TR 95/19 - Income tax: airline industry employees - allowances, reimbursements and work-related deductions

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

other Rulings on this topic

IT 85; IT 112; IT 113; IT 208; IT 299; IT 327; IT 2062; IT 2084; IT 2197; IT 2198; IT 2199; IT 2230; IT 2370; IT 2416; IT 2452; IT 2477; IT 2493; IT 2543; IT 2641; IT 2685; MT 2027; TR 92/8; TR 92/15; TR 93/19; TR 93/24; TR 94/3; TR 94/22; TD 92/142; TD 92/154; TD 92/157; TD 93/108; TD 93/113; TD 93/115; TD 93/145; TD 93/232; TD 93/244

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

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

What this Ruling is about

Class of person/arrangement

1. This Ruling applies to employees in the airline industry ('airline employees'). For the purposes of this Ruling, airline employees are flight attendants, flight engineers, pilots and ground engineers.

2. This Ruling deals with:

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

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

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

4. The Ruling also discusses whether deductions are allowable or specifically excluded (or limited), under subsections 51(1), 51(4) or 51(6), or sections 51AB, 51AE, 51AF, 51AG, 51AGA, 51AH, 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 airline employees 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.

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

Date of effect

9. This Ruling applies to years commencing both before and after its date of issue. However, 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 93/19. There have been no substantial changes to the technical views contained in the Ruling. The Ruling has been re-drafted to clarify some issues and to revise the commentary on the substantiation rules which were amended subsequent to the issue of TR 93/19. This Ruling formally withdraws Taxation Ruling TR 93/19.

Ruling

Allowances

12. The receipt of an allowance does not automatically entitle an airline employee 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 e.g., a tool allowance is fully assessable and there may be a possible deduction for repairs to tools, depreciation of tools or replacement of tools (see **Explanation** section);

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

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

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

Allowances - no deduction allowable

14. ***Isolated Establishment Allowance:*** This allowance is paid to airline employees who work shifts at times when there is limited public transport available. This allowance must be included in assessable income. A deduction is not allowable against this allowance.

Reasonable allowance amounts

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

(a) overtime meal expenses;

(b) domestic travel expenses; and

(c) overseas travel expenses.

Allowances (including Overseas Daily Travelling Allowance, Australian Daily Travelling Allowance and Standard Daily Travelling Allowance) received in relation to these expenses are fully assessable.

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

18. However, if motor vehicle expenses are reimbursed by the employer on a cents per kilometre basis, the amount is included as assessable income of the airline employee under paragraph 26(eaa) of the Act. A deduction may be allowable in relation to motor vehicle expenses incurred (see ***Transport expenses,*** paragraphs 133 to 155).

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 airline employee for depreciation (see Taxation Determination TD 93/145 and ***Depreciation of tools and equipment***, paragraphs 69 to 77).

20. If a payment is received for an **estimated** expense, the amount received by the airline employee is considered to be an allowance (not a reimbursement) and is fully assessable to the airline employee (see **Allowances**, paragraphs 12 to 15).

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

Calculators: A deduction is allowable for depreciation, to the extent of the work-related use of the calculators (paragraphs 36 and 37).

(See also ***Depreciation of Tools and Equipment***, paragraphs 69 to 77).

Cash/bar shortages: A deduction is allowable for the cost of making up cash or bar shortages (paragraph 38).

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

Clothing, uniforms and footwear: A deduction is allowable for the cost of buying, hiring or replacing clothing, uniforms or footwear 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 ATO before 1 July 1995. These transitional arrangements cease to have affect from 1 July 1995. A deduction will not be allowable for expenditure incurred after 30 June 1995 in relation to clothing approved under the transitional arrangements; or

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

Expenditure on clothing, uniforms and footwear must satisfy the deductibility tests in subsection 51(1) of the Act and must not be private or domestic in nature (paragraphs 42 to 66).

Expenditure on shoes, socks and stockings may give rise to a deduction where these items form an integral part of a compulsory and distinctive uniform, the components of which are set out by the employer in its expressed uniform policy or guidelines. The employer's uniform policy or guidelines should stipulate the characteristics of the shoes, socks and stockings that qualify them as being a distinctive part of the compulsory uniform, e.g., colour, style, type, etc. The wearing of the uniform must also be strictly and consistently enforced with breaches of the uniform policy giving rise to disciplinary action. These latter factors reflect the fact that image is of critical importance to the particular employer (paragraph 56A, also see Taxation Ruling TR 96/16).

Depreciation of tools and equipment: A deduction is allowable for depreciation to the extent of the work-related use of the tools and equipment. Tools and equipment 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 the effective life is less than three years (paragraph 69 to 77).

Driver's licence: A deduction is not allowable for the cost of acquiring or renewing a driver's licence (paragraphs 78 to 80).

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

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

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

Glasses/contact lenses: A deduction is not allowable for the cost of buying prescription glasses or contact lenses. The cost of anti-glare glasses is an allowable deduction for pilots and flight engineers (see ***Protective equipment***, paragraph 104).

Grooming: A deduction is not allowable for the cost of grooming including cosmetics, skin care products, hairdressing and other personal grooming expenses. A deduction may be allowable, in limited circumstances, for rehydrating moisturiser and rehydrating hair conditioner used to combat the drying effects on the skin and hair when constantly exposed to harsh working conditions and to meet the employer's strict grooming requirements (see paragraphs 82 to 89 and also Taxation Rulings TR 96/17 and TR 96/18).

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*** (paragraphs 67 and 68).

Licences: A deduction is allowable for the cost of renewing licences held by an airline employee in respect of his or her employment. A deduction is not allowable for the cost of obtaining the initial licence.

Luggage: A deduction is allowable for depreciation on luggage including travel bags, overnight bags, suitpacks, navigation bags and suitcases to the extent of the work-related use of the luggage (see ***Depreciation of tools and equipment***, paragraphs 69 to 77).

Luggage trolleys: A deduction is allowable for the cost of luggage trolleys that are used for work-related purposes.

Meals: A deduction is not allowable for the cost of meals eaten during a normal working day (paragraphs 90 to 96). If an award overtime meal allowance has been paid, a deduction may be allowable (see paragraphs 98 to 101). A deduction may be allowable if meal costs are incurred by an airline employee who travels for work-related purposes (see ***Travel expenses***, paragraphs 159 to 165).

Medical examinations for licence renewal: A deduction is allowable for the expenses associated with medical examinations for the renewal of relevant licences. These expenses include the cost of the travel to and from the medical practitioner.

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

Newspapers: A deduction is not allowable for the cost of newspapers (paragraph 97).

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 98 to 101).

Parking fees and tolls: A deduction is allowable for parking fees and bridge or road tolls paid by an airline employee while travelling in the course of employment, e.g., between work places (paragraphs 102 and 103).

Protective equipment: A deduction is allowable for the cost of safety equipment such as anti-glare glasses for pilots and flight engineers (paragraph 104). A deduction is not allowable for the cost of sunglasses, sunhats, sunscreens and wet weather gear that are worn or used to provide protection from the natural environment (paragraphs 48 to 51).

Repairs to tools and equipment: A deduction is allowable for repairs to tools and equipment to the extent of the work-related use of the item (paragraph 105).

Salary guarantee and loss of licence insurance: A deduction is allowable for the premium in respect of salary guarantee and loss of licence insurance in circumstances where the eventual benefits are assessable (paragraphs 106 to 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 airline employee's current income-earning activities. Self education costs can include fees, travel, books and equipment (paragraphs 109 to 115).

If self education expenses are allowable but also fall within the definition of 'expenses of self education' in section 82A of the Act, the first $250 is not an allowable deduction (paragraphs 116 and 117).

Stationery: A deduction is allowable for the cost of log books, diaries, etc., to the extent to which they are used for work-related purposes.

Technical or professional publications: A deduction is allowable for the cost of buying or subscribing to journals, periodicals and magazines that have a content specifically related to airline employees and are not general in nature (paragraphs 118 to 120).

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

Cost of calls: A deduction is allowable for the cost of work-related calls (paragraphs 121 and 122).

Installation and connection costs: A deduction is not allowable for the cost of installing or connecting a telephone, etc., (paragraphs 123 and 124).

Rental costs: A deduction is allowable for a proportion of telephone/equipment rental costs if the airline employee can demonstrate that he or she is 'on call', or required to telephone their employer on a regular basis (paragraphs 125 to 127).

Silent telephone numbers: A deduction is not allowable for the cost of obtaining a silent telephone number (paragraph 128).

Timepieces: A deduction is not allowable for the cost and maintenance of timepieces (paragraphs 129 to 132).

Tools and Equipment: A deduction is allowable for depreciation on tools and equipment (paragraphs 69 to 77). A deduction is allowable for the cost of repairs to tools and equipment to the extent of their work-related use (paragraph 105).

Transport expenses: Transport expenses include public transport fares and the running costs associated with using motor vehicles, motor cycles, bicycles, etc., for work-related travel. They do not include accommodation, meals and incidental expenses (see ***Travel expenses*** at paragraphs 159 to 165). The treatment of transport expenses incurred by an airline employee when travelling is considered below:

Travel between home and work: Generally, a deduction is not allowable for the cost of travel between home and the normal work place as it is considered to be a private expense. The fact that travel is outside normal working hours or involves a second or subsequent trip

does not change this principle. This principle is not altered by the performance of incidental tasks en route (paragraphs 134 to 137).

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 because there is no secure area for the storage of the equipment at the work place 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 airline employee as a matter of convenience or personal choice (paragraphs 138 to 141).

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 142 to 143).

Travel from the normal work place to an alternative work place while still on duty and back to the normal work place or directly home: A deduction is allowable for the cost of travel from the normal work place to other work places. A deduction is also allowable for the cost of travel from the alternative work place back to the normal work place or directly home. This travel is undertaken in the course of earning assessable income and is an allowable deduction (paragraphs 144 and 145).

Travel from home to an alternative work place for work-related purposes and then to the normal work place or directly home: A deduction is allowable for the cost of travel from home to an alternative work place and then on to the normal work place or directly home (paragraphs 146 and 147).

Travel between two places of employment or between a place of employment and a place of business: A deduction is allowable for the cost of travel directly between two places of employment or a place of employment and a place of business, provided that the travel is undertaken for the purpose of carrying out income-earning activities (paragraphs 148 to 153).

Travel between home and work while 'on call': A deduction is generally not allowable for the cost of travel between home and a place of employment while 'on call' (paragraphs 154 and 155).

Travel in connection with self education: See ***Self education expenses*** (paragraphs 113 and 114).

Travel expenses: A deduction is allowable for the cost of travel (accommodation, fares, meals and incidentals) incurred by an airline employee when travelling in the course of employment (paragraphs 159 and 162). Special substantiation rules apply (paragraphs 163 to 165).

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 166 to 169). A deduction is not allowable for contributions to staff social clubs or associations.

Vaccinations: A deduction is not allowable for the cost of vaccinations as a precaution for airline employees at risk from infectious diseases (paragraph 170).

Wet weather gear: A deduction is not allowable if this clothing is worn to provide conventional protection from the natural environment. A deduction is allowable if the nature of the work creates conditions that make it necessary for the airline employee to provide protection to his or her person or clothing (paragraphs 48 to 51).

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 airline employee to be considered for deductibility. A deduction is not allowable for expenses not incurred by an airline employee, 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 18 and 19 for exceptions to this rule).

Expense meets deductibility tests

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

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

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

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

(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) ALR 225; 100 CLR 478; 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; 4 AITR 236); and

(c) it is necessary to determine the **connection** between the particular outgoing and the operations or activities by which the taxpayer most directly gains or produces his or her assessable income (Charles Moore & Co (WA) Pty Ltd v. FC of T (1956) 95 CLR 344; 11 ATD 147; 6 AITR 379; FC of T v. Cooper (1991) 29 FCR 177; 91 ATC 4396; (1991) 21 ATR 1616 (Cooper's case); Roads and Traffic Authority of NSW v. FC of T (1993) 43 FCR 233; 93 ATC 4508; (1993) 26 ATR 76; FC of T v. Hatchett (1971) 125 CLR 494; 71 ATC 4184; 2 ATR 557; 125 CLR 494 (Hatchett's case)).

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

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

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

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

29. Private or domestic expenditure is considered to include costs of living such as food, drink 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 an airline employee does not preclude it from being an allowable deduction (Taxation Ruling IT 2198).

31. **Example:** Graeme, a ground engineer, is supplied with protective overalls by his employer and also voluntarily buys another pair. The cost of the protective overalls that he purchased and the laundry costs of both pairs are allowable deductions.

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

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

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

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

Expense satisfies the substantiation rules

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

Calculators

36. A deduction is allowable for depreciation of calculators and must be apportioned between work-related and private use (see Depreciation of tools and equipment, paragraphs 69 to 77).

37. A deduction is allowable for the cost of maintenance of calculators including batteries and repairs.

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

Cash/bar shortages

38. During the course of their duties, flight attendants are required to deal with monies paid by passengers. Cash/bar shortages may occur and the employee is required to make up the shortfall. A deduction for cash/bar shortages is allowable under subsection 51(1) of the Act. Receipts for any shortfall are provided by the airline and they should be retained by the airline employee.

Child care

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

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

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

Clothing, uniforms and footwear

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

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

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

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

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

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

(ii) approved in writing by the ATO under the transitional arrangements contained in *Taxation*

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

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

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

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

(iii) the expenditure is not of a private nature

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

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

Protective clothing

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

45. 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).

46. A deduction is allowable for expenditure on footwear specifically designed to provide protection to the wearer at work, e.g., special non-slip shoes that pilots and flight engineers may wear on the tarmac to carry out a safety inspection of the aircraft.

47. 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.

48. 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).

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

50. **Example:** Barry uses a high pressure hose in his job as an airline employee. He wears heavy duty wet weather gear to protect himself and his clothing. A deduction is allowable for the cost of buying and maintaining this protective wet weather gear.

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

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

Although this taxpayer was self-employed, the same deductibility tests as set out in paragraphs 26 to 33 applied.

Occupation specific clothing

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

53. It is considered that airline employees do not wear clothing that is occupation specific clothing.

Compulsory uniform or wardrobe

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

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

56. In *Case R55* 84 ATC 411; 27 CTBR (NS) *Case 109*, it was concluded (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.'

56A. Expenditure on shoes, socks and stockings is essentially of a private nature and, even when these items are worn at the request of the employer, their cost will only be deductible in limited circumstances. To qualify for deduction, the items must firstly form an integral part of a distinctive and compulsory uniform the components of which are set out by the employer in its expressed uniform policy or guidelines (see paragraphs 54 and 55). In addition, the employer's uniform policy or guidelines should stipulate the characteristics of the shoes, socks and stockings that qualify them as being a distinctive part of the compulsory uniform, e.g., colour, style, type, etc. The wearing of the uniform must also be strictly and consistently enforced, with breaches of the uniform policy giving rise to disciplinary action. It is only in strict compulsory uniform regimes that expenditure on shoes, socks and stockings is likely to be regarded as work-related rather than private in nature (see Taxation Ruling TR 96/16).

57. In *Case U95* 87 ATC 575, a shop assistant employed by a retail merchant was required to dress according to the standard detailed in the staff handbook. The prescribed dress standards were as follows (ATC at 577):

> 'SELLING STAFF: FEMALE STAFF - To wear a plain black tailored dress, suit or skirt, plain black or white blouse, either long or short sleeved. No cap sleeved, or sleeveless dresses or blouses are to be worn.'

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

> '...nothing distinctive or unique about the combination of clothing which would identify the wearer as a [name of employer] shop assistant or even a shop assistant from another department store. The colour combination of the clothing would be included in the range of acceptable street dress unassociated with business or employment, as well as a combination of colours sometimes worn by female drink or food waiting staff.'

Non-compulsory uniform or wardrobe

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

60. If airline employees 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 51 AL.

Conventional clothing

61. 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) as they are of a private nature (see also paragraphs 28 and 29).

62. 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).

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

64. 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 find that the nature of the expense is essentially private.'

65. 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.'

66. Expenditure on shoes, socks and stockings is usually a private expense and no deduction is allowable. However, it may give rise to a deduction where these items form an integral part of a distinctive and compulsory uniform, the components of which are set out by the employer in its expressed uniform policy or guidelines (paragraph 56A, also see Taxation Ruling TR 96/16).

Laundry and maintenance

67. A deduction is allowable for the cost of cleaning and maintaining clothing that falls into one or more of the categories of deductible clothing listed in paragraph 42. This applies whether the clothing is purchased by the airline employee or supplied by the employer.

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

Depreciation of tools and equipment

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

70. A deduction is allowable under subsection 54(1) of the Act for depreciation on tools and equipment owned and used by an airline employee for income-producing purposes. In addition, a deduction for depreciation is allowable 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.

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

72. Any item of equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less, or if its effective life is less than three years (section 55 of the Act). This means an immediate deduction is available for the cost of each item in the year in which it is purchased. However, the item may be depreciated at a rate less than 100% if the taxpayer so elects (subsection 55(8) of the Act). The current depreciation rates are set out in Taxation Ruling IT 2685.

73. **Example:** Ray, a pilot, purchased luggage valued at $250. The luggage is used only for work-related purposes. He is entitled to an immediate deduction of $250.

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

75. **Example:** Alison is an airline employee who owns a laptop computer. She uses this computer at work during the week and at home on weekends for writing personal letters. She is entitled to a deduction for a proportion of the depreciation based on the work use of the laptop computer. A reasonable apportionment might be 5/7 business use.

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

77. 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 (Taxation Determination TD 92/142).

Driver's licence

78. 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.

79. 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.

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

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

Fines

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

Grooming (cosmetics, skin care, hairdressing)

82. A deduction is not allowable for the cost of items bought for personal use, such as cosmetics, shaving products, deodorant, hair products, skin care products, and sunscreen. These expenses are

private in nature and are therefore not deductible under subsection 51(1).

83. The decision of the Federal Court of Australia in *Mansfield v. FC of T* 96 ATC 4001; (1995) 31 ATR 367, involving a female flight attendant, confirms the long held view that expenditure on cosmetics, personal care products and hairdressing expenses is private and not deductible (see Taxation Ruling TR 96/18).

84. In *Mansfield's* case, Mr Justice Hill stated (ATC at 4008, ATR at 374):

> "Even if makeup as such is required by the airline as an incident of the employment, I am presently of the view that makeup retains an essential personal characteristic which excludes it from deductibility."

85. When considering the non deductibility of hairdressing expenditure, Mr Justice Hill stated (ATC at 4009, ATR at 376):

> "The fact that Mrs Mansfield was required by her employer to be well groomed and presentable does not of itself operate to confer deductibility. Expenditure on hairdressing is of a private nature. There is no additional feature which shows any relationship between the expenditure on the one hand and Mrs Mansfield's employment as a flight attendant. The expenditure does not have the character of employment-related expenditure and in my view is not deductible. Her selection of a perm, which requires somewhat regular maintenance, is her choice. It is not occasioned by her employment."

86. The Federal Court in *Mansfield's* case considered the deductibility of expenses incurred by a flight attendant on rehydrating moisturiser and rehydrating hair conditioner. It was found that Mrs Mansfield's employer placed great importance on the presentation and grooming of its flight attendants. It was, for example, not acceptable for a flight attendant to fly with dry or cracked skin, blemishes or cold sores that could not be concealed. The relevant award also conferred an entitlement to sick leave if an employee was unable to work because of cosmetic problems.

87. However, the requirement to be well groomed and the receipt of an allowance to cover expenses were not sufficient to make the deduction allowable. The "additional feature" to the grooming requirements of the employer, which showed the relationship between the expenditure on rehydrating moisturiser and rehydrating hair conditioner and the income earning activity, was the effect on Mrs Mansfield of her abnormal and unique working environment, i.e., the detrimental effects on her skin and hair of dehydration brought about

by constant exposure to the low humidity of the pressurised airline cabin.

88. This led Mr Justice Hill to conclude (ATC at 4007, ATR at 374) that:

> "...expenditure for moisturiser, the necessity for which was brought about by the harsh conditions of employment which Mrs Mansfield was called upon to endure, is incidental and relevant to her occupation as a flight attendant. It has the necessary connection with her activities in the cabin itself. It is these activities which are directly relevant to her gaining and producing assessable income by way of salary."

89. A deduction for rehydrating moisturiser and rehydrating hair conditioner is allowable only where there are harsh working conditions and a requirement that the taxpayer be well groomed. Where a deduction is allowable, only the amount actually spent on such items for work purposes can be claimed as a deduction. That is, only the proportion of the total expenditure on these products that relates specifically to the taxpayer's income earning activities will be an allowable deduction (see Taxation Ruling TR 96/17).

Meals

90. A deduction is not allowable for the cost of meals consumed by airline employees in the normal course of a working day.

91. It is our view that the cost of meals will not have sufficient connection with the income-earning activity and, in any case, the cost is a private expense and fails to meet the tests of deductibility described in paragraphs 26 to 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 said (FCR at 199-200; ATC at 4414; ATR at 1636):

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

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

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

93. 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.

94. A deduction is generally not allowable for the cost of food or meals consumed while on duty. These costs fail to meet the tests of deductibility described in paragraphs 26 to 33, and are considered to be private in nature.

95. In *Case Y8* 91 ATC 166; *AAT Case 6587* (1991) 22 ATR 3037, a police officer claimed a deduction for the cost of meals while performing special duties away from his normal place of residence. It was held that the cost of these meals was private in nature and no deduction was allowable under subsection 51(1) of the Act.

96. A deduction is allowable for the cost of meals bought while working overtime, if an award overtime meal allowance has been paid (paragraphs 98 to 101).

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

Newspapers

97. 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 an airline employee may be able to use part of the information in the course of his or her work, the benefit gained is usually remote and the proportion of the expense that relates directly to work is incidental to the private expenditure. This view is supported in *Case P30* 82 ATC 139; 25 CTBR (NS) *Case 94* and *Case P114* 82 ATC 586; 26 CTBR (NS) *Case 47*.

Overtime meal expenses

98. 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.

99. 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.

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

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

Parking fees and tolls

102. 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 an airline employee for certain car parking expenses where the conditions outlined in section 51AGA of the Act are met.

103. A deduction is not allowable for parking fees and tolls incurred when airline employees are travelling between their home and their normal place of employment. The cost of that travel is a private expense and the parking fees and tolls therefore have the 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 138 to 141).

Protective equipment

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

Repairs to tools and equipment

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

Salary guarantee and loss of licence insurance

106. The deductibility of premiums for salary guarantee and loss of licence insurance depends on whether the potential benefits payable to the insured are assessable or are considered to be of a capital nature.

107. The extent to which a premium is an allowable deduction is discussed in Taxation Rulings IT 208, IT 2230 and IT 2370. Generally, if the potential benefit is a one-off payment, e.g., for the loss of a limb, the payment is considered to be capital in nature and therefore the premiums are not deductible under subsection 51(1) of the Act.

108. However, where the benefit is by way of regular payments which replace lost earnings, the premiums are an allowable deduction to the extent of the portion of the premium which is attributable to the potential assessable benefits payable under the policy.

Self education expenses

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

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

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

(c) A deduction is not allowable if the education is designed to enable an airline employee 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. Airline employees other than flight attendants do not qualify for a deduction in respect of the cost of acquiring a second language if the knowledge of a second language is not related to their current income-earning activities.

111. **Example:** Amy, a flight attendant, voluntarily learns to speak a second language. Her employer pays additional salary to those qualified in a relevant second language. Additionally, the knowledge of a second language enhances promotion prospects. Amy's self education expenses incurred in relation to the learning of a relevant second language is therefore an allowable deduction under subsection 51(1) of the Act.

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

113. 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

114. **Example:** Frank is an apprentice ground engineer who travels a long distance to a technical college to undertake his apprenticeship course for two consecutive days each fortnight and sleeps away from home. He is allowed a deduction for the cost of travel to and from his place of education, overnight accommodation, meals and incidentals, less $250 (see paragraph 116).

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

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

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

Limit on deductibility

116. 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.

117. '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.

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 an airline employee'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:

> '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' (ATC at 633-634; CTBR at 422).

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

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

Cost of calls

121. A deduction is allowable for the cost of telephone calls made by an airline employee in the course of carrying out his or her duties.

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

Installation or connection costs

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

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

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

Rental costs

125. 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.

126. If the telephone is not used 100% for work-related purposes, only a proportionate deduction will be allowable.

127. 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

128. 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).

Timepieces

129. Deductions for the cost and maintenance of timepieces are not allowable under subsection 51(1) of the Act as the expense is considered to be private in nature.

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

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

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

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

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

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 159 to 165). The treatment of transport costs incurred by an airline employee when travelling is considered below.

Travel between home and work

134. A deduction is not allowable for the cost of travel by an airline employee 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. An airline employee may be regularly employed at one work place some days and at another place on other days. In both cases, the normal work place is where the airline employee performs normal duties.

Travel between home and work - transporting bulky equipment

138. 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 and Case U29 87 ATC 229; AAT Case 32 (1987) 18 ATR 3181). If the equipment is transported to and from work by the airline employee as a matter of convenience or personal choice, it is considered that the transport costs are private and no deduction is allowable. A deduction is not allowable if a secure area for the storage of equipment is provided at the work place (see Case 59/94 94 ATC 501; AAT Case 9808 (1994) 29 ATR 1232).

139. In Case 43/94 ATC 387; AAT Case 9654 (1994) 29 ATR 1031, a flight sergeant with the Royal Australian Air Force was supplied with a locker. By personal choice, he kept only a full dress uniform in the locker, preferring to keep his equipment in the boot of his car in which he travelled to and from work. The equipment was carried in a duffle bag which, when packed, weighed 20kg. He also carried a navigational bag containing charts, work manuals and study materials and on occasions another bag which weighed 10kg when packed. The Tribunal decided that the cost of the taxpayer's travel to and from work was not incurred in earning his assessable income.

140. In Case *U107* 87 ATC 650; AAT *Case 75* 18 ATR 3544, a ground maintenance engineer was allowed a deduction for the expense of transporting his tools to and from the airport on the grounds that the two substantial tool boxes were of such size and weight that they could not reasonably have been transported on public transport. The Tribunal was of the opinion that the security provided was not sufficient.

141. In Case L49 79 ATC 339; 23 CTBR (NS) Case 56, an airline pilot was not allowed a deduction for expenses incurred in transporting luggage to and from the airport. The taxpayer's duties commenced when he 'signed on' at the airport for a flight or, on other occasions of mandatory attendance, on arrival at the airport. In this case, Board Member Mr M B Hogan stated (ATC at 342; CTBR at 469):

> 'The taxpayer had the normal accoutrements of a travelling businessman, a bulky suitcase and a hand satchel. But this bulk is hardly such as to suggest that the accoutrements were being transported primarily, and that the taxpayer obtained an incidental (and "tax free") ride.'

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

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

143. **Example:** Jane, an airline employee, is allowed a deduction for the cost of travel from the airport directly to a university to give night lectures, for which she is paid.

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

144. A deduction is allowable for the cost of travel from an airline employee's normal work place to other work places. The cost of travel from the alternative work place back to the normal work place or directly home is also an allowable deduction. This travel is undertaken in the performance of an airline employee's duties. It is incurred in the course of gaining assessable income and is an allowable deduction.

145. **Example:** David travels from the airport to his employer's city office to attend a meeting. After the meeting he travels directly home. The cost of each journey is an allowable deduction to David.

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

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

147. **Example:** Janet works at the airport. She is required to travel from home to a warehouse to pick up supplies and then on to the airport. The cost of travelling from home to the warehouse and then on to the normal work place is an allowable deduction. However, the cost of travelling home from the normal work place is not an allowable deduction.

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

148. 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.

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

150. A deduction is not allowable for the cost of travel between a person's home, at which a part-time income-producing activity is carried on, and a place of full-time employment unless there is some aspect of the travel that is directly related to the part-time activity.

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 is a flight attendant who 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 deductibility of travelling expenses between places of employment/business.

Travel between home and work while 'on call'

154. Ground engineers may be contacted after regular hours for shiftwork or to attend to machinery breakdowns. Although a taxpayer may be required to travel to work in response to a call while on standby, this would not ordinarily alter the private character of that travel. In *FC of T v. Genys* 87 ATC 4875; (1987) 19 ATR 356, a nursing sister was denied the cost of travelling to and from work. She worked relief shifts in intensive care and the shifts were arranged by telephone. It was held there was nothing about the travel that distinguished it from normal travel to and from work.

155. In some instances, duties commence upon receipt of a phone call. In *FC of T v. Collings* 76 ATC 4254; 6 ATR 476, the taxpayer was engaged in the conversion of a computer facility and often used a personal computer at home that was connected by telephone to her employer's computer. If the problem could not be fixed through the telephone connection, the taxpayer was required to travel to the site. It was held that travel from home to the site was an allowable deduction as the performance of duties had commenced and the travel was effectively between two work sites (see Taxation Rulings IT 112 and IT 113).

Automobile Association/Club membership fees

156. 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

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

Calculation of motor vehicle balancing adjustment

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

Travel expenses

159. A deduction is allowable for the costs incurred by an airline employee in undertaking work-related travel. Travel expenses include the costs of accommodation, fares, meals and incidentals.

160. Accommodation expenses incurred in maintaining a residence in the city of the airline employee's base while also maintaining a family residence in another city, i.e., a domicile port, are not an allowable deduction. We consider that the airline employee's duties commence when he or she 'signs on' at their base, not when he or she departs from his or her domicile port.

161. In FC of T v. Toms 89 ATC 4373; 20 ATR 466, the Federal Court held that the expenses related to accommodation near the work place while maintaining a family residence in another location were not an allowable deduction as they were considered to be private expenses.

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

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

164. If a travel allowance is received and the amount of the claim for expenses incurred is no more than the reasonable amount, substantiation is not required. The Commissioner of Taxation publishes annually a Taxation Ruling that sets out the amount of reasonable expenses covered by a travel allowance.

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

Union or professional association fees and levies

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

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

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

168. 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).

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

Vaccinations

170. A deduction is not allowable for the cost of vaccinations to protect airline employees at risk from infectious diseases in the work

place as the expense relates to a personal medical expense, and is therefore of a private nature.

Alternative views

Telephone installation or connection costs

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

Protective clothing and equipment

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

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