TR 1999/D6 - Income tax and fringe benefits tax: Members of Parliament - allowances, reimbursements, donations and gifts, benefits, deductions and recoupments

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Draft Taxation Ruling

Income tax and fringe benefits tax: Members of Parliament – allowances, reimbursements, donations and gifts, benefits, deductions and recoupments

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Preamble

Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office.
DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings which represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

What this Ruling is about

Class of person/arrangement

1. This Ruling applies to Members of the Commonwealth House of Representatives and of the Senate, Members of State Legislative Assemblies and Legislative Councils, Members of the Northern Territory and Australian Capital Territory Legislative Assemblies, and Ministers of the Crown (Ministers), collectively referred to in this Ruling as Members.

2. This Ruling deals with:

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

   (b) the assessability of donations and gifts received by Members;

   (c) the assessability of the benefits received under frequent flyer programs;

   (d) the taxation treatment of life gold passes and severance passes used by Members;

   (e) the deductibility of losses or outgoings commonly claimed by Members; and

   (f) the recoupment of deductible expenses.

3. The Ruling also discusses paragraphs 26(e) and 26(eaa) of the *Income Tax Assessment Act 1936* (ITAA 1936) and whether

deductions are allowable or are specifically excluded (or limited) under subsection 26-20(1); section 8-1, 25-60, 26-30 or 26-45; Division 32, 34 or 42 of the *Income Tax Assessment Act 1997* (ITAA 1997[1]); or section 51AGA or 51AH of the ITAA 1936.

4. This Ruling is confined to the taxation treatment of transactions arising from a Member's Parliamentary, electoral, party or portfolio activities, referred to in this Ruling as 'work-related' activities.

Cross reference table of provisions

5. A reference to a provision in the ITAA 1997 should be read as a reference to any equivalent provision in the ITAA 1936. The following Table cross references the provisions of the ITAA 1997 to the corresponding provisions of the ITAA 1936.

	ITAA 1997	**ITAA 1936**
Statute	*Income Tax Assessment Act 1997*	*Income Tax Assessment Act 1936*
Years	1997-98 and later	1996-97 and earlier
Ordinary income	section 6-5	subsection 25(1)
Ordinary deductions	section 8-1	subsection 51(1)
Rates or taxes	sections 8-1, 20-20, 20-40	subsection 51(1), section 72
Assessable recoupments	section 20-20	sections 69, 72, 74
Tax-related expenses	section 25-5, 20-25	section 69
Election expenses	sections 25-60, 20-20, 20-35	section 74
Election expenses do not extend to entertainment	section 25-70	section 74B
Penalty expenses	section 26-5	subsection 51(4)
HECS and student assistance	subsection 26-20(1)	subsection 51(6)
Relative travel expenses	section 26-30	section 51AG
Related entities	section 26-35	section 65
Recreational club expenses	section 26-45	subsection 51AB(4)
Entertainment expenses	Division 32	section 51AE
Deduction for entertainment	section 32-5	subsection 51AE(4)
Non compulsory uniform	Division 34	section 51AL

[1] All further legislative references in this draft Ruling at to the ITAA 1997, unless otherwise stated.

Occupational specific clothing	subsection 34-20(1)	subsection 51AL(26) in part
Car depreciation limit	section 42-80	section 57AF
Depreciation rate	sections 42-125, 42-130, 42-135	section 55
Reducing depreciation deductions	subsection 42-170(1)	section 61
Substantiation	Division 900	Schedule 2B
Meaning of work expense	subsection 900-30(3)	Division 2 of Schedule 2B
Written evidence	Subdivision 900-E	Division 5 of Schedule 2B
Relief from effects of failing to substantiate	Subdivision 900-H	Division 8 of Schedule 2B
Definitions	section 995-1	subsection 6(1)

Date of effect and application

6. This Ruling applies to years of income commencing both before and after its date of issue. The only exceptions are our views on the deductibility of travel and newspaper expenses, which apply only to the 1999-2000 year of income and subsequent income years.

7. The view expressed at paragraphs 92 to 109 in the **Explanations**, in relation to the inapplicability of paragraph 8-1(1)(b) to losses or outgoings incurred by a Member, differs from our previously held view. Consequently, the position outlined therein will only apply, where necessary, to a Member's losses or outgoings incurred in the 1999-2000 year of income and subsequent income years.

8. The Ruling does not apply to Members to the extent that it conflicts with the terms of 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).

9. Where a Member's circumstances are different from those described in this Ruling in relation to a particular allowance, reimbursement, donation or gift, benefit, recoupment, loss or outgoing, he or she may need to apply for a private ruling under section 14ZAF or 14ZAG of the *Taxation Administration Act 1953*.

10. The application of public rulings where a taxpayer has a private ruling is considered at paragraph 19 of Taxation Ruling TR 92/20 and also in Taxation Determination TD 93/34.

Previous Rulings

11. Taxation Rulings IT 2331 and IT 2532 will be withdrawn on finalisation of this Ruling. To the extent that our views on those Rulings still apply, they have been incorporated in this Ruling.

12. Taxation Ruling IT 2258 will be withdrawn on finalisation of this Ruling except insofar as it applies to expenses incurred in contesting an election for membership of a local governing body. To the extent that our views in that Ruling still apply to Members, they have been incorporated in this Ruling.

Ruling

Allowances

13. A payment is an **allowance** when a Member is paid a definite predetermined amount to cover an estimated expense. It is an amount contributed towards an expected expense, and is made regardless of whether the Member incurs the expected expense. The spending of the allowance is at the complete discretion of the Member.

14. The receipt of an allowance does not, in itself, entitle a Member to a deduction (see paragraphs 86 to 91).

15. The following types of allowances are commonly received by Members, in addition to their Parliamentary 'salaries' (see paragraphs 34 to 38). Particular allowances may vary depending on the Parliament in which a Member serves.

- Committee allowance
- Daily expense allowance
- Electorate allowance
- Expense or entertainment allowance
- Opposition spokespersons' allowance
- Postage allowance
- Printing and stationery allowance
- Private vehicle allowance/motor vehicle allowance
- Telephone allowance
- Travel allowance.

Assessability of allowances

16. Allowances (and Parliamentary 'salaries'), with the exception of those allowances referred to at paragraph 17, are to be returned as assessable income. The fact that certain deductions may be claimed in respect of losses or outgoings arising from the activity to which the allowance is directed does not affect assessability.

17. The exception applies where a Member receives a domestic travel allowance or an overseas travel allowance for food, drink or incidentals and the deductible expenses incurred are equal to, or greater than, the amounts considered reasonable by the Commissioner for substantiation purposes. In these circumstances, if the Member chooses not to claim deductions for relevant expenses in his or her income tax return, then the amount of the allowance need not be included in assessable income (see **Administrative arrangements applicable to travel allowances**, paragraphs 54 to 61). See, also, *Travel expenses covered by an annual entitlement*, paragraphs 316 to 318.

Reimbursements

18. If a Member is compensated for an expense already incurred, the payment is a **reimbursement** (paragraphs 62 to 67).

19. If a reimbursement of a deductible expense is a fringe benefit under the *Fringe Benefits Tax Assessment Act 1986* (FBTAA), any deduction otherwise allowable to a Member is reduced by the amount of the reimbursement (section 51AH of the ITAA 1936). The amount reimbursed does not form part of a Member's assessable income.

20. Where a non-deductible reimbursement is a fringe benefit, the entity that makes the reimbursement may be subject to fringe benefits tax (FBT) (e.g., refund of child care expenses). The amount reimbursed does not form part of a Member's assessable income.

21. If a Member receives a payment in respect of motor vehicle expenses that is based on the distance travelled by the motor vehicle, e.g., cents per kilometre, the amount is to be included in the Member's assessable income under paragraph 26(eaa) of the ITAA 1936.

22. Where a reimbursement is a 'recoupment', as defined in section 20-25, and the recoupment is for a loss or outgoing of a kind specified in section 20-30, the amount recouped forms part of a Member's assessable income (see **Recoupment of deductible expenses** at paragraph 31).

23. If a payment is received for an estimated expense, the amount received by the Member is considered to be an allowance, not a reimbursement (see ***Allowances***, paragraphs 13 to 17).

Donations and gifts

24. A donation or gift does not form part of a Member's assessable income where it is given for personal reasons unconnected with any work-related activities of the Member. However, if a donation or gift is made because of, in respect of, for, or in relation to, his or her work-related activities, the donation or gift forms part of the Member's assessable income (paragraphs 68 to 75).

25. If a donation or gift to a nominated Member is channelled through a political party (including a donation or gift to a fund established by the political party) on the basis that it will be passed on by the party to that Member, the gift is assessable to the Member at the time the political party receives the donation or gift (paragraphs 76 to 78).

Frequent flyer programs

26. Benefits that arise under a standard frequent flyer program do not form part of a Member's assessable income (paragraphs 79 and 80).

Life gold passes and severance passes

27. On 'retirement' from Federal Parliament, Members may be issued with either a Life Gold Pass or a Severance Pass. Similar travel entitlements are available for Members of State and Territory Parliaments.

28. We consider that the **issuing** of a Life Gold Pass or Severance Pass has no **income** taxation implications. Similarly, the value of the travel benefits received through the **use** of the Pass does not form part of a Member's assessable income. This may also apply to the spouse, and widow or widower of a deceased Member (paragraphs 81 to 85).

General deductions

29. A deduction is only allowable if a loss or outgoing:

(a) is actually incurred (paragraph 87);

(b) meets the deductibility tests (paragraph 88 to 90); and

(c) satisfies the substantiation rules, where applicable (paragraphs 43 to 53).

Apportionment

30. Losses or outgoings are not deductible to the extent to which they are not incurred in gaining or producing assessable income, 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. A loss or outgoing may, therefore, need to be apportioned between deductible and non-deductible components (see, also, *Apportionment*, paragraph 91).

Recoupment of deductible expenses

31. Specific provisions operate to include in assessable income amounts received as recoupment of certain losses or outgoings allowed, or allowable as deductions, such as election expenses. The effect of these provisions is that, where there is a specified 'recoupment' in respect of specified losses or outgoings, the amount is to be included in assessable income (paragraphs 110 and 111). (See, also, **Reimbursements** at paragraphs 62 to 67.)

Work-related expense claims

32. Commonly encountered work-related expenses incurred by Members, and the extent to which they are allowable as deductions, are discussed below.

Bank fees: A deduction is allowable, as a work-related expense, for Financial Institutions Duty that relates to Parliamentary remuneration deposited in a Member's bank account(s). A deduction is also allowable for government duty tax or debits tax charged on any outgoing from a Member's account, to the extent to which the outgoing is an allowable deduction (see Taxation Ruling IT 2084).

Briefcases, calculators and electronic organisers: A deduction is allowable for the work-related portion of depreciation on these items (see ***Depreciation of equipment***, paragraphs 140 to 151).

Child Care: A deduction is not allowable for child care expenses (paragraphs 115 to 118).

Clothing: A deduction is not allowable for the cost of conventional clothing and footwear (paragraphs 119 to 121).

Laundry and maintenance: A deduction is not allowable for the cost of cleaning and maintaining conventional clothing (paragraphs 122 and 123).

Club membership fees: A deduction is not allowable for recreational club membership fees. However, a deduction is allowable for fees paid for Airport Lounge membership to the extent to which they are incurred on work-related activities (paragraph 124).

Community group membership fees: A deduction is not allowable for membership fees of a community group unless there is a direct connection between a Member's work-related activities and the Member's involvement with the community group, and the fees are not of a private nature (paragraphs 125 to 127).

Computers and software: A deduction is allowable for depreciation on the cost of computers, modems and related software and hardware to the extent to which they are used by a Member for work-related purposes. An item bought on or after 1 July 1991 can be depreciated at the rate of 100% if its cost is $300 or less, or its effective life is less than 3 years (paragraphs 128 to 132).

If software is bought separately from a computer, in the period 1 July 1991 to 11 May 1998, a deduction for the full cost of the software is allowable (under the general deduction provisions) in the year in which it is purchased. The deduction must, if applicable, be apportioned between work-related and private use (see **Depreciation of equipment**, paragraphs 140 to 151).

Note: the 1998 Federal Budget provided for legislation that will result in the cost of software purchased for more than $300 (with or without a computer), on or after 10 a.m. Australian Eastern Standard Time (AEST) on 11 May 1998, being amortised either at the rate of 40% over two and a half years, or the life of the software licence, whichever is shorter. (*These comments do not form part of this Ruling and are provided to alert readers to a potential legislative change.*)

Conferences, seminars and training courses: A deduction is allowable for the cost of attending conferences and seminars if the expense is directly connected to a Member's work-related activities (paragraphs 133 to 139).

Depreciation of equipment: A deduction is allowable for depreciation to the extent of the work-related use of the equipment. An item of equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if it costs $300 or less, or if its effective life is less than three years (paragraphs 140 to 151).

Donations, gifts and contributions: A deduction is allowable under Division 30 of the ITAA 1997 for gifts of $2 or more to listed or approved recipients, or under section 8-1 in respect of donations, gifts, contributions to constituents and organisations where the outgoings are directly connected with a Member's work-related activities and they are not private or domestic in nature (paragraphs 152 to 154). (See, also, **Party membership fees, levies and donations**, paragraphs 251 to 253.)

Driver's licence: A deduction is not allowable for the cost of acquiring or renewing a driver's licence (paragraphs 155 and 156).

Election expenses: A deduction is allowable for expenses incurred in contesting an election for Membership, of the Federal or a State Parliament, or the Legislative Assembly of the Northern Territory or the Legislative Assembly for the Australian Capital Territory (paragraphs 157 to 172).

Entertainment expenses: A deduction is not allowable for the cost of providing entertainment (food and drink) except where it is incurred in providing entertainment for the public at large.

A deduction is allowable for the cost of providing light refreshments in the nature of morning and afternoon teas to staff and visitors (paragraphs 173 to 180).

Expenses incurred in the transitional period before a Member takes his or her seat: A deduction is not allowable for any losses or outgoings incurred by Members 'elect' prior to the date on which they take their seats because any connection that might exist between them and the income producing process is too remote (paragraphs 181 to 183).

Fares: A deduction is allowable for the cost of using public transport for work-related travel.

Fines: A deduction is not allowable for fines imposed under a law of the Commonwealth, a State, a Territory or a foreign country, or by a court (see Taxation Ruling TR 93/25).

Functions and presentations: A deduction is allowable for the cost of attending functions where the role of a Member requires attendance at the function (paragraph 184). A deduction is not allowable if a Member is attending a purely social function (see ***Entertainment expenses***, paragraphs 173 to 180).

A deduction is not allowable for the cost of goods, such as food and clothing, purchased at fetes and fairs.

A deduction is allowable for the cost of prizes donated and presented at functions where there is a direct connection with a Member's work-related activities.

Attendance on behalf of a Member: A deduction is allowable for costs incurred by a Member who is represented by another person at functions, presentations and Parliamentary, electoral or party meetings. However, a deduction is not allowable for costs that would not have been deductible to the Member had he or she attended personally (paragraphs 186 and 187).

Glasses/contact lenses: A deduction is not allowable for the cost of buying prescription glasses, contact lenses or sunglasses, because these expenses are private or domestic in nature.

Grooming: A deduction is not allowable for grooming expenses, for example, hairdressing and make-up, as such expenses lack the essential character of expenses incurred in gaining or producing a Member's Parliamentary remuneration (paragraphs 188 to 190).

Guard dogs: A deduction is not allowable for losses or outgoings incurred in maintaining guard dogs for the protection of a Member and his or her family (see ***Security costs***, paragraphs 276 to 278).

Home office expenses: A deduction is allowable for running expenses related to a private study, or other room, to the extent to which it is used for work-related activities (paragraphs 191 to 199).

Insurance of equipment: A deduction is allowable for the cost of insurance of equipment to the extent of its work-related use (paragraphs 200 and 201).

Interest on loan to purchase equipment: A deduction is allowable for interest on money borrowed to finance the purchase of equipment to the extent to which the equipment is used for work-related purposes (paragraphs 202 and 203).

Internet access*:** A deduction is allowable for the 'time usage cost' of researching work-related matters on the Internet. This includes the work-related portion of the service provider recurrent costs or costs associated with accessing web sites. Installation and connection costs of an Internet environment are not allowable deductions (paragraphs 204 and 205). (See, also, ***Telephones, answering machines, pagers, beepers and other telecommunications equipment expenses, paragraphs 290 to 297.)

Laundry and maintenance of clothing, etc: A deduction is not allowable for the cost of laundry and maintenance of clothing and footwear (see ***Clothing***, paragraphs 122 and 123).

Legal expenses: A deduction is allowable for legal expenses incurred by a Member in defending the day-to-day activities through which he or she gains or produces assessable income (work-related activities), if the losses or outgoings are not capital, private or domestic in nature. Where legal proceedings stem from activities that could not reasonably be regarded as being part of the work-related activities of a Member, the losses or outgoings are not allowable deductions (paragraphs 206 to 215).

Maintaining a private residence: A deduction is not allowable for the cost of maintaining a Member's private residence.

Meals: A deduction is not allowable for the cost of meals eaten during a normal working day (paragraphs 216 to 221). A deduction is not allowable for the cost of providing meals to visitors or guests (see ***Entertainment expenses***, paragraphs 173 to 180). A deduction is allowable if meal costs are incurred by a Member who travels away

from home overnight on work-related activities (see ***Travel expenses***, paragraphs 301 to 329).

Motor vehicle and other transport expenses: Transport expenses include public transport fares and running costs associated with using motor vehicles, motor cycles, bicycles, etc., for work-related travel (paragraphs 222 to 224). These expenses do not include accommodation, meals and incidental expenses incurred in undertaking work-related travel involving an overnight stay away from a Member's residence (see ***Travel expenses***, paragraphs 301 to 336). The treatment of motor vehicle and other transport expenses incurred by a Member when travelling is considered below.

*Travel between home and a **normal** place of work:* A deduction is not allowable for the cost of travel between home and the normal work place. This outcome is not altered by the performance of incidental tasks en route, or if the travel is outside normal working hours, or includes a second or subsequent trip (paragraphs 225 to 229).

*Travel between two **separate** work places:* A deduction is allowable for the cost of travelling directly between two separate work places (paragraph 230).

*Travel from a normal work place to an **alternative** work place and back to a **normal** work place, or directly home:* A deduction is allowable for the cost of travelling directly between a normal work place and an alternative work place. A deduction is also allowable for the cost of travel from an alternative work place back to a normal work place or directly home (paragraphs 231 and 232).

*Travel from home to an **alternative** work place and then to a **normal** work place, or directly home:* A deduction is allowable for the cost of travel from home to an alternative work place and then on to the normal work place or directly home (paragraphs 233 and 234).

Automobile Association/Club membership fees: The annual road service fee is taken into account in calculating the deduction allowable if either the log book method or one-third of actual expenses method is used to claim work-related car expenses (paragraphs 235 and 236).

Calculation of motor vehicle balancing adjustment: A depreciation balancing adjustment may be necessary on the disposal of a motor vehicle that has been owned and used by a Member for work-related purposes (see Taxation Ruling IT 2493 and paragraph 237).

Car wash expenses: The cost of cleaning a vehicle is taken into account in calculating the deduction allowable if either the log book method or one-third of actual expenses method is used to claim work-related car expenses (paragraph 238).

Depreciation cost limit for motor vehicles: Section 42-80 imposes a limit on the depreciable cost base of motor vehicles (including four-wheel drive vehicles) (paragraph 239).

Car provided by 'employer': A deduction is not allowable for car expenses incurred by a Member if:

(a) the car is provided by an 'employer' (see **Role of a Member**, paragraph 35) for the exclusive use of the Member and/or their relatives; and

(b) the Member and/or his or her relatives are entitled to use the car for private purposes (see section 51AF of the ITAA 1936 and paragraphs 240 and 241).

Parking fees and tolls: A deduction is allowable for bridge tolls, road tolls and parking fees (but not fines) paid by a Member while travelling on, or for, work-related purposes (paragraph 242).

Newspapers: A deduction is allowable for the cost of newspapers to the extent to which they are used for work-related purposes (paragraphs 243 to 250).

Party membership fees, levies and donations: A deduction is allowable for compulsory membership subscriptions and levies paid to retain membership of a political party. A deduction may also be allowable, up to a maximum of $1,500 in any one income year, for donations of $2 or more made to certain political parties, independent candidates and independent Members ** (paragraphs 251 to 253).

****Note proposed legislation** (*These comments do not form part of the Ruling and are provided to alert readers to a potential legislative change).*

Patron expenses: A deduction is allowable for expenses incurred in being a patron of an organisation where the outgoings are directly connected to a Member's work-related activities and they are not of a private or domestic nature (paragraphs 254 and 255).

Professional library: A deduction is allowable for depreciation of a professional library to the extent of its work-related use. The content of reference material must be directly relevant to work-related activities (paragraphs 256 to 260).

Raffle ticket expenses: A deduction is allowable for the cost of raffle tickets where the expenditure is incurred as a consequence of a Member's participation in work-related functions and activities.

A deduction is not allowable for the cost of raffle tickets where the expenditure is incurred in situations where the Member is merely attending a function or activity in his or her private capacity (paragraphs 261 to 267).

Raffle prizes: The value of any prizes won does not form part of a Member's assessable income (paragraph 268).

Relocation expenses: A deduction is not allowable for expenses incurred when a Member moves from a residence in one location to another location (paragraphs 269 to 273).

Repairs to equipment: A deduction is allowable for the cost of repairs to equipment to the extent that the equipment is used for work-related purposes (section 25-10) (paragraphs 274 and 275).

Security costs: A deduction is not allowable for the cost of installing a security system at a Member's residence. However, a deduction is allowable for the depreciation and maintenance of a security system installed in a Member's electorate office where a Member incurs the costs of installation and maintenance. A deduction is also allowable for the depreciation and maintenance of a security system installed in a second property to the extent to which that property is used by a Member for accommodation purposes on work-related travel involving an overnight stay away from his or her residence (paragraphs 276 to 278).

Self education expenses: A deduction is allowable for the cost of self education if there is a sufficient connection between the course of education and the work-related activities of a Member. Self education costs can include fees, travel, books, and equipment (paragraphs 279 to 282). See, also, Taxation Ruling TR 98/9.

Limit on deductibility: In some circumstances, the amount allowable under section 8-1 will need to be adjusted (see paragraphs 283 to 285).

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

Technical or professional publications: A deduction is allowable for the cost of buying, or subscribing to, journals, periodicals and magazines that are not general in nature and have a content specifically connected to a Member's work-related activities (paragraphs 286 to 289).

Telephones, answering machines, pagers, beepers and other telecommunications equipment expenses: A deduction is allowable for the work-related portion of the rental cost (paragraphs 295 and 296), or depreciation of these items (see ***Depreciation of equipment***, paragraphs 140 to 151).

Cost of calls: A deduction is allowable for the cost of work-related calls (paragraphs 290 to 292).

Installation or connection costs: A deduction is not allowable for the cost of installing or connecting a telephone, etc., (paragraphs 293 and 294).

Rental Costs: A deduction is allowable for a proportion of private home telephone/equipment rental costs where a Member can demonstrate that he or she has a work-related need to use their private telephone equipment outside normal 'office' hours (paragraphs 295 and 296).

Unlisted telephone number: A deduction is not allowable for the cost of obtaining an unlisted telephone number (paragraph 297).

Trade, business or professional association fees: A deduction is allowable for annual fees paid to associations to the extent to which the fees relate to a Member's work-related activities. A deduction is not allowable for joining fees or for contributions to staff social clubs or associations. Where the services provided by an association do not directly relate to a Member s work-related activities, the deduction for any income year is limited to $42 in respect of any one association (paragraphs 298 to 300).

Travel expenses: A deduction is allowable for the cost of travel (fares, accommodation, meals and incidentals) incurred by a Member on work-related travel (paragraphs 301 to 336). Special substantiation rules apply to travel allowance expense claims (see ***Substantiation rules***, paragraphs 43 to 53).

Travel expenses covered by a travel allowance: A deduction is allowable for travel expenses that are covered by a travel allowance, provided the tests for deductibility and the substantiation rules are satisfied. However, where the claim for deductible travel allowance expenses does not exceed amounts considered reasonable by the Commissioner, substantiation is not required (paragraphs 307 to 313).

Travel expenses not covered by a travel allowance: A deduction is allowable for travel expenses incurred that are not covered by a travel allowance, provided the tests for deductibility and the substantiation rules are satisfied (paragraphs 314 and 315).

Travel expenses covered by an annual entitlement: A deduction is allowable for travel expenses that are covered by an annual entitlement, provided the tests for deductibility and the substantiation rules are satisfied (paragraphs 316 to 318).

Accompanying relative's travel expenses: Section 26 -30 may affect the deduction allowable for the cost of travel attributable to relatives accompanying a Member on work-related travel (paragraphs 319 and 320).

Second property not used as a Member's residence: A deduction is allowable for expenses of a non-capital nature, and for depreciation of plant, where the property is not properly regarded as a second residence. However, the deduction is limited to the extent to which the expenditure is incurred in respect of a property that is used by a Member for work-related travel purposes on overnight stays away

from his or her residence, and the expenditure is not private or domestic in nature (paragraphs 321 to 329).

Second residence expenses: A deduction is not allowable for the costs of maintaining a property that is used as a second residence (paragraphs 330 to 336).

Wages: A deduction is allowable for the cost of wages paid for services rendered to assist a Member to carry out his or her work-related activities, provided the expenditure is not private or domestic in nature (paragraphs 337 and 338).

Related entity: A deduction is not allowable to the extent to which a payment of wages to a relative, exceeds the amount considered reasonable (paragraphs 339 to 341).

***Watches*:** A deduction is not allowable for the cost of purchasing, repairing or maintaining a watch (paragraphs 342 and 343).

Explanations

Role of a Member

33. The role of a Member can be summarised as follows.

- *Parliamentary.* The primary role of a Member is to represent his or her electorate in the Parliament. A Member is expected to attend Parliament and vote regularly on Bills, take part in debates and Parliamentary committees, present petitions from his or her electorate, talk to the media, etc.
- *Electoral.* A Member is expected to meet with constituents and attend activities within the electorate such as school fetes, annual meetings of community clubs and organisations, balls, new factory and public works openings, and the like. A Member may also be required to travel interstate, intrastate and overseas as part of his or her overall responsibilities.
- *Party.* A Member who is a member of a political party is expected to organise and sustain branches of the party, help formulate policy through party committees, and to campaign for the party. He or she also campaigns for party endorsement as a candidate for election.

34. For the reasons outlined at paragraphs 92 to 109, although a Member is not a common law employee, we do not consider that a Member's work-related activities, undertaken to discharge his or her Parliamentary, electoral and party responsibilities, amount to a

business carried on for the purpose of gaining or producing assessable income.

35. However, a Member of an Australian Parliament is specifically incorporated into the definition of 'employee' by virtue of the definitions of 'salary or wages' and 'eligible person' in section 221A of the ITAA 1936. The person or government body who pays a Member's Parliamentary remuneration is also defined in section 221A as the Member's 'employer'.

36. '(A) Member of an Australian Parliament' also comes within the statutory definition of 'employee' in the FBTAA by virtue of its link to section 221A of the ITAA 1936.

37. In addition, a Member is treated as an 'employee' for Superannuation Guarantee purposes (section 12, *Superannuation Guarantee (Administration) Act 1922*).

38. The intention, and effect, of these provisions is to ensure that a Member's Parliamentary 'salary' and allowances are subjected to tax instalment deductions, that certain claims for deductions are subject to the substantiation provisions, that fringe benefits are taxed, and that the superannuation guarantee provisions apply in appropriate circumstances.

Allowances

39. The following types of allowances are commonly received by Members, in addition to their Parliamentary 'salaries'. Particular allowances may vary, depending on the Parliament in which a Member serves.

Committee allowances

This is a daily allowance paid to Members of Parliamentary Committees to cover incidental costs.

Daily expense allowance

This allowance is paid to federal Members who hold seats in the Australian Capital Territory for each day they attend sittings or meetings in Canberra.

Electorate allowance

This allowance is paid to cover incidental expenditure incurred in discharging a Member's electoral responsibilities.

Expense or entertainment allowance

This allowance is paid to some Ministers and office holders in State Parliaments. It is paid to cover incidental expenditure incurred in discharging his or her additional responsibilities.

Opposition spokespersons' allowance

This allowance is paid to cover additional costs incurred by nominated opposition spokespersons.

Postage allowance

This allowance is paid to cover postage costs incurred in discharging Parliamentary and electoral responsibilities.

Printing and stationery allowance

This allowance is paid to cover the costs of printing and stationery incurred in discharging Parliamentary and electoral responsibilities.

Private vehicle allowance/motor vehicle allowance

This allowance is paid where a Member uses his or her private vehicle for work-related purposes.

Telephone allowance

This allowance is paid to offset the work-related costs associated with the use of home and mobile telephones.

Travel allowances including the following:

- An allowance, based on prescribed amounts, paid on a per trip basis for specific travel to nominated destinations.
- An allowance, based on prescribed amounts, paid in respect of a special purpose, such as continuing professional development.
- An allowance, based on a fixed annual entitlement, paid to cover the travel costs of a spouse or nominee who accompanies a Member.
- An allowance, based on prescribed amounts, paid on a per trip basis for travel to nominated destinations where evidence is available that expenses have been incurred

at commercial establishments such as hotels and motels.

- An allowance paid on a per trip basis for travel to nominated destinations where Members are **not** accommodated at commercial establishments. The rate at which this allowance is paid reflects the reduced costs associated with being accommodated at non-commercial establishments.
- An allowance, based on an average number of anticipated trips, paid to Members in the form of a fixed annual entitlement to cover the costs of accommodation, food, drink and incidental expenses for overnight travel. The allowance is not paid on a trip-by-trip basis as and when travel is undertaken.
- An allowance, paid to some State Members, towards the cost of overnight accommodation and incidental expenses where their usual place of residence is located a 'prescribed distance' from the GPO of the State Capital. The 'prescribed distance' may be determined by way of a specified distance from a GPO or by way of a specified electorate categorisation. The allowance is paid as a fixed annual entitlement. The allowance can be used to cover the costs of commercial or non-commercial accommodation.

40. As at the date of this Ruling, the various travel allowances received by Members do not exceed amounts set by the Remuneration Tribunal on which the reasonable allowance amounts in respect of travel expenses are based (see paragraphs 48 to 52).

41. Allowances (and Parliamentary 'salaries'), with the exception of those allowances referred to at paragraph 42, are to be returned as assessable income under section 6-5 or 6-10. The fact that certain deductions may be claimed in respect of losses or outgoings arising from the activity to which the allowance is directed, does not affect assessability.

42. The exception applies where a Member receives a domestic travel allowance or an overseas travel allowance for food, drink or incidentals and the deductible expenses incurred are equal to, or greater than, the amounts considered reasonable by the Commissioner for substantiation purposes. In these circumstances, if the Member chooses not to claim deductions for relevant expenses in his or her income tax return, then the amount of the allowance need not be included in assessable income (see ***Administrative arrangements applicable to travel allowances***, paragraphs 54 to 61). See, also,

Travel expenses covered by an annual entitlement, paragraphs 316 to 318.

Substantiation rules

43. As explained at paragraphs 35 to 38, the substantiation rules in Division 900 apply to Members because they are included in the definition of 'PAYE earner' and are, therefore, treated for substantiation purposes as if they are employees.

44. In respect of a Member's work-related activities, the substantiation rules apply only to 'work expenses' that qualify as deductions under a Division of the ITAA 1997, other than Division 900 - the substantiation rules - and 'car expenses' that qualify as deductions under a Division other than Division 28.

Work expenses

45. 'Work expenses' are those losses or outgoings incurred in producing a Member's Parliamentary salary and allowances, and include, **but are not limited to**:

- expenses for accommodation, food, drink and incidentals covered by a travel allowance ('travel allowance expenses');
- expenses for food and drink covered by a meal allowance ('meal allowance expenses');
- depreciation expenses; and
- Parliamentary election expenses.

Car expenses

46. Written evidence is required to substantiate the total claims for deduction under the 'one-third of actual expenses' and 'log book' methods of deducting car expenses. The substantiation rules do not apply to 'car expenses' claimed under the cents per kilometre or 12% of original cost methods. There is no exception for a small total of expenses equivalent to that found with 'work expenses' of $300 or less. A comprehensive explanation of the 'one-third of actual expenses' and 'log book' methods of deducting car expenses is provided in the annual *TaxPack* publication under the 'car expenses' question.

47. **The effect of the substantiation rules on 'work expenses' and 'car expenses' is that, even though the expenses might otherwise satisfy the general tests for deductibility (see 'General deductions', paragraphs 86 to 91) or other deduction provisions,**

they are not allowable as deductions unless they can be substantiated with written evidence. However, if the total 'work expenses' (which do not include 'car expenses') claimed, excluding 'travel allowance expenses' and 'meal allowance expenses', are $300 or less, the expenses incurred can be claimed without getting written evidence, provided they are otherwise deductible.

Exception to the substantiation rules – 'work-expenses'

48. The Commissioner of Taxation publishes an annual Taxation Ruling that outlines amounts considered reasonable in relation to certain 'work expenses'. For Members, these are:

- domestic travel allowance expenses, and
- overseas travel allowance expenses for food, drink or incidentals.

49. If an allowance is received for domestic travel expenses or overseas travel expenses for food, drink or incidentals, **and** the amount of the deduction claimed for expenses covered by the allowance is no more than the reasonable amount notified in the annual Reasonable Allowance Amounts Taxation Ruling, substantiation is not required. However, as explained at paragraph 47, deductions are limited to expenses that qualify as allowable deductions under other provisions. If the deduction claimed is more than the reasonable amount, the exception does not apply and the whole claim must be substantiated - not just the excess over the reasonable amount.

50. However, notwithstanding the exception in relation to overseas travel allowance expenses, a deduction for these expenses incurred in travelling away from a Member's ordinary residence for six or more nights in a row is not allowable unless the Member keeps travel records showing that the activities were undertaken in the course of producing the Member's assessable income.

51. Accommodation expenses incurred in respect of overseas travel are not covered by the exceptions to the substantiation rules (see subsection 900-55(1)).

52. Taxation Ruling TR 98/10, applicable to reasonable allowance expenses incurred in the 1998-99 year, has detailed information on the amounts considered reasonable, and relevant substantiation rules.

Relief from substantiation rules

53. If a claim for deduction in respect of 'work expenses' or 'car expenses' cannot be substantiated, a Member's right to deduct the amount may not be affected if the nature and quality of the evidence

available is sufficient to satisfy the Commissioner that the expense has been incurred, and is otherwise deductible (see Subdivision 900-H and Taxation Ruling TR 97/24).

Administrative arrangements applicable to travel allowances

54. In the interests of reducing the costs of complying with taxation laws, the Commissioner adopts a pragmatic approach in relation to certain allowances. This obviates the need for tax instalments to be deducted from domestic travel allowances, and overseas travel allowances for food, drink or incidentals where the recipient of the allowance is expected to incur deductible expenses at least equal to the amounts the Commissioner considers reasonable. Where applicable, the allowances concerned do not have to be shown on group certificates (see, for example, PAYE Bulletin No 8 for the 1998-99 year). See, also, *Travel expenses covered by an annual entitlement*, paragraphs 316 to 318.

Claims for deduction

55. If a Member, who has received a travel allowance of the kind described at paragraph 49, has incurred deductible expenses equal to, or greater than, the reasonable amount, the Member may choose not to claim a deduction in his or her income tax return, or to include the allowance in assessable income.

56. However, where a Member chooses to claim a deduction, be it less than, equal to, or greater than, the reasonable amount, the full amount of the allowance must be included in assessable income, and the actual deductible amount claimed.

57. Where it is necessary for Members to include, as assessable income, allowances paid for domestic travel, and overseas travel for food, drink or incidentals, and to substantiate related claims for deductions, the amounts concerned are limited to those arising from the particular trip, or trips, involved.

58. **Example:** A Member undertook ten domestic trips in an income year for which he was paid travel expense allowances totalling $7,500. Each allowance paid did not exceed the amounts considered reasonable, and it was expected that the Member would incur deductible expenses at least equal to the amount of the allowances paid. Tax instalments were, therefore, not deducted and no part of the $7500 was shown on his group certificate.

59. On one trip, for which he was paid an allowance of $1,250, the Member incurred deductible expenses of $1,500 that could be substantiated. As he wishes to claim a deduction for the full $1,500 he incurred, the Member must include the $1,250 allowance received

for that trip in his assessable income, and claim a deduction for the $1,500 expenses.

60. Provided the Member incurred deductible expenses, in relation to each of the other nine trips, at least equal to the amount of the allowances received for each of those trips, no further amount in respect of the allowances need be included in his assessable income.

61. If a deduction is claimed for travel expenses covered by a travel allowance, the allowance must be included as assessable income.

Reimbursements

62. If a Member is compensated for an expense already incurred, the payment is a reimbursement (see Taxation Ruling TR 92/15).

63. Where a reimbursement of a deductible expense is a fringe benefit under the FBTAA, any deduction otherwise allowable to a Member is reduced by the amount of the reimbursement (section 51AH of the ITAA 1936). Where the actual expense incurred is fully reimbursed, no part of the reimbursement forms part of a Member's assessable income, and no part of the expense is allowable as a deduction.

64. Where a non-deductible expense is reimbursed, section 51AH has no application. However, where the reimbursement is a fringe benefit, the entity that makes the reimbursement may be subject to FBT (e.g., refund of child care expenses). In these circumstances, no part of the reimbursement forms part of a Member's assessable income.

65. Where a Member receives a payment in respect of motor vehicle expenses that is based on the distance travelled by the motor vehicle, e.g., cents per kilometre, the amount received is to be included in the Member's assessable income under paragraph 26(eaa) of the ITAA 1936. A deduction may be allowable for the motor vehicle expenses incurred (see ***Motor Vehicle and other transport expenses***, paragraphs 222 to 242).

66. However, where a reimbursement that is not a fringe benefit under the FBTAA comprises a 'recoupment' as defined in section 20-25 of the ITAA 1997, and the recoupment is for a loss or outgoing of a kind specified in section 20-30, the amount recouped forms part of a Member's assessable income and the deduction for the relevant loss or outgoing is not reduced (see, also, **Recoupment of deductible expenses** at paragraphs 110 and 111).

67. If a payment is received for an estimated expense, the amount received by the Member is considered to be an allowance, not a reimbursement (see ***Allowances***, paragraphs 13 to 17).

Donations and gifts

68. If a Member receives a donation or gift of money because of, in respect of, for, or in relation to, his or her work-related activities, the amount received forms part of his or her assessable income under section 6-5 or 6-10. This view follows from the principles that have been established in cases such as: *The Squatting Investment Co. Ltd v. FC of T* (1953) 86 CLR 570; *Scott v. FC of T* (1966) 117 CLR 514; 40 ALJR 205; *Kelly v. FC of T* (1985) 80 FLR 155; (1985) 16 ATR 478; 85 ATC 4283; *FC of T v. Dixon* (1952) 86 CLR 540; *Hayes v. FC of T* (1956) 96 CLR 47; *FC of T v. Blake* (1984) 2 Qd R 303; 75 FLR 315; (1984) 15 ATR 1006; 84 ATC 4661; *G v. Commr of IR (NZ)* 12 ATD 378 and *FC of T v. Cooke and Sherden* (1980) 42 FLR 403; (1980) 29 ALR 202; (1980) 10 ATR 696; 80 ATC 4140.

69. Where a donation or gift is received in the above circumstances in a form other than money, the value to the Member of the donation or gift is also to be included in the Member's assessable income under section 6-10 of the ITAA 1997 (that links to paragraph 26(e) of the ITAA 1936). This is because the donation or gift is given or granted to the Member in respect of, for or in relation directly or indirectly, to the Member's work-related activities (see paragraph 24).

70. If a donation or gift is in all other respects assessable income, the fact that it is paid to a Member by a relative, friend or colleague is not sufficient to alter its character as assessable income in the hands of the Member.

71. **Example:** A Member plans to seek re-election to the seat that he holds. To assist him to finance his campaign, friends and relatives arrange various fundraising activities and give the proceeds to the Member. These amounts form part of the Member's assessable income in the year in which they are received.

72. A donation or gift does not form part of a Member's assessable income in circumstances where it is given for personal reasons, unconnected with any work-related activities of the Member.

73. **Example:** A Member relocates to the National Capital for a year due to the demands of her position. During the year she receives a number of gifts from her parents and other close relatives out of natural love and affection. There are no income tax consequences arising from the receipt of these gifts.

74. Donations and gifts may be made to Members both as an expression of goodwill towards them personally, and also in recognition of some work-related activity of the Member (perhaps a major funding boost for the electorate) or the Member's political convictions. Accordingly, where a donation or gift is given on personal grounds, and a substantial, but not necessarily dominant

reason for the donation or gift being received by the Member is to be found in his or her work-related activities, the donation or gift forms part of the Member's assessable income in the year in which it is received.

75. **Example:** A Member receives unsolicited gifts of money when he addresses a meeting of party Members. These gifts are given because those attending are politically motivated to contribute to the work the Member is undertaking. Although the Member is not in any way motivated by the prospect of receiving the gifts when he sets out to address the meeting, these amounts form part of the Member's assessable income in the year in which they are received.

76. If a donation or gift to a nominated Member is channelled through a political party (including a donation or gift to a fund established by the political party) on the basis that it will be passed on by the party to that Member, the gift is assessable to the Member at the time the political party receives the donation or gift.

77. Sometimes a donor makes a donation or gift to a political party and merely expresses a preference that it be passed on to a particular Member. The political party owns the donation or gift at the time it is made and retains an unfettered discretion about whether or not it acts in accordance with the donor's preference. In these circumstances, the donation or gift is assessable to the Member if, and to the extent to which, the political party actually passes on the donation or gift to the Member or otherwise deals with it on his or her behalf. The Member derives the income in these cases when he or she receives the donation or gift from the political party or it is otherwise dealt with on his or her behalf.

78. Where a donor makes a donation or gift to a special purpose fund, such as a Member's re-election fund, that has been established by a political party to directly fund designated activities, the donation or gift does not form part of the Member's assessable income and there are no other income tax consequences for the Member.

Frequent flyer programs

79. Benefits that arise under a standard frequent flyer program do not form part of a Member's assessable income because the benefits result from a personal contractual relationship that is not, in itself, productive of assessable income.

80. The standard features of these programs are:

(a) the customer is dealing with the supplier in a personal capacity, that is, in accordance with the normal arm's length commercial relationship that exists between consumers and suppliers;

(b) membership is restricted to natural persons;

(c) membership of the program is usually by application that may require an application fee;

(d) benefits are accrued, in the form of points, with each purchase of goods or services;

(e) program members and non-members both pay the same amount for the goods or services purchased; and

(f) points are redeemable for goods or services.

Life gold passes and severance passes

81. On 'retirement' from Federal Parliament, Members are issued with either a Life Gold Pass or a Severance Pass. Similar travel entitlements are available for State and Territory Members.

82. The benefits available to a Federal Member who has served in the Parliament are:

(a) **Life Gold Pass:** A Life Gold Pass is awarded to a Member who has either held high office (such as a Minister, Speaker or Prime Minister) or who has served in Parliament for 20 years (or the life of 7 Parliaments). The holder of a Life Gold Pass (and his or her spouse, if he or she accompanies the holder at the time of the travel) is entitled to up to 25 return trips per annum (by plane, train or bus) for non-commercial purposes within Australia, at government expense.

Furthermore, the widow or widower of a Gold Pass holder, or the widow or widower of a Member who would have qualified for a Gold Pass at the time of his or her death, is also entitled to travel for a period of 12 months from the death of the Gold Pass holder or Member, as the case may be.

(b) **Severance Pass:** A Member who doesn't qualify for a Gold Pass upon 'retirement' from Parliament may, nevertheless, obtain a Severance Pass for non-commercial travel. The period of entitlement to travel under a Severance Pass varies from 6 months for service in one Parliament, to 5 years for service in 6 Parliaments. However, unlike a Life Gold Pass holder, the spouse of a Member holding a Severance Pass has no entitlement to travel, whether during the lifetime of a Member or after the date of death of the Member.

83. We do not consider that the **issuing** of passes under the Life Gold Pass and Severance Pass Schemes attracts any **income** tax

implications. However, travel benefits received in relation to each **use** of a Gold Pass or Severance Pass by a Member will be taxed as a residual benefit, within the meaning of section 45 of Division 12 of the FBTAA, to the provider of the pass.

84. Similarly, travel benefits received by the spouse of a Gold Pass holder, or by a widow or widower of a Member who dies in office but who would have qualified for a Gold pass at the time of his or her death, will be taxed as a residual fringe benefit to the provider of the pass.

85. Under section 23L of the ITAA 1936 the value of these travel benefits do not form part of the recipient's assessable income under sections 6-5 or 6-10 of the ITAA 1997. This applies to a Member, the Member's spouse, and the widow or widower of the deceased Member, as the case may be.

General deductions

86. A deduction is only allowable if a loss or outgoing:

(a) is actually incurred (paragraph 87);

(b) meets the deductibility tests (paragraphs 88 to 90); and

(c) satisfies the substantiation rules where applicable (paragraphs 43 to 53).

Losses or outgoings actually incurred

87. A deduction is only allowable for losses or outgoings actually incurred by a Member. For example, a deduction is not allowable for items provided to a Member free of charge, regardless of whether it is possible to substantiate the relevant expenses.

Deductibility tests

88. The tests for deductibility of losses or outgoings are in section 8-1, which provides that:

'**8-1(1)** You can ***deduct*** from your assessable income any loss or outgoing to the extent that:

(a) it is incurred in gaining or producing your assessable income; or

(b) it is necessarily incurred in carrying on a business for the purpose of gaining or producing your assessable income.

8-1(2) However, you cannot deduct a loss or outgoing under this section to the extent that:

(a) it is a loss or outgoing of capital, or of a capital nature; or

(b) it is a loss or outgoing of a private or domestic nature; or

(c) it is incurred in relation to gaining or producing your exempt income; or

(d) a provision of this Act prevents you from deducting it.'

89. Section 8-1 applies to the 1997-98 year of income and subsequent years. The equivalent provision in the ITAA 1936, which expresses the same ideas, is subsection 51(1), which applies to income years up to, and including, the 1996-97 year of income.

90. As a result of considerations of subsection 51(1), it has been established by the courts that for a loss or outgoing to be deductible under paragraph 8-1(1)(a):

(a) it must have the **essential character** of a loss or 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) 32 ALJR 139; (1958) 11 ATD 404 (*Lunney's* case));

(b) there must be a nexus between the loss or 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; (1949) 8 ATD 431 (*Ronpibon Tin*)); and

(c) it is necessary to determine the **connection** between the particular loss or outgoing and the operations or activities by which the taxpayer more directly gains or produces his or her assessable income (*Charles Moore & Co (WA) Pty Ltd v. FC of T* (1956) 95 CLR 344; (1956) 11 ATD 147; 6 AITR 379; *FC of T v. Hatchett* (1971) 125 CLR 494; 71 ATC 4184; (1971) 2 ATR 557 (*Hatchett's* case)).

Apportionment

91. The combined operation of subsections 8-1(1) and 8-1(2) may require apportionment of a loss or outgoing into deductible and non-deductible components, where a single loss or outgoing is incurred for more than one purpose or on items of a differing nature.

Does paragraph 8-1(1)(b) apply to losses or outgoings incurred by a Member?

92. In two Board of Review references, *Case N26* 81 ATC 143; 24 CTBR (NS) *Case 98* and *Case M71* 80 ATC 492; 24 CTBR (NS) *Case 46*, it was decided that each applicant Member was carrying on the business of a political vocation, with the result that consideration of their claims for deductions was not confined to paragraph 8-1(1)(a) and relevant parts of subsection 8-1(2), the bulk of the analysis being devoted to the application of paragraph 8-1(1)(b).

93. Whereas courts have interpreted the paragraph 8-1(1)(b) test in fairly broad terms in comparison to the language they have used in relation to the paragraph 8-1(1)(a) test, in practice the application of the paragraph 8-1(1)(b) test rarely produces a different result to the application of the paragraph 8-1(1)(a) test.

94. As the Full High Court said, at CLR 56, of *Ronpibon Tin*:

> 'No doubt the expression "in carrying on a business for the purpose of gaining or producing" lays down a test that is different from that implied by the words "in gaining or producing". But these latter words have a very wide operation and will cover almost all the ground occupied by the alternative.'

95. Members are not common law employees (see, for example, *State Chamber of Commerce and Industry and Others v. The Commonwealth of Australia* (1987) 163 CLR 329; 61 ALJR 459; 73 ALR 161; (1987) 19 ATR 103; 87 ATC 4745) because they have no identifiable employer, as such. There is no express or implied contract of employment between a Member, his or her political party, the Executive, a Premier or the Prime Minister, or the Governor-General or a State Governor. Also, none of these entities exercises, or is entitled to exercise, a degree of control over a Member's activities sufficient to support an argument that a master servant relationship exists.

96. The fact that Members are not common law employees does not lead, inexorably, to the conclusion that they are carrying on business within the meaning of the paragraph 8-1(1)(b) test for deductibility (see *FC of T v. Charlton* (1984) 71 FLR 107; (1984) 15 ATR 711; 84 ATC 4415 at 4418). For paragraph 8-1(1)(b) to apply, a Member's activities must amount to a business that he or she is 'carrying on ... for the purpose of gaining or producing ... assessable income'.

97. In subsection 995-1(1), 'business' is defined in the following terms: '***business*** includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee'. The words 'profession, trade, employment, vocation or calling' are not

technical terms, and are, therefore, to be interpreted according to their ordinary meaning.

98. The word 'vocation', which is apt to describe a Member's activities, was considered by Denman J in *Partridge v. Mallandaine (Surveyor of Taxes)* (1886) 2 TC 179, in which he said, at 180, that:

> '[a] man may employ himself in order to earn money in such a way as to come within that definition [employment], but I think the word "vocation" is a still stronger word. It is admitted to be analogous to the word "calling", which is a very large word; it means the way in which a person passes his life, and it is a very large word indeed.'

99. The words 'vocation or calling' in the subsection 995-1(1) definition of 'business' are wide enough to encompass a 'profession' (see *Robbins Herbal Institute v. FC of T* (1923) 32 CLR 457 at 460-461) or 'trade', as does 'employment'. It is, therefore, apparent that there is considerable overlap in the terms 'profession, trade, employment, vocation or calling', and that the words 'vocation or calling' were used in an extending sense to aid the inclusive nature of the definition, rather than as a reference to discrete occupations specifically intended to be brought within the definition.

100. It is a common occurrence in the community for people to pursue vocations - passing their lives in particular ways for particular causes - that could not be regarded as businesses carried on for the purpose of gaining or producing assessable income. The most frequently encountered are those pursuing hobbies or recreations, however avidly.

101. People who, beyond formal retirement, continue their former activities in a scaled down or uncommercial manner, would also fall into the category as those pursuing vocations that do not amount to business carried on for the purpose of gaining or producing assessable income. For example, an accountant who continues to practice, but on a cost recovery or less than cost recovery, basis, or a lawyer who continues to practice for the benefit of community groups on a voluntary basis, may be said to be continuing their vocations. However, they could no longer be said to be carrying on a business for the purpose of gaining or producing assessable income.

102. The categories, 'profession, trade, employment, vocation or calling' referred to in the definition of 'business' in subsection 995-1(1), represent occupations that have the potential to constitute businesses carried on for the purpose of gaining or producing assessable income as required by paragraph 8-1(1)(b). However, there is nothing in the definition of 'business' that provides any guidance for determining whether the nature, extent and manner of undertaking those occupations would meet the requirements of paragraph 8-1(1)(b). Whether or not a particular occupation is carried on as a

business for the purpose of gaining or producing assessable income is a question that can only be decided on the facts of the particular case.

103. The courts have considered the meaning of the phrase 'carrying on a business' on many occasions and have determined that, among other things, it is necessary for the activities under consideration to amount to a commercial enterprise (see, for example, *Hope v. Bathurst City Council* (1980) 144 CLR 1; 54 ALJR 345; 41 LGRA 262; (1981) 29 ALR 577; (1981) 12 ATR 231; 80 ATC 4386 per Mason J and *State Superannuation Board (NSW) v. FC of T* (1988) 82 ALR 63; (1988) 19 ATR 1264; 88 ATC 4382). Further, in the appeal to the Full Federal Court in the latter case (*State Superannuation Board v. FC of T* (1988) 21 FCR 535; (1988) 85 ALR 125; (1988) 20 ATR 211; 89 ATC 4078) Davies J stated (at FCR 548; ALR 139; ATR 222; ATC 4088) that:

> '[a] business must have organisation. It usually has capital, plant, employees and consumables. It must derive income and it must trade with or deal with another person or persons'.

104. There are some similarities between a Member's activities and those undertaken by business proprietors in the commercial environment. For example, Members set up offices and go about their tasks in a businesslike way with system, regularity and repetition, etc. However, the nature of a Member's role is fundamentally different. On election, a Member becomes an integral part of the Parliament that, under the relevant constitutional framework, exercises the legislative power of the Commonwealth, State or Territory, as the case may be. Also, the associated activities undertaken by a Member in relation to his or her Parliamentary constituency are inextricably linked to the Member's primary and pivotal role as a Parliamentarian: they cannot be considered in isolation from that role. We consider that the essential nature of a Member's activities and those of the Parliament in which he or she serves are the same. The activities of Parliaments could not be described as being commercial in nature. Therefore, it follows that the activities of a Member do not amount to a commercial enterprise.

105. For the foregoing reasons, a Member's activities cannot be characterised as a business carried on for the purpose of gaining or producing assessable income. A Member's activities are more appropriately described as the rendering of services to the Parliament and their Parliamentary constituency, for which a Parliamentary remuneration is paid. Therefore, claims for deduction of losses and outgoings incurred in the course of gaining or producing assessable Parliamentary remuneration may only be considered under paragraph 8-1(1)(a).

106. It follows from the above that we are, respectfully, of the view that *Case N26* 81 ATC 143; 24 CTBR (NS) *Case 98* and *Case M71*

80 ATC 492; 24 CTBR (NS) *Case 46* were wrongly decided. We believe that the Board of Review, in those cases, misdirected itself on its interpretation of the definition of 'business', the relationship of that definition with the language of paragraph 8-1(1)(b), and the true nature of a Member's activities.

Ministers

107. Ministers of State undertake a dual role. As elected Members, they have the normal Parliamentary and electoral responsibilities assumed by their non-Ministerial colleagues. However, they also have responsibility for administering government departments and membership of the Executive Council and Cabinet, where applicable. In the exercise of their statutory and other responsibilities, Ministers represent the Crown and do not act in the capacity of servants of the Crown. In this context, the administration of a government department is more appropriately described as the rendering of services by the responsible Minister to the department concerned.

108. Although the Governor-General and State Governors have a limited legal right to control Ministers of State in respect of their appointment, that right, in accordance with convention, has rarely, if ever, been exercised. We do not consider that the existence of this limited right of control is sufficient, in itself, to establish a master servant relationship.

109. Should we be wrong in this conclusion, it nevertheless follows that a Minister who is regarded as a common law employee would not be entitled to have claims for deduction of expenses incurred in connection with his or her Ministerial activities tested against paragraph 8-1(1)(b). Therefore, for the purposes of this Ruling, no relevant distinction need be drawn between Ministers and their non-Ministerial colleagues.

Recoupment of deductible expenses

110. Subdivision 20-A operates to include in assessable income amounts received as recoupment of specified losses or outgoings allowed or allowable as deductions, such as election expenses, rates or taxes and tax-related expenses. The effect of these provisions is that, where there is a specified 'recoupment', that broadly includes any kind of reimbursement, refund, insurance, indemnity or recovery, or grant in respect of a loss or outgoing, that amount is to be included in assessable income.

111. Subdivision 20-A does not apply to recoupment amounts that are ordinary income or amounts that are included in assessable income by some other provision of the ITAA 1997. Neither does the

Subdivision apply to recoupments of deductible expenses that are fringe benefits under the FBTAA. In practice, therefore, the recoupment provisions only apply to reimbursements of specified deductible expenses when a reimbursement is made by an entity other than the Member's 'employer' (see **Role of a Member**, paragraph 35).

Work-related expense claims

112. Commonly encountered work-related expenses incurred by Members, and the extent to which they are allowable deductions, are discussed below in alphabetical order.

Briefcases, calculators and electronic organisers

113. A deduction is allowable for depreciation on an item of plant, such as a briefcase, a calculator or an electronic organiser to the extent to which that item is used for work-related activities (section 42-15). For information on depreciation of items of plant generally, and specifically those costing $300 or less, or those having an effective life of 3 years or less, see ***Depreciation of equipment***, paragraphs 140 to 151.

114. A deduction is allowable for the cost of repairing and maintaining briefcases, calculators and electronic organisers to the extent of their work-related use. A deduction is also allowable for the cost of batteries for calculators and electronic organisers.

Child care

115. A deduction is not allowable for child care expenses, even if a Member must arrange for child care so that he or she can undertake work-related activities. However, these expenses may be regarded as 'necessarily incurred' to the extent to which they form part of the costs of a prescribed course of education for the purpose of determining entitlement to a deduction for self education expenses (see ***Self education expenses***, paragraphs 279 to 285).

116. The High Court held in *Lodge v. FC of T* (1972) 128 CLR 171; 72 ATC 4174; (1972) 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).

117. **Example:** A Member and his spouse are invited to attend a public function. They engage the services of a baby sitter to care for

their children. The cost of the child care is not an allowable deduction as it is a private expense (see *Case M 71* 80 ATC 492; 24 CTBR (NS) *Case 46*).

118. See, also, *Martin v. FC of T* 84 ATC 4501; (1984) 15 ATR 808.

Clothing

119. A deduction is not allowable for the cost of conventional clothing and footwear, or for the cost of cleaning and maintaining conventional clothing or footwear.

120. **Example:** A Member decides, as a result of the televising of parliamentary proceedings, to purchase a range of high quality garments to wear on those occasions. A deduction is not allowable because there is an insufficient connection between the acquisition of these items and the Member's work-related activities. The costs incurred by the Member are also private or domestic in nature.

121. The fact that conventional clothing is damaged in an accident at work does not alter the private nature of the cost of replacement clothing or the cost of repairing the damage.

Laundry and maintenance

122. A deduction is not allowable for the cost of cleaning and maintaining clothing of the kind worn by Members, because the losses or outgoings are private or domestic in nature.

123. See, also, Taxation Rulings TR 94/22 and TR 97/12.

Club membership fees

124. A deduction is not allowable for recreational club membership fees as they are losses or outgoings of a private nature. Section 26-45 specifically denies a deduction for the cost of recreational club membership, or the right to enjoy the facilities of a club. However, a deduction is allowable for fees paid to obtain Airport Lounge membership to the extent to which the membership is used for work-related purposes.

Community group membership fees

125. A deduction is not allowable for membership fees of a community group unless the Member's involvement with the community group is for work-related purposes and the fees are not of a private nature.

126. In *Case H33* 76 ATC 285; 20 CTBR (NS) *Case 87*, a member of a State Parliament was allowed a deduction for a subscription to a suburban Catholic Club. The membership was mainly for political reasons and gave the taxpayer little personal advantage.

127. A deduction is not allowable for membership fees where a community group is established or carried on mainly to provide facilities for the use or benefit of its members for drinking, dining, recreation or entertainment (section 26-45).

Computers and software

128. A deduction is allowable under section 42-15 for depreciation on the cost of computers, modems and related software and hardware to the extent to which they are used by a Member for work-related purposes. A computer bought on or after 1 July 1991 can be depreciated at the rate of 100% if its cost is $300 or less, or its effective life is less than 3 years.

129. If software is bought separately from a computer, in the period 1 July 1991 to 11 May 1998, a deduction for the full cost of the software is allowable (under the general deduction provisions) in the year in which it is purchased. The deduction must, if applicable, be apportioned between work-related and private use (see ***Depreciation of equipment***, paragraphs 140 to 151).

130. *Note*: the 1998 Federal Budget provided for legislation that will result in the cost of software purchased for more than $300 (with or without a computer), on or after 10 a.m. Australian Eastern Standard Time (AEST) on 11 May 1998, being amortised at the rate of 40% over two and a half years, or the life of the software licence, whichever is shorter. (*These comments do not form part of the Explanation and are provided to alert readers to a potential legislative change.*)

131. A deduction is allowable under section 25-10 for the cost of repairs to computer equipment. The cost of any repair must, if applicable, be apportioned between work-related and private use.

132. A deduction is allowable for the interest paid on money borrowed to finance the purchase of a computer. The amount of interest claimed must, if applicable, be apportioned between work-related and private use.

Conferences, seminars and training courses

133. Subject to the limitations of deductibility for ***Self education expenses*** explained at paragraphs 283 and 284, a deduction is allowable for the cost of attending conferences, seminars and training

courses to maintain or increase the knowledge, ability or skills required by a Member. There must be a relevant connection between the conference, seminar or training course and the current work-related activities of a Member.

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

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

135. A deduction is allowable for the cost of travel (fares, accommodation, meals and incidental expenses), registration and conference material costs incurred in attending work-related conferences or seminars.

136. **Example:** A Member attends a training seminar delivered by the Media Entertainment and Arts Alliance at a venue located away from his workplace and is required to stay overnight. The seminar covers topics such as: dealing with media interviews; how to present a professional image on camera; and wardrobe considerations. The seminar is directly relevant to increasing the Member's knowledge and work-related skills. A deduction is allowable for the cost of attending the seminar.

137. If part of the cost of a conference, seminar or training course represents the cost of food and drink that is provided, the cost is only an allowable deduction according to the terms of section 32-35 (see Taxation Determination TD 93/195).

138. If the main purpose in incurring relevant costs is to attend a conference, seminar or training course and the existence of any private activity is merely incidental, the costs are fully deductible. If attendance at a conference, seminar or training course is only incidental to a private activity (e.g., a holiday) then only those costs directly attributable to the conference, seminar or training course are an allowable deduction. The cost of accommodation, meals and travel directly relating to the private activity is not allowable under section 8-1.

139. **Example:** A Member with responsibilities in the areas of economics and commerce attends a ten day training course on 'Trade negotiations in Asia - a practical guide'. The course is directly relevant to her work-related activities and is held at a resort on the Gold Coast. She takes advantage of this location to take a few days holiday at the end of the course and incurs additional accommodation expenses as a result. As the main purpose in travelling to the resort

was to attend the training course, she is entitled to claim the cost of her travel directly to and from the course. However, the only accommodation and meal expenses she can claim are those directly associated with the course.

Depreciation of equipment

140. An outright deduction is not allowable under section 8-1 for the cost of an item of plant as it is a capital expense.

141. A deduction is allowable for depreciation of items of plant owned and used by a Member for income-producing purposes (section 42-15). A deduction is also allowable for depreciation of items of plant that are not actually used during the year of income for income-producing purposes, but are installed ready for use for that purpose and held in reserve.

142. There are two methods of 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 item of plant. Depreciation using the diminishing value method is calculated initially as a percentage of the plant's cost and thereafter as a percentage of the undeducted cost (the cost of the plant less the sum of the depreciation deductions and any further depreciation amounts that are not allowable as deductions because the plant was not used for income-producing purposes).

143. An item of plant acquired on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less (section 42-130), or if its effective life is less than three years (section 42-125). This means that an immediate deduction is available for the cost of such items of plant in the year of income in which they are acquired. However, items may be depreciated at a rate less than 100% if the taxpayer so elects (section 42-120).

144. **Example:** A Member pays $250 for a briefcase that is used only for work-related activities, e.g., carrying reference books, documents and notes. The amount of $250 is an allowable deduction in the income year in which the briefcase is acquired.

145. If plant is used partly for work-related purposes and partly for other purposes, the depreciation deduction should be reduced to reflect the extent of work-related use (subsection 42-170(1)).

146. **Example:** A Member owns a laptop computer that is used for work-related purposes during the week, and at home on weekends for preparing personal letters. The Member estimates from diary notes that 15% of the computer's use is for private purposes. The Member is entitled to a deduction for 85% of the total depreciation.

147. If plant is acquired part way through an income year, the depreciation must be apportioned on a pro-rata basis.

148. An arbitrary figure is not acceptable when determining the value of plant for depreciation purposes (*Case R62* 84 ATC 454; 27 CTBR (NS) *Case 113*).

149. **Example:** A bookcase is purchased on 1 July 1996 for $400 but it is not used for work-related purposes until 1 July 1998. It is depreciated at a rate of 13.5% using the diminishing value method.

150. To determine the opening undeducted cost of the bookcase, depreciation should be calculated at the specified rate from the date of purchase to 30 June 1998. The depreciation in the 1997 and 1998 years is $54 and $47 respectively. The opening undeducted cost of the bookcase at 1 July 1998 is $299 ($400 - $54 - $47). In the 1998-99 year, the bookcase is used solely for work-related purposes, and the depreciation expense that is allowable as a deduction is $299 x 13.5% = $40.36, rounded to $41.

151. The current indicative depreciation rates are set out in Taxation Ruling IT 2685.

Donations, gifts and contributions

152. Division 30 of the ITAA 1997 contains specific provisions regarding the deductibility of gifts and donations of $2 or more to listed or approved recipients. (See, also, ***Party membership fees, levies and donations***, paragraphs 251 to 253.)

153. Apart from the specific provisions of Division 30, a deduction is allowable under section 8-1 for the cost of ***donations*** - such as trophies, books and sporting equipment; ***gifts*** - such as flowers and cards for birthdays, anniversaries, funerals and the like; ***contributions to constituents*** - such as ad hoc emergency monetary assistance; and ***contributions to organisations*** - such as guides, scouts, church organisations and sporting clubs; within the Member's electorate, where the outgoings are directly connected to work-related activities, and they are not private or domestic in nature. A deduction may also be allowable for the cost of donations, gifts and contributions made outside the Member's electorate where that direct connection exists. For example, in the case of a Minister (or Shadow Minister) who makes a donation to an organisation located outside of his or her electorate that performs services in an area covered by his or her portfolio responsibilities. Where a deduction is allowable under one of these provisions, it is not also allowable as a double deduction under the other.

154. 'Donations' for the provision of entertainment are not deductible (see ***Entertainment expenses***, paragraph 175).

Driver's licence

155. 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 of a capital or private nature. The cost of renewing a licence is private in nature.

156. 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 ITAA 1936.

Election expenses

157. A deduction is allowable for expenditure incurred in contesting Parliamentary elections (section 25-60). Unlike the general deduction provisions of section 8-1, the election expense provisions do not specifically 'deny deductibility on the basis that the outgoings are of a capital, private or domestic nature' (*Case S23* 85 ATC 253 at 254; 28 CTBR (NS) *Case 22* at 169 (*Case S23*)). However, for a deduction to be allowable, the expenditure must be 'incurred in contesting an election' and it must be of a type that would be incurred by a Member to further his or her chances of being elected to a Parliament.

158. Claims for election expenses are only allowable where they can be substantiated (see **Substantiation rules**, paragraphs 43 to 53).

159. In *FC of T v. Wilcox* 82 ATC 4411; (1982) 13 ATR 395 (*Wilcox*) it was decided that section 74 of the ITAA 1936 operated to allow the taxpayer deductions for election expenses incurred during a period of some 2 years between the date he was endorsed as a candidate and the date of the election he contested. The Court also agreed that the phrase 'in contesting an election' in subsection 74(1) could be referable to events prior to the commencement of the formal election process.

160. In *Case S23* the Board found (at ATC 255; CTBR 170) that:

> '[w]hilst the decision in *Wilcox* provides authority for the view that campaign expenses incurred prior to the official commencement of the election may, in certain circumstances, qualify for deduction in terms of section 74, the precise parameters of time are not clearly defined.'

161. The Board in *Case S23* decided that, having regard to the circumstances of the case before it, particularly the absence of party endorsement, the taxpayer was not engaged in contesting an election when the expenses in question were incurred. In addition, the

connection between the expenditure and the contesting of the election necessary for a deduction to be allowable had not been established.

162. The following expenditure, although not an exhaustive list, is typically incurred 'in contesting an election':

- advertising and promotional expenses incurred during the election period;
- expenses of printing electoral material that is used in the election period;
- costs of election-related opinion polls or other research undertaken during the election period;
- travel and accommodation costs associated with the campaign;
- wages paid to persons employed for campaign purposes;
- auditing costs related to reimbursement claims;
- costs of campaign novelty items - car stickers, T-shirts, lapel buttons or badges, pens, pencils or balloons;
- costs of insurance policies specifically taken out to cover volunteer workers for the campaign;
- additional expenditure on postage and telecommunications occasioned by an election;
- running costs for vehicles used during the campaign period;
- costs of campaign rallies and meetings;
- costs of conveying voters to the polls;
- payments to scrutineers;
- ex-gratia payments to volunteer workers;
- nomination deposits; and
- costs involved in raffles or other fundraising activities.

163. A deduction is not allowable for expenses incurred merely because they are incurred during the period of time a candidate contests the election, for example, where a candidate incurs 'normal' household expenditure or acquires an asset that may be used during and after the election period.

164. **Example:** A candidate claims deductions for a series of outgoings directed specifically at an election campaign, together with his normal housekeeping expenses incurred during the election period. A deduction is not allowable for the housekeeping expenses because

they are not connected with the candidate's attempt at winning the election.

165. **Example:** A candidate owned a car that was nearing the end of its effective life. As she needed a reliable vehicle to use in her election campaign, the candidate purchased another car for a change-over cost of $30,000 and claimed this amount as a deduction under section 26-50. A deduction is not allowable for the $30,000 because the car was predominantly used for purposes other than contesting the election. However, running costs of the car incurred in contesting the election are allowable deductions.

166. Section 25-70 limits the deductions that can be claimed under section 25-60 in relation to the provision of entertainment. These expenses are only deductible to the extent to which they are incurred in respect of the provision of entertainment that is available to the public generally, or food or drink to the candidate while travelling in the course of a campaign, unless the expenses of food and drink are incurred in the course of entertaining another person.

167. A sitting Member who incurs expenditure that is not deductible under some other provision of the ITAA 1997, for example, section 8-1, is not able to gain the benefits of a deduction under section 25-60 merely because he or she may be contesting an election at some time in the future.

168. In *Case S23*, a sitting Member incurred expenditure in relation to clothing, hair care, and dry-cleaning (which would not have been deductible under section 8-1). She claimed that the amounts expended would enhance the likelihood of her subsequent re-election and, therefore, the expenses were deductible as election expenses. The Board found (at ATC 256; CTBR 171):

> '... having due regard to all of the circumstances, particularly those relating to the absence of party endorsement, that the taxpayer was not at that stage engaged in contesting an election, ...'.

169. A deduction is not allowable under section 25-60 for expenditure incurred in gaining party pre-selection.

170. In *Case J48* 77 ATC 425; 21 CTBR (NS) *Case 70*, pre-selection expenses were disallowed by the Board because (ATC 427; CTBR 759):

> '... in our opinion the best view is that pre-selection expenses, even if the pre-selection occurs close to election day, do not constitute expenditure incurred "in being elected a member, or in contesting an election for membership, of the Parliament", and hence do not fall within section 74 [of the ITAA 1936].'

171. A person who is seeking to be elected as an independent does not need pre-selection. The time at which an independent candidate commences contesting an election, and from which expenses are incurred for that purpose, is a question of fact that varies according to individual circumstances.

172. Where a Member receives a recoupment of deductible election expenses, the amount of the recoupment may need to be included in the Member's assessable income (see ***Recoupment of deductible expenses***, paragraphs 110 and 111).

Entertainment expenses

173. A deduction is not allowable under the general deduction provisions of section 8-1 for the provision of entertainment (see section 32-5). Of the exceptions to this general rule that are set out in Subdivision 32B, only section 32-35 relating to seminar expenses is relevant to Members (see paragraph 137).

174. Broadly, the 'provision of entertainment' means entertainment by way of food, drink, recreation, accommodation or travel. Entertainment includes business lunches and social functions, but excludes meals purchased during overnight work-related travel (subsection 32-10(2)).

175. A deduction is not allowable for 'donations' made under an arrangement for the specific purpose of enabling the recipient to provide entertainment, whether made for fund raising purposes or otherwise (see section 32-75).

176. In *Case Y11* 91 ATC 184; *AAT Case 6641* (1991) 22 ATR 3063, a senior officer in the Australian Defence Force, who was involved in negotiations to buy defence equipment, was denied a deduction for expenditure incurred in attending a range of lunches, cocktail parties, dinners and other forms of social contact relevant to the performance of his duties. Direct business was done on many of those occasions. It was held that the entertainment provisions (subsection 51AE(4) of the ITAA 1936) operated to deny the claim. It did not matter that the expenditure was directly relevant to business transactions.

177. In *Frankcom v. FC of T* (1982) 65 FLR 25; 82 ATC 4599; (1982) 13 ATR 636, a magistrate was denied a deduction under the general deduction provisions for the costs of attending a cocktail party hosted by the Bar Association and Law Society and dinners given by the Queensland Stipendiary Magistrates' Association. The taxpayer's duties as a magistrate did not necessitate his attendance at social functions. Hence, the expenditure was not incidental and relevant to the taxpayer's income-producing activities and was of a private

nature. It should be noted, however, that this case was decided prior to the enactment of the entertainment provisions.

178. **Example:** A Member provides light refreshments such as tea, coffee, fruit drinks, cakes and biscuits to constituents when they visit her electorate office. A deduction is allowable for the cost of providing these refreshments to the constituents because we do not consider that this amounts to the provision of entertainment, and the expenditure satisfies the general deduction tests.

179. **Example:** When entertaining constituents and overseas visitors, a Member often invites guests to join him for a meal, at his expense, in the Parliamentary dining room. The provision of these meals amounts to entertainment and the cost is not an allowable deduction.

180. **Example:** A Member hosted a barbecue at which proposals for government funding programs were debated and voted on by invited members of his local business community. The cost of this function is not an allowable deduction because it represents the provision of entertainment.

Expenses incurred in the transitional period before a Member takes his or her seat

181. A Member who is elected to the Senate as the result of a half senate election does not take his or her seat until the 1st of July following the polling day. Similarly, a Member elected to the Western Australian Legislative Council does not take his or her seat until the 22nd of May following the polling day. In both cases, affected Members are not entitled to receive their Parliamentary remuneration until such time as they take their seats.

182. Retiring Senators and Western Australian MLCs hold their seats, and are entitled to their Parliamentary remuneration until the end of their term in the Parliament. Throughout this period, retiring Members continue to represent their constituencies.

183. A deduction is not allowable for any losses or outgoings incurred by Members 'elect' prior to the date on which they take their seats because any connection which might exist between them and the income-producing process is too remote.

Functions and presentations

184. A deduction is allowable for the cost of attending functions where a Member's attendance is for work-related purposes. A deduction is not allowable if a Member is attending a purely social function, such as a family get-together. These expenses are private in

nature and may also relate to the provision of entertainment (see ***Entertainment expenses***, paragraphs 173 to 180).

185. A deduction is not allowable for the cost of goods, such as food and clothing, purchased at fetes and fairs. These expenses are considered to be of a private or domestic nature.

Attendance on behalf of Member

186. A deduction is allowable for costs incurred by a Member who is represented by another person at functions, presentations and Parliamentary, electoral or party meetings. However, a deduction is not allowable for costs that would not have been deductible to the Member had he or she attended personally.

187. **Example:** A Member incurs motor vehicle expenses as a result of his spouse deputising for him at the opening of a government funded youth centre in his electorate. The motor vehicle expenses incurred are an allowable deduction.

Grooming

188. A deduction is not allowable for grooming expenses, for example, hairdressing and make-up, as such expenses lack the essential character of expenses incurred in gaining or producing a Member's Parliamentary remuneration.

189. The deductibility of these expenses was considered by Hill J in *Mansfield v. FC of T* 96 ATC 4001; (1995) 31 ATR 367. He was of the view that the cost of make-up incurred by a flight attendant retained an essential personal character that excluded it from deductibility, even though the taxpayer was required by her employer to wear make-up. Further, Hill J concluded that, although the taxpayer was required by her employer to be well groomed and presentable, there was no 'additional feature' present that established a relationship between the general hairdressing expenses and the taxpayer's employment as a flight attendant. The hairdressing expenses were held not to be an allowable deduction.

190. In *Case 72/96* 96 ATC 640; *AAT Case 11,455* (1996) 34 ATR 1098, a television newsreader claimed a deduction for the cost of hairdressing, make-up and other items purchased for use on-camera. The taxpayer stated that she was required to wear her hair in an appropriate style and that the make-up was theatrical in nature. The Administrative Appeals Tribunal found that expenditure on hairdressing or on ordinary make-up purchased in order to be well groomed, was expenditure of a private nature.

Home office expenses

191. Costs associated with a Members home are normally of a private or domestic nature. However, a deduction may be allowable for a proportion of the expenses associated with a Member's home if part of the home is used in connection with the Member's work-related activities, e.g., an area of the home is a private study.

192. Taxation Ruling TR 93/30 distinguishes between two types of expenses associated with the home.

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

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

193. A deduction is not allowable for the cost of occupancy expenses for Members who maintain an office or study at home if they carry out work-related activities at home as a matter of convenience. This was clearly established by the High Court decisions in *Handley v. FC of T* (1981) 148 CLR 182; 81 ATC 4165; (1981) 11 ATR 644 (*Handley's* case) and *FC of T v. Forsyth* (1981) 148 CLR 203; 81 ATC 4157; (1981) 11 ATR 657. In *Handley's* case, the High Court decided that Mr Handley's outgoings on mortgage interest, rates and insurance premiums were related to the building and/or home as a whole, and they would remain the same whether or not he worked at home.

194. This principle is based on the proposition that occupancy expenses are related to a building's primary function as a house, and this is not changed even if a room is set aside exclusively for income-producing purposes (see *Thomas v. FC of T* (1972) ALR 368; 72 ATC 4094; (1972) 3 ATR 165).

195. A deduction is allowable for **additional** running expenses if a Member maintains a separate office or study at home (e.g., for carrying out research, preparing speeches, reading reports, etc). Where the office or study is used exclusively by the Member for work-related activities, all of the running costs attributable to that area of a Member's home are allowable as deductions (see *FC of T v. Faichney* (1972) 129 CLR 38; 72 ATC 4245; (1972) 3 ATR 435). However, where the office or study is also used for other purposes, running expenses must be apportioned between deductible and non-deductible components.

196. Some running costs (e.g., heating, cooling and lighting) may be an allowable deduction even though an area of the home has not been set aside exclusively for use as a private office or study. This may occur where a Member uses a separate room, e.g., the lounge room, for work-related purposes.

197. **Example:** A Member performs work-related activities in his lounge room when it is not being used by other family members. The Member would be entitled to a deduction for expenditure incurred for heating, cooling and lighting etc to the extent to which those costs related directly to the period(s) of such use.

198. The amount that a Member is entitled to claim is the difference between what was actually paid for heating, cooling and lighting, and what would have been paid had he or she not worked from home. That is, the Member is only entitled to claim a deduction for that portion of the expenditure that relates directly to his or her work-related activities.

199. Further information can be found in Taxation Ruling TR 93/30.

Insurance of equipment

200. Where a Member pays a premium on an insurance policy that provides coverage for loss, damage, theft, etc., of equipment that is used in his or her work-related activities, a deduction is allowable to the extent of the equipment's work-related use.

201. **Example:** A Member insures the contents of her home. Included in the contents is a computer that is used exclusively for work-related purposes. The Member is entitled to a deduction for the portion of the insurance premium that is referrable to the value of the computer. If only 50% of the computer's use is for work-related activities, a deduction is only allowable for 50% of that portion of the insurance premium referrable to the computer.

Interest on loan to purchase equipment

202. A deduction is allowable for interest on money borrowed to acquire equipment, to the extent to which the equipment is used for work-related purposes. If, for instance, the computer is used other than for work-related purposes, the interest must be apportioned between deductible and non-deductible components on the basis of the computer's usage.

203. **Example:** A Member takes out a loan to acquire a computer and associated hardware and software that will be used solely for

work-related purposes. A deduction is allowable for the interest incurred in respect of those borrowings.

Internet access

204. Where a Member utilises information from the Internet for the purposes of research, or otherwise in the course of carrying out his or her work-related activities, the work-related portion of the fee paid to the Internet Service provider (ISP) is an allowable deduction.

205. **Example:** Over a period of one month a Member accesses the Internet for the purpose of work-related research. This research takes the Member 10 hours to complete. For another 10 hours the Member and his family access the Internet for private purposes. The Member has a contract with an ISP that provides him with 20 hours of access to the Internet each month for a $40 fee. The Member is entitled to claim a deduction of $20, i.e., half the $40 fee paid to the ISP.

Legal expenses

206. A deduction is allowable for legal expenses incurred by a Member in defending the day-to-day activities through which he or she gains or produces assessable income (work-related activities), if the losses or outgoings are not capital, private or domestic in nature. Where legal proceedings stem from activities that could not reasonably be regarded as being part of the work-related activities of a Member, the losses or outgoings are not allowable deductions because they are not incurred in the course of gaining or producing assessable income.

207. In *Case V116* 88 ATC 737; *AAT Case 4,502* (1988) 19 ATR 3703, a member of a board of directors incurred expenses in defending himself against defamation proceedings brought by the dismissed chairman of directors. The Tribunal found, on the facts, that the taxpayer was defending himself against a claim that he had made defamatory remarks in the course of the performance of his duties, and the alleged defamation was not 'private' in character. The deduction was allowed.

208. In *FC of T v. Rowe* 95 ATC 4691; (1995) 31 ATR 392, an engineer employed by the Livingston Shire Council incurred legal costs as a result of engaging a solicitor and counsel to defend himself against dismissal during the course of a statutory inquiry established under the *Local Government Act 1936-1985* (Qld). In the words of Burchett J (at ATC 4702-4703; ATR 404):

> '… I think these expenses should be recognised as incurred by the respondent in defending the manner of his performance of his duties. It was only by so justifying himself that he could

> make a successful defence against dismissal. When the matter is seen in this light, it falls squarely within the rule discussed in *Putnin v. Commissioner of Taxation* 91 ATC 4097; (1991) 27 FCR 508. To adapt language there quoted (at ATC 4100; FCR 511) from *The Herald and Weekly Times Limited v. FC of T* (1932) 2 ATD 169 at 170-172; (1932) 48 CLR 113 at 117-119, the liability in question was incurred, or the claim was encountered, because of the very act of performing the work by which the respondent earned assessable income. The activities which produced the assessable income were what exposed the taxpayer to the liability discharged by the expenditure. As the Court said in *Putnin* at ATC 4102; FCR 513, so here, "the ... proceedings arose from the activities by which the taxpayer earned his income, the mode of his performance of a particular task carried out in the course of business operations".'

209. **Example:** A Member incurred legal expenses in being represented before a Royal Commission at which she was required to appear. The Royal Commission was enquiring into Cabinet decisions made during the term of a former Parliament when the Member was a senior Minister. The Member is entitled to a deduction because it was her work-related activities that exposed her to the liability for the legal expenses.

210. A deduction is not allowable where a Member incurs legal expenses to protect his or her personal reputation, and perhaps, his or her seat in Parliament. This is because the losses or outgoings are not incurred in respect of the Member's work-related activities, but are of a capital, private or domestic nature.

211. In *Case N9* 81 ATC 56; 24 CTBR (NS) *Case 81*, a deduction was not allowed for legal expenses incurred by a director of a number of companies in defending himself on charges under the *Companies Act* that stood to affect his future appointment as a director. The expenses were held to be essentially private (as they were incurred to protect his good name and reputation) and of a capital nature (as they were incurred to retain and restore his position). The Board stated (*Case N9* at 59; *Case 81* at 698) that:

> 'At all events, it seems to us that the happenings which gave rise to the expenditure, irrespective of whether convictions were recorded against the taxpayer, could not be regarded as normally to be expected in ordinary business transactions or, as in the instant case, to be resorted to as a matter of course by a director or an employee working in the interests of his employer in the course of gaining or producing his personal assessable income.'

212. In *Case W101* 89 ATC 821; *AAT Case 5,009* (1989) 20 ATR 3421, the taxpayer obtained a corporate credit card at the request of the company that employed him. The cost of overseas air travel undertaken by three other executives of the company was charged to the taxpayer's credit card. The company did not pay the debt and the credit card company sued the taxpayer, who eventually paid the debt. The legal expenses incurred by the taxpayer in relation to the matter (as well as the debt itself) were held not to be deductible, as they were not incurred by him in the course of gaining or producing assessable income.

213. A deduction is not allowable for losses or outgoings incurred in relation to a Member's personal affairs that are not part of his or her work-related activities because they are not connected with the income-producing process and are private or domestic in nature.

214. **Example:** A Member incurred legal expenses in defending an action for breach of contract brought by a former landlord. The action arose in respect of a house used by the Member as a second residence when she was based in Canberra on work-related activities. A deduction is not allowable as the expenditure is of a private or domestic nature.

215. A deduction is not allowable where a Member incurs legal expenses on behalf of another person because the losses or outgoings are not incurred in respect of the Member's work-related activities, and are of private or domestic nature.

Meals

216. A deduction is not allowable for the cost of meals consumed by a Member in the course of a normal working day, that is, where the Member is **not** travelling away from home overnight on work-related activities (see ***Travel expenses***, paragraph 303). It is our view that the cost of such meals does not have sufficient connection with the work-related activities of the Member and, in any case, the cost is a private expense and fails to meet the tests of deductibility described in paragraphs 88 to 90.

217. The Full Federal Court considered the deductibility of food costs in *FC of T v. Cooper* (1991) 29 FCR 177; 91 ATC 4396; (1991) 21 ATR 1616 (*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 was not allowable. Hill J said (at FCR 199-200; ATC 4414; ATR 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 (at FCR 201; ATC 4415; ATR 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.'

218. We do not accept that a deduction is allowable for the difference between the cost of preparing a home-made meal and the cost of a meal purchased during an ordinary working day.

219. The fact that a Member might incur the cost of meals, that he or she would not normally incur, as a result of working extended hours, does not alter the private or domestic nature of the outgoings.

220. In *Case Y8* 91 ATC 166; *AAT Case 6,587* (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, but not involving an overnight stay away from his 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 ITAA 1936.

221. **Example:** Due to a late night sitting of Parliament, a Member, who is not travelling away from home overnight, decides to purchase her evening meal at a restaurant. A deduction is not allowable for the cost of the meal. The expense is private in nature.

Motor vehicle and other transport expenses

222. 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 meals, accommodation and incidental expenses incurred in undertaking work-related travel involving an overnight stay away from a Member's residence (see ***Travel expenses***, paragraph 302). The following views on the deductibility of motor vehicle and other transport expenses are subject to the exception outlined in paragraph 240 in connection with a car provided by an 'employer' (see **Role of a Member**, paragraph 35).

223. A Member may work at a number of different places, such as an electorate office, Parliament, a Ministerial office and other places depending on his or her Parliamentary responsibilities. Each of these places is considered to be a **normal** place of work.

224. However, a Member often needs to perform a diverse range of activities at other places. These constitute **alternative** places of work. These places are often one-off, or temporary places of work, such as radio and television stations and constituents' homes.

*Travel between home and a **normal** place of work*

225. Subject to the exceptions discussed below, a deduction is not allowable for the cost of travel between home and the normal work place, as it is not incurred in the course of producing assessable income and, in any case, it is considered to be a private expense. This principle is not altered by the performance of incidental tasks during the journey, nor is the principle changed if the travel is outside working hours or includes a second or subsequent trip (see Taxation Ruling MT 2027, paragraph 34).

226. **Example:** A Member normally travels directly to Parliament when it is sitting. She collects her mail at her electorate office on the way to Parliament, but does nothing else at the electorate office. No deduction is allowable for her transport expenses. The incidental nature of picking up the mail does not alter the essential character of her travelling between home and work.

227. The High Court considered the deductibility of transport expenses incurred in travelling between home and work in (*Lunney's* case). Williams, Kitto and Taylor JJ stated that (CLR 498-499; ATD 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 such 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.'

228. The fact that the travel is outside normal working hours, or involves a second or subsequent trip, does not change this principle.

229. For more information see paragraph 6 of Taxation Ruling IT 2543, Taxation Ruling IT 112 and Taxation Determination TD 93/113.

*Travel between two **separate** work places*

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

*Travel from the normal work place to an **alternative** work place and back to a **normal** work place, or directly home*

231. A deduction is allowable for the cost of travel from a Member's normal work place to other work places. A deduction is also allowable for the cost of travel from an alternative work place back to a normal work place or directly home. This travel is undertaken in the performance of a Member's work-related activities. The cost of the travel is incurred in the course of a Member's income-producing activities and is an allowable deduction.

232. **Example:** A Member is required to travel from her electorate office to a constituent's home. The cost of any travel undertaken from the electorate office to her constituent's home, and then back to the electorate office, or directly home, is an allowable deduction.

*Travel from home to an **alternative** work place and then to a **normal** work place, or directly home.*

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

234. **Example:** A Member ordinarily travels from home directly to her electorate office on Monday. On occasions she travels from her home to a radio station to conduct an interview, and afterwards travels to her electorate office. The cost of the travel undertaken from her home to the radio station, and then on to the electorate office, or directly home, is an allowable deduction.

Automobile Association/Club membership fees

235. The annual membership fee is taken into account in calculating the deduction allowable if either the log book method or one-third of actual expenses method is used to claim work-related car expenses. For a deduction to be allowable the car must be owned or leased by the Member.

236. A deduction is allowable for membership fees paid to an Automobile Association or Club for the provision of roadside or break down services in respect of work-related activities. Although members are usually entitled to additional benefits, such as the provision of a magazine, travel and legal advice, these benefits are considered to be incidental to the main purpose of membership, that is, the provision of roadside or breakdown service. A deduction is not allowable for a joining fee as this is an expense of a capital nature.

Calculation of motor vehicle balancing adjustment

237. A depreciation balancing adjustment may be necessary on the disposal of a motor vehicle that has been owned and used by a Member for work-related purposes (see Taxation Ruling IT 2493).

Car wash expenses

238. The cost of cleaning a vehicle is taken into account in calculating the deduction allowable if either the log book method or one-third of actual expenses method is used to claim work-related car expenses. For a deduction to be allowable the car must be owned or leased by the Member.

Depreciation cost limit for motor vehicles

239. Section 42-80 imposes a limit on the depreciable cost base of motor cars (including station wagons and four-wheel drive vehicles) if the acquisition cost is greater than a specified amount. The depreciable cost base limit applies to both new and second hand vehicles (see Taxation Ruling TR 93/24).

Car provided by 'employer'

240. A deduction is not allowable for car expenses, and depreciation, related to a car if:

(a) the car is provided by an 'employer' (see **Role of a Member**, paragraph 35) for the exclusive use of the Member and/or their relatives; and

(b) the Member and/or their relatives are entitled to use the car for private purposes (see section 51AF of the ITAA 1936).

241. Deductions for expenses associated with the use of the car but that are not costs related to the car itself, e.g., parking fees and tolls, are not precluded by the operation of section 51AF of the ITAA 1936 (see *Case Y43* 91 ATC 412; *AAT Case 7,273* (1991) 22 ATR 3402).

Parking fees and tolls

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

(a) on work-related activities where the travelling expenses are allowable deductions; or

(b) for self education purposes where the self education expenses are allowable deductions (see paragraph 282).

Newspapers

243. A deduction is not allowable under section 8-1 for the cost of newspapers that are not purchased specifically for work-related purposes as the cost of such newspapers is essentially private in nature. Although a Member may use some part of the information in these newspapers in the course of his or her work, the connection between the cost incurred and any work-related benefit gained is usually remote and merely incidental to the private component. This view is supported by: *Case K68* 78 ATC 667; (1978) 22 CTBR (NS) *Case 86*; *Case N67* 81 ATC 349; (1981) 25 CTBR (NS) *Case 18*; *Case P114* 82 ATC 586; (1982) 26 CTBR (NS) *Case 47* and *Case P124* 82 ATC 629; (1982) 26 CTBR (NS) *Case 55*.

244. These cases can be contrasted with *Case R70* 84 ATC 493; (1984) 27 CTBR (NS) *Case 124*, where a supervisor in the Commonwealth Auditor-General's Department was allowed a deduction for the cost of certain issues of *The National Times* and *The Australian Financial Review*. In this case it was held there was a sufficient connection between the duties carried out by the taxpayer and the content of the issues purchased. A deduction was not allowed for the cost of the taxpayer's local newspaper, *The Canberra Times*, as the expense was held to be essentially private in nature.

245. However, it is accepted that Members may need to directly utilise particular newspapers as part of their work-related activities. If the main reason a Member purchases a particular newspaper is for its use in the course of his or her work-related activities, the cost is allowable as a deduction (analogous cases: *Case S12* 85 ATC 165; 28 CTBR (NS) *Case 18* and *Case U5* 87 ATC 124).

246. **Example:** A Member has three of the major Sydney newspapers delivered to her home. Before leaving home in the morning she scrutinises the major political interest stories from two of these papers, and takes any relevant pages with her to her electorate office. As this activity is directed solely to her work-related activities, and any private use is purely incidental, the cost of the two newspapers is an allowable deduction. However, the cost of the third

newspaper, that is used for private reading at home, is not an allowable deduction.

247. In addition, some Members require access to specialist newspapers because of the nature of their particular work-related activities. Where such a requirement exists, a deduction is allowable for the full cost of purchasing, or subscribing to, these publications.

248. **Example:** A Minister (or Shadow Minister) with a finance-related portfolio takes out an annual subscription to *The Australian Financial Review*. The full cost of the subscription is an allowable deduction. However, other Members whose role does not include responsibility for specific finance-related matters, who also purchase this newspaper, are not entitled to deductions except for the cost of those issues used directly in the course of their work-related activities.

249. A Member is entitled to a deduction for the cost of newspapers that he or she purchases for use by staff and constituents in his or her electorate office.

250. However, if a Member receives a reimbursement for the cost of purchasing newspapers that would otherwise be fully or partly deductible, and the reimbursement is a fringe benefit under the FBTAA, the deduction otherwise allowable is to be reduced by the amount of the reimbursement (see ***Reimbursements***, paragraphs 62 to 67).

Party membership fees, levies and donations

251. A deduction is allowable under section 8-1 for a Member's ordinary membership subscription to a political party, and for compulsory levies paid to retain membership of the party.

252. A deduction is allowable under Subdivision 30-DA, up to a maximum of $1,500 in any one income year, for donations of $2 or more made to political parties that are registered under Part XI of the *Commonwealth Electoral Act 1918* or under corresponding State or Territory legislation.**

253. A deduction is also allowable Subdivision 30-DA, up to a maximum of $1,500 in any one income year, for donations of $2 or more made to independent candidates or independent Members who are not endorsed by, or members of, political parties that are registered under Part XI of the *Commonwealth Electoral Act 1918* or under corresponding State or Territory legislation.**

** **Note proposed legislation.** (*These comments do not form part of the Explanation and are provided to alert readers to a potential legislative change.)*

Patron expenses

254. Any costs incurred by a Member in being a patron are allowable deductions only where there is a direct connection with the Member's work-related activities and the position of patron. Where a Member acts as the patron of an organisation for personal reasons, any expenses incurred in relation to that position are not allowable deductions because they are private or domestic in nature.

255. **Example:** A Member who is patron of a youth group in his electorate incurs expenses in travelling from home to the annual general meeting of the group. He also contributes $100 towards the cost of the meeting. The Member's participation as patron of this group formed part of his program of maintaining contact with his constituents. Both expenses are allowable deductions. The travel expenses are allowable because the meeting place is an alternative work place (see ***Motor vehicle and other transport expenses***, paragraphs 231 and 232) and the $100 contribution is directly connected with the Member's work-related activities (see ***Donations***, paragraphs 152 to 154).

Professional library

256. A deduction is allowable for depreciation of a professional library used by a Member for work-related activities (section 42-15). If an individual reference book is purchased on or after 1 July 1991 it can be depreciated at a rate of 100% if its cost is $300 or less (section 42-130), or if its effective life is less than three years (section 42-125). Where this provision applies, an immediate deduction is available for the cost of each book in the year in which it is purchased. However, a book may be depreciated at a rate less than 100% if a Member so chooses (section 42-120).

257. The current indicative depreciation rates are set out in Taxation Ruling IT 2685.

258. For depreciation purposes, reference books may only be included in the professional library if their content is directly relevant to a Member's work-related activities. Depreciation deductions are not allowable in respect of encyclopaedias and general reference books because their content is non-specific.

259. In *Case P26* 82 ATC 110; (1982) 25 CTBR (NS) *Case 90*, a university lecturer was allowed a deduction for depreciation on legal books but was denied a deduction for depreciation on general reading and fiction books. The Board of Review stated (ATC 116; CTBR 666):

> 'No doubt the illustrations and anecdotes which he was able to use did serve as useful teaching aids but in my view these activities were not plant or articles within the meaning of section 54 of the Act [ITAA 1936], as they were not used or installed ready for use for the purpose of producing assessable income.'

260. If the cost of a textbook has been claimed as a deduction under a provision of the ITAA 1997, other than the depreciation provisions, its cost may not be added to the value of a professional library and depreciated. For example, a Member may have claimed a deduction for the cost of a textbook as part of her self education expenses. The cost of this textbook cannot also be included in the value of a professional library for depreciation purposes (see ***Depreciation of equipment***, paragraphs 140 to 151).

Raffle ticket expenses

261. In attending fetes and other community activities, Members are often encouraged, and indeed expected, to purchase raffle tickets. Similarly, in carrying out the duties of their designated portfolios, Ministers (or Shadow Ministers) attend certain functions and activities within the community where they are also expected to purchase raffle tickets.

262. Expenditure on raffle tickets is an allowable deduction where the expenses are incurred in attending functions or activities within the Member s electorate in his or her capacity as a Member, i.e., not in some private capacity. Members should ensure that they have appropriate records that enable the basis of claims for raffle ticket expenses to be determined.

263. **Example:** A Member attends the annual fete of a school in her electorate as part of her regular program of maintaining contact with her constituents. The Member's children attend other schools, and she has no private connection with the school in her electorate. In the course of the fete, the Member spends $30 on raffle tickets she is asked to buy. The full cost of the raffle tickets is an allowable deduction.

264. A deduction is not allowable for the cost of raffle tickets purchased outside a Member's electorate. It is considered that the required connection between the occasion of the outgoing and the role of the Member in representing his or her electorate does not exist.

265. However, where a Minister (or Shadow Minister) purchases raffle tickets at an activity or function outside his or her electorate, a deduction is allowable where there is a direct connection between the

occasion of the outgoing and his or her portfolio related responsibilities.

266. **Example:** A Minister with responsibilities in the education area is invited to attend a speech night at a school outside his electorate. During the evening, the Minister agrees to buy $20 worth of raffle tickets. The $20 is an allowable deduction.

267. **Example:** If a Minister, Shadow Minister or Member buys raffle tickets at the local shops from XYZ Charity while doing his or her weekly grocery shopping, or merely purchases tickets from his or her secretary who is fund raising for a children's sporting club, a deduction is not allowable. The expenditure is incurred in a private capacity rather than in carrying out portfolio or work-related activities.

Raffle Prizes

268. The prospect of a Member winning a prize as the result of purchasing a raffle ticket is so remote that, if it does occur, the prize constitutes a windfall gain, the value of which does not form part of a Member's assessable income. However, if a Member subsequently disposes of a prize, there may be capital gains tax (CGT) consequences.

Relocation expenses

269. A deduction is not allowable under section 8-1 for losses or outgoings incurred when a Member changes his or her residential location, as they are not incurred in the course of work-related activities and, in any case, are private or domestic in nature. This principle applies to transfers within an electorate and between electorates. Expenses that fall into this category include temporary board and lodging; freight to consign personal and educational items; insurance; and hire of vehicles to transport items.

270. Relocation expenses incurred by a Member as a result of an undertaking given to move to the electorate after being elected, are not election expenses for the purposes of section 25-60 (see ***Election expenses***, paragraphs 157 to 172).

271. In *Fullerton v. FC of T* (1991) 32 FCR 486; 91 ATC 4983; (1991) 22 ATR 757, the taxpayer worked for the Queensland Forest Service (QFS) as a professional forester for over 20 years. In that time, QFS transferred him to a number of different locations. His position ceased to exist as a result of a reorganisation and he had no choice but to accept a transfer to avoid retrenchment. The QFS reimbursed a portion of the relocation expenses incurred and the taxpayer claimed the remainder as a tax deduction. It was held that the expenditure on the taxpayer's domestic or family arrangements

was not an allowable deduction under subsection 51(1) of the ITAA 1936, even though the expenses had a causal connection with the derivation of his assessable income.

272. In *Case U91* 87 ATC 525, the taxpayer, a Commonwealth public servant, was transferred at the request of his employer from a State office to the central office of the department in Canberra. He was denied a deduction for expenses incurred in attempting to auction his house. It was held the connection between the expenses and the income-producing process was too remote for the expenses to be said to have been incurred in gaining or producing assessable income.

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

Repairs to equipment

274. A deduction is allowable for repairs to equipment that is used or held by a Member solely for work-related purposes, (see subsection 25-10(1)). If the equipment is used or held by a Member only partly for income producing purposes, the deduction is limited to an amount that is reasonable in the circumstances (see subsection 25-10(2)).

275. **Example:** A Member expends $200 on repairs that are carried out on a computer that is used 60% for work-related purposes and 40% for private purposes. The Member is entitled to a deduction for 60% of the repair costs, i.e., $120.

Security costs

276. A deduction is not allowable for expenses incurred in obtaining and maintaining guard dogs for the protection of Members and/or their families, as the expenses are not incurred in the course of work-related activities and are, in any case, private or domestic in nature. For the same reasons, a deduction is not allowable for the installation, maintenance and depreciation of a security system at a Member's residence. The cost of installing a security system is also an outgoing of capital, or of a capital nature.

277. However, a deduction is allowable for the depreciation and maintenance of a security system installed in a Member's electorate office where the Member incurs the costs of installation and maintenance. A deduction is also allowable for the depreciation and maintenance of a security system installed in a second property (not used as a Member's residence) to the extent to which that property is used by the Member for accommodation purposes when on work-related travel involving an overnight stay away from his or her residence.

278. In *Case T20* 86 ATC 211; 29 CTBR (NS) *Case 23* and *Case V144* 88 ATC 906; *AAT Case 4,609* (1988) 19 ATR 3880, the taxpayers were Family Court Judges who were advised to improve the security of their private residences for safety reasons. In both cases, it was held that the expenses incurred in installing a security system and maintaining a guard dog were essentially private in nature and no deduction was allowable.

Self education expenses

279. Subject to the limit on deductibility explained at paragraphs 283 to 285, a deduction is allowable for self education expenses under section 8-1 where the education is directly relevant to a Member's current work-related activities.

280. A deduction is not allowable if the education is designed to enable a Member to get employment, to obtain new employment, or to open up a new income producing activity (*FC of T v. Maddalena* 71 ATC 4161; (1971) 2 ATR 541).

281. Self education includes courses undertaken at an educational institution (whether leading to a formal qualification or not), attendance at work-related conferences, seminars and training courses, self-paced learning and study tours (see ***Conferences, seminars and training courses***, paragraphs 133 to 139).

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

Limit on deductibility

283. A self education expense that is an allowable deduction under section 8-1 is limited if it falls under the definition of an 'expense of self-education' under section 82A of the ITAA 1936. Generally, an 'expense of self-education' needs to be incurred in connection with a 'prescribed course of education'. A 'prescribed course of education' refers to an organised course of study provided by schools, colleges or universities. It also includes a course provided by an institution or organisation whose primary function is to provide systematic instruction, training or schooling in a subject, skill or trade.

284. If a self education expense that is deductible under section 8-1 is also regarded as an 'expense of self-education' under section 82A, then the deduction allowable under section 8-1 cannot be greater than the net amount of expenses of self education less $250.

285. Taxation Ruling TR 98/9 provides further information on self education expenses.

Technical or professional publications

286. A deduction is allowable under section 8-1 for the cost of buying, or subscribing to, journals, periodicals and magazines that have a content directly connected to a Member's work-related activities, provided the contents of the publications are not general in nature. For example, a deduction is not allowable for the cost of buying magazines such as *Time*, *The Bulletin* and *Reader's Digest* as they are general interest publications.

287. In *Case P124* 82 ATC 629; 26 CTBR (NS) *Case 55*, an air traffic controller was denied a deduction for the cost of aviation magazines. Dr G W Beck (Member) said (at ATC 634; CTBR 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.'

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

289. **Example:** A Minister (or Shadow Minister) with a finance-related portfolio takes out an annual subscription to *The Economist*. The full cost of the subscription is an allowable deduction. However, other Members whose role does not include responsibility for specific finance-related matters and who also purchase this journal, are not entitled to deductions except for the cost of particular journals used directly in the course of their work-related activities.

Telephones, answering machines, pagers, beepers and other telecommunications equipment expenses

Cost of calls

290. A deduction is allowable for the cost of telephone calls made from a Member's home in the course of carrying out his or her work-related activities.

291. Work-related calls may be identified from an itemised telephone account. If such an account is not prepared, a reasonable estimate of call costs, based on diary entries of calls made over a

period of one month, together with relevant telephone accounts, is acceptable for substantiation purposes.

292. If a Member is reimbursed for the cost of calls that would otherwise be fully or partly deductible, and the reimbursement is a fringe benefit under the FBTAA, the deduction otherwise allowable is reduced by the amount of the reimbursement.

Installation or connection costs

293. A deduction is not allowable for the cost of installing or connecting telephones, answering machines, pagers, beepers or other telecommunications equipment, as the expenditure is of a capital nature. Whether the connection is made to a Member's electorate office or private residence does not change this. If the connection is made to a Member's residence, it is also considered to be private or domestic in nature.

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

295. A deduction is allowable for a proportion of private home telephone equipment rental costs where a Member can demonstrate, for example, based on the number of calls recorded in diary notes, that he or she has a work-related need to use private telephone equipment outside normal 'office' hours.

296. If a Member is reimbursed for rental costs that would otherwise be fully or partly deductible, and the reimbursement is a fringe benefit under the FBTAA, the deduction otherwise allowable is reduced by the amount of the reimbursement.

Unlisted telephone number

297. A deduction is not allowable for the cost of obtaining an unlisted number as it is private or domestic in nature (see Taxation Determination TD 93/115).

Trade, business or professional association fees

298. A deduction is allowable under section 8-1 for fees paid to a trade, business or professional association to the extent to which the fees relate to a Member's work-related activities. A deduction is not allowable for an initial fee paid to join an association, as it is an outgoing of a capital nature. Taxation Rulings IT 299, IT 327, IT 2062 and IT 2416 provide further information on the treatment of trade and professional association fees.

299. A deduction is not allowable for payments to staff social clubs or associations (section 26-45).

300. Where the services provided by a trade, business or professional association do not directly relate to a Member's work-related activities and are, therefore, not deductible under section 8-1, section 25-55 operates to provide a deduction in any income year up to a limit of $42 in respect of any one association.

Travel expenses

301. Subject to the exception referred to at paragraph 302, travel allowances must be included as assessable income.

302. The exception applies where a Member receives a domestic travel allowance or an overseas travel allowance for food, drink or incidentals, and the deductible expenses incurred are equal to, or greater than, the amount considered reasonable by the Commissioner for substantiation purposes. In these circumstances, if a Member chooses not to claim any deductions for travel expenses in his or her income tax return, then the amount of the travel allowance received need not be included in assessable income. (See, also, **Administrative arrangements applicable to travel allowances** at paragraph 54 and *Travel expenses covered by an annual entitlement*, paragraphs 316 to 318.)

303. Travel expenses referred to in this section are those expenses incurred by a Member on fares, meals, accommodation and incidental expenses in undertaking work-related travel involving an overnight stay away from his or her residence. They do not include public transport fares, and running costs associated with using motor vehicles, motor cycles, bicycles, etc., dealt with under ***Motor vehicle and other transport expenses*** at paragraphs 222 to 242. **Travel expenses include losses or outgoings incurred on both domestic and overseas travel. Deductions can only be claimed for expenses actually incurred, whether or not an allowance is received.** (See, also, **Substantiation rules**, paragraphs 43 to 53).

304. **Example:** A Member travels by air from Perth to Canberra to attend Parliamentary sittings. He stays in Canberra for three days, and

then travels by air to Melbourne to chair a Parliamentary committee meeting. He stays overnight in Melbourne and, on the following day, travels to Ballarat to pursue business that arose at the committee meeting. He travels from Ballarat, via Melbourne, back to Perth. A deduction is allowable for travel expenses incurred by the Member in respect of the whole journey.

305. Travel expenses that are unconnected with a Member's work-related activities are not allowable deductions as they are not incurred in the course of gaining or producing assessable income and, in any case, are of a private or domestic nature.

306. **Example:** A Member flies from her New South Wales country electorate to Sydney to attend Parliamentary sittings for five days. On the conclusion of those sittings, she is joined by her family for a holiday in Sydney that extends for two days. Although accommodation and other expenses are incurred in Sydney for seven days, no part of the expenses incurred in respect of the two day holiday period is allowable as a deduction. However, she would be entitled to claim the full cost of her return fare because the main purpose of the travel was work-related.

Travel expenses covered by a travel allowance

307. **The receipt of an allowance does not automatically entitle a Member to a deduction for travel expenses** (see Taxation Rulings IT 2543 and TR 98/10 and Taxation Determination TD 93/174). Travel expenses (covered by a travel allowance) for accommodation, food, drink and incidentals, but not fares, constitute 'travel allowance expenses' for substantiation purposes (see subsection 900-30(2)).

308. Reasonable travel allowance expense amounts (reasonable amounts) under the substantiation provisions are notified in annual Taxation Rulings (see, for example, Taxation Ruling TR 98/10 for the 1998-99 income year). Where a Member's claim for deductible travel allowance expenses does not exceed these reasonable amounts, substantiation is not required. However, the Member must still be able to demonstrate the deductibility of the expenses incurred.

309. **Example:** In the 1998-99 year of income, a Member travelled to a capital city and stayed overnight. He was paid a travel allowance of $320 (see paragraph 30 of Taxation Ruling TR 98/10). This amount was fully expended on accommodation, meals and incidentals. In accordance with the **Administrative arrangements applicable to travel allowances** explained at paragraphs 54 to 61, the Member is not obliged to include the allowance received in his assessable income, provided that no claim for deduction is made for the travel allowance expenses in his income tax return. See, also, *Travel expenses covered by an annual entitlement*, paragraphs 316 to 318.

310. **Example:** A Member travels from his country electorate to a capital city to attend a Parliamentary sitting. He receives a travel allowance of $3,200 in respect of the sitting. The Member only incurs $2,750 on travel allowance expenses. He must include the full amount of the $3,200 allowance received in his assessable income, and limit his claim for deduction to $2,750.

311. Where a deduction is claimed in excess of a reasonable allowance amount, the whole claim must be substantiated, not just the excess over the reasonable allowance amount.

312. **Example:** A Member travels from her country electorate to a capital city to attend a Parliamentary sitting. She receives a travel allowance of $3,200 in respect of the sitting. The reasonable allowance amount for the trip is $3,200. The Member expends $3,800 on travel allowance expenses. If she wishes to claim a deduction for the total expenses of $3,800, the Member must have written evidence to support the whole of her claim, not just the $600 excess over the reasonable amount. The Member must also include the full amount of the $3,200 allowance received in her assessable income.

313. Alternatively, if the Member chose not to keep written evidence of her expenses of a standard sufficient to satisfy the substantiation rules in respect of the total expenses of $3,800, she does not need to include the allowance of $3,200 as assessable income provided that she does not claim a deduction for the expenses in her income tax return. However, she must still be able to demonstrate the deductibility of travel expenses of at least $3,200 (see, also, the example in **Administrative arrangements applicable to travel allowances** at paragraphs 58 to 60 and see, also, *Travel expenses covered by an annual entitlement*, paragraphs 316 to 318.

Travel expenses not covered by a travel allowance

314. A deduction is allowable for work-related travel expenses not covered by a travel allowance to the extent to which they can be substantiated in accordance with the substantiation rules (see paragraphs 43 to 53). As no travel allowance is received for this category of expenses, the exception to the substantiation rules cannot apply.

315. **Example:** A Member incurred work-related travel expenses totalling $550 that were not covered by an allowance. She can only substantiate $475 of the travel expenses, and the nature and quality of her records is insufficient to satisfy the Commissioner that he should grant relief from the substantiation rules in respect of the remaining $75. The Member is only entitled to a deduction of $475.

Travel expenses covered by an annual entitlement

316. A travel allowance that is not paid to cover relevant expenses for specific journeys undertaken, or to be undertaken, for work-related travel, is not a travel allowance for the purposes of the exception from substantiation, i.e., a Member needs to substantiate the expenses with written evidence. For example, this could occur where a Member uses part of his or her electorate allowance to travel within the electorate. The electorate allowance is not paid in respect of specific journeys undertaken, or to be undertaken, by the Member - it is paid to cover a variety of obligations associated with a Member's duties. Travel allowances that are paid in the form of fixed annual entitlements do not come within the statutory definition of 'travel allowances' because it could not be said that they are paid 'to cover losses or outgoings ... that you incur for travel away from your ordinary residence' (see subsection 900-30(3) and paragraphs 54 to 58 of Taxation Ruling TR 98/10).

317. However, a fixed annual entitlement for work-related travel expenses may be a travel allowance where the allowance is based on a specified number of overnight stays **and** there is a requirement, where a Member does not travel for the number of overnight stays in the year in question, for the Member to repay that part of the entitlement referrable to the trips not undertaken.

318. Where a Member travels for more than the number of overnight stays covered by an annualised travel allowance of the kind referred to at paragraph 317, he or she is entitled to a deduction for work-related travel expenses incurred in respect of these additional overnight stays. As these additional overnight travel expenses are not covered by a travel allowance, a Member needs to substantiate the expenses incurred in respect of the additional overnight travel with written evidence.

Accompanying relatives' travel expenses

319. A deduction is not allowable for losses or outgoings incurred that are attributable to a relative accompanying a Member while travelling, unless the relative performs substantial duties and is either a fellow Member, a common law employee of the Commonwealth of Australia, a State or a Territory, as the case may be, or an employee of the Member. Also, accompanying relatives' travel expenses are only considered for deductibility if it is reasonable to conclude that the relative would still have accompanied the Member even if he or she had not had a personal relationship with the Member (see section 26-30).

320. For section 26-30 purposes, if a single outgoing is made, an apportionment may be necessary to determine the amount attributable

to the accompanying relative. The method of determining that amount depends on the individual circumstances of the case (see *Case R2* 84 ATC 106; 27 CTBR (NS) *Case 53*; *Case S80* 85 ATC 589; 28 CTBR (NS) *Case 88* and *Case V39* 88 ATC 335; *AAT Case 4,157* (1988) 19 ATR 3292).

Second property not used as a Member's residence

321. A Member may choose to rent or buy a property rather than stay in a hotel or other commercial establishment when travelling. A deduction is allowable for expenses, that are not of a capital, private or domestic nature, in respect of such a property where it is used by a Member for accommodation when he or she is undertaking work-related travel involving an overnight stay away from home and the property is not regarded as a second residence. Such expenses include: lease payments; rent; interest on borrowings used for the acquisition of the property; rates; taxes; insurance; general maintenance of the building, plant and grounds. A deduction is also allowable for depreciation of plant used in connection with such a property.

322. Where the property is used for a dual purpose, relevant losses or outgoings may need to be apportioned between deductible and non-deductible components. The method of any such apportionment could only be determined after consideration of all relevant facts, but would generally follow the 'common sense' approach adopted in *Case V39* 88 ATC 335; *AAT Case 4,157* (1988) 19 ATR 3292. Merely incidental or immaterial usage not connected with work-related travel may be disregarded.

323. **Example:** A Member of a State Parliament maintains a residence in her country electorate. Her Parliamentary duties require her to stay in the capital city for a total of four months each year. The Member prefers not to stay in hotels, and so she took out a three year lease of an apartment in the capital city to provide her with the necessary accommodation while travelling away from home. The Member's husband and children remained in the family home, the only exception being the use of the city apartment on two weekends by her eldest daughter.

324. In these circumstances it could not be said that the Member had established a second residence. Also, the minimal use of the property by her eldest daughter may be disregarded. The Member is entitled to deductions for the lease rental and other non-capital expenses, and depreciation of plant, in relation to the apartment without apportionment.

325. Had the city apartment been used by family members for material periods for non-work related purposes in any income year,

the deductions otherwise allowable would need to be apportioned between deductible and non-deductible components.

326. **Example:** In the above **Example**, if other family members used the city apartment for, say, two periods of two weeks during term breaks, and one period of eight weeks (a total of three months) at times when the apartment was not being used by the Member, a deduction is only allowable for three quarters of the total expenses.

327. Where a property is shared by two or more Members, the deductions allowable to each Member depends on:

- whether the property is owned, leased or rented;
- the form of ownership, where applicable; and
- the financial arrangements implemented between the Members.

328. The deductions allowable to individual Members can only be established after a consideration of the facts of each case. However, the total claims for deductions made by the Members involved in sharing a property cannot exceed the deductible outgoings incurred in relation to the property had it been owned by only one Member.

329. Disposal of a property of the kind referred to at paragraphs 321 to 328 may have CGT consequences. However, any gain made on disposal would not form part of a Member's ordinary income under section 6-5 unless the transaction giving rise to the gain forms part of a business carried on by the Member for the purpose of gaining or producing assessable income. Each case would need to be considered on its own facts.

Second residence expenses

330. Where it has been established that a property used to accommodate a taxpayer amounts to a second residence, the Courts and the Administrative Appeals Tribunal have consistently held that the essential character of the expenses incurred were of a private or domestic nature unconnected with income-producing activities and, therefore, not deductible. Expenses considered included lease payments, rent, interest on borrowings used for the acquisition of the property, rates, taxes, insurance, depreciation of plant and general maintenance of the building, plant and grounds. The reasoning in these cases was that a taxpayer's choice to establish a residence is not dictated by travel needs, but by considerations of a private or domestic nature. It follows that the required connection between second residence expenses and a taxpayer's income-producing activities is absent. See *FC of T v. Charlton* (1984) 71 FLR 107; (1984) 15 ATR 711; 84 ATC 4415; *FC of T v. Toms* (1989) 20 ATR 466; 89 ATC 4373; *Case X4* 90 ATC 116; *AAT Case 5,545* (1989) 21 ATR 3120

(*Case X4*) and *Roads and Traffic Authority of NSW v. FC of T* (1993) 43 FCR 223; (1993) 116 ALR 482; (1993) 26 ATR 76; 93 ATC 4508.

331. In *Case X4*, Senior Member Beddoe (at ATC 118; ATR 3122) found, on the facts, that the house in respect of which claims for deduction had been made:

> 'was used therefore for domestic purposes of the applicant's family as well as himself'
>
> and that
>
> '[t]he overall picture painted by the applicant's evidence is that he was intent on creating a home away from home. He did not wish to stay in hotels and preferred to have his own premises with his own facilities, books etc. The essential character of the house was that of a second home.'

332. *Case X4* assists in explaining the criteria by which it may be concluded that a property is to be regarded as a second residence. However, the circumstances of each case differ and each must, therefore, be decided on its own facts.

333. While it is not possible to lay down a definitive formula for resolving the question, consideration is generally given to the following factors:

(a) the number and location of all properties used for the Member's accommodation;

(b) the nature and purpose of the travel leading to the Member' occupation of the property;

(c) the type of property giving rise to the expenses claimed, e.g., apartment, house, hostel, hotel;

(d) the size and standard of the accommodation;

(e) the furniture, fixtures and contents of the property;

(f) the basis on which the Member secures the use of the property, e.g., ownership, long or short term lease/rental;

(g) the reason why the Member chose to use that particular property;

(h) periods of use, and how used by the Member;

(i) whether, and to what extent, the Member was accompanied by family members, friends or associates;

(j) the frequency and duration of return trips to the Member' ordinary or former residence;

(k) the use to which the Member' ordinary or former residence was put when not occupied by the Member;

(l) whether the Member' children attend school at the second location; and

(m) whether the Member' spouse seeks employment at the second location.

334. **Example:** After a Member was appointed to the Federal Ministry at the beginning of a new Parliament, he purchased a house in Canberra so he could live close to the National Parliament. His wife and children moved with him into the Canberra house, and he leased the family home in Melbourne on a commercial basis. The Member's children commenced full time education in Canberra and in the relevant income year, the family resided in the Canberra house for nine months. During this period, the entire family was only ever away from the Canberra house on one occasion for a family holiday.

335. The Canberra house constitutes a residence. Therefore, it could not be said that the Member was travelling away from home during the period of occupancy. Any expenses incurred by the Member in relation to the Canberra house are private or domestic in nature, and are not allowable deductions even though the Member may have qualified for, and received, a travel allowance in respect of that period.

336. This view has equal application to State and Territory Members who establish a second residence.

Wages

337. A deduction is allowable for wages paid by a Member for services rendered to assist the Member to carry out his or her work-related activities, provided the expenditure is not private or domestic in nature.

338. Members are not common law employees working in an environment where the manner in which they carry out their work-related activities is subject to employer control (see paragraph 35). Although we do not consider that a Member's work-related activities amount to the carrying on of a business, in common with commission only real estate salespersons, they perform their work-related activities under significantly different circumstances to most employees, with considerable flexibility in how they perform their duties (see paragraph 210 of Taxation Ruling TR 98/6).

Related entity

339. Subsection 26-35(1) applies to deductions claimed for payments made, or for a liability incurred, to a 'related entity'. A 'related entity' includes a relative and a partnership in which a

Member's relative is a partner. Deductions are limited to so much of the amount as the Commissioner considers reasonable (section 26-35). In forming a view as to an amount that is considered reasonable, the Commissioner has regard to the amount the Member would have been expected to pay to an unrelated person with similar skills and experience for provision of the same services.

340. **Example:** A Member employed her spouse as a research assistant to complete research on issues that were expected to be debated in a coming Parliamentary session. The Member's spouse had nine years commercial experience as a research assistant. The costs were not reimbursed, as the Member was currently employing the maximum number of staff she was entitled to employ at government expense.

341. A deduction is allowable for the amount paid to her spouse if the rate of the payment made was commensurate with commercial rates for the type of work performed. If the amount paid exceeded the amount payable under a commercial arrangement, a deduction may not be allowable for the amount of the excess.

Watches

342. A deduction is not allowable for a loss or outgoing incurred in purchasing, repairing or maintaining a watch as the expense is of a private or domestic nature.

343. In *Case S82* 85 ATC 608; 28 CTBR (NS) *Case 87*, a nursing sister was denied a deduction for the cost of a watch that was used in the course of her employment. The Board of Review's decision was that the watch was (ATC 612; CTBR 682):

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

Detailed contents list

344. Below is a detailed contents list for all parts of this draft Ruling, except the **Explanations** part) (an **Index of Explanations** follows at paragraph 345):

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345. The following alphabetical index refers to the paragraph references on the **Work related expense claims** (paragraph 112) in the **Explanations** part of this draft Ruling.

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Your comments

346. If you wish to comment on this Ruling, please send your comments promptly by Friday, 18 June 1999 to:

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Commissioner of Taxation
26 May 1999

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IT 112; IT 299; IT 327; IT 2062; IT 2084; IT 2258; IT 2331; IT 2406; IT 2416; IT 2481; IT 2493; IT 2532; IT 2543; IT 2566; IT 2614; IT 2685; MT 2027; TD 93/34; TD 93/113; TD 93/115; TD 93/174; TD 93/195; TR 92/15; TR 92/20; TR 93/24; TR 93/25; TR 93/30; TR 94/22; TR 97/12; TR 97/24; TR 98/6; TR 98/9; TR 98/10

Subject references:

- accompanying relative's travel expenses
- allowances
- attendance on behalf of a Member
- automobile association/club fees
- bank fees

- briefcases, calculators and electronic organisers
- calculation of motor vehicle balancing adjustment
- car provided by 'employer'
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