TR 95/22 - Income tax: employee building workers - allowances, reimbursements, long service payments, redundancy trust payments and work-related deductions

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Taxation Ruling

Income tax: employee building workers - allowances, reimbursements, long service payments, redundancy trust payments 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 2641; IT 2685; MT 2027; TR 92/8; TR 92/15; TR 92/20; TR 94/3; TR 94/22; TR 94/23; TD 92/142; TD 92/154; TD 92/157; TD 93/17; TD 93/108; TD 93/113; TD 93/115; TD 93/145; TD 93/230; 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 building workers. A 'building worker' is a person who is employed either on-site or off-site in the capacity of a foreman, supervisor, leading hand, tradesperson, apprentice, general construction worker, labourer, plant operator or similar occupation within the building and construction industry.

2. For the purposes of this Ruling, the activities of the building and construction industry include the following:

(a) the construction of buildings (including site preparation and the on-site assembly and erection of pre-fabricated buildings), roads, railroads, bridges, aerodromes, irrigation projects, harbour or river works, water, gas, sewerage or stormwater drains or mains, electricity or other transmission lines or towers, pipelines or oil refineries, or other specified civil engineering projects;

(b) the repair of buildings or other structures;

(c) the alteration or renovation of buildings, preparation of mine sites, demolition or excavation;

(d) the installation of heating or air conditioning equipment, alarm systems, blinds and awnings, petrol bowsers, electrical wiring, lifts, escalators, factory assembled

boilers and 'built-in' furniture, and the on-site assembly and installation of boilers; and

(e) special building or construction services such as steel erection, carpentry, bricklaying, concreting, plumbing, painting, plastering, floor and wall tiling, roof tiling, glazing, landscaping and the installation or laying of floor coverings such as carpet or linoleum.

3. This Ruling deals with:

(a) the assessability of allowances, reimbursements, long service payments and redundancy trust payments received by building workers; and

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

4. The Ruling discusses the assessability of allowances, reimbursements, long service payments and redundancy trust payments received under sections 25, 26AD, 27A, 27C, 27F and paragraphs 26(e) and 26(eaa) of the *Income Tax Assessment Act 1936* (the Act).

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

6. The tax treatment of allowances and reimbursements received is examined at paragraphs 13 to 22 in the **Ruling** section.

7. The tax treatment of long service payments and redundancy trust payments is examined at paragraphs 23 to 25 in the **Ruling** section..

8. The common work-related expenses incurred by building workers and the extent to which they are allowable deductions are discussed, in alphabetical order, at paragraph 28 in the **Ruling** section. The substantiation provisions are not discussed in depth in this Ruling.

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

10. 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 building workers. 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

11. This Ruling applies to years commencing both before and after its date of issue. The only exception is our views on the tax treatment of deductions for expenses claimed in relation to award transport payments, which apply only to 1996-97 and later income years. 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).

12. 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.

Ruling

Allowances

13. The receipt of an allowance does not automatically entitle a building worker to a deduction. The term 'allowance' does not include a reimbursement (see paragraphs 19 to 22), but for the purposes of this Ruling, includes what is known in the industry as 'special rates'.

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

(a) fully assessable to the employee with a possible deduction allowable, depending upon individual circumstances (paragraph 15);

(b) fully assessable to the employee with no deduction allowable even though an allowance is received (paragraph 16);

(c) fully assessable to the employee with a deduction allowable for expenses incurred subject to special substantiation rules (paragraph 17);

(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 (paragraph 18).

Allowances - possible deduction

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

Allowance	**Possible allowable deduction (see Explanations section)**
Excess fares/fares/daily fares (award transport payment)	Transport expenses Motor vehicle expenses Fares
Grindstone Second hand timber Tools	} Repairs to tools Depreciation of tools Replacement of tools

Allowances - no deduction allowable

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

Acid work Asbestos Bagging Bitumen work Brick cutting machine Certificate Cleaning down brickwork Cold work Computing quantities Confined space Cutting tiles Dirty work Disability District Dry polishing of tiles Dual lift Explosive powered tools First aid Follow the job Fumes Furnace work Greaser carrying oils Heavy blocks	Height work Hot work Hydraulic hammer Industry Insulation Lifting other than standard bricks Multi storey Paint spray application Pile driver Plaster or composition spray Pneumatic tool operation Roof repairs Site allowances for special projects Slushing Special Suspended perimeter work platform Swing scaffold Towers Toxic substances Underground Waste disposal Weekend return home Wet work

Reasonable allowance amounts

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

(a) overtime meal expenses;

(b) domestic travel expenses; and

(c) overseas travel expenses.

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

Allowances - not assessable and no deduction allowable

18. A deduction is not allowable to a building worker in respect of expenses incurred in relation to the following allowances:

(a) Living away from home;

(b) Camping;

(c) Caravan;

(d) Distant work.

NOTE: These allowances are paid to a building worker who:

- is required to live away from home for extended periods,
- receives the allowance as compensation for the cost of having to live away from home, and
- does not receive the allowance as a form of travel allowance.

These allowances are not assessable to the building worker as the employer is usually subject to Fringe Benefits Tax in respect of the allowances. If the allowance is paid wholly or in part for travel expenses, it is assessable to the building worker and a deduction may be allowable (see Taxation Determination TD 93/230 and ***Travel expenses***).

Reimbursements

19. If a building worker 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 building worker 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).

20. 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 building worker under paragraph 26(eaa) of the Act. A deduction may be allowable in relation to motor vehicle expenses incurred (see ***Transport expenses***, paragraph 129).

21. 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 building worker for depreciation (see Taxation Determination TD 93/145 and ***Depreciation of equipment,*** paragraphs 81 to 88).

22. If a payment is received from an employer for an **estimated** expense, the amount received by the building worker is considered to be an allowance (not a reimbursement) and is fully assessable to the building worker (see **Allowances,** paragraphs 13 to 18).

Long service payments

23. Building workers may be entitled under various State Acts to long service payments. The payments are assessable as follows:

(a) payments made while continuing to work or seeking employment in the industry constitute income in the normal sense and are fully assessable under subsection 25(1) of the Act; and

(b) payments made when terminating employment and leaving the building and construction industry fall for consideration under section 26AD of the Act, that deals with the tax treatment of long service leave payments. On leaving the industry, the payment may be apportioned into various components and a reduced rate of tax may apply.

Redundancy trust payments

24. A redundancy payment made by a redundancy trust is to provide a cash payment to a building worker whose job is being made redundant, who retires, becomes unemployed or withdraws from the industry.

25. Payments made from a redundancy trust on termination of employment are eligible termination payments. Generally, these payments from a redundancy trust are not considered to be a bona fide redundancy payment in terms of section 27F of the Act and would not qualify for concessional treatment in terms of subsection 27C(2) of the Act (see Taxation Determination TD 93/17). However, where a redundancy trust agreement has been examined by the ATO and the ATO has confirmed that under certain circumstances bona fide redundancy payments may be made, those approved payments will qualify for concessional treatment.

Deductions

26. A deduction is only allowable if an expense:

(a) is actually incurred (paragraph 30);

(b) meets the deductibility tests (paragraphs 31 to 38); and

(c) satisfies the substantiation rules (paragraphs 39 and 40).

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

28. The common work-related expenses incurred by building workers 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 building worker's bank account(s). A deduction is not allowable for any other bank fees as a work-related expense (Taxation Ruling IT 2084).

Child care: A deduction is not allowable for child care expenses (paragraphs 51 to 53).

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

(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 for clothing approved under the transitional arrangements; or

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

Expenditure on clothing, uniforms and footwear must satisfy the deductibility tests in subsection 51(1) of the Act and must not be private or domestic in nature (paragraphs 54 to 78).

Depreciation of tools and equipment: A deduction is allowable for depreciation on the cost of tools and equipment to the extent of the work-related use of the tools and equipment. An item of equipment or a tool 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 81 to 88).

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 in addition to the cost of a standard licence required for work purposes (paragraphs 89 to 92).

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 93).

First aid courses: A deduction is allowable if it is necessary for a building worker, 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 building worker, 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 safety glasses is an allowable deduction (see ***Protective equipment,*** paragraph 107).

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

Laundry and maintenance of clothing, uniforms and footwear: A deduction is allowable for the cost of laundry and maintenance of supplied or purchased clothing, uniforms or footwear if these items are of a kind described under ***Clothing, uniforms and footwear*** (see also paragraphs 79 and 80).

Licences and certificates: A deduction is allowable for the cost of renewing licences and certificates held by a building worker in respect of his or her employment. A deduction is not allowable for the cost of obtaining the initial licence or certificate.

Meals: A deduction is not allowable for the cost of meals eaten during a normal working day (paragraphs 94 to 99). If an award overtime meal allowance has been paid, a deduction may be allowable (see paragraphs 101 to 104). A deduction may be allowable if meal costs are incurred by a building worker who travels for work-related purposes.(see ***Travel expenses***, paragraphs 182 to 186).

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

Newspapers: A deduction is not allowable for the cost of newspapers (paragraph 100).

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 101 to 104).

Parking fees: A deduction is allowable for parking fees paid by a building worker while travelling in the course of employment, e.g., between work sites (paragraphs 105 and 106).

Protective equipment: A deduction is allowable for the cost of safety equipment such as harnesses, goggles, breathing masks, helmets, etc.

(paragraph 107). 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 60 to 63).

Radios, cassette players, walkmans, etc: A deduction is not allowable for the cost of these items.

Repairs to tools and equipment: A deduction is allowable under section 53 of the Act for repairs to tools and equipment, to the extent that the tools and equipment are used in income-producing activities (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 current income-earning activities of the building worker. 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 (paragraphs 114 to 116).

Stationery: A deduction is allowable for the cost of log books, diaries, etc., used for income-producing 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 the building worker's current income-earning activities and are not general in nature (paragraphs 117 to 121).

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

Cost of calls: A deduction is allowable for the cost of work-related calls (paragraphs 122 and 123).

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 124 and 125).

Rental costs: A deduction is allowable for a proportion of telephone rental costs if the building worker can demonstrate that he or she is 'on call', or required to telephone their employer on a regular basis (paragraphs 126 and 127).

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

Tolls: A deduction is allowable for bridge and road tolls paid by a building worker when travelling in the course of employment, e.g., between work sites (paragraphs 105 and 106).

Tools: A deduction is allowable for depreciation on the cost of tools. Tools bought on or after 1 July 1991 canbe 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 84). A deduction is allowable for the cost of repairs to tools to the extent of their work-related use (paragraph 108).

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***). The treatment of transport expenses incurred by a building worker 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. The principle is also not altered if the building worker is required to have a car available at work, uses a car because using public transport is impracticable, or is required to travel to work outside normal hours (paragraphs 130 to 135).

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 building worker as a matter of convenience. A deduction is not allowable if a secure area for the storage of equipment is provided at the workplace (paragraphs 136 to 141).

Travel between home and work where home is a base of operations and work is commenced at home: A deduction is allowable for transport expenses if they can be attributed to travelling **on** work, as distinct from travelling **to** work, i.e., where the building worker's home is used as a base of operations and his or her work has commenced before leaving home (paragraphs 142 to 149).

Travel between home and shifting places of work: A deduction is allowable for the transport expenses incurred in travelling between home and shifting places of work, where the building worker is required by the nature of the job itself to do the job in more than one place. The mere fact that a building worker may choose to do part of

the job in a place separate from that where the job is located, is not enough (paragraphs 150 to 164).

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 165 and 166).

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 167 and 169).

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 170 to 172).

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 173 to 179).

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 by a building worker when travelling in the course of employment, e.g., travel interstate to supervise at another work site (paragraphs 182 and 183). Special substantiation rules apply (paragraphs 184 to 186).

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 187 to 190

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 building worker to provide protection to his or her person or clothing (paragraphs 60 to 63).

Explanations

Deductibility of work-related expenses

29. 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

30. The expense must actually be incurred by the building worker to be considered for deductibility. A deduction is not allowable for expenses not incurred by a building worker, 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 20 and 21 for exceptions to this rule).

Expense meets deductibility tests

31. 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.'

32. 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 22511 ATD 404 (Lunney's case));

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

(c) it is necessary to determine the **connection** between the particular outgoing and the operations or activities by which the taxpayer most directly gains or produces his or

her assessable income (Charles Moore & Co (WA) Pty Ltd v. FC of T (1956) 95 CLR 344; 11 ATD 147; 6 AITR 379; FC of T v. Cooper (1991) 29 FCR 177; 91 ATC 4396; (1991) 21 ATR 1616 (Cooper's case); Roads and Traffic Authority of NSW v. FC of T (1993) 43 FCR 223; 93 ATC 4508; (1993) 26 ATR 76; FC of T v. Hatchett (1971) 125 CLR 494; 71 ATC 4184; 2 ATR 557 (Hatchett's case)).

33. 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., sunscreen or driver's licence);

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

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

34. 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...'

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

36. **Example:** Des, a painter, is supplied with protective overalls by his employer and also voluntarily buys another pair. The cost of the protective overalls and the laundry costs of both pairs are allowable deductions.

37. The fact that an expense is incurred by a building worker at the direction of his or her employer does not mean that a deduction is automatically allowable e.g. must have a car available at work.

38. 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

39. The income tax law requires substantiation of certain work-related expenses. If the total of these expenses is $300 or less, the building worker 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.

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

Award transport (fares) allowances

41. Award transport (fares) allowances are allowances paid to employees under an award that recognises that employees may incur transport costs for travel undertaken in the course of performing the duties of employment. Award transport (fares) allowances do not cover the cost of meals, accommodation and incidentals incurred when travelling (see ***Travel expenses***, paragraphs 182 to 186).

42. The receipt of an allowance, whether paid under an award or not, does not mean that the building worker is automatically entitled to claim a deduction. Regardless of the level of the claim, the tests of deductibility in subsection 51(1) of the Act must be met.

43. A deduction is allowable only to the extent to which the expenses are incurred by the building worker in earning assessable income. Taxation law does not authorise a deduction for amounts that have not been incurred, or for expenditure that is not incurred in earning assessable income.

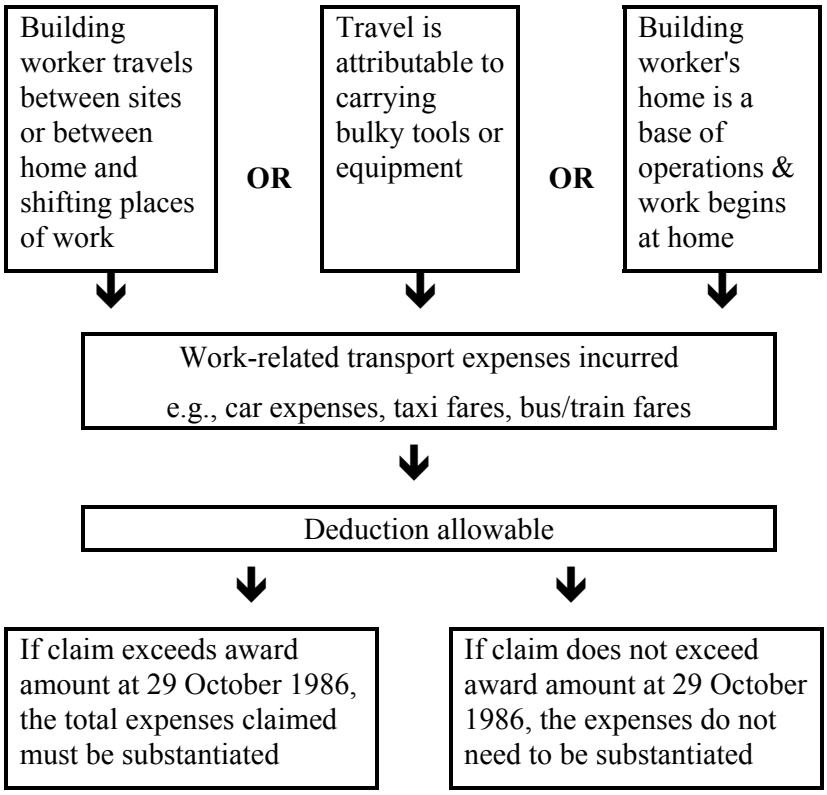
44. In addition to the tests in subsection 51(1) of the Act, the rules of substantiation must be met for claims made in relation to award transport (fares) allowances.

45. Building workers who claim deductions in excess of the amount of the award transport allowance payable as at 29 October 1986, must substantiate the whole of the claim, not just the excess. Deductions claimed that do not exceed the award rate as at 29 October 1986 are excluded from the substantiation requirements.

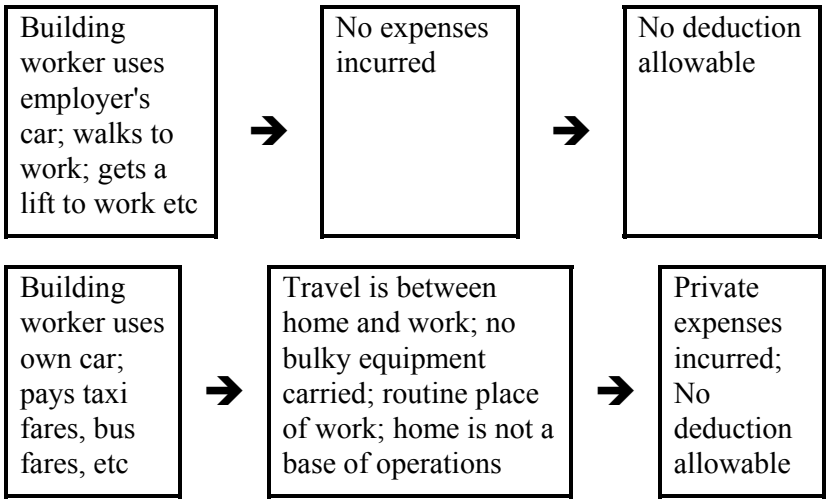
46. The following diagram illustrates the tests of deductibility and the substantiation rules as they apply to claims for transport expenses.

For further explanation, see ***Transport expenses*** at paragraphs 129 to 179.

Deduction allowable



No deduction allowable



47. **Example:** Chandra, a house painter, uses his car to carry his bulky tools and equipment to and from work. His employer pays him an award transport (fares) allowance of $10.80 per day. The award rate as at 29 October 1986 was $7.60 per day. A deduction is allowable for Chandra's transport costs, but if he claims a deduction of more than $7.60 per day, he must substantiate the whole of his claim, not just the excess over $7.60 per day.

48. **Example:** Arthur, an electrician is paid an award transport (fares) allowance, but his employer also provides him with free transport to and from work each day. As Arthur has not incurred any transport costs, he is not entitled to a deduction against the allowance.

49. **Example**: George, a concrete formworker, is employed to set up and strip the formwork for concrete slabs for new houses. It is usual for George to work at more than one site each day. He has no regular work pattern and the nature of his job requires him to do the job in more than one place. He does not receive any allowances from his employer. George would be allowed a deduction for his transport costs as he has shifting places of work. He must substantiate the whole of his claim.

50. **Example:** Michael is a carpenter employed permanently at a factory that manufactures kitchens. He does not transport bulky tools or equipment to work. Even though Michael is not required to leave the factory at any time in the course of his work, his employer pays him a fares allowance. Michael is not entitled to a deduction for the cost of travel to and from work, as it is a private expense.

Common work-related expense claims

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

Child care

51. A deduction is not allowable for child care expenses, even if it is a prerequisite for a building worker 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 building worker to undertake studies relevant to his or her employment.

52. 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).

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

Clothing, uniforms and footwear

54. 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 arrangement; 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)).

55. 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

56. Building workers may be provided with protective clothing by their employer (e.g., overalls for the protection of their conventional clothing). Building workers 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.

57. 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).

58. A deduction is allowable for expenditure on footwear specifically designed to provide protection to the wearer at work, e.g., steel-capped boots for a bricklayer, rubber boots for a concreter, special non-slip shoes for a roof tiler.

59. 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.

60. 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.

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

62. **Example:** Eric uses a high pressure hose to clean brickwork 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.

63. 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 31 to 38 applied.

Occupation specific clothing

64. 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.

65. It is not considered that building workers would wear clothing that is occupation specific.

Compulsory uniform or wardrobe

66. 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.

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

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

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

69. 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.'

70. 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

71. 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. 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.

72. If building workers 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

73. 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 26 and 27).

74. 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.

75. 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.

76. 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.'

77. 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.'

78. 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

79. 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 54. This applies whether the clothing is purchased by the building worker or supplied by the employer.

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

Depreciation of tools and equipment

81. 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.

82. A deduction is allowable under subsection 54(1) of the Act for depreciation on tools and equipment owned and used by a building worker for income-producing purposes. 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.

83. 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.

84. 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.

85. 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).

86. **Example:** Alison is a carpenter who owns an electric drill. She uses this drill at work during the week and at home on weekends for her home renovations. She is entitled to a deduction for a proportion of the depreciation based on the work use of the drill. A reasonable apportionment might be 5/7 business use.

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

88. 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

89. 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.

90. 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.

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

92. Some building workers 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 work-related purposes.

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

Fines

93. 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).

Meals

94. A deduction is not allowable for the cost of meals consumed by building workers in the normal course of a working day. It is our view that the cost of meals will not have sufficient connection with the income-earning activity and, in any case, the cost is a private expense and fails to meet the tests of deductibility described in paragraphs 31 to 38.

95. 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.'

96. 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.

97. 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 31 to 38, and are considered to be private in nature.

98. 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.

99. A deduction is allowable for the cost of meals bought while working overtime, if an award overtime meal allowance has been paid (paragraphs 101 to 104).

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

Newspapers

100. 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 building worker 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

101. 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 31 to 38.

102. 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.

103. 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 building worker 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.

104. 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

105. 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 an allowable deduction); or

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

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

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

106. A deduction is not allowable for parking fees and tolls incurred when building workers 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 i.e., travel between home and work - transporting bulky equipment; travel between home and work where home is a base of operations and work is commenced at home; travel between home and shifting places of work (paragraphs 136 to 164).

Protective equipment

107. A deduction is allowable for the cost of protective equipment used at work. Protective equipment includes safety helmets, ear muffs, face masks, 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

108. A deduction is allowable under section 53 of the Act for repairs to tools and equipment, to the extent that the tools and equipment are used in income-producing activities.

Self education expenses

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 building worker's income-earning activities are based on skill/knowledge and the education enables him or her to maintain or improve that skill/knowledge e.g. an apprenticeship course.

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

(c) A deduction is not allowable if the education is designed to enable a building worker 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:** Jane is an employee electrician 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.

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 an apprentice plumber who travels a long distance to a technical college to undertake his apprenticeship course for two consecutive days each fortnight. He is allowed a deduction for the cost of travel to and from his place of education, 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.

116. **Example:** Francesco, an apprentice plumber, incurs self education expenses totalling $1650 in connection with his apprenticeship course at a technical college. Francesco is allowed a deduction for $1400, being the excess of his expenses over $250.

Technical or professional publications

117. 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 building worker's work and are not general in nature.

118. 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'.

119. 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.

120. **Example:** Warren, a building supervisor, subscribes to the *Building Construction, Materials & Equipment* magazine. The cost is an allowable deduction as there is sufficient nexus between the expense and Warren's job.

121. **Example:** Warren also subscribes to *The Australian Woodworker*. The cost would not be an allowable deduction as there is insufficient nexus between the expense and Warren's job.

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

Cost of calls

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

123. 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

124. 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.

125. 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

126. 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.

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

Business calls (incoming and outgoing)
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).

Transport expenses

129. Transport expenses include public transport fares and the running costs associated with using motor vehicles, motor cycles and bicycles etc for income-producing travel. They do not include accommodation, meals, and incidental expenses (see ***Travel expenses*** paragraphs 182 to 186). The treatment of transport costs incurred by a building worker when travelling is considered below.

Travel between home and work

130. A deduction is not allowable for the cost of travel by a building worker between home and his or her normal work place as it is generally considered to be a private expense. The cost of travelling between home and work is generally incurred to put the building worker in a position to perform duties of employment, rather than **in the performance** of those duties.

This principle is not altered by the performance of incidental tasks en route (paragraph 34 of Taxation Ruling MT 2027). The principle is also not altered if the building worker is required to have a car available at work, uses a car because using public transport is impracticable, or is required to travel to work outside normal hours.

131. 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'.

132. 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.

133. **Example:** A building supervisor is phoned at his home outside normal working hours as the building site has been vandalised. He travels between his home and the building site in response to this emergency. The cost of travel to and from the building site is not an allowable deduction.

134. A building worker may be regularly employed off-site on some days and on-site on other days. In both cases, the normal work place is where the building worker performs normal duties.

135. **Example:** Jack and Bill are carpenters who are employed to construct roof trusses in their employer's factory and also to install the trusses in houses at a housing estate. The travel between home and the factory or between home and the housing estate is travel to and from their normal work place. It is private and no deduction is allowable (but see paragraphs 136 to 141). The cost of travel between the factory and the housing estate is an allowable deduction.

Travel between home and work - transporting bulky equipment

136. 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 (Vogt's case)). In order to establish that the deduction is allowable, the building worker must be able to first demonstrate that the equipment is bulky. If this is satisfied, it must then be established that the workplace is not secure enough to store the equipment while the building worker is absent. If the equipment is transported to and from work by the building worker as a matter of convenience or personal choice, it is considered that the transport costs are private and no deduction is allowable (see Case 43/94 94 ATC; AAT Case 9654 (1994) 29ATR 1031 and Case 59/94 94 ATC 501; AAT Case 9808 (1994) 29 ATR 1232).

137. In Case 43/94, 94 ATC; AAT Case 9 (1994) the taxpayer was a flight sergeant with the Royal Australian Air Force. He was supplied with a locker in which to store various items of uniform clothing and flying equipment. By personal choice, he kept only a full dress uniform in the locker, preferring to keep the 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

usually took home a navigational bag containing charts, work manuals and study materials and on occasions, he carried another bag which weighed 10kg when packed.

138. The Tribunal found that (ATC at 390; ATR at 1034-1035):

'• ....all of the items....when removed from the bag, were capable of satisfactory storage in the locker;

- the decision to keep the equipment in the boot of the car was driven by personal choice....;
- the duffle bag with its contents was not of a size or weight to impede facile transportation.'

The Tribunal decided that the cost of the taxpayer's travel to and from work was not incurred in earning his assessable income.

139. **Example:** Charlie, a bricklayer, uses his car to travel to the work site each day in order to transport his trowels, levels, lines, hammer, mortar boards and other equipment. There is no secure place on site for storage of these items. Because of the bulk of this equipment, Charlie would be entitled to claim a deduction for his car expenses.

140. **Example:** Geoffrey, a builder's labourer, carries only his steel-capped boots to work in his car. Geoffrey's car expenses are private as his travel from home to work is not attributable to carrying bulky equipment.

141. **Example:** Fred, a bricklayer, usually leaves his bulky tools and equipment in a secure area at the work site. His employer requires him to go to a different site the next day, so he takes the tools and equipment home . The cost of Fred's travel home and to the work site the next day is an allowable deduction as it can be attributed to the transport of bulky equipment.

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

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

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

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

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

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

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

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

144. **Example:** Samantha is a building supervisor at a Cairns resort development. The site operates 16 hours a day, 7 days a week. Samantha's usual pattern of work is to attend at the site from 7am to 4pm from Monday to Friday. She is required to be on call outside these hours. Usually, when a problem arises, she is able to handle it over the telephone from home. If she gives instructions over the telephone, and then has to travel to the site to deal with the problem, a deduction is allowable for her transport costs. Samantha's home is a base of operations and, **on these occasions**, she commences work at home and is travelling **on** her work, not **to** her work.

145. The reasons for this view are:

(i) the journey begins as a result of the performance of the duties of the employment at Samantha's home, namely attending to problems over the telephone.

(ii) the journey from home to the site is undertaken, not to commence duty, but to complete an aspect of employment already underway before the journey commences.

Note: It is unlikely that the cost of travelling from the work site to home would be an allowable deduction as Samantha would not be travelling on work after leaving the work site.

146. In *Collings'* case, the taxpayer was a specially trained computer consultant who was on call 24 hours a day. She was frequently called upon out of ordinary hours to rectify problems. This often

necessitated travel because the problem was incapable of being rectified on the terminal at her home. Rath J said (ATC at 4268 ; ATR at 491-492):

> 'Her double work-location is not only not merely colourable, but the two places of work are a necessary obligation arising from the nature of her special duties...When called at her home, the taxpayer immediately had the responsibility of correcting the malfunction...In my opinion in this case the taxpayer's expenses in respect of her travelling between her home and work... were in the special circumstances of this case...allowable deductions...'

147. **Example:** Jim is a plant operator who obtains work with various employers through an agency. The terms of the agency agreement require him to be on 24 hour stand-by. When a job becomes available the agency contacts him and he has the option of taking the job or declining it. If Jim accepts the job he will be required to travel either direct to the work site or to the employer's depot, from where he will be directed to the work site. A deduction is not allowable in respect of Jim's travel from home to the depot or direct to the work site. A deduction is allowable for the transport costs incurred in travelling from the depot to the work site.

148. The following reasons support the view that Jim's travel between home and work is private:

(i) the requirement to be on stand-by and the mere receipt of the telephone call from the agency are not sufficient to treat Jim's home as a place of work;

(ii) whether or not Jim is under an obligation to accept the offer of work, his duties do not commence upon receipt of the telephone call but rather when he reaches the depot or work site.

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

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

The transport costs incurred by the taxpayer in travelling between her home and work were not allowed as 'the taxpayer was not travelling

on her work', per Mr T J McCarthy (Member) (ATC at 451; CTBR at 945). None of the characteristics detailed in paragraph 141 were present in this case.

Travel between home and shifting places of work

150. A deduction is allowable for the cost of travel between home and work if a building worker has shifting places of work. Shifting places of work can be shown to exist if a building worker regularly works at more than one work site on any given day. Occasionally staying at a particular work site for several days or even a few weeks, will not mean that a building worker ceases to have a pattern of shifting work places, providing the usual pattern of work involves regularly working at more than one work site on any given day.

151. Another term for 'shifting places of work' is itinerancy. There have been a number of Court and Tribunal cases in which itinerancy has been considered, and where commercial travellers have been cited as a good example of employees whose work is inherently itinerant. Although this occupation usually involves the constant movement from one work place to another, this does not mean that all commercial travellers are always entitled to a deduction for the cost of travelling between home and work. For example, a commercial traveller who is required to call at his employer's office at the beginning and at the end of each day, would not be entitled to a deduction for his travel costs between home and the office (unless he was transporting bulky equipment).

152. Similarly, many building workers may be engaged in itinerant work from time to time. However, this does not mean that the costs of travelling between home and work will always be an allowable deduction for building workers. It is the circumstances of each particular taxpayer that determine whether he or she is entitled to a deduction.

153. Some of the cases that refer to shifting places of work (or itinerancy) are *Horton v. Young* (1972) Ch. 157; 47 TC 60 (*Horton v. Young)*; *Taylor v. Provan* (1975) AC 194 (*Taylor v. Provan*); *FC of T v. Weiner* 78 ATC 4006; 8 ATR 335 (*Weiner's case*); *Case R8* 84 ATC 157; 27 CTBR(NS) *Case 59* (*Case R8*); *Case T106* 86 ATC 1192; *AAT Case 17* (1986) 18 ATR 3093 (*Case T106*); *Case U29* 87 ATC 229; *AAT Case 32* 18 ATR 3181 (*Case U29*); *Case U97* 87 ATC 584; *AAT Case Case 68* 18 ATR 3491 (*Case U97*); *FC of T v. Genys* 87 ATC 4875; (1987) 19 ATR 356 (*Genys' case*).

154. The characteristics supporting the allowance of a deduction for the cost of travelling between home and work that emerged from these cases were:

(a) there was more than one work place attended each day (*Weiner's case* and *Case T106*);

(b) travel was a fundamental part of the employees' work (*Taylor v. Provan*);

(c) there was no 'fixed place (or places) of work' (*Horton v. Young* TC at 68);

(d) there was no 'home station' (*Case U97*);

(e) there was a 'web of workplaces' (*Case U 97*);

(f) there was the continual movement by the worker from one work place to another (*Horton v. Young* TC at 68 and *Weiner's case*);

(g) any break in the pattern of continual movement of the worker from one workplace to another was 'on a purely temporary basis' (*Horton v. Young* TC at 68)

155. The characteristics present in these cases but which were not found to support the allowance of a deduction for travel between home and work on the basis of itinerancy were:

(a) being on stand-by or short notice contact for work (*Genys' case*);

(b) having a settled pattern of employment (*Case U97*);

(c) being a casual employee who works for different employers regularly (*Genys' case*);

(d) the incurring of 'additional expenditure' to travel to work (*Case U 29*);

(e) the taxpayer had a principal place of duty as a matter of routine, even though that may have changed at intervals of several months (*Case U 29*);

(f) the obtaining of work from an agency on a regular basis so that one regularly has different employers on different days (*Genys' case*).

156. In *Case U 97*, the taxpayer was a relief fireman who was nominally attached to a fire station in a Sydney suburb but was commonly sent to other fire stations in the Sydney fire district ('outer stations'). Some of the relevant facts established about his employment were:

(a) he was employed by the same employer in the same class of employment every day;

(b) he travelled to one outer station regularly for a number of days then to another outer station for another period and so on;

(c) on occasions, he was telephoned at home with instructions to proceed to a particular outer station the next day. By and large however, he was aware of his commitments well in advance - he would certainly know the day before.

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

> ' several observations were made [in that case] to illustrate the web of workplaces that one would expect to find, particularly in a casual rather than a semi-permanent pattern, in order to categorise employment as itinerant.'

Senior Member McMahon went on to say:

> 'In my view, the circumstances of the present applicant are such that his settled pattern of employment cannot be regarded as itinerant, even though he is not required to serve at the same station for every day...There is not the web of workplaces ...There is not the constant unsettled dispatch from one workplace to another, the element of uncertainty...'

158. **Example:** Dan, a builder's labourer, is regularly dispatched by his employer to a different site each day. When he finishes work each day, his employer tells him where he will be required to work the next day. He regularly has to travel to more than one site each day, although on occasions he may stay at a site for a few days. A deduction is allowable for Dan's transport costs as he has shifting places of work. It is not considered that his home is a base of operations.

159. The reasons for this view are:

(i) Dan regularly works at more than one work site each day;

(ii) There is continual movement from one work place to another;

(iii) He does not have a fixed place of work;

(iv) Dan does not work to any regular pattern.

160. **Example:** Sally, a plumber's offsider working on the Gold Coast, is dispatched to work on various sites in the area giving assistance to plumbers. Sally usually knows several days in advance the sites that she will be required to attend, although she does get an occasional emergency telephone call dispatching her to a different site on the following day. The length of time Sally stays at a site varies, but once she arrives at a site, Sally invariably remains there for more than one day. A deduction is not allowable for Sally's transport expenses.

161. The reasons for this view are:

(i) The settled pattern of employment does not lead to a conclusion that there are shifting places of work, even though Sally may not be required to work at the same work site every day;

(ii) There is not a continual movement between work sites;

(iii) There is not a 'web of workplaces';

(iv) There is a minimal degree of uncertainty about the location of Sally's work place.

162. **Example:** Colin, a bricklayer's labourer, travels by train each day to work at the site of a new shopping centre in Suburb X, 40km from his home. He works at this site for 2 months. He then works on a site in his home suburb for 4 weeks before returning to work at the Suburb X site for an indefinite period. A deduction is not allowable for Colin's transport expenses between home and either work site, for reasons similar to those given above for Sally.

163. **Example:** Jock is a carpenter and joiner who, for the last 9 months, has had three regular employers, Tom, Dick and Fred. His regular weekly work pattern involves working at the joinery shop of each builder, as follows:

Monday: Home→Tom's joinery in suburb A→Home

Tuesday: Home→Tom's joinery in suburb A→Home

Wednesday: Home→Fred's joinery in suburb C→Home

Thursday: Home→Dick's joinery in suburb B→Home

Friday: Home→Dick's joinery in suburb B→Home

Jock usually uses his car to travel to and from work, but has occasionally used public transport as he only has to carry a small toolbox containing handtools. Jock is not entitled to a deduction for his travel costs.

164. The reasons for this view are:

(i) Jock is in the situation of having several distinct employments;

(ii) in respect of each employment, the job itself does not require Jock to incur transport expenses in the performance of his duties;

(iii) each employer has a distinct base of operations where Jock is able to perform his duties;

(iv) Jock does not have shifting places of work;

(v) Jock's home is not considered to be a base of operations even though he stores his tools there overnight;

(vi) Jock's tools are not bulky.

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

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

166. **Example:** David, a building supervisor, travels from his work site directly to a technical college to give night lectures. The cost of this travel is an allowable deduction.

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

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

168. **Example:** David, a building supervisor, travels from his normal work site 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 David.

169. **Example:** Mick, a builder's labourer, arrives at the work site and is directed by his employer to go to a work site in another suburb for the day to cover for a labourer who is sick. The cost of Mick's travel between his normal work site and the alternate site and then home, is an allowable deduction.

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

170. 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).

171. **Example:** Mick, the labourer in paragraph 169, is directed to continue going to the alternate work site for a further three days. The cost of Mick's travel between home and the alternate work site is an allowable deduction.

NOTE: If this arrangement continued, there would come a time when the alternate work place would become Mick's normal work place and his travel costs would cease to be an allowable deduction. There is no established test for determining when such an arrangement would cease to be purely temporary. Each case would need to be looked at on its own facts.

172. **Example:** Janet, an apprentice electrician, is required to travel from home to assist with some emergency repairs at her employer's head office. She then travels to her normal work place. 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 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

173. 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-earning activities.

174. **Example:** Graeme, a house painter, works on at least two houses each day. The cost of travel from one house to another is an allowable deduction as the cost is incurred in travelling between two places of employment (see Taxation Ruling IT 2199).

175. If the building worker 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 building worker'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).

176. 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.

177. 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.

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

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

Automobile Association/Club membership fees

180. 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.

Calculation of motor vehicle balancing adjustment

181. 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

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

183. Receipt of an allowance does not automatically entitle a building worker 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.

184. 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 a building worker receives a travel allowance.

185. 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 a Taxation Ruling annually that sets out the amount of reasonable expenses covered by a travel allowance.

186. 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

187. 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.

188. Taxation Ruling 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.' (Taxation Ruling IT 2062 paragraphs 2 and 3).

189. 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 (Taxation Ruling IT 2416).

190. 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 (Taxation Ruling IT 299). A deduction is not allowable for payments to staff associations or clubs (subsection 51AB(4) of the Act).

Alternative views

Telephone installation or connection costs

191. 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

192. 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 a building worker to provide protection to his or her person or clothing (see paragraphs 61 and 62).

193. The view was also expressed that heavy duty clothing such as drill shirts, trousers and shirts are protective clothing and their cost should be an allowable deduction. The Commissioner's view is at paragraph 57.

Transport expenses

194. The view was expressed that the Building and Construction Industry is inherently itinerant and that building workers should be entitled to claim a deduction for the cost of travelling between home and work each day. Paragraphs 136 to 172 set out the circumstances in which the Commissioner considers a deduction is allowable for the costs incurred by a building worker in travelling between home and work.

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