

# ***TR 94/D16 - Income tax: work-related deductions of employees of the Australian Defence Forces***



This cover sheet is provided for information only. It does not form part of *TR 94/D16 - Income tax: work-related deductions of employees of the Australian Defence Forces*

This document has been finalised by TR 94/16.



## Draft Taxation Ruling

### Income tax: work-related deductions of employees of the Australian Defence Forces

#### other Rulings on this topic

IT 2198; IT 2477; IT 2685;  
TR 92/8; TR 93/18;  
TD 93/112; TD 93/114;  
TD 93/175

contents	para
<b>What this Ruling is about</b>	<b>1</b>
<b>Ruling</b>	<b>3</b>
Taxable allowances	3
Non-taxable allowances	4
Deductions	5
<b>Date of effect</b>	<b>42</b>
<b>Explanations</b>	<b>44</b>
Background	44
Taxable allowances	62
Non-taxable allowances	84
Deductions	91
<b>Index of Explanations</b>	<b>220</b>

*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

1. This Ruling deals with income and deductions for work-related expenses frequently claimed by employees of the Australian Defence Forces (ADF) (the three arms being the Army, Navy and Air Force). This Ruling differentiates taxable and non-taxable allowances under the *Income Tax Assessment Act 1936* (ITAA) and discusses whether or not deductions are allowable under subsection 51(1), section 51AB or section 51AE.

2. Generally employment related expenses over \$300 in total are subject to the substantiation provisions of sections 82KT to 82KZBB of the ITAA. This Ruling does not discuss these substantiation requirements.

## Ruling

### Taxable allowances

3. The following are some of the more common allowances paid to ADF members that are taxable under paragraph 26(ea) of the ITAA:

Arduous Conditions Allowance	Flying Allowance
Clearance Diving Allowance	Hard Lying Allowance
Common Duties Allowance	Isolated Establishment Allowance
Diving Allowance	Language Proficiency Allowance
Field Allowance	Parachutist Allowance
Flight Duties Allowance	

# TR 94/D16

Special Action Forces Allowance	Trainees Dependant Allowance
Special Royal Navy Allowance	Trainee leaders Allowance
Submarine Escape Training Facility Allowance	Unpredictable Explosives Allowance
Submarine Service Allowance	

## Non-taxable allowances

4. The following allowances are exempt under subparagraph 23(t)(iii) of the ITAA:

Separation Allowance	Education Allowance
Living Out Allowance	Child Education Allowance
Living Out Away From Home Allowance	Re-engagement Allowance
	Disturbance allowance

## Deductions

5. Listed below are some of the more common expenses ADF members may incur:

### Clothing

#### *Conventional clothing*

6. Expenditure on conventional clothing such as underwear, socks, running shoes, ordinary footwear and hire clothing is not deductible (see paragraph 93).

#### *Uniforms*

7. Expenses incurred for official military uniforms such as shirts displaying rank or embellishment and matching trousers, regulation jumpers, camouflage shirt and trousers are allowable (see paragraph 97).

#### *Plain sports clothing*

8. Expenses incurred on the purchase of plain sports clothing (T-shirts, shorts, shoes, socks, track suits, etc) are not allowable deductions (see paragraph 99).

#### *Distinctive sports clothing*

9. Expenditure on monogrammed sports clothing, such as track suits, T-shirts and shorts displaying a Regimental Crest, is allowable. Gym/running shoes are not allowable (see paragraph 99).

***Uniform Maintenance Allowance***

10. The Uniform Maintenance Allowance must be included as assessable income. The cost of purchasing items of uniform is allowable (see paragraph 97).

***Laundry expenses***

11. The cost of laundering or dry cleaning is only deductible where it relates to items of clothing that are allowable (e.g. uniform, distinctive sports clothing) (see paragraph 102).

***Donations***

12. Donations to non public funds such as the Welfare Fund are not allowable (see paragraph 104).

**Education**

***Self-education expenses***

13. Self-education expenses are allowable provided there is a real connection between the course of study undertaken and the current job of the member. Self-education principles should be applied to determine whether or not the expense in a particular situation is allowable (see paragraph 105).

***Language course expenses***

14. These expenses are allowable provided it can be demonstrated that a real connection exists between the language course and the current position of the member. Self-education principles should be applied to determine whether or not the expense in a particular situation is allowable (see paragraph 113).

***Language Proficiency Allowance***

15. Claims against Language Proficiency Allowance are deductible provided there is a real connection between the course of study and the current job of the member (see paragraph 117).

***Extra Regimental Duties (ERD)***

16. Expenses in relation to ERD are allowable where the ERD forms part of income earning activity and the expense is not of a private or domestic nature (see paragraph 120).

# TR 94/D16

## **Fitness related expenses**

### ***Expenses for sporting activities - general***

17. For most ADF occupations there is little connection between sporting activities and the normal income producing duties of the member. Therefore in most instances no deduction is allowable (see paragraph 128).

### ***Travel to sport***

18. Where no deduction is available for sport, travel in relation to sport is not allowable (see paragraph 138).

### ***Gym or sporting facility membership subscriptions***

19. Payment of a membership subscription to a gym or sporting facility is not an allowable deduction (see paragraph 139).

### ***Gym or sporting facility fees (other than membership subscriptions)***

20. Payment of a fee to a gym or other sporting facility is not an allowable deduction unless there is a strong connection between the expense and the normal income producing duties of the member (see paragraph 140).

## **Messing and related expenses**

### ***Compulsory Mess subscriptions***

21. The cost of compulsory Mess subscriptions is not allowable (see paragraph 142).

### ***Compulsory functions***

22. Charges for compulsory attendance to Mess functions are not allowable (see paragraph 145).

### ***Food, drink and entertainment***

23. Expenditure in the Mess on food, drink, entertainment (for self or guests), etc., is not allowable (see paragraph 149).

## **Personal items**

### ***Glasses/contact lenses***

24. Expenses for glasses or contact lenses are not deductible (see paragraph 152).

### ***Haircuts***

25. The cost of haircuts is not allowable (see paragraph 153).

*Personal grooming and underclothes*

26. Expenditure on personal grooming items, underwear, stockings, hair products and sun screen, is not allowable (see paragraph 156).

*Sunglasses*

27. Expenditure for the cost of sunglasses is not deductible (see paragraph 159).

*Watches*

28. Expenditure on wrist watches is not allowable (see paragraph 162).

*Weight loss expenses*

29. Expenses relating to losing weight are not allowable (see paragraph 164).

**Telephone***Installation costs*

30. The cost of installing a phone is not allowable (see paragraph 170).

*Rental*

31. A portion of telephone rental is allowable provided the member is on call, or is required to regularly contact or be contacted by their employer. Deductions should be apportioned between work and private usage (see paragraph 173).

*Costs of calls*

32. The direct cost of work-related calls is deductible (see paragraph 174).

**Tools and equipment**

33. The cost of tools and equipment relating to the member's current job is deductible to the extent they are used for work purposes (see paragraph 175).

**Travel***To and from work*

34. The expense of travelling to and from work is ordinarily not an allowable deduction (see paragraph 184).

# TR 94/D16

## ***Living off the base***

35. The expense of travelling to and from work is ordinarily not an allowable deduction (see paragraph 185).

## ***Carrying equipment to and from work***

36. If it is necessary to transport bulky equipment in your personal vehicle the cost is deductible (see paragraph 190).

## ***Performing duties on the way to and from work***

37. Expenses relating to performing duties on the way to and from work are allowable provided the task performed is not merely incidental and/or the trip is significantly out of the normal route (see paragraph 196).

## ***Between bases***

38. The cost of travelling on and between bases for work purposes is an allowable deduction (see paragraph 202).

## ***Extra Regimental (or Service) Duties***

39. Expenditure on travel in relation to ERD or Service duties is allowable provided the ERD forms part of income earning activity and the expense is not of a private or domestic nature (see paragraph 208).

## ***Medical appointments***

40. Expenses for travelling to and from base for official medical appointments are allowable. Expenses for travelling to personal medical appointments are not allowable (see paragraph 212).

## ***Travel while 'on-call'***

41. The expense of travelling while on call is allowable if the duties commence when the telephone call is received or the travel undertaken is not to the normal place of work (see paragraph 216).

## **Date of effect**

---

42. This Ruling generally applies to years commencing both before and after its date of issue. However, our views in relation to the cost of compulsory Mess subscriptions and the costs of attending compulsory Mess functions apply only to the 1994-95 income year and later income years. For the 1993-94 income year and earlier income years, we will accept that compulsory Mess subscriptions and the costs of attending compulsory Mess functions are allowable deductions.

43. Furthermore, this Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute

agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

## **Explanations**

---

### **Background**

44. The employees of the Australian Defence Forces (ADF) experience conditions of employment that are very different from other occupations. The number of variations in occupation is so diverse that it is not possible to describe them all in this Ruling.

45. When a member gains employment in the ADF he/she is regarded as being 'on call' 24 hours a day and subject to Military Regulations at all times. This raises the initial question of **when** is the income being earned.

46. In *Case J21* 77 ATC 193; 21 CTBR (NS) 43 (army officer claiming travel to and from work) MB Hogan and N Dempsey stated (ATC at 193; CTBR at 462):

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

47. For expenditure on an item to be a tax deduction, the expense must:

- actually be incurred, and
- meet deductibility tests, and
- satisfy the substantiation rules under sections 82KT to 82KZBB of the ITAA.

48. The main provision under the ITAA dealing with work-related expenses is subsection 51(1). It provides that:

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

49. Decisions in several court cases have provided guidance on interpreting this section. For a work-related expense to be deductible the following judicial guidelines should be considered.



# TR 94/D16

50. The expense must actually be incurred by the taxpayer to be allowable. A deduction cannot be claimed for expenses not incurred by the member, or expenses reimbursed by the ADF. In addition, a deduction cannot be claimed by the member for items provided free of charge. For example, it costs Stephen \$24 to travel to another base for a meeting. This expense is then reimbursed out of petty cash. Stephen cannot claim a deduction for this expense.

51. The expense must be relevant and incidental to the earning of the income (*Ronpibon Tin NL v. FC of T* (1949) 78 CLR 47; 4 AITR 236). In this case the taxpayer companies were mining companies which, as a result of World War 2, were unable to continue part of their normal operations in Malaya. They claimed the entirety of their management and administration expenses. A portion of the deduction was allowed and on the question of deductibility in general it was said that (CLR at 56; ATR at 435):

'For expenditure to form an allowable deduction as an outgoing incurred in gaining or producing the assessable income it must be incidental and relevant to that end.'

52. There needs to be a perceived connection between the expense and the income earning activity (*Hatchett v. FC of T* 71 ATC 4184; 2 ATR 557). In this case a primary school teacher was denied the costs of studying at university. Although it was argued that this expense would increase the chance of a promotion and in turn, result in earning more income, it was held not to be allowable as there must be a 'perceived connection' between the outgoing and the income gained.

53. The expense must have the essential character of an income producing expense (*Lunney v. FC of T*; *Haley v. FC of T* (1958) 100 CLR 478; 11 ATD 405, (*Lunney's case*)). The taxpayers in these cases claimed the costs of travelling to and from work. It was held that to be deductible under subsection 51(1) the expenditure must be relevant and incidental to gaining the income, and that this depends on the essential character of the expenditure. The Court said (CLR at 498; ATD at 412.):

'The question whether the fares which were paid by the taxpayers are deductible under s51(1) 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 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...

...Whether or not it should be so characterised depends upon considerations which are concerned more with the essential character of the expenditure itself.'

54. In *Lunney's* case it was held the expenditure incurred in travelling to and from work did not have the essential character of an income producing expense. Its character was private.

55. It is common for ADF members to claim tax deductions for expenses incurred as a result of a direction from a commanding officer. It is also common for claims to be made because an expense was incurred as a condition of service. These factors do not change the 'essential character' of an item if it is not normally deductible.

56. In *FC of T v. Cooper* 91 ATC 4396; 21 ATR 1616 (*Cooper's* case), Hill J said (ATC at 4414; ATR at 1616):

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

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

57. However, the fact that an expense is voluntary does not automatically preclude an item from being deductible. See Taxation Ruling IT 2198 - *Allowable deductions: expenditure voluntarily incurred by employee taxpayers*.

58. A further important consideration may be the taxpayer's subjective purpose in incurring an expense. In the High Court decision of *Fletcher v. FC of T* 91 ATC 4950; 22 ATR 613 (*Fletcher's* case) it was held that subjective purpose may be taken into account, where an expense is voluntarily incurred and the connection between the production of the income and the expense is not objectively clear. *Fletcher's* case also emphasised that subsection 51(1) issues may turn on a characterisation of the expense.

59. A deduction will be denied under the exclusion clauses of subsection 51(1) where it is incurred for an item that is either:

- private or domestic in nature (e.g. haircuts)
- capital or capital in nature (e.g. purchase of a computer)
- incurred in earning tax exempt income (e.g. income of Army Reserve personnel).

60. Expenditure on items that are private or domestic in nature is expressly denied under the exclusionary clauses of subsection 51(1).

# TR 94/D16

Private or domestic expenditure is considered to include costs of living such as food, drink, shelter and clothing. In *Case T47* TBRD 1968 243; 14 CTBR (NS) 56 J.F. McCaffrey stated (TBRD at 243; CTBR at 307):

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

61. For a deduction to be allowable, the substantiation provisions must be met. Sections 82KT to 82KZBB of the ITAA outline the substantiation requirements for deductible expenditure. Where a work-related expense has actually been incurred and the deductibility tests are satisfied, it is still necessary to meet the requirements of the substantiation provisions before a deduction is allowable. Details of the substantiation provisions are not discussed in this ruling.

## **Taxable allowances**

62. The following allowances are assessable income under paragraph 26(ea) of the ITAA:

### ***Arduous Conditions Allowance***

63. Paid to compensate ADF members who are required to work under environmental conditions involving heat, confined spaces and exposure to chemicals of a hazardous nature.

### ***Clearance Diving Allowance***

64. Paid in recognition of the acquisition and continued maintenance of skills and knowledge required for military clearance diving.

### ***Clearance Diving Allowance (Disability Element)***

65. Paid in recognition of the environmental factors and accompanying stress associated with clearance diving duties.

### ***Common Duties Allowance***

66. Paid in recognition of those extra duties performed by an ADF member that are associated with the community life of approved expeditions to the Antarctica.

### ***Diving Allowance***

67. Paid in recognition of diving duties performed by members whose normal functions do not include diving; and the need to attract and retain such members.

### ***Field Allowance***

68. Paid to provide financial recompense for the extreme nature of the disabilities experienced when in the field for substantial periods, including the significant liability to be on call and work long and irregular hours under adverse conditions.

***Flight Duties Allowance***

69. Paid to compensate ADF members who are not entitled to Flying Allowance, for the disabilities experienced when performing in flight duties in service aircraft.

***Flying Allowance (Qualification/Skills Element)***

70. Paid in recognition of the acquisition and maintenance of substantial skills and knowledge required of military aviation, and the need to attract and retain members as aircrew. The rates of the element vary to reflect the skills and knowledge applicable to the various ranks.

***Flying Allowance (Disability Element)***

71. Paid in recognition of the disabilities and stresses inherent in the military flying environment.

***Hard Lying Allowance***

72. Paid to provide some form of compensation for the discomfort experienced by ADF members required to live in a seagoing ship, seagoing submarine or a defence force vessel for at least 48 hours and who do not qualify for a Seagoing Allowance or Submarine Service Allowance.

***Isolated Establishment Allowance***

73. Paid to ADF members living a certain radius from base. It is paid to compensate members living off base for their additional expenses in travelling to and from work.

Note: no 'contra' deduction is allowable. Travel costs to and from work, regardless of why or where a person resides is a personal expense, and ordinarily not deductible (see paragraph 34.)

***Language Proficiency Allowance***

74. Paid to encourage ADF members to become proficient in an approved foreign language and to obtain aids to assist in maintaining that proficiency.

***Parachutist Allowance***

75. Paid in recognition of the stress and skills associated with parachuting and attention and retention factors which are not comprehended within the salary structure.

***Service Allowance***

# TR 94/D16

76. Paid to ADF members after the completion of their initial training.

## ***Special Action Forces Allowance (Qualification/Skills and Disabilities)***

77. Paid in recognition of the special demands which cannot be adequately reflected in the salary structure. The allowance comprises two elements - Qualification/Skills and Disabilities. The former acknowledges the significant levels of additional skill that must be acquired and maintained. The latter acknowledges the hazard and stress associated with service within the Special Services environment.

## ***Special Royal Navy Allowance***

78. Payable to a member of the RAN posted to Britain for RN duties associated with deep sea experimental diving.

## ***Submarine Escape Training Facility Allowance***

79. Paid to an instructor or trainee performing submarine escape duties or training.

## ***Submarine Service Allowance***

80. Paid to submariners who are posted to or available for posting to a seagoing submarine in recognition of the factors of responsibility, environment, stress and attraction and retention of personnel.

## ***Trainees Dependant Allowance***

81. Paid to enable trainees with dependants to receive a salary not less than a private (or equivalent rank.)

## ***Trainee Leaders Allowance***

82. Paid to selected cadet and apprentice leaders in recompense for additional duties undertaken and higher responsibility exercised.

## ***Unpredictable Explosives Allowance***

83. Paid to compensate for the hazard and consequential stress involved in dealing with unpredictable explosives.

## **Non-taxable allowances**

84. These allowances are exempt under subparagraph 23(t)(iii) of the ITAA:

## ***Separation Allowance***

85. Paid to compensate members for the effects of separation from their homes. It recognises both the intangible effects of separation and the additional expenses incurred by a member, such as the need to maintain contact with dependants and the requirements for some

household tasks, normally done by the member, to be carried out on a commercial basis.

***Living Out Allowance***

86. Paid to cover reasonable extra costs of commercial accommodation because service accommodation is not available.

***Living Out Away From Home Allowance***

87. Paid to married members on duty away from their homes to meet reasonable costs of commercial accommodation used because service accommodation, in which rations and quarters would be supplied free of charge, is not available. The allowance is paid in respect of actual expenditure incurred in respect of accommodation, meals, food, laundry and utilities.

***Education Allowance***

88. Paid under the Military Financial Regulations (r 131), the Naval Financial Regulations (r 122) and the Air Force Regulations (r 634) and is a cash allowance.

***Child Education Allowance***

89. Paid for actual education costs for children in respect of members posted overseas.

***Disturbance Allowance***

90. Paid to cover expenses of moving, such as reconnecting the telephone, when a member is posted.

**Deductions**

***Clothing***

91. Expenditure on conventional clothing is not normally deductible. In *Case T47* (1968) TBRD 243; 14 CTBR (NS) 56, J.F. McCaffrey stated (TBRD at 243; CTBR at 307):

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

92. For expenditure on clothing to be an allowable tax deduction the expense must:

- actually be incurred, and
- meet deductibility tests, and
- satisfy the substantiation rules under sections 82KT to 82KZBB of the ITAA.

# TR 94/D16

## ***Conventional clothing***

93. While it is recognised that a high standard of dress is required when attending the Mess or other official functions, for taxation purposes conventional clothing is private in nature and not an allowable deduction under subsection 51(1).

94. Items of clothing which are considered conventional will always include underwear, socks, gym shoes and ordinary footwear. Expenditure on shoes which have no distinguishable features and can be purchased at normal retail outlets by the general public, such as court shoes and black dress shoes, are conventional in nature.

95. An ADF member is not entitled to claim a deduction for clothing purchased by their partner to attend the Mess or other official functions. Besides the conventional clothing issue, this cost is not allowable in the first instance as the expense was not incurred for the taxpayer.

96. In *Case T83* 86 ATC 1114, an officer cadet employed in the Department of Defence was denied a deduction for a lounge suit that he was required to purchase to wear at various Army functions. It was held that the expense was of a private or domestic kind, notwithstanding the expectation of the employer of a high dress standard.

## ***Uniforms***

97. Expenditure on military uniform is deductible. We consider that for taxation purposes a uniform includes items such as: military white, blue or khaki shirts with rank or other embellishments (depending on the arm of the force); standard matching trousers; regulation jumpers and jackets; official Mess uniform; hats or caps with rank or other embellishments; camouflage shirt and trousers.

98. This would not include items of a conventional nature which are worn with it (whether by regulation or otherwise). Items that are not deductible include ladies' handbags, hair accessories, socks, plain T-shirts and items mentioned in paragraph 94 above.

## ***Plain sports clothing***

99. ADF personnel may purchase sports clothing such as T-shirts, shorts and tracksuits, to participate in sporting or other field activities. There is nothing about this clothing which removes it from being essentially private in character, and not allowable under subsection 51(1). No deduction is allowable for socks or running shoes as they are considered to be conventional clothing.

***Sports clothing - monogrammed/distinctively unique***

100. ADF members are required to wear sports attire when participating in physical training. Deductions are allowable for official military monogrammed shirts, shorts and tracksuits. The identifier should be in the form of an easily visible (official) monogram such as a Regimental Crest.

***Uniform Maintenance Allowance and laundry expenses***

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

102. Expenses for dry cleaning and the laundering of uniforms are an allowable deduction. In order to claim a deduction, the items being cleaned must be allowable in the first instance under subsection 51(1). Items of clothing considered to be uniform are outlined in paragraph 97.

103. For example: Greg receives a Uniform Maintenance Allowance of \$500. He purchases uniform items such as shirts and trousers costing \$120 and also purchases underwear and socks from the army stores costing \$40. The cost of dry cleaning his uniform of shirts and trousers is \$135. Greg must include \$500 in his taxation return, and is entitled to a deduction of \$255 (i.e. uniform \$120 and laundering of uniform \$135), provided appropriate documentation is kept. He cannot claim a deduction for the purchase or laundering of underwear and socks.

**Donations**

104. Section 78 of the ITAA allows deductions for donations to approved funds, authorities or institutions. Any donations made to non public funds such as welfare funds, silver funds and social clubs are not allowable.

**Education*****Self-education***

105. For expenditure on self-education to be an allowable tax deduction the expense must:

- actually be incurred, and
- meet deductibility tests, and



# TR 94/D16

- satisfy the substantiation rules under sections 82KT to 82KZBB of the ITAA.

106. A full discussion of the deductibility under subsection 51(1) of self-education expenses is in Taxation Ruling TR 92/8. This Ruling should be referred to in determining each claim for self-education expenses.

107. Where expenses of self-education are allowable under subsection 51(1), but also fall within the definition of 'expenses of self-education' under section 82A, only the excess of the expenses over \$250 is deductible.

108. 'Expenses of self-education' are defined under section 82A as all expenses necessarily incurred by a taxpayer in connection with a course of education provided by a school, college, university or other place of education, and undertaken by the taxpayer to gain qualifications for use in the carrying on of a profession, business, trade or in the course of employment.

109. Allowability of self-education expenses depends on the nexus between the course of study and the individual member's present area of employment.

110. Factors in determining the required nexus would include:

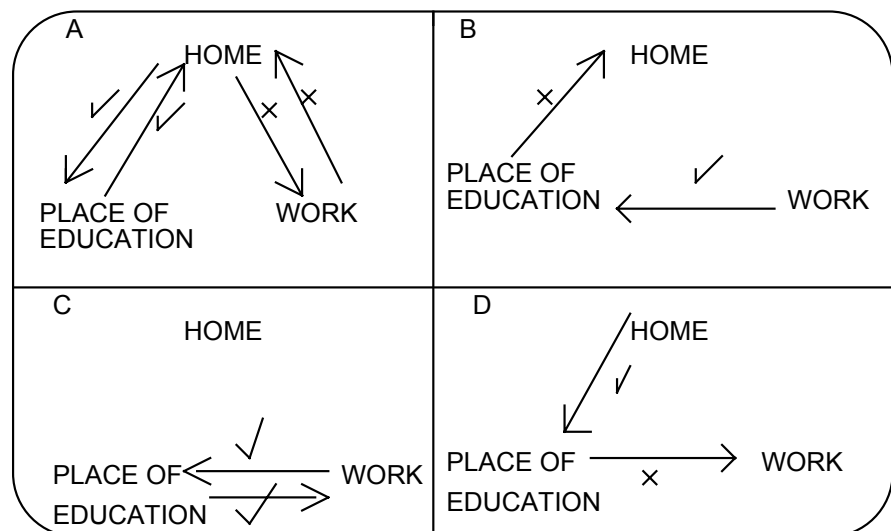
- the real connection between the course of study and your current job,
- whether the expense is incurred voluntarily (this may be an indication that it is not a requirement of a particular job),
- likelihood of an increase in income in the near future, e.g. a promotion,
- whether a new field of activity is being opened. If yes, the expense has been incurred at a point too soon in time to be allowable.

111. Expenses that may be claimed include: text books, tuition fees, seminar fees, stationery, conferences and certain travel.

112. Travel is only allowed in certain circumstances. See Diagram 1.

- travel from home to place of education and back home (A) - deductible
- travel from home to work and/or work to home (A) - not deductible
- travel from work to place of education and then home (B) - only travel from work to place of education is deductible
- travel from work to place of education and back to work (C) - deductible

- travel from home to place of education and then to place of work (D) - only travel from home to place of education is deductible.

**DIAGRAM 1** Travel in relation to self-education***Language course expenses***

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

114. Where an ADF member voluntarily incurs expenses in learning a language in the hope of gaining a posting overseas, the expense incurred is at a point too soon in time to establish a connection with future income. This is the case even though as a result of this expenditure the member may gain an advantage over other applicants in the event of a vacancy in an overseas posting.

115. Anticipation of a promotion or a job posting is not sufficient to satisfy that it was incurred in gaining or producing assessable income in the near future. See Taxation Determination TD 93/175 - *Expenditure incurred by an employee in applying for a promotion*.

116. If there is a strong possibility of a member being posted overseas or being called upon to use foreign language skills in a particular job, and expenses are incurred in fulfilling this possibility, then it is more likely that the expenses will be deductible. Self-education principles need to be examined to determine the deductibility of the expense.

# TR 94/D16

## ***Claims against Language Proficiency Allowance***

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

118. The allowance is paid to maintain already existing skills, not to learn new skills. Once the allowance is approved it is paid for as long as those skills are maintained. There is no statutory requirement for the skills to be relevant to the current duties of the member.

119. A deduction is only available if the language skills being maintained are relevant to the duties being performed by the member.

## **Extra Regimental Duties (ERD)**

(ERD is also referred to as Service Duties.)

120. For expenditure on ERD to be an allowable tax deduction the expense must:

- actually be incurred, and
- meet deductibility tests, and
- satisfy the substantiation rules under sections 82KT to 82KZBB of the ITAA.

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

122. In determining the allowability of any claims in relation to ERD each case should be examined individually on its merits. It is necessary to look at the nature of the activity undertaken in the context of subsection 51(1) and section 51AE.

123. Although some ERD's may be of general benefit to the ADF and may have a valuable effect on staff morale, for an expense to be deductible there must be a nexus between the activity and deriving assessable income. As discussed in paragraphs 55-56, a 'condition of employment' is not in itself a test for deductibility.

124. If a member wishes to claim expenses for performing ERD's that are outside their normal duties, it must not be of a domestic or private nature, e.g. for food, drink or entertainment.

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

126. **Example:** Angelo's ERD is coaching a military football team. This task includes travelling to various grounds to watch them play on a Saturday afternoon and taking some of the playing members with him. If it were considered work-related, the place of work would be the football oval, and the issue would constitute travel to and from work. However, this is a recreational activity and the travel expense is not deductible under section 51AE. (See paragraph 138.)

### **Fitness related expenses**

127. For expenditure on fitness and sporting related activities to be an allowable tax deduction the expense must:

- actually be incurred, and
- meet deductibility tests, and
- satisfy the substantiation rules under sections 82KT to 82KZBB of the ITAA.

### ***Expenses for sporting activities in general***

128. The ADF places a high emphasis on sporting activities to promote physical fitness, team building and leadership skills. The degree of sporting activity a member undertakes will depend on the member's occupation within the ADF and their personal interests and preferences. The nature of the expenses incurred includes sports equipment, clothing and travel.

129. Expenses relating to sports activities will not ordinarily be allowable as there is an insufficient nexus between the income earning activity and the outgoing. The expense also fails the 'essential character' test. See paragraphs 53-54.

130. A wide range of sporting activities is undertaken by ADF personnel including:

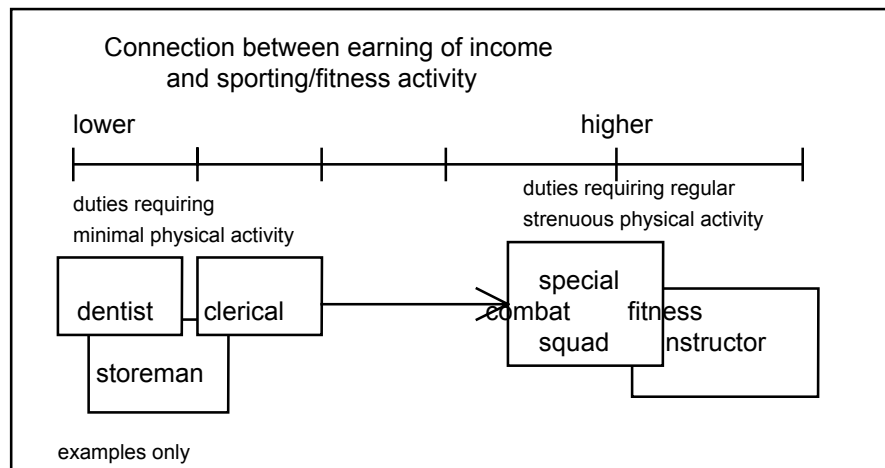
- private/own time sporting activities,

# TR 94/D16

- national/international matches and competitions (taxpayer meets a percentage of expenses),
- representative/inter service/combined services matches and competitions,
- programmed sports activities.

131. There is also a wide variety of 'occupation' types within the ADF. The nexus between sport and the income earning activity of the member will vary depending on the nature of the duties performed. Income earning activity which requires minimal physical exertion in performing those duties has a low nexus with sport. The following diagram illustrates the nexus.

DIAGRAM 2



132. The further along the right hand end of the scale in Diagram 2 the occupation lies, the greater the likelihood that the connection between the expense and the earning of income can be established. We accept that in a minority of instances there will be a sufficient nexus to allow a deduction for the expense, e.g. a physical fitness instructor. See Taxation Determination TD 93/114 - *Expenses of keeping fit and police officers*.

133. However, it is emphasised that expenses do not become deductible simply as a result of a person's title or occupation. A fitness instructor who earns his income by designing training programs and instructing/examining course participants, but does not engage in any physical activities himself, will not be able to establish the required nexus.

134. Similarly, it is unlikely that occupations toward the left hand end of Diagram 2 will be able to establish a sufficient nexus.

135. **Example:** Natalie is a medical practitioner in the Navy. Her expenses in relation to golf equipment and playing golf are not allowable as they are not incidental and relevant to the activities by which she earns her income.

136. **Example:** Doug is currently working as a chef. He participates in rugby league on his weekly sports afternoon and is also an official participant in an ADF rugby league team that plays in the local town on Saturday afternoons. No deduction is allowable for equipment or travel in connection with either of these activities.

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

### ***Travel to sport***

138. ADF members may be required to participate in afternoon sporting events on a regular basis. Some members elect, for reasons of convenience (e.g. so the member can go straight home after the session), to use their own vehicle to travel to the various venues. The fact that a high standard of fitness is required of ADF members is not sufficient to change the basic character of this expense. Where no deduction is available for sport (see paragraphs 128-129), travel in relation to sport is not deductible.

### ***Gym or sporting facility membership subscriptions***

139. ADF members may pay gym membership fees to lose weight or to maintain or increase their fitness. Section 51AB denies a deduction for this expense. Section 51AB provides that:

'notwithstanding any other provisions in the Act, a loss or outgoing is not an allowable deduction to the extent in which it is incurred by a taxpayer to secure or maintain, for the taxpayer or any person, membership of a social or sporting club or rights to enjoy member facilities.'

### ***Gym or sporting facility fees (other than membership subscriptions)***

140. ADF members may incur gym fees to lose weight or maintain or increase their fitness. We consider that, although members are required to have varying levels of fitness, in the majority of cases such expenses are not relevant and incidental to the earning of assessable income. Income is generally not derived from being fit.

# TR 94/D16

141. However this may be available as a deduction in exceptional circumstances. For example, positions where the carrying out duties of a particular occupation effectively depend on peak physical fitness, i.e. some physical fitness instructors. See Taxation Determination TD 93/114 - *Expenses of keeping fit and police officers*.

## **Messing and related expenses**

### ***Compulsory Mess subscriptions***

142. These are not deductible. The Mess is predominantly used as a recreation and living area for ADF personnel. It is also a venue for formal and informal dinners, functions, meetings and the placement of notices. ADF personnel are required to pay a compulsory subscription to the Mess. These subscriptions are utilised in the day-to-day running and upkeep of the Mess. Expenses include such things as book keeping, insurance, and the purchase and maintenance of silverware.

143. As this expenditure is incurred in the maintenance of a place primarily used for recreation, dining and drinking, the expense is private in nature and not an allowable deduction under subsection 51(1).

144. The connection between the expense and the assessable income is insufficient to satisfy the first limb of subsection 51(1). ADF personnel earn their income by performing the tasks set out on their duty statements and job descriptions. There is no clear nexus between these duty statements and their subscriptions which fund a facility primarily used for eating, drinking and recreation.

## **Charges for compulsory attendance at Mess functions**

145. The charges for attending compulsory Mess functions are not allowable deductions.

146. ADF personnel are required to attend a number of functions in the Mess such as dinners, dances and cocktail parties. The expenses of compulsory Mess functions are excluded from deductibility under subsection 51(1) as they are private in nature.

147. In reaching this opinion, we have taken into consideration that many of these functions are compulsory; behaviour at such functions may be taken into account for promotion, and it is the means by which ADF personnel learn Mess function etiquette.

148. However, as discussed above at paragraphs 55-56, the fact that expenditure is incurred as a condition of employment or as the result of a command, does not make it an allowable deduction. The essential

character remains private. See *Cooper's* case discussed in paragraph 56.

***Food, drink and entertainment***

149. ADF personnel may incur expenses in attending functions; purchasing food and drink in the Mess, or for entertaining guests in an official or informal capacity. While it is recognised that the member is expected to incur some of these expenses as a part of their duties, section 51AE denies a deduction for entertainment expenses. Subsection 51AE(4) states that:

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

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

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

- (a) entertainment by way of food, drink or recreation; or
- (b) accommodation or travel in connection with, or for the purpose of facilitating entertainment to which paragraph (a) applies...

whether or not -

- (c) business discussions or business transactions occur;
- (d) in connection with the working of overtime or otherwise in connection with the performance of the duties of any office or employment;
- (e) for the purposes of promotion or advertising; or
- (f) at or in connection with a seminar.

Subsection 51AE(1) defines recreation as including -

- (a) amusement;
- (b) sport or similar leisure-time pursuits; and
- (c) recreation or amusement provided on, or by means of, a vehicle, vessel or aircraft;'

151. In *Case Y11* 91 ATC 184; 22 ATR 3063, a senior ADF officer involved in negotiations to buy defence equipment was denied a deduction for expenditure incurred in attending a range of lunches, cocktail parties, dinners and other forms of social contact relevant to the performance of his duties. Direct business was done on many of



# TR 94/D16

those occasions. It was held that section 51AE(4) operated to deny the claim. It did not matter that the expenditure was directly relevant to employment related transactions.

## **Personal items**

### ***Glasses/contact lenses***

152. The cost of purchasing glasses or contact lenses is not deductible as the expense is private in nature.

### ***Haircuts (maintenance of Queen's Headdress)***

153. ADF personnel are required by Australian Military Regulations and orders to keep their hair short (optional for women as it may be tied back). This expense is not allowable under subsection 51(1) as it is private in nature.

154. In *Case L61* 79 ATC 488; 23 CTBR (NS) 73 an army officer was denied a deduction for his haircuts. It was held that although it was a condition of employment to be well groomed, the expense related to lifestyle and was therefore private in nature.

155. In *Case U217* 87 ATC 1216 a policeman who claimed 50% of the cost of his haircuts was denied a deduction. It was a condition of his employment that he was required to keep his hair short. The fact that he only claimed half the cost of his haircuts (representing what was above his 'normal' expenditure) was not the issue. The outgoing was private in nature.

### ***Personal grooming and underclothes***

156. Costs for personal items such as makeup, shaving equipment, deodorant, hair products, hair nets, clips and bobby pins, underclothes, stockings and sun screen are not allowable deductions under subsection 51(1) as they are private in nature. The character of these expenses is not altered by any requirement to replace service issue items. Nor is their character altered by any order or regulation to purchase or wear such an item. See *Cooper's* case discussed in paragraph 56.

157. In *Case U216* ATC 1214 a food and drink waitress was required to wear makeup while at work. She claimed excess costs for makeup. It was found that the makeup was neither relevant nor incidental to the earning of the taxpayer's assessable income.

158. In *Case Q11* 83 ATC 41; 26 CTBR (NS) 75 a lawn mowing contractor claimed the cost of sun screen. It was held that protecting his skin from sun damage was a private expense.

***Sunglasses***

159. The cost of purchasing conventional sunglasses is not deductible as the expense is private in nature. See Taxation Ruling IT 2477 - *Cost of sunglasses used by truck drivers or commercial travellers*.

160. However, we accept that in limited circumstances protective-type goggles may be claimed where they are worn for the purposes of protection. The expense for anti glare glasses may also be allowable to aircraft pilots and flight engineers, as these also can be distinguished from conventional sunglasses worn on the ground. See Taxation Ruling TR 93/18 - *Deductibility of expenses for staff in the airline industry*, paragraphs 29 - 31.

161. In these cases, the glasses were considered to be protective equipment as they protected the taxpayer from personal injury in performing the duties of employment rather than protection from the natural environment. As sunglasses worn by a taxpayer are for protection from the natural environment, the cost of these sunglasses is not deductible. Some clothing and footwear may be worn to prevent injury at work or to protect other conventional clothing.

***Watch expenses***

162. Members of the ADF may be involved in activities requiring them to wear a watch. The cost of purchasing a wrist watch is ordinarily a personal expense and not deductible under subsection 51(1).

163. In *Case Q10* 83 ATC 38; 26 CTBR (NS) 74 an army officer was disallowed the cost of watch repairs. Dr G.W. Beck stated (83 ATC at 40; 26 CTBR (NS) at 521):

'...a wrist watch is essentially part of the personal equipment that individuals acquire to enable them to more easily function in their daily lives.'

Expenditure on specialist watches, such as a fob watch used by a nurse or a dedicated stop-watch used by a fitness instructor, is allowable.

***Weight loss expenses***

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

165. The character of the expense is not altered by any order or ADF regulation. See *Cooper's* case at paragraphs 55-56 above.

# TR 94/D16

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

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

## Telephone

168. For expenditure relating to telephones to be an allowable tax deduction the expense must:

- actually be incurred, and
- meet deductibility tests, and
- satisfy the substantiation rules under sections 82KT to 82KZBB of the ITAA.

169. From time to time, it may be necessary for some ADF members to make and receive work-related calls.

### ***Installation costs***

170. Installation costs for telephones are not deductible under subsection 51(1) as they are considered to be a capital expense.

171. In *Case M53* 80 ATC 357; 24 CTBR (NS) 73 it was held that (ATC at 359; CTBR at 236):

'...on payment of the connection fee, this taxpayer bought into existence an advantage for the enduring benefit of his newly established medical practice.'

172. Expenditure on maintaining a telephone used in the production of assessable income is allowable. See *Case N5* 81 ATC 35; 24 CTBR (NS) 78 at paragraph 37.

### ***Rental***

173. Deductions for the cost of telephone rental are allowable for members who are 'on call' or are required to contact regularly or are contacted by their employer. Claims should be apportioned according to the use made of the telephone. An appropriate basis for such apportionment would be the ratio of incoming and outgoing work-related calls as against private calls.

### ***Telephone calls***

174. The direct cost of work-related telephone calls is an allowable deduction.

**Tools and equipment**

175. For expenses of tools and equipment to be allowable tax deductions the expenses must:

- actually be incurred, and
- meet deductibility tests, and
- satisfy the substantiation rules under sections 82KT to 82KZBB of the ITAA.

176. Members may choose to purchase a broad range of items to assist them with their duties. Where these expenses are not reimbursed and in-service equipment is not used, a deduction may be allowable if it meets the provisions of subsection 51(1) or section 54 (dealing with depreciation). Items that are private in nature are excluded. Expenses may be incurred voluntarily as discussed in Taxation Ruling IT 2198 - *Allowable deductions: expenditure voluntarily incurred by employee taxpayers*.

177. **Example:** Bill, who is a member of a military band, purchases instruments, sheet music, compact discs and visits various orchestral recitals. A portion of the cost of these items is allowable if it can be demonstrated that the expense relates directly to the earning of assessable income. This would depend on the individual circumstances of the case as outlined in Taxation Ruling IT 2198.

178. Where tools and equipment are used for income producing activities:

- items under \$300 may be claimed as a deduction,
- items over \$300 and having a life expectancy of more than 3 years should be depreciated as they are capital in nature. Depreciation rates are contained in Taxation Ruling IT 2685.

179. Items with a dual purpose should be apportioned between work and private usage. For example, a member who has purchased electronic testing equipment for use at work, but frequently uses it at home should apportion his depreciation claim between work and private usage.

180. **Example:** Margaret, a clerical worker, is supplied with a calculator, but chooses to purchase her own which she finds more functional than the one supplied to her. Margaret would be entitled to claim a deduction for the cost of her calculator.

181. **Example:** John purchases equipment in preparation for an upcoming field exercise, including a knapsack to carry his tools of trade in. The cost of the knapsack is allowable.

# TR 94/D16

182. **Example:** An officer purchases a computer to use at work. The expense is not allowable under subsection 51(1) as it is capital in nature. However, the computer may be depreciated over a number of years. If the computer has a percentage of private use, the depreciation must be apportioned to reflect the work-related use only.

## Travel

183. For expenditure on travel to be an allowable tax deduction the expense must:

- actually be incurred, and
- meet deductibility tests, and
- satisfy the substantiation rules under sections 82KT to 82KZBB of the ITAA.

### *Travel to and from work*

184. It is an established principle that the cost of travelling to and from work is ordinarily a private expense and is not an allowable deduction under subsection 51(1), even if public transport is not available. See *Lunney's* case as discussed in paragraphs 53-54 above.

### *Living off the base*

185. Travel to and from work is not ordinarily a deductible expense.

186. If no accommodation is available on base, or through the member's own choice he/she lives some distance away (thus necessitating use of their own vehicle to go to work), this is not sufficient to change the character of the expense which is essentially private. See *Case J21* 1977 ATC 193; 21 CTBR (NS) 43, and *Case V131* 1988 ATC 838.

187. Further, the receipt of an allowance to cover these costs (e.g. the Isolated Establishment Allowance) does not make these expenses deductible as they remain private in nature. See *Lunney's* case, *Case U156* 1987 ATC 908 and *Case R22* 84 ATC 212; 27 CTBR (NS) 76. Paragraphs 35-36 above discuss the Isolated Establishment Allowance.

188. In *Case V131* 1988 ATC 838, the taxpayer was an officer in the Royal Australian Air Force. He lived in a capital city and worked on an RAAF base 40km away. He was forced to live off the base as no married quarters were available at the time. He was compulsorily posted to the base and had no say as to where he was sent. Due to no availability of public transport, the taxpayer drove to work each day and claimed a deduction for the expense.

189. The board held that he was not entitled to a deduction and stated that although the taxpayer was forced to live a great distance from the base the matter had been conclusively dealt with by the High Court in *Lunney's* case. See discussion in paragraphs 53-54 above.

***Carrying equipment to and from work***

190. ADF personnel may be required to transport equipment in the course of performing their duties. Where service transport is not used and the expense has not been reimbursed by the ADF, the cost may be deductible in limited circumstances under subsection 51(1).

191. In order to claim a deduction for travel to and from work when carrying tools or equipment, it must be proven that employment has created the necessity to transport items (*Vogt v. FC of T* 75 ATC 4073; 5 ATR 274 (*Vogt's* case)) and that it was impractical to keep them at work (*Case U29 87* ATC 229; 18 ATR 32).

192. In *Vogt's* case a musician transported his instruments between his place of residence and the various places where he performed. It was held that the essential character of the expenditure was such that it should be regarded as having been incurred in gaining or producing the assessable income. The costs were attributed to the transport of the bulky equipment rather than to the travel to and from work. Waddell J stated (ATC at 4078; ATR at 279):

'...the first step in determining whether the expenditure in the present case is deductible under s51(1) is to state what are the relevant aspects of the operations carried on by the taxpayer for the production of his income...

Secondly, it was essential to the carrying on of those operations. There was no other practical way of getting his instruments to the places where he was to perform. Thirdly, in a practical sense, the expenditure should be attributed to the carriage of the taxpayer's instruments rather than his travel to the places of performance.'

193. In *Case U29 87* ATC 229; 18 ATR 32 a carpenter successfully claimed travel between home and work sites. His place of work varied during the week and it was not secure to leave his tools at the sites. The Board held that his employment created the need, as a matter of practical necessity, for him to transport his tools from his home where he was able to keep them safely. It was in practical terms necessary for him to transport them by car.

194. In *Case Z22 92* ATC 230; 23 ATR 7944 an aircraft maintenance engineer was denied a deduction for transporting his tools from home to work for convenience. Larger tools were kept in a padlocked mesh cage but other tools were kept in a canvas bag that could be carried

# TR 94/D16

over the shoulder. The bag was taken home in the boot of the car each night.

195. The deduction was denied as it was possible that the tools could have been stored at work, they could be carried on public transport and they were taken home largely for convenience. It was not sufficient for instruments to be carried merely for convenience. In *Case U107* 87 ATC 651, 18 ATR 75 it was stated that:

'...merely putting his tools in the car's boot did not alter either the nature of the trip or the character of the expenditure.'

## ***Performing duties on the way to and from work***

196. If a trip is made directly from home to a place where substantial employment duties are performed and which is not the normal place of work, expenditure on travel is allowable. Similarly, if the person travels from that place to home, the travel is also allowable.

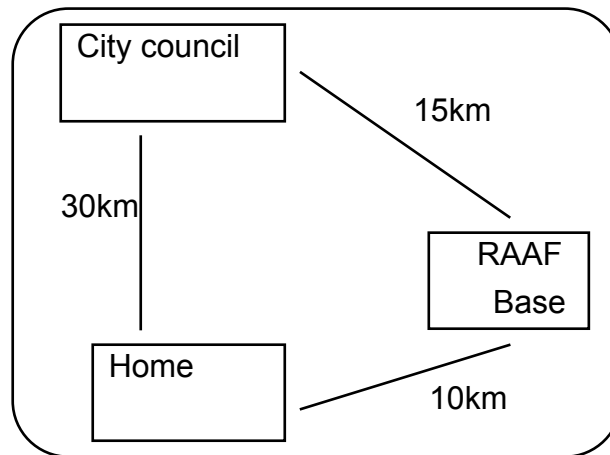
197. **Example:** Graeme, a careers officer in the Navy, travels from the Careers Office, makes an external presentation at a local school and travels home after the presentation. The whole trip, in this instance would be allowable.

198. Performing minor tasks such as picking up mail or collecting supplies and which can be carried out incidentally to the normal work route, does not change the nature of the trip. This is travel to and from work and is not deductible.

199. If the task is not minor in nature or incidental to the normal route, that is, the task consumes a significant amount of time or requires a significant alteration to the normal route, expenditure on the full trip is allowable.

200. **Example:** a permit has to be dropped into the local council chambers. Rather than make a special trip into town, Peter's commanding officer asks him if he would mind dropping it off on the way home as he normally travels past the council chambers on the way home. This is a minor task that is not significantly out of Peter's normal travel pattern. This would not be an allowable deduction.

201. **Example:** on the way home from work, Jannine called into the city council's planning office to discuss alterations to an RAAF building plan that required amending. The trip was out of her normal way home (see Diagram 3). The cost of the trip from the normal place of employment to the council office and then home is allowable.

**DIAGRAM 3*****On and between bases***

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

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

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

205. **Example:** Rosemary reports at point Y to sign on and then goes on to point Z where her daily duties are actually performed. Neither travel between home and point Y, nor between point Y and point Z, is allowable as she has not actually commenced duties.

206. **Example:** Philip works at Army Base A but is attached to Base B. During Philip's normal working day he must travel from Base A to Base B, usually twice a week, for a meeting with his Commanding Officer. This would constitute an allowable deduction as he is travelling in the course of his duties.



# TR 94/D16

207. **Example:** Gabriel is in the Catering Corps. Most supplies are delivered. There are occasions when he has to drive from work to town or another Mess to collect supplies. Travel in this instance would be allowable.

## ***Travel for extra regimental (or service) duties***

208. As outlined in paragraphs 120 to 126 above, expenses relating to ERD may be allowable based on the facts of each case.

209. **Example:** William is required to organise the Christmas Party for staff and their families. Travel to and from this event would not be allowable as it is considered to be a private expense.

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

## ***Travel for medical appointments***

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

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

213. Travel for any other medical appointments which are not a requirement of service but are needed due to personal ailments (e.g. driving to the in service dentist with a toothache) would be a private expense and not allowable.

## ***Travel to and from afternoon sports***

214. See paragraphs 128-129 above.

## ***Travel while 'on-call'***

215. ADF members may be contacted after regular 'on-duty' hours and as a result commence specified duties. Although a taxpayer may be required to travel to work, in response to a call while on standby, this would not ordinarily alter the character of that travel.

216. In *FC of T v. Genys* 87 ATC 4860; 19 ATR 356 a nursing sister was denied the cost of travelling to and from work. She worked relief shifts in intensive care and the shifts were arranged by telephone. It was held there was nothing about the case that distinguished it from normal travel to and from work.

217. In some instances duties commence upon receipt of the phone call. For example, in *FC of T v. Collings* 76 ATC 4254; 6 ATR 476 the taxpayer was engaged in the conversion of a computer facility and

often used a personal computer at home that was connected by telephone to her employer's computer. If the problem could not be fixed through the telephone connection, the taxpayer was required to travel to the site. It was held that travel from home to the site was deductible as the performance of duties had commenced and the travel was effectively between two sites of work.

218. **Example:** Sam, who is an administrative officer rostered to be on call, had to travel after hours to the same office building where he normally works during the day to check reported fire damage. The cost of travel is not allowable as it is travel to and from work.

219. **Example:** Laurie's duties as Base Safety Officer require him to issue detailed instructions to a number of other ADF personnel, in an emergency, from his home phone before travelling to the location of the emergency. Laurie is entitled to claim his travel from home as his duties commenced at home.

## **Index of Explanations**

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

	para
Background	44
Taxable allowances	62
Arduous Conditions Allowance	63
Clearance Diving Allowance	64
Clearance Diving Allowance (Disability Element)	65
Common Duties Allowance	66
Diving Allowance	67
Field Allowance	68
Flight Duties Allowance	69
Flying Allowance (Qualification/Skills Element)	70
Flying Allowance (Disability Element)	71
Hard Lying Allowance	72
Isolated Establishment Allowance	73
Language Proficiency Allowance	74
Parachutist Allowance	75
Service Allowance	76
Special Action Forces Allowance (Qualification/Skills and	

**TR 94/D16**

	para
Disabilities)	77
Special Royal Navy Allowance	78
Submarine Escape Training Facility Allowance	79
Submarine Service Allowance	80
Trainees Dependant Allowance	81
Trainee Leaders Allowance	82
Unpredictable Explosives Allowance	83
Non-taxable allowances	84
Separation Allowance	85
Living Out Allowance	86
Living Out Away From Home Allowance	87
Education Allowance	88
Child Education Allowance	89
Disturbance Allowance	90
Deductions	91
Clothing	91
Conventional clothing	93
Uniforms	97
Plain sports clothing	99
Distinctive sports clothing	100
Uniform Maintenance Allowance	101
Laundry expenses	102
Donations	104
Education	105
Self-education expenses	105
Language course expenses	113
Language Proficiency Allowance	117
Extra Regimental (or Service) Duties	120
Fitness related expenses	127
Expenses for sporting activities in general	128
Travel to sport	138
Gym or sporting facility membership subs	139
Gym or sporting facility fees	140

**TR 94/D16**

FOI status: draft only - for comment

page 35 of 36

	para
Messing and related expenses	142
Compulsory Mess subscriptions	142
Charges for compulsory functions	145
Food, drink and entertainment	149
Personal items	152
Glasses and contact lenses	152
Haircuts	153
Personal grooming and underclothes	156
Sunglasses	159
Watch expenses	162
Weight loss expenses	164
Telephone	168
Installation costs	170
Rental	173
Telephone calls	174
Tools and equipment	175
Travel	183
To and from work	184
Living off the base	185
Carrying equipment to and from work	190
Performing duties on the way to and from work	196
On and between bases	202
Extra Regimental (or Service) Duties	208
Medical appointments	211
To and from sports afternoons	214
While 'on call'	215

**Commissioner of Taxation**

28 April 1994

ISSN 1039 - 0731

Not previously released to the public in  
draft form

ATO references

NO

Price \$3.60

BO ALB/94001

FOI index detail

# TR 94/D16

page 36 of 36

FOI status: draft only - for comment

## *reference number*

- Case L61 79 ATC 488; 23 CTBR (NS) 73
- Case M53 80 ATC 357; 24 CTBR (NS) 29
- Case N5 81 ATC 35; 24 CTBR (NS) 78
- Case N71 81 ATC 383; 25 CTBR (NS) 25
- Case Q10 83 ATC 38; 26 CTBR (NS) 74
- Case Q11 83 ATC 41; 26 CTBR (NS) 75
- Case R22 84 ATC 212; 27 CTBR (NS) 76
- Case T47 TBRD 1968 243; 14 CTBR (NS) 56
- Case T74 86 ATC 1064
- Case T83 86 ATC 1114; 17 ATR 1208
- Case U156 87 ATC 908
- Case U216 87 ATC 1214
- Case U217 87 ATC 1216
- Case V131 88 ATC 838
- Case Z22 92 ATC 230; 23 ATR 7944
- Case 10 94 ATC 168

## *subject references*

- allowances
- clothing
- donations
- education
- Extra Regimental Duties
- fitness
- glasses
- Messing
- personal grooming
- sunglasses
- telephone
- tools
- travel
- watches
- weight loss

## *legislative references*

- ITAA 23(t)(iii)
- ITAA 26(ea)
- ITAA 51(1)
- ITAA 51AB
- ITAA 51AE
- ITAA 54
- ITAA 78
- ITAA 82A
- ITAA 82KT-82KZBB

## *case references*

- FC of T v. Collings 76 ATC 4254 6 ATR 476
- FC of T v. Cooper 91 ATC 4396; 21 ATR 1616
- FC of T v. Edwards 93 ATC 5162; 27 ATR 293
- FC of T v. Genys 87 ATC 4860; 19 ATR 356
- Fletcher v. FC of T 91 ATC 4950; 22 ATR 613
- Hatchett v. FC of T 71 ATC 4184; 2 ATR 557
- Lunney v. FC of T; Haley v. FC of T; (1958) 100 CLR 478; 7 ATR 166
- Ronpibon Tin NL v. FC of T (1949) 78 CLR 47; 8 ATD 431
- Vogt v. FC of T 75 ATC 4073; 5 ATR 274
- Case J21 77 ATC 193; 21 CTBR (NS) 43