 ATR 1233 where a police motorcycle patrolman was allowed a deduction for a pair of wrap-around sunglasses. In this case the additional safety features of the wrap-around sunglasses protected the taxpayer from foreign particles. It was not considered as conventional wear but as protective equipment.

87. Whether anti-glare glasses are an expense of a private or domestic nature was addressed in *Case U124* 87 ATC 741; *AAT Case 87* (1987) 18 ATR 3624. This involved a display operator where it was decided that the glasses were entirely unsuitable for normal private use and the glasses bore a distinct occupation character because of their special protective qualities against the glare arising from the visual display unit screen. The glasses protected the operator from possible personal injury in performing the duties of her employment and assisted her in performing those duties (see Taxation Ruling IT 2477).

88. Similarly, the cost of anti-glare glasses is an allowable deduction for pilots and flight engineers as they offer protection against glare from the instrument panels and display screens in the aircraft, which require constant monitoring. The glasses are protective equipment as the nature of the work rather than the natural environment creates the conditions that make it necessary to wear the anti-glare glasses.

89. A deduction is not allowable for the cost of anti-glare glasses or sunglasses used by a truck driver, as they are worn to provide conventional protection from the natural environment. It is our view that the nature of the work does not create the conditions that make it necessary for the truck driver to wear anti-glare glasses.

90. **Example:** Harry is a long distance truck driver. He bought a pair of anti-glare glasses for protection from glare while driving his truck. A deduction is not allowable for the cost of these glasses as they are not considered to be protective eye wear. They offer conventional protection from the natural environment, not from the particular hazards of the equipment used in the course of employment.

***Meals***

91. A deduction is not allowable for the cost of meals consumed by truck drivers in the normal course of a working day. It is our view that the cost of meals will not have sufficient connection with the income-earning activities and, in any case, the cost is a private expense and fails to meet the tests of deductibility described in paragraphs 26 to 33.

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

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

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

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

93. **Example:** James drives a truck around Sydney making deliveries and buys lunch and snacks 'on the road'. He returns home after completing his deliveries and does not receive an award overtime meal allowance. A deduction is not allowable for the cost of lunches and snacks as the expenditure was not incurred in gaining or

producing assessable income and is considered to be of a private nature.

94. 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.

95. A deduction is not allowable for the cost of food or meals consumed while on duty even though a truck driver may be required to work long hours (see paragraphs 99 and 100 for exceptions to this general rule). These costs fail to meet the tests of deductibility described in paragraphs 26 to 33, and are considered to be private in nature.

96. 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. On occasions these special duties were 'tagged on' at the end of his normal duties, so that on such occasions he was prevented from having his breakfast, lunch and dinner at home. 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.

97. **Example:** Peter is a truck driver and in the course of performing his income-earning activities he is away from home for extended periods of time. He buys breakfast, lunch and dinner while on the road and returns to his normal residence to sleep. He is not paid an award overtime meal allowance. Expenses incurred by Peter in buying his meals are private and no deduction is allowable.

98. In *Case U148* 87 ATC 868; AAT *Case 105* (1987) 18 ATR 3744, a truck driver was allowed a deduction for the cost of meals bought 'on the road'. The circumstances under which the deduction was allowed were set out in Taxation Ruling IT 2579. The Commissioner now considers, based on more recent cases (*Cooper's* case and *Case Y8*), that the decision in *Case U148* is incorrect and accordingly, Taxation Ruling IT 2579 was withdrawn with effect from 1 July 1994. In C*ase Y8* Dr Gerber (Deputy President) referred to the decision in *Case U148* and said (ATC at 168; ATR at 3040):

> 'To the extent that Senior Member Roach allowed the expenditure on meals taken "on the road" on the basis that they were "not unreasonable", I must regretfully part company with him. "Reasonableness" has not yet, as far as I am aware, been used as a litmus test to determine "the extent to which (expenditures) are incurred in gaining or producing the assessable income" or were of a private or domestic nature. Catching a bus to work is not "unreasonable", but it does not make the busfare an allowable deduction (*Lunney v FC of T*

(1957-58) 100 CLR 478). It is also "reasonable" for working mothers to engage babysitters. However the sitter's fees thus incurred are not deductible (*Lodge v FC of T* 72 ATC 4174).'

99. A deduction is allowable for the cost of meals if the truck driver is required to sleep away from home, as the meal expense would be part of a travel expense (see ***Travel expenses***, paragraphs 157 to 172).

100. A deduction is allowable for the cost of meals bought while working overtime, if an award overtime meal allowance has been received (see ***Overtime meals***, paragraphs 102 to 105).

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

***Newspapers***

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

***Overtime meal expense***

102. A deduction is allowable for the cost of meals bought while working overtime if an award overtime meal allowance is received and the expenditure meets the deductibility tests in paragraphs 26 to 33.

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

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

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

### *Parking fees and tolls*

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

(a) between two separate places of work;

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

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

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

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

107. A deduction is not allowable for parking fees and tolls incurred when truck drivers are travelling between their home and their normal place of employment (see *Case C47* 71 ATC 219; 17 CTBR (NS) *Case 44*). The cost of that travel is a private expense and the parking fees and tolls therefore have that same private character. A deduction is allowable for parking fees and tolls if the travel is not private, e.g., *travel between home and work - transporting bulky equipment* (paragraphs 139 and 140).

### *Repairs to tools and equipment*

108. A deduction is allowable under section 53 of the Act for repairs to tools and equipment, to the extent of the work-related use of the tools and equipment.

### *Self education*

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

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

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

110. **Example:** John is a truck driver who would like to go into business for himself. He is doing a part-time course in Business Administration. John is not allowed any deduction for the costs of this course as the course is not related to his current income-earning activities.

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

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

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

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

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

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

| | Deductible as self education expense? | | Deductible as self education expense? | |
|---|---|---|---|---|
| Home | YES → | Place of Education | YES → | Home |
| Home | YES → | Place of Education | NO → | Work |
| Work | YES → | Place of Education | NO → | Home |
| Work | YES → | Place of Education | YES → | Work |

112. **Example:** Francesco is a truck driver who travels a long distance to attend a 3 day heavy vehicle defensive driving course. He is allowed a deduction for the cost of travel to and from the course, overnight accommodation, meals and incidentals.

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

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

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

*Limit on deductibility*

114. 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.

115. '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.

### *Sleeping bags*

116. A deduction is allowable for depreciation on the cost of a sleeping bag used by a truck driver when travelling away from home for income-producing purposes. A sleeping bag bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less, or its effective life is less than three years (paragraph 71).

### *Stationery*

117. A deduction is allowable under subsection 51(1) of the Act for the cost of log books, diaries and pens that are used for income-producing purposes.

### *Technical or professional publications*

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

119. 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.'

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

121. **Example:** Jason, a truck driver, subscribes to the *Australian Truckie* magazine. The cost is an allowable deduction as there is sufficient nexus between the expense and Jason's job.

122. **Example:** Bob, a truck driver, subscribes to a journal about Mechanics. The cost would not be an allowable deduction as there is no special occupational focus in this magazine for a truck driver.

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

123. 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*

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

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

#### *Installation or connection costs*

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

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

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

#### *Rental costs*

128. The situations where telephone rental will be an allowable deduction, especially for employees, are identified in Taxation Ruling IT 85. It states that taxpayers who are either 'on call' or required to

contact their employer on a regular basis may be entitled to a deduction for some portion of the cost of telephone rental.

129. If the telephone is not used 100% for income-earning 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*

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

***Tools***

131. A deduction is allowable for depreciation on the cost of tools purchased by a truck driver to the extent of their work-related use. The purchase can be made at the direction of the employer, or voluntarily. Tools bought on or after 1 July 1991 can be depreciated at a rate of 100% if the cost of a particular item is $300 or less, or its effective life is less than three years (see paragraph 71).

132. A deduction is allowable under section 53 of the Act for repairs to tools and equipment, to the extent of the work-related use of the tools and equipment.

***Transport expenses***

133. 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 157 to 172). The treatment of transport costs incurred by a truck driver when travelling is considered below.

*Travel between home and work*

134. A deduction is not allowable for the cost of travel by a truck driver 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).

135. 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.'

136. 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.

137. **Example:** Arthur, an employee truck driver, is phoned at his home as an urgent delivery has to be made. He travels from home to his employer's premises to pick up his truck. The cost of this travel is not an allowable deduction.

138. Collecting mail, supplies, truck parts etc. and comparable tasks while travelling between the truck driver's home and his or her regular work base do not transform private travel into work-related travel. Similarly, if a truck driver travels from home to collect a truck prior to starting work, such travel is a private expense. The cost of this travel is not an allowable deduction under subsection 51(1) of the Act. This is confirmed in paragraph 34 of Taxation Ruling MT 2027.

*Travel between home and work - transporting bulky equipment*

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

140. A deduction is not allowable if a secure area for the storage of equipment is provided at the work place (see *Case 43/94* 94 ATC; *AAT Case 9654* (1994) 29 ATR 1031 and *Case 59/94* 94 ATC 501; *AAT Case 9808* (1994) 29 ATR 1232).

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

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

142. **Example:** David, a truck driver, travels from his employer's depot directly to his RSL Club where he works as a casual barperson. 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*

143. A deduction is allowable for the cost of travel from a truck driver's normal work place to other work places. The cost of travel from the alternate work place back to the normal work place or directly home is also an allowable deduction. This travel is undertaken in the performance of a truck driver's duties. It is incurred in the course of gaining assessable income and is allowable as a deduction.

144. **Example:** Don, a truck driver, travels from his depot where his leaves his truck to his employer's head office to attend a meeting. After the meeting he travels directly home. The cost of each journey is an allowable deduction to Don.

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

145. 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).

146. **Example:** Earl, a truck driver, is required to travel from home to his employer's head office to attend a meeting. He then travels to his depot to collect his truck and commence his driving shift. The cost of travelling from home to the head office and then on to the normal work place is an allowable deduction. However, the cost of travelling home from the depot at the end of his shift is not an allowable deduction.

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

147. 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.

148. **Example:** Phil, a truck driver, works from two depots. The cost of travel from one depot to another on the same day is an allowable deduction as the cost is incurred in travelling between two places of employment (see Taxation Ruling IT 2199). A deduction is not allowable for the journey back home.

149. If the truck driver lives at one of the places of employment or business a deduction may not be allowable as the travel is between home and work. It is necessary to establish whether the income-earning 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 truck driver'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).

150. A deduction is not allowable for the cost of travel between a person's home at which a part-time income-earning 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.

151. 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.

152. **Example:** Virginia, a truck driver, teaches guitar at her home on Monday evenings. The cost of travelling from the work place to home is not an allowable deduction. It is a private expense rather than an expense incurred in deriving assessable income.

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

*Automobile Association/Club membership fees*

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

*Depreciation cost limit for motor vehicles*

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

*Calculation of motor vehicle balancing adjustment*

156. 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***

157. A deduction is allowable for work-related travel expenses incurred by an employee truck driver who is required to sleep away from home. These expenses could include the costs of accommodation, fares, meals or incidentals. Such expenses are seen as having a sufficient connection with the truck driver's income-earning activities.

158. There have been a number of cases considered by the Courts and Tribunals where deductions for travel expenses were allowed where the taxpayer was required to sleep away from home. In *Case E34* 5 TBRD (NS) 205; 4 CTBR (NS) *Case 99*, J L Burke (Chairman) stated (TBRD at 205; CTBR at 587:

> '...where the taxpayer maintained a domestic establishment and where her employment caused her to move away from that establishment for periods of indefinite duration, I am prepared to find that expenses incurred on hotel accommodation and meals

> whilst the taxpayer was absent from her headquarters, if I may use the term, were not of a private or domestic nature.'

The conclusion reached in that case was, because the income-earning activities of the position required the taxpayer to sleep away from home, the expenses incurred on accommodation and meals were an allowable deduction.

159. **Example:** Kim, a truck driver, is required to drive his truck to a distant country depot and sleeps in the cab of the truck while away from home. He incurs meal expenses while on the road. Kim is considered to be travelling in the course of performing his duties as he is required to sleep away from home. A deduction is allowable for the cost of buying meals while on the road. As Kim slept in the cab of his truck, no deduction is allowable for accommodation expenses, as none were incurred.

160. A recent case involved workers who were paid a camping allowance by their employer as they were required to camp at a work site each day. The work site was too far away for the workers to commute to the site. They stayed at the site for a period of five days and returned home on the weekends. None of the workers spent inordinate periods of time in the camps so that the camp did not become their home (*RTA* case).

161. In *RTA* case Hill J said (ATC at 4521; ATR at 92; FCR AT 240)

> 'Where a taxpayer is required by his employer, and for the purposes of his employer, to reside, for periods at a time, away from home and at the work site, and that employee incurs expenditure for the cost of sustenance, or indeed other necessary expenditure which, if the taxpayer had been living at home, would clearly be private expenditure, the circumstance in which the expenditure is incurred, that is to say, the occasion of the outgoing operates to stamp that outgoing as having a business or employment related character.'

It was decided that a deduction would have been allowable for meals and camping expenses if the expense had been incurred by the employees while away from home.

162. **Example:** Peter, a truck driver, is required to go on long distance trips which involve sleeping away from home. He was away for 208 days in the financial year but did not receive a travel allowance from his employer. Peter incurs expenses for the cost of breakfast, lunch and dinner bought while he is travelling on his work. A deduction is allowable for the cost of Peter's meals as the circumstances which require him to sleep away from home give the meal expenses a business or employment related character. Peter

would need to keep written evidence to substantiate his meal expenses.

163. In a case involving a commercial traveller who incurred accommodation expenses after changing his residence from Brisbane to the South Coast of Queensland (*Case H85* 8 TBRD (NS) 390; 7 CTBR (NS) *Case 30*), H H Antcliff (Member) stated (TBRD at 393; CTBR at 163):

> '....no claim was made in respect of visits to towns within reasonable daily travelling distance thereof as no accommodation expenses were thereby incurred. The sum of...expended on accommodation on his Brisbane visits, in my view and on the authorities cited by the Chairman, were incurred in gaining or producing his assessable income and were not of a private or domestic nature.'

164. This case also confirms that where the income-earning activities of a taxpayer, like the commercial traveller, require them to sleep away from home, expenditure on meals and accommodation is an allowable deduction.

165. **Example:** Joe, a truck driver, is required to make deliveries to a number of distant country locations. The round trip to complete the deliveries takes approximately three days and he completes this round trip each week. Joe's principle income-earning activity is driving his truck. He usually sleeps in his truck, but occasionally stays in a motel. A deduction is allowable for the travel expenses (motel accommodation, fares, meals and incidental expenses) that Joe incurs on these trips.

*Work-related travel for a truck driver*

166. A work-related travel expense occurs when a taxpayer is required to travel away from his or her normal place of work or sleep away from his or her ordinary place of residence in the course of performing income-earning activities. The normal place of work is where the income-earning activities of a taxpayer are usually carried out.

167. The principle income-earning activity of a truck driver is driving a truck. A truck driver may be required to perform a number of duties as part of his or her income-earning activities. These could include completing paper work, driving, loading and unloading, refuelling, minor repairs to the truck etc. A truck driver by the very nature of his or her employment is required to be 'on the road' for the major part of his or her working day to perform his or her duties. Consequently, the normal work place for a truck driver is the truck.

168. The work place may also include the depot where the truck driver may complete various duties such as preparing paper work or loading and checking the truck before commencing driving duties. The normal work place for a truck driver may not be one fixed location and facts may differ.

169. Similarly, the income-earning activities of a theatrical artist are carried out at the various theatres or other venues at which the performances are contracted to take place. A commercial traveller has shifting work places and the income-earning activities occur while visiting various customers or potential customers. By contrast, a clerk's income-earning activities are carried out at his or her normal place of work, which is usually a fixed location.

170. A truck driver or commercial traveller, etc., is not travelling in the course of income-earning activities unless he or she sleeps away from home. A truck driver's normal work place is on the road driving the truck and a commercial traveller has shifting places. For these occupations, there is no fixed work place and a work-related travel expense does not occur unless the truck driver or commercial traveller, etc., sleeps away from their ordinary residence while performing their duties.

171. **Example:** Michael is a truck driver who is required to transport a load of cement from Sydney to Canberra and then return to his base. He buys food and drink during the course of the trip. As Michael will return home to sleep he is not considered to have incurred a travel expense. He will not be allowed a deduction for meals bought while on the road regardless of whether or not Michael's employer paid him a travel allowance.

172. A deduction is allowable for accommodation expenses incurred by a truck driver who sleeps away from his ordinary residence while travelling for work. Receipts must be obtained to substantiate work-related accommodation expenses incurred by a truck driver even if a travel allowance is received. Generally truck drivers do not incur accommodation expenses when travelling for work as they sleep in their truck.

*Substantiation of travel expenses*

173. *Tax Law Improvement (Substantiation) Act 1995* ('TLIS Act') introduced new rules in relation to substantiation expenses. The new rules took effect from 1 July 1994.

174. Paragraphs 176 to 193 discuss the substantiation rules in respect of travel expenses incurred before 1 July 1994. Paragraphs 194 to 216 discuss the substantiation rules in respect of travel expenses incurred from 1 July 1994.

175. Paragraph 217 explains special arrangements that apply to the substantiation of claims for meal expenses incurred as part of a travel expense before 1 July 1995.

*Travel expenses incurred before 1 July 1994*

176. There are a number of factors which affect the application of the substantiation provisions to claims for travel expenses by a truck driver. These include:

- whether a travel allowance was received;
- whether the travel allowance received was reasonable;
- whether the claim for travel expenses exceeds the allowance received;
- whether it is reasonable to expect the truck driver to obtain documentary evidence for certain travel expenses.

177. The receipt of a travel allowance does not automatically entitle a truck driver to a deduction for travel expenses. Whether a deduction is allowable for travel expenses is a separate question, unrelated to whether a truck driver receives a travel allowance (see Taxation Determination TD 93/174). A deduction for travel expenses will only be allowable where a truck driver has incurred allowable travel expenses as per paragraphs 157 to 172.

178. A truck driver must keep a travel diary as well as written evidence when travelling for work if he or she is away from home for more than 5 nights. The diary must contain particulars of each activity undertaken in respect of the travel. Truck drivers generally sleep in their trucks and do not incur accommodation expenses when travelling for work. However, if a truck driver incurs accommodation expenses, a receipt or similar document must be obtained to substantiate the expense.

*Reasonable travel allowance*

179. In certain circumstances, a deduction may be allowable for work-related travel expenses without substantiation where a reasonable travel allowance is paid. The Commissioner can form an opinion of what is a reasonable travel allowance having regard to the total outgoings that it would be reasonable for the taxpayer who received the allowance to incur (subsection 82KZ(4) of the Act).

180. Amounts up to the food and drink component of the Australian Public Service daily travel allowance payable in respect of 'other country centres' are considered to be reasonable for a truck driver in

receipt of a travel allowance. Taxation Rulings setting out the amounts that the Commissioner considers to be reasonable are released annually (see Taxation Rulings IT 2686 (for 1992/1993), TR 93/22 (for 1993/1994) and TR 94/23 (for 1994/1995).

181. Subsection 82KZ(4) of the Act gives the Commissioner the authority to form an opinion about reasonable travel allowance amounts only in circumstances where an allowance has been received. Where no allowance is received the Commissioner has no authority to form an opinion on the reasonableness of likely expenses for work-related travel.

*When is substantiation required for travel expenses (pre 1 July 1994)?*

182. The following table sets out the substantiation requirements for travel expenses incurred before 1 July 1994.

| | |
|---|---|
| Travel allowance received which is less than the amount considered to be reasonable | Expenses claimed must have been incurred.<br>Expenses must satisfy subsection 51(1) of the Act.<br>If the claim is no more than the allowance received, no substantiation is required.<br>If the claim is more than the allowance received, the whole claim must be supported by documentary evidence. |
| Travel allowance received is considered to be reasonable | Expenses claimed must have been incurred.<br>Expenses must satisfy subsection 51(1) of the Act.<br>If the claim is no more than the allowance received, no substantiation is required.<br>If the claim is more than the allowance received, the whole claim must be supported by documentary evidence. |
| Travel allowance received is greater than the amount considered to be reasonable | Expenses claimed must have been incurred.<br>Expenses must satisfy subsection 51(1) of the Act.<br>The whole claim must be supported by documentary evidence. |
| No travel allowance received | Expenses claimed must have been incurred.<br>Expenses must satisfy subsection 51(1) of the Act.<br>The whole claim must be supported by documentary evidence. |

*How to prove travel expenses where documentary evidence is required*

183. A deduction is not allowable in respect of an employment-related expense or a travel expense, or an eligible expense in relation to a meal allowance or travel allowance, unless documentary evidence

of the expense has been obtained and retained by the taxpayer (sections 82KZ and 82KZA of the Act).

184. Documentary evidence of an expense includes a receipt, invoice or similar document that sets out the particulars outlined in section 82KU of the Act. Receipts or invoices must be written in the English language and show:

- the date on which the expense was incurred;
- the name of the supplier of the goods or services;
- the amount of the expense incurred;
- the nature of the goods or service; and
- the date the document was made out.

185. In some circumstances, it is considered unreasonable to expect a truck driver to obtain receipts, and the expenses concerned will be deemed undocumentable (see examples in paragraph 187). Where a truck driver incurs this type of undocumentable expense, he or she must keep an expense diary in accordance with subsection 82KU(6) of the Act. An expense diary must be in the English language and show:

- the date on which the expense was incurred;
- the name of the supplier of the goods or service;
- the amount of the expense incurred; and
- the nature of the goods or services.

186. The most common travel expense incurred by truck drivers who sleep away from home when travelling for work are meal expenses. In most cases a receipt containing the relevant details can be obtained for the cost of a meal incurred by a truck driver, e.g., where the meal is purchased from a roadhouse with dining or take-away facilities. It is not considered that it is unreasonable for a truck driver to obtain receipts for meal costs incurred at roadhouses or similar food outlets (e.g., fast food chains or diners).

187. It may not be reasonable to expect a truck driver to obtain receipts for some food and drink purchases. For example, it would be unreasonable to expect a truck driver to obtain receipts for purchases made from vending machines or outlets that do not normally provide receipts such as roadside caravans.

188. These expenses are deemed undocumentable expenses and must be supported by an expense diary containing details as set out in paragraph 185. Most truck drivers will have a combination of both receipts and diary entries to support travel expense claims. If a receipt can be obtained for an expense it is not an undocumentable expense.

189. **Example:** Rob, a truck driver, is required to transport goods to other states. His trips keep him away from home for several days at a time. While on the road it is normal for Rob to have a cooked breakfast and a substantial evening meal at a roadhouse. For lunch Rob purchases a drink and a snack from vendors who do not supply receipts. It is expected that Rob would obtain receipts for his breakfast and evening meals as it is not unreasonable or impractical to get a receipt from a roadhouse. Diary entries would be sufficient substantiation for Rob's lunches.

190. As an alternative to keeping a separate expense diary, a truck driver may record the details of undocumentable expenses on the back of the relevant page of an *Australian Professional Driver's Log Book* or similar driver's log book. All the details as set out in paragraph 185 must be recorded on the relevant page of the log book.

*Documentary evidence for small amounts*

191. If an expense does not exceed $10 and the total of these small expenses does not exceed $200 for the year of income, it is not necessary for a truck driver to get a receipt for each small expense. Instead of getting receipts, the truck driver can record each item of expense in a diary. The diary entries will be considered sufficient evidence for substantiation purposes if they record details as listed in paragraph 185.

*Relief from substantiation requirements*

192. When reviewing an assessment, the Commissioner has a limited discretion under section 82KZAA of the Act to allow relief from substantiation for a particular expense item. In applying this relief, consideration is given to the nature and quality of the evidence available to substantiate the expense claimed and any special circumstances affecting the taxpayer.

193. If the evidence is deficient in some small respect and an expense was incurred, then provided the Commissioner is satisfied that the deficiency is not deliberate, the discretion may be applied and the evidence accepted as satisfying the substantiation requirements. The degree of compliance with the substantiation sections will vary from case to case and each must be considered on its own facts (see Taxation Ruling IT 2645).

*Travel Expenses incurred from 1 July 1994*

194. There are a number of factors which affect the application of the substantiation provisions to a truck driver. These include :

- whether a travel allowance was received;
- whether the claim for travel expenses covered by the travel allowance exceed the reasonable amount;
- whether it is reasonable to expect the truck driver to obtain documentary evidence for certain travel expenses.

195. The receipt of a travel allowance does not automatically entitle a truck driver to a deduction for travel expenses. Whether a deduction is allowable for travel expenses is a separate question, unrelated to whether a truck driver receives a travel allowance (see Taxation Determination TD 93/174). A deduction for travel expenses will only be allowable where a truck driver has incurred allowable travel expenses as per paragraphs 157 to 172.

196. A truck driver must keep a travel record as well as written evidence when travelling for work if he or she is away from home for 6 or more nights in a row (see exception at paragraph 198). The travel record must contain particulars of each activity undertaken in respect of the travel (Schedule 2B, Division 6 of the TLIS Act). A travel record is a record of activities undertaken during the travel (it is not a record of expenses incurred during the travel).

197. Truck drivers generally do not incur accommodation expenses when travelling for work as they sleep in their truck. If a truck driver incurs accommodation expenses, a receipt or similar document must be obtained to substantiate the expense.

*Reasonable travel allowance amount*

198. If a travel allowance is received, a deduction may be allowable for work-related domestic travel expenses without getting written evidence or keeping travel records, if the total of the expenses claimed covered by the allowance is considered reasonable. The Commissioner can form an opinion as to what is a reasonable travel allowance expense claim having regard to the total outgoings that it would be reasonable for the taxpayer who received the allowance to incur.

199. Amounts claimed up to the food and drink component of the Australian Public Service daily travel allowance payable in respect of 'other country centres' are considered to be reasonable for a truck driver in receipt of a travel allowance. Taxation Rulings setting out the amounts that the Commissioner considers to be reasonable are

released annually (see Taxation Rulings IT 2686 (for 1992/1993), TR 93/22 (for 1993/1994) and TR 94/23 (for 1994/1995).

200. The substantiation provisions provide authority for the Commissioner to form an opinion about reasonable travel expense claims only where a travel allowance has been received. Where no allowance is received the Commissioner has no authority to form an opinion on the reasonableness of likely expenses for travel.

201. The amount of travel allowance received does not determine if the travel expense claim is reasonable. A truck driver can deduct a travel allowance expense for travel within Australia without getting written evidence or keeping travel records if the Commissioner considers reasonable the total of the expenses claimed for travel covered by the allowance (Schedule 2B, section 2-8 of the TLIS Act).

*When is substantiation required for travel expenses (post 30 June 1994)?*

202. The following table sets out the substantiation requirements for travel expenses incurred after 30 June 1994.

| | |
|---|---|
| If a travel allowance **is** received | Expenses claimed must have been incurred.<br>Expenses claimed must satisfy subsection 51(1) of the Act.<br>If the claim is no more than the reasonable amount, no substantiation is required.<br>If the claim is more than the reasonable amount, the whole claim must be supported by written evidence. |
| If **no** travel allowance received | Expenses claimed must have been incurred.<br>Expenses claimed must satisfy subsection 51(1) of the Act.<br>The whole claim must be supported by written evidence. |

*How to prove travel expenses where written evidence is required*

203. A deduction is not allowable in relation to work expenses including a meal allowance expense and a travel allowance expense unless written evidence of the expense has been obtained and retained by the taxpayer (Schedule 2B, Division 2, Division 5 and Division 7 of the TLIS Act).

204. Written evidence from a supplier must be in the English language and show**:**

- the date the expense was incurred;
- the name or business name of the supplier;
- the amount of the expense incurred;
- the nature of the goods or service; and
- the date the document was made out.

205. If the document provided by the supplier does not specify the nature of the goods or service, the missing details may be written on the document by the truck driver before lodging his or her income tax return for the income year (Schedule 2B, section 5-4 of the TLIS Act).

206. In some circumstances, it is unreasonable to expect a truck driver to obtain receipts (see examples in paragraph 208). Where a truck driver incurs this type of expense he or she must record details of the expense in a diary or similar document as soon as possible after incurring the expense. The diary or similar record must be in the English language and show:

- the date on which the expense was incurred;
- the name of the supplier of the goods or service;
- the amount of the expense incurred;
- the nature of the goods or services; and
- the date the record is made out.

207. The most common travel expenses incurred by truck drivers who sleep away from home when travelling for work are meal expenses. In most cases a receipt containing the relevant details can be obtained for the cost of a meal incurred by a truck driver, e.g., where the meal is purchased from a roadhouse with dining or take-away facilities. It is not considered that it is unreasonable for a truck driver to obtain receipts for meal costs incurred at roadhouses or similar food outlets (e.g., fast food chains and diners).

208. It may not be reasonable to expect a truck driver to obtain receipts for some food and drink purchases. For example, it would be unreasonable to expect a truck driver to obtain receipts for purchases made from vending machines or outlets that do not normally provide receipts such as roadside caravans. These expenses are considered 'otherwise too hard to substantiate' and must be supported by a diary or similar record containing details as set out in paragraph 206 (Schedule 2B, section 5-7 of the TLIS Act).

209. Most truck drivers will have a combination of both receipts and diary entries to support travel expense claims. If a receipt can be

obtained for an expense it is not an expense 'otherwise too hard to substantiate'.

210. **Example:** Rob, a truck driver, is required to transport goods to other states. His trips keep him away from home for several days at a time. While on the road it is normal for Rob to have a cooked breakfast and a substantial evening meal at a roadhouse. For lunch Rob purchases a drink and a snack from vendors who do not supply a receipt. It is expected that Rob would obtain receipts for his breakfast and evening meals as it is not unreasonable to get a receipt from a roadhouse. Diary entries would be sufficient substantiation for Rob's lunches.

211. As an alternative to keeping a separate diary, a truck driver may record the details of expenses considered 'otherwise too hard to substantiate', on the back of the relevant page of an *Australian Professional Driver's Log Book* or similar driver's log book. All of the details as set out in paragraph 206 must be recorded on the relevant page of the log book.

*Written evidence for small amounts*

212. If an expense does not exceed $10 and the total of these small expenses does not exceed $200 for the year of income, it is not necessary for a truck driver to get a receipt for each small expense. Instead of getting receipts, the truck driver can record each item of expense in a diary (Schedule 2B, section 5-6 of the TLIS Act). The diary entries will be considered sufficient evidence for substantiation purposes if they record details as listed in paragraph 206.

*Relief from substantiation requirements*

213. The Commissioner has a limited discretion to allow relief from substantiation of a particular expense item. In applying this relief consideration is given to the nature and quality of the evidence available to substantiate the claim. The Commissioner must be satisfied that an expense was incurred and that there is an entitlement to a deduction for that expense (Schedule 2B, Division 8 of the TLIS Act).

214. If the evidence is deficient in some small respect and an expense was incurred on a work-related item, the discretion may be applied and the evidence accepted as satisfying the substantiation requirements. The degree of compliance with the substantiation sections will vary from case to case and each must be considered on its own facts.

215. **Example:** Bruce, an employee truck driver, incurred meal expenses on a trip from Sydney to Brisbane to deliver goods. He

obtains receipts for most of his meal expenses but for those purchases for which he cannot get a receipt, he records the details on the reverse page of his log book. On a few occasions, when recording the details, he omits to show the date the record was made out. If this was the only detail missing, it would be a minor omission, and the Commissioner's discretion would be applied.

216. If a truck driver had a reasonable expectation that substantiation would not be required, the Commissioner's discretion may be applied. The Commissioner must be satisfied that the only reason the evidence was not obtained was that the truck driver had a reasonable expectation that written evidence would not be needed to substantiate the claim in order to be able to deduct the amount.

*Substantiation of meal expenses - special arrangements for pre 1 July 1995 expenses*

217. Where written evidence is required in respect of a claim for meal expenses as part of a travel expense incurred prior to 1 July 1995, properly kept diary entries (see paragraph 206 and 185) will be considered as sufficient evidence. However, from 1 July 1995 where written evidence is required, receipts should be obtained in accordance with paragraphs 203 to 212.

### *Truck repairs*

218. A deduction is allowable for costs incurred in buying parts and labour costs for the repair of the employer's trucks, either at the direction of the employer or voluntarily. If any reimbursement is received by an employee truck driver to cover the cost of repairs, the amount is not required to be included as assessable income and a deduction is not allowable (see paragraph 16).

219. **Example :** Chandra, a truck driver, damages a tail light on his employer's truck during a trip from Perth to Sydney. He buys a replacement tail light for $150 and is reimbursed by his employer on his return to Perth. A deduction is not allowable to Chandra for the $150 and the reimbursement is not assessable income.

### *Truck washing*

220. A deduction is allowable for the cost of truck washing where the washing of the truck is necessary to ensure that the truck is an efficient income-earning vehicle. For example, washing the truck may be necessary due to the carriage of different goods. Expenses incurred in

buying detergents, etc., for this purpose will be an allowable deduction if there has been no reimbursement by the employer.

221. **Example:** Frank was unloading a consignment of groceries and notices a spillage of some items. He was required to wash the truck to ensure that the truck floor is clean and free from contamination, as his next consignment is bags of flour. He washes the employer's truck with detergent at a cost of $10 but is not reimbursed by his employer. Frank can claim a deduction for the expense of $10.

222. If items of a capital nature are purchased, such as shampooing attachments for a hose, a deduction is allowable for depreciation to the extent of the work-related use of the item.

223. **Example:** Bob buys a shampooing attachment costing $100 and uses it in the relevant tax year to wash his employer's truck. Bob estimates that he is required to clean the truck once a week due to the carriage of different goods. He also uses the attachment to clean the family car every fourth week. Because the item cost less than $300, it is subject to immediate write off in the year of purchase. The deduction must be apportioned on the basis of one fifth of the cost being private. The allowable deduction would therefore be $80.

### *Union or professional association fees and levies*

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

225. 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).

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

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

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

***Working dogs***

229. A deduction is allowable for depreciation on working dogs which are used by a truck driver in his or her income-earning activities e.g. drivers who transport cattle. A depreciable item bought on or after 1 July 1991 is able to be depreciated at a rate of 100% if its cost is $300 or less, or its effective life is less than three years (paragraph 71). Rates of depreciation are set out in Taxation Ruling IT 2685.

230. A deduction is also allowable under subsection 51(1) for veterinary fees and pet food expenses for working dogs.

# Alternative views

231. During consultation following the release of Income Tax Ruling TR 94/18, the following alternative views were expressed:

232. ***Driver's licence****:* that costs associated with upgrading an ordinary licence, as well as renewal costs should be an allowable deduction, as there is sufficient nexus between these costs and the performance of a truck driver's work. The ATO view is at paragraphs 76 to 79.

233. ***Meals*****:** that deductions for meals as allowed in Taxation Ruling IT 2579 should stand. The ATO view is expressed at paragraphs 91 to 100 and IT 2579 was withdrawn as from 1 July 1994.

234. ***Substantiation of meal expenses as part of a travel expense:*** that it is impracticable to obtain a receipt for a meal expense. The ATO view is at paragraphs173 to 217.

235. ***Sunglasses/anti-glare glasses:*** that the cost of these items should be allowable deductions as they enhance a truck driver's ability to perform his duties. The ATO view is that these items provide protection from the natural environment and their cost is a private expense. The ATO view is at paragraphs 84 to 90 and in Taxation Determination TD 93/244.

236. ***Telephone installation or connection costs*****:** 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.

237. ***Protective clothing and equipment*****:** that allowable deductions for '*protective clothing*' and '*protective equipment*' should include sunhats, sunscreens, wet weather gear, etc., that provide protection against the natural environment. The view of the Commissioner is that expense is a personal or living expense, similar to the cost of travel between home and work, conventional clothing and daily meals. A deduction is allowable for the cost of protective clothing and equipment where the conditions of the work (rather than the natural environment) make it necessary for a truck driver to provide protection to his or her person or clothing (see paragraphs 43 to 50).

# Index of Explanations

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

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