TR 95/D10 - Income tax: employee building workers - allowances, reimbursements, long service payments, redundancy trust payments and work-related deductions

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Draft Taxation Ruling

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

other Rulings on this topic

IT 85; IT 112; IT 299; IT 327; IT 2062; IT 2198; IT 2199; IT 2416; IT 2452; IT 2477; IT 2493; IT 2543; IT 2641; IT 2685; MT 2027; TR 92/8; TR 92/15; TR 92/20; TR 93/22; TR 94/22; TR 94/23; TD 92/142; TD 92/154; TD 92/157; TD 93/17; TD 93/108; TD 93/113; TD 93/115; TD 93/145; TD 93/232; TD 93/244

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What this Ruling is about

Class of person/arrangement

1. This Ruling applies to building workers. A 'building worker' is a person who is employed either on-site or off-site in the capacity of a foreman, supervisor, leading hand, tradesperson, apprentice, general construction worker, labourer or plant operator within the building and construction industry.

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

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

(b) the repair of buildings or other structures;

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

(d) the installation of heating or air conditioning equipment, alarm systems, blinds and awnings, petrol bowsers, electrical wiring, lifts, escalators, factory assembled boilers and 'built-in' furniture, and the on-site assembly and installation of boilers; and

(e) special building or construction services such as steel erection, carpentry, bricklaying, concreting, plumbing,

painting, plastering, floor and wall tiling, roof tiling, glazing, landscaping and the installation or laying of floor coverings such as carpet or linoleum.

3. This Ruling deals with:

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

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

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

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

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

7. The tax treatment of long service payments and redundancy trust payments is examined at paragraphs 23 to 25.

8. The common work-related expenses incurred by building workers and the extent to which they are allowable deductions are discussed, in alphabetical order, at paragraph 28 in the Ruling section.

9. The substantiation provisions are not discussed in depth in this Ruling.

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

Date of effect

11. This Ruling applies to years commencing both before and after its date of issue. The only exception concerns our views on the deductibility of expenses claimed against award transport allowances, which apply only to the 1995/96 and later income years. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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

Ruling

Allowances

13. The receipt of an allowance does not automatically entitle a building worker to a deduction. The term 'allowance' does not include a reimbursement (see paragraphs 19 to 21), but for the purposes of this Ruling, includes what is known in the industry as 'special rates'.

14. Allowances fall into the following categories:

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

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

(c) fully assessable to the employee with a deduction allowable for expenses incurred:

(i) up to the extent of the allowance without substantiation, or

(ii) in excess of the allowance, subject to substantiation of the whole claim

(paragraph 17);

(d) not assessable to the employee because the employer may be subject to Fringe Benefits Tax. A deduction is not allowable to the employee for expenses incurred against such an allowance (paragraph 18).

Allowances - possible deduction

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

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

Allowances - no deduction allowable

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

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

Reasonable allowances

17. The Commissioner of Taxation publishes Taxation Rulings annually that indicate amounts considered reasonable for the following allowances:

(a) overtime meal expenses,

(b) domestic travel expenses, and

(c) overseas travel expenses.

These allowances are fully assessable. If an allowance is received that is equal to or less than an amount considered to be reasonable, a deduction for expenses incurred is allowable up to the amount of the allowance, without substantiation. If a deduction is claimed in excess of the allowance, the whole claim must be substantiated.

Allowances - not assessable and no deduction allowable

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

(a) Living away from home

(b) Camping

(c) Caravan

(d) Distant work.

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

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

These allowances are not assessable to the building worker as the employer may be subject to Fringe Benefits Tax in respect of the allowances.

Reimbursements

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

20. However, if motor vehicle expenses are reimbursed by the employer on a cents per kilometre basis, the amount is included as assessable income of the building worker under paragraph 26(eaa) of the Act. A deduction may be allowable for the actual expenses incurred (see ***Transport expenses***, paragraph 129 of this Ruling).

21. If the reimbursement by the employer is for the cost of a depreciable item (eg. tools and equipment), a deduction is allowable to the building worker for depreciation (see Taxation Determination TD 93/145 and ***Depreciation of equipment,*** paragraphs 81 to 88 of this Ruling).

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

Long service payments

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

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

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

(Subject to a bill currently before Parliament. The final ruling will reflect any changes in legislation.)

Redundancy trust payments

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

25. A redundancy payment made by a redundancy trust, as described above, is not considered to be a bona fide redundancy payment in terms of section 27F and would not qualify for concessional treatment in terms of

subsection 27C(2) (see Taxation Determination TD 93/17).

Deductions

26. A deduction is only allowable if an expense:

(a) is actually incurred (paragraph 30),

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

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

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

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

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

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

(a) protective;

(b) occupation specific;

(c) compulsory and meet the requirements of Taxation Ruling IT 2641;

(d) non-compulsory and registered with the Textile Clothing and Footwear Development Authority (TCFDA) or approved in writing by the Australian Taxation Office (ATO) before 1 July 1995 under the transitional arrangements; or

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

(paragraphs 54 to 78).

Depreciation of tools and equipment: A deduction is allowable for depreciation to the extent of the work-related use of the tools and equipment (paragraphs 81 to 88).

Driver's licence: A deduction is not allowable for the cost of acquiring or renewing a driver's licence. A deduction is allowable for

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

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

Fines: A deduction is not allowable for fines imposed under any law of the Commonwealth, a State, a Territory, a foreign country, or by a court (paragraph 93).

First aid courses: The cost of these courses is usually met by the employer and no deduction is allowable to the building worker. If it is necessary for a building worker to undertake first aid training to assist in emergency work situations, and the cost is met by the building worker, the expenses of such training are an allowable deduction.

Glasses/contact lenses: A deduction is not allowable for the cost of buying prescription glasses or contact lenses. The cost of safety glasses is an allowable deduction (see ***Protective equipment,*** paragraph 107).

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

Licences and certificates: A deduction is allowable for the cost of licences and certificates held by a building worker in respect of his or her employment.

Meals: A deduction is not allowable for the cost of meals eaten during a normal working day, as meal expenses are considered to be private (paragraphs 94 to 99). If an award overtime meal allowance has been paid, a deduction may be allowable (see paragraphs 101 to 104). A deduction may be allowable if meal costs are incurred by a building worker who travels for work-related purposes.(see ***Travel expenses***, paragraphs 172 to 176).

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

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

Overtime meal allowance: A deduction is allowable for the cost of meals bought while working overtime if an award overtime meal allowance is received and the expenditure is not private in nature (paragraphs 101 to 104). Special substantiation rules apply.

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

Protective equipment: A deduction is allowable for the cost of safety equipment such as harnesses, goggles, breathing masks, helmets, etc. (paragraph 107). A deduction is not allowable for the cost of sunglasses, sunhats, sunscreens and wet weather gear that are worn or used to provide protection from the natural environment (paragraphs 60 to 63).

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

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

Self education expenses: A deduction is allowable for the cost of self education if there is a direct connection between the self education and the work-related activities. Self education costs can include fees, travel, books and equipment (paragraphs 109 to 113). If self education expenses are allowable but also fall within the definition of 'expenses of self education' in section 82A of the Act, the first $250 is not an allowable deduction (paragraphs 114 to 116).

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

Technical or professional publications: A deduction is allowable for the cost of buying or subscribing to journals, periodicals and magazines that have a content specifically related to building workers and are not general in nature (paragraphs 117 to 121).

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

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

Installation or connection costs: A deduction is not allowable for the cost of installing or connecting a telephone, mobile phone, pager, beeper or other telecommunications equipment, as it is a capital expense (paragraphs 124 and 125).

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

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

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

Tools: A deduction is allowable for depreciation of the cost of tools. Tools bought after 1 July 1991 are able to be depreciated at a rate of 100% if the cost of a particular item is $300 or less, or its effective life is less than three years (paragraph 84). A deduction is allowable for the cost of repairs to tools to the extent of their work-related use (paragraph 108).

Transport expenses: Transport expenses include public transport fares and the running costs associated with using motor vehicles, motor cycles and bicycles etc, for work-related travel. They do not include meals, accommodation and incidental expenses (see ***Travel expenses***). The deductibility of transport expenses incurred by a building worker when travelling is considered below:

Travel between home and work: A deduction is not allowable for the cost of travel between home and the normal work place as it is generally considered to be a private expense. This principle is not altered by the performance of incidental tasks en route (paragraphs 130 to 135).

Travel between home and work - transporting bulky equipment: A deduction is allowable if the transport expenses can be attributed to the transportation of bulky equipment rather than to private travel between home and work (paragraphs 136 to 138).

A deduction is not allowable if an employer:

(a) provides a secure area for the storage of equipment at the workplace; or

(b) provides insurance cover for stolen equipment; or

(c) has a policy of compensating for, or replacing, stolen equipment.

Travel between home and work where home is a base of operations and work is commenced at home: A deduction is allowable for transport expenses if they can be attributed to travelling **on** work, as distinct from travelling **to** work, ie. where the building worker's home is used as a base of operations and his or her work has commenced before leaving home (paragraphs 139 to 148).

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

the job in a place separate from that where the job is located, is not enough (paragraphs 149 to 157).

Travel between two separate work places if there are two separate employers involved: A deduction is allowable for the cost of travelling directly between two places of employment (paragraphs 158 and 159).

Travel from the normal work place to an alternate work place while still on duty and back to the normal work place or directly home: A deduction is allowable for the cost of travel from the normal work place to other work places. A deduction is also allowable for the cost of travel from the alternate work place back to the normal work place or directly home. This travel is undertaken in the course of gaining assessable income and is allowable as a deduction (paragraphs 160 and 161).

Travel from home to an alternate work place for work-related purposes and then to the normal work place or directly home: A deduction is allowable for the cost of travel from home to an alternate work place and then on to the normal work place or directly home (paragraphs 162 and 163).

Travel between two places of employment or between a place of employment and a place of business: A deduction is allowable for the cost of travel directly between two places of employment or a place of employment and a place of business, provided that the travel is undertaken for the purpose of carrying out work-related activities (paragraphs 164 to 170).

Travel in connection with self education: See ***Self education*** (paragraphs 109 to 112).

Travel expenses: A deduction is allowable for the cost of travel expenses (accommodation, fares, meals and incidentals) incurred by a building worker when travelling in the course of employment, eg. travel interstate to supervise at another work site (paragraphs 172 and 173). Special substantiation rules apply (paragraphs 174 to 176).

Union/professional association fees and levies: A deduction is allowable for union or professional association fees, although a deduction is not generally allowable for levies (paragraphs 177 to 180).

Wet weather gear: A deduction is not allowable if this clothing is worn to provide conventional protection from the natural environment. A deduction is allowable if the nature of the work creates conditions that make it necessary for the building worker to provide protection to his or her person or clothing (paragraphs 60 to 63).

Explanations

Deductibility of work-related expenses

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

(a) is actually incurred,

(b) meets the deductibility tests, and

(c) satisfies the substantiation rules.

Expense actually incurred

30. The expense must actually be incurred by the building worker to be considered for deductibility. A deduction is not allowable for expenses not incurred by a building worker, eg. if items are provided free of charge. Under section 51AH of the Act, a deduction is not generally allowable if expenses are reimbursed (see paragraphs 20 and 21 for exceptions to this rule).

Expense meets deductibility tests

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

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

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

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

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

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

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

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

(a) private or domestic in nature (eg. sunscreen or driver's licence),

(b) capital, or capital in nature (eg. purchase of a compressor), or

(c) incurred in earning tax exempt income (eg. income of Army Reserve personnel).

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

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

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

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

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

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

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

In *Cooper's* case a professional footballer was denied the cost of purchasing food and drink. His coach had instructed him to consume

additional food, so he would not lose weight during the football season. The character of the expense was private.

Expense satisfies the substantiation rules

39. The income tax law requires substantiation of certain work-related expenses. If the total of these expenses exceeds $300, the records that must be kept include receipts, invoices or similar documents, diaries or log books (eg. in relation to car expenses).

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

Award transport (fares) allowances

41. Award transport (fares) allowances are allowances paid to employees under an award that recognises that employees may incur transport costs for travel undertaken in the course of performing the duties of employment. Award transport (fares) allowances do not cover the cost of meals, accommodation and incidentals incurred when travelling (see ***Travel expenses***, paragraphs 172 to 176).

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

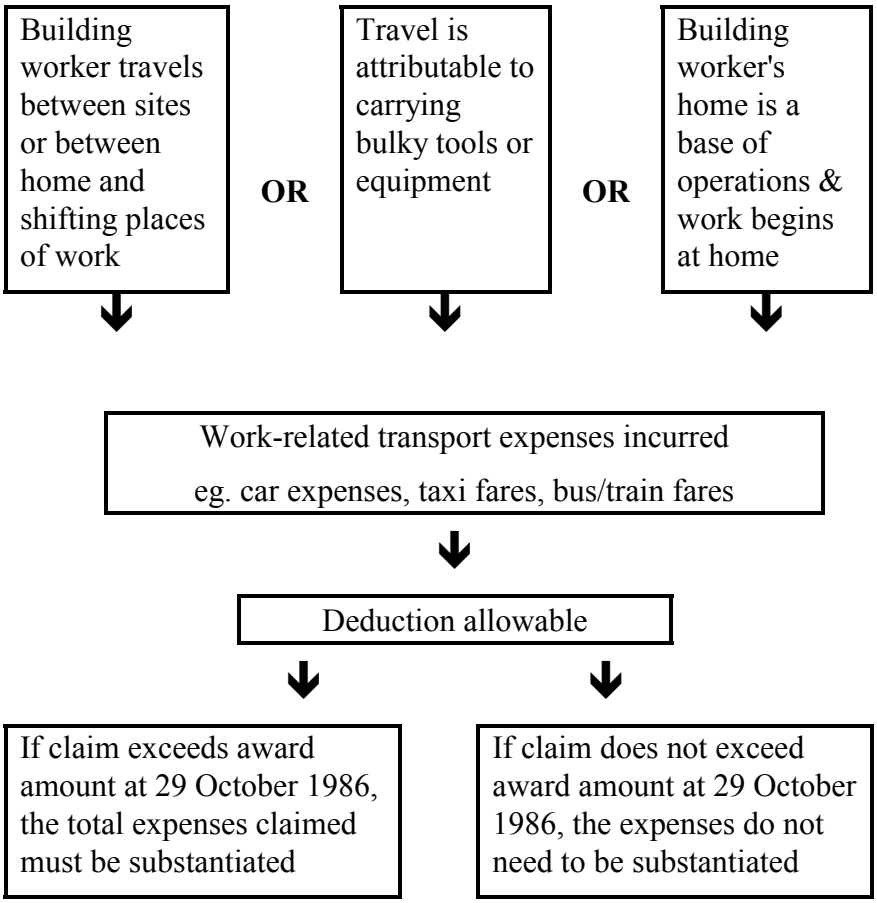
43. A deduction is only allowable to the extent to which the expenses are incurred by the building worker in earning assessable income. Taxation law does not authorise a deduction for amounts that have not been incurred, or for expenditure that is not incurred in earning assessable income.

44. In addition to the tests in subsection 51(1), the rules of substantiation must be met in relation to claims made against award transport (fares) allowances (sections 82KT to 82KZBB).

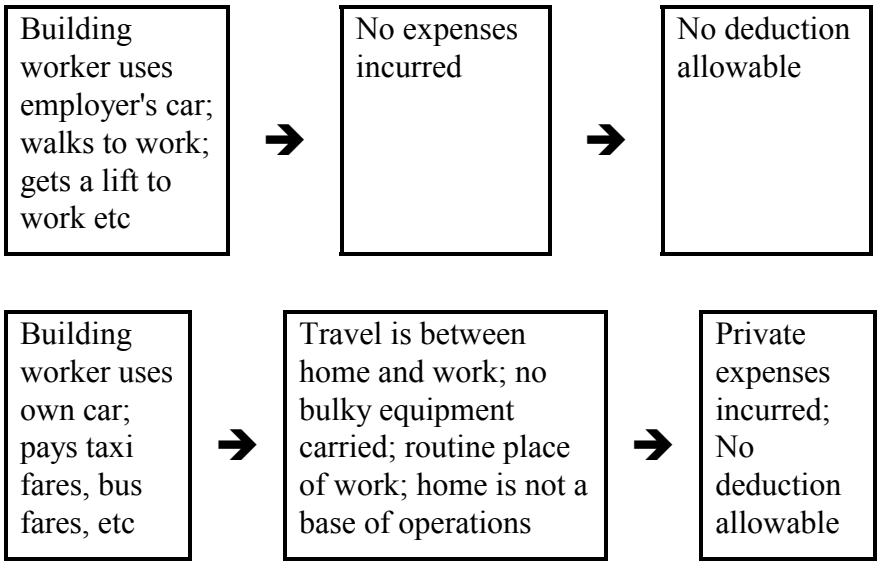
45. Building workers who claim deductions in excess of the amount of the award transport allowance payable as at 29 October 1986, must substantiate the whole of the claim, not just the excess. Deductions claimed that do not exceed the award rate as at 29 October 1986 are excluded from the substantiation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

46. The following diagram illustrates the tests of deductibility and the substantiation rules as they apply to claims for transport expenses. For further explanation, see **Transport expenses** at paragraphs 129 to 171.

Deduction allowable



No deduction allowable



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

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

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

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

Common work-related expense claims

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

Child care

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

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

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

Clothing, uniforms and footwear

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

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

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

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

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

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

(ii) approved in writing by the ATO under the transitional arrangements contained in *Taxation Laws Amendment Act No. 82 of 1994* (all such approvals cease to have effect from 1 July 1995); or

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

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

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

(iii) the expenditure is not of a private nature

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

Protective clothing

55. Protective clothing must satisfy the deductibility tests in subsection 51(1) and must not be private or domestic in nature.

56. Building workers may be provided with protective clothing by their employer (eg. overalls for the protection of their conventional clothing). Building workers may also buy additional items of

protective clothing and the cost of this clothing is an allowable deduction under subsection 51(1).

57. It is considered that heavy duty conventional clothing such as jeans, drill shirts and trousers is not protective. We consider that the cost of these items is a private expense and is not an allowable deduction (Taxation Determination TD 92/157).

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

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

60. A deduction is not generally allowable for the cost of items that provide protection from the natural environment (eg. sunglasses, sunhats, sunscreen, umbrellas and thermal underwear). The cost of these items is considered to be a private expense. This view is supported in *Case Q11* 83 ATC 41; 26 CTBR (NS) *Case 75,* and in *Case N84* 81 ATC 451; 25 CTBR (NS) *Case 43*. See also Taxation Ruling IT 2477 and Taxation Determination TD 93/244.

61. An exception to this general rule can arise if the nature of the work (rather than the natural environment) creates conditions that make it necessary for the building worker to provide protection to his or her person or clothing (eg. using chemicals or high pressure water hoses).

62. **Example:** Eric uses a high pressure hose to clean brickwork and wears heavy duty wet weather gear to protect himself and his clothing. Eric would be able to claim a deduction for the cost of buying and maintaining his protective wet weather gear.

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

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

Although this taxpayer was self-employed, the same deductibility tests as set out in paragraphs 31 to 38 applied.

Occupation specific clothing

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

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

Compulsory uniform or wardrobe

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

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

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

> '...conventional clothing of a particular colour or style does not necessarily, because of those factors alone, assume the character of a uniform. Likewise, ordinary clothing is not converted into a uniform by the simple process of asserting that it fills that role or by the wearing of a name plate, etc. attached to clothing' (ATC at 416; CTBR at 874).

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

> 'SELLING STAFF: FEMALE STAFF - To wear a plain black tailored dress, suit or skirt, plain black or white blouse, either long or short sleeved. No cap sleeved, or sleeveless dresses or blouses are to be worn' (ATC at 577).

70. The deduction for clothing was denied because there was:

> '...nothing distinctive or unique about the combination of clothing that would identify the wearer as a [name of employer] shop assistant or even a shop assistant from another department store. The colour combination of the clothing would be included in the range of acceptable street dress unassociated with business

or employment, as well as a combination of colours sometimes worn by female drink or food waiting staff' (ATC at 580).

Non-compulsory uniform or wardrobe

71. A deduction is not allowable for the purchase and maintenance costs of non-compulsory uniform or wardrobe clothing **unless** the conditions outlined in section 51AL of the Act are met. Section 51AL provides that expenditure on a non-compulsory uniform or wardrobe will be allowable under subsection 51(1) only if the design of the clothing has been entered on the Register of Approved Occupational Clothing kept by the TCFDA, or if the design of the clothing is approved in writing by the ATO under Taxation Ruling IT 2641. Transitional arrangements enabling the ATO to approve designs of non-compulsory uniforms and wardrobes will expire on 30 June 1995.

72. If building workers are provided with uniforms by their employers, that bear the employer's logo, and it is not compulsory to wear the uniform, no deduction is allowable for maintenance costs. This is unless the uniform is approved before 1 July 1995 by the ATO or registered with TCFDA.

Conventional clothing

73. The views of the ATO on the deductibility of costs of buying and maintaining conventional clothing are set out in Taxation Ruling TR 94/22. This Ruling sets out our views on the implications of the decision of the Full Federal Court of Australia in *Edwards* case. Mrs Edwards was the personal secretary to the wife of a former Queensland Governor. She was able to establish that her additional clothing expenses were allowable in her particular circumstances. In most cases, expenses for conventional clothing will not meet the deductibility tests of subsection 51(1) of the Act as they are of a private nature (see also paragraphs 26 and 27).

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

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

clothes were an aspect of her image. The taxpayer submitted to the Tribunal that her matter could be paralleled to the facts in the *Edwards* case.

76. Senior Member Barbour distinguished this case from *Edwards* case on the basis of the emphasis placed by the Tribunal and Court on Mrs Edwards' additional changes of clothes throughout a work day - a fact not present in this one - and found the essential character of the expense to be private saying (ATC at 427; ATR at 1083):

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

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

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

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

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

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

Laundry and maintenance

79. A deduction is allowable for the cost of cleaning and maintaining clothing that falls into one or more of the categories of deductible clothing listed in paragraph 54. This applies whether the clothing is purchased by the building worker or supplied by the employer.

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

Depreciation of tools and equipment

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

82. However, a deduction is allowable under subsection 54(1) of the Act for depreciation on tools and equipment owned and used by a building worker for work-related purposes. In addition, depreciation is allowable on tools and equipment that are not actually used during the year for work-related purposes but are installed ready for use for that purpose and held in reserve.

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

84. Any item of equipment bought on or after 1 July 1991 is able to be depreciated at a rate of 100% if the cost is not more than $300, or if the effective life is less than three years (section 55 of the Act). This means an immediate deduction is available for the cost of each item in the year in which it is purchased. However, the item may be depreciated at a rate less than 100% if the taxpayer so elects (subsection 55(8)). The current depreciation rates are set out in Taxation Ruling IT 2685.

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

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

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

88. An arbitrary figure is not acceptable when determining the value of equipment for depreciation purposes (*Case R62* 84 ATC 454; 27 CTBR (NS) *Case 113*). In determining the value of an item to be depreciated, its opening value is the original cost to the taxpayer less the amount of any depreciation that would have been allowed if the unit had been used, since purchase, to produce assessable income (see Taxation Determination TD 92/142).

Driver's licence

89. A deduction is not allowable for the cost of obtaining or renewing a driver's licence. The cost associated with obtaining a driver's licence is a capital or private expense. The cost of renewing a licence is a private expense.

90. In *Case R49* 84 ATC 387; 27 CTBR (NS) *Case 104*, it was held that even though travel was an essential element of the work to be performed by the taxpayer, a driver's licence was still an expense that was private in nature and was therefore not deductible under subsection 51(1).

91. Taxation Determination TD 93/108 confirms that a deduction is not allowable for the cost of renewing a driver's licence even if the holding of a driver's licence is a condition of employment.

92. Some building workers may need an endorsed licence to perform their duties. In some states, these types of endorsements do not add to the cost of the licence. However, a deduction is allowable for the cost of a premium that is paid in addition to the cost of a standard licence required for work purposes.

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

Fines

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

Meals

94. A deduction is not allowable for the cost of meals consumed by building workers in the normal course of a working day. It is our view that the cost of meals will not have sufficient connection with the

work-related activity and, in any case, the cost is a private expense and fails to meet the tests of deductibility described in paragraphs 31 to 38.

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

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

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

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

96. We do not accept that the cost of meals can be apportioned between what the cost of a home-made meal would be and the cost of a meal purchased during an ordinary working day.

97. A deduction is generally not allowable for the cost of food or meals consumed while on duty. These costs fail to meet the tests of deductibility described in paragraphs 31 to 38, and are considered to be private in nature.

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

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

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

Newspapers

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

Overtime meal allowance

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

102. A deduction is allowable for the cost of meals bought while working overtime if the expenditure meets the deductibility tests in paragraphs 31 to 38, and it is not of a private nature.

103. The general rule is that no deduction is allowed for overtime meal expenses unless documentary evidence, such as a receipt, is obtained. However, special substantiation rules apply if a building worker receives an overtime meal allowance paid under an industrial award. A deduction is allowable without substantiation, provided the claim does not exceed the allowance received and the allowance is considered reasonable by the Commissioner of Taxation (Taxation Ruling TR 94/23).

104. If a deduction claimed is more than the allowance received the building worker must have documentary evidence to support the total claim, not only the excess.

Parking fees and tolls

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

(a) between two separate places of work;

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

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

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

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

106. A deduction is not allowable for parking fees and tolls incurred when building workers are travelling between their home and their normal place of employment. The cost of that travel is a private expense and the parking fees and tolls therefore have that same private character (see exception in paragraphs 136 to 157).

Protective equipment

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

Repairs to tools and equipment

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

Self education expenses

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

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

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

(c) A deduction is not allowable if the education is designed to enable a building worker to get employment, to obtain new employment or to open up a new income earning

activity (*FC of T v. Maddalena* 71 ATC 4161; 2 ATR 541).

(d) Self education includes courses undertaken at an educational institution (whether leading to a formal qualification or not), attendance at work-related conferences or seminars, self-paced learning and study tours.

(e) Self education expenses include fees, travel expenses (eg. attending a conference interstate), transport costs, books and equipment.

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

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

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

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

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

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

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

	Deductible as self education expense?		Deductible as self education expense?	
Home	YES ➔	Place of Education	YES ➔	Home
Home	YES ➔	Place of Education	NO ➔	Work
Work	YES ➔	Place of Education	NO ➔	Home
Work	YES ➔	Place of Education	YES ➔	Work

112. **Example:** Francesco is an apprentice plumber who travels a long distance to a technical college to undertake his apprenticeship course for two consecutive days each fortnight. He is allowed a deduction for the cost of travel to and from his place of education, overnight accommodation, meals and incidentals.

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

(a) a Higher Education Contribution Scheme (HECS) payment (subsection 51(6)).

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

Limit on deductibility

114. If self education expenses are allowable under subsection 51(1) but also fall within the definition of 'expenses of self education' in section 82A, only the excess of the expenses over $250 is deductible, ie., the first $250 is not deductible.

115. 'Expenses of self education' are defined in section 82A as all expenses (other than HECS payments, Open Learning charges and debt repayments under the Tertiary Student Financial Supplement Scheme) necessarily incurred by a taxpayer in connection with a prescribed course of education. 'A prescribed course of education' is defined in section 82A as a course provided by a school, college, university or other place of education and undertaken by the taxpayer to gain qualifications for use in the carrying on of a profession, business or trade, or in the course of any employment.

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

Technical or professional publications

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

118. In *Case P124* 82 ATC 629; 26 CTBR (NS) *Case 55*, an air traffic controller was not allowed a deduction for the purchase of aviation magazines. Dr G W Beck (Member) said:

> 'His work did not require him to buy the papers and magazines...[and although]. There might be some tenuous connection between the cost of aviation magazines and the maintenance of knowledge necessary for holding a flying licence...but it seems to me that the possible connection is altogether too remote' (ATC at 633-634; CTBR at 422).

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

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

121. **Example:** Bob, a builder's labourer at a construction site, subscribes to *The Australian Woodworker*. The cost would not be an

allowable deduction as there is insufficient nexus between the expense and Bob's job.

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

Cost of calls

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

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

Installation or connection costs

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

125. In *Case M53* 80 ATC 357; 24 CTBR (NS) *Case 29*, it was held that (ATC at 359; CTBR at 236):

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

Rental costs

126. The situations where telephone rental will be an allowable deduction, especially for employees, are identified in IT 85. It states that taxpayers who are either 'on call' or required to contact their employer on a regular basis may be entitled to a deduction for some portion of the cost of telephone rental.

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

$$\frac{\text{Business calls (incoming and outgoing)}}{\text{Total calls (incoming and outgoing)}}$$

Silent telephone number

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

Transport expenses

129. Transport costs include public transport fares and the running costs associated with using motor vehicles, motor cycles and bicycles etc for work-related travel. They do not include meals, accommodation and incidental expenses (see ***Travel expenses*** paragraphs 172 to 176). The deductibility of transport costs incurred by a building worker when travelling is considered below.

Travel between home and work

130. A deduction is not allowable for the cost of travel by a building worker between home and his or her normal work place as it is generally considered to be a private expense. This principle is not altered by the performance of incidental tasks en route (paragraph 34 of Taxation Ruling MT 2027).

131. The High Court considered travel expenses incurred between home and work in *Lunney's* case. In a joint judgment, Williams, Kitto and Taylor JJ stated the following:

> 'The question whether the fares which were paid by the appellants are deductible under section 51 should not and, indeed, cannot be solved simply by a process of reasoning which asserts that because expenditure on fares from a taxpayer's residence to his place of employment or place of business is necessary if assessable income is to be derived, such expenditure must be regarded as "incidental and relevant" to the derivation of income...But to say that the 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' (CLR at 498-499; ATD at 412-413).

132. The fact that the travel is outside normal working hours or involves a second or subsequent trip does not change this principle. For more information see paragraph 6 of Taxation Ruling IT 2543, Taxation Ruling IT 112 and Taxation Determination TD 93/113.

133. **Example:** A building supervisor is phoned at his home outside normal working hours as the building site has been vandalised. He travels between his home and the building site in response to this

emergency. The cost of travel to and from the building site is not an allowable deduction.

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

135. **Example:** Jack and Bill are carpenters who are employed to construct roof trusses in their employer's factory and also to install the trusses in houses at the work site. The travel between home and either of these locations is travel to and from their normal work place. It is private and no deduction is allowable (but see paragraphs 136 to 138).

Travel between home and work - transporting bulky equipment

136. A deduction is allowable if the transport costs can be attributed to the transportation of bulky equipment rather than to private travel between home and work (see *FC of T v. Vogt* 75 ATC 4073; 5 ATR 274).

137. A deduction is not allowable if an employer:

(a) provides a secure area for the storage of equipment at the work place; or

(b) provides insurance cover for stolen equipment; or

(c) has a policy of compensating for, or replacing, stolen equipment (see *Case 59/94* 94 ATC 501; *AAT Case 9808* (1994) 29 ATR 1232).

138. **Example:** Charlie, a bricklayer, uses his car to travel to the work site each day in order to transport his trowels, levels, lines, hammer, mortar boards and other equipment. There is no secure place on site for storage of these items. His employer also does not have insurance cover for, nor a policy of compensating for or replacing stolen equipment. Because of the bulk of this equipment, Charlie would be entitled to claim a deduction for his car expenses.

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

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

140. A deduction is allowable for transport costs incurred where a building worker is travelling **on** his or her work, as distinct from travelling **to** his or her work. In other words, the building worker's

home is a base of operations, in that some part of the work is done at home, or the work is commenced at or before the time of leaving home to travel to work.

141. There have been a number of cases considered by courts and tribunals where deductions for transport expenses were allowed on the basis that the taxpayer's home was a base of operations. Characteristics recognised in these cases as contributing to the conclusion that a taxpayer's home is a base of operations are:

(a) The nature of the job itself makes travel in the performance of its duties essential, and the taxpayer may be said to be travelling in the performance of his or her duties from the moment of leaving home to the moment of return (*FC of T v. Ballesty* 77 ATC 4181; (1977) 7 ATR 411).

(b) The performance of the duties of the job commences before leaving home. The obligation is more than just being on stand-by duty at home (*FC of T v. Collings* 76 ATC 4254; (1976) 6 ATR 476 (*Collings* case)).

(c) The taxpayer does not choose to do part of the work in two separate places. The two places of work are a necessary obligation arising from the nature of the special duties of the job (*Collings* case).

142. **Example:** Samantha is a building supervisor at a Cairns resort development. The site operates 16 hours a day, 7 days a week. Samantha's usual pattern of work is to attend at the site from 7am to 4pm from Monday to Friday. She is required to be on call outside these hours. Usually, when a problem arises, she is able to handle it over the telephone from home. If she gives instructions over the telephone, and then has to travel to the site to deal with the problem, a deduction is allowable for her transport costs. Samantha's home is a base of operations and, **on these occasions**, she commences work at home and is travelling on her work.

143. The reasons for this view are:

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

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

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

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

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

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

146. The reasons for this view are:

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

(ii) Jim is under no obligation to accept the offer of work and hence accessibility at home is not something that would be said to be required of him in the course of his employment;

(iii) Jim's duties do not commence upon receipt of the telephone call but rather when he reaches the depot or work site.

147. **Example:** Jock is a builder's labourer who, for the last 9 months, has had three regular employers, Tom, Dick and Fred. His regular weekly work pattern involves working at different sites for each builder, as follows:

Monday:	Home→Tom's work site in suburb A→Home
Tuesday:	Home→Dick's work site in suburb B→Home
Wednesday:	Home→Fred's work site in suburb C→Home
Thursday:	Home→Tom's work site in suburb A→Home
Friday:	Home→Dick's work site in suburb B→Home

Jock carries a small toolbox with a hammer, pincers, small pinchbar, lunch and his Thermos. The toolbox is neither bulky nor heavy. He usually uses his car to travel to and from work, but has occasionally used public transport. Jock is not entitled to a deduction for his travel costs.

148. The reasons for this view are:

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

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

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

(iv) Jock's home is not considered to be a base of operations.

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

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

The transport costs incurred by the taxpayer in travelling between her home and work were not allowed as 'the taxpayer was not travelling on her work', per T J McCarthy (Member) (ATC at 451; CTBR at 945).

Travel between home and shifting places of work

150. There have been a number of cases considered by courts and tribunals where deductions for transport expenses were allowed on the basis of the taxpayers' shifting places of work (see *Taylor v. Provan* [1975] AC 194; *FC of T v. Genys* 87 ATC 4875; (1987) 19 ATR 356; *Case T106* 86 ATC 1192; *AAT Case 17* (1986) 18 ATR 3093). Characteristics recognised in these cases as contributing to deductions for transport expenses being allowable where the taxpayer has shifting places of work were:

(a) the taxpayer does not work according to any regular pattern as to work site (*Case T106*).

(b) there is no long term plan by which the taxpayer can predict what is required of him or her in the future (*Case T106*).

(c) there is no certainty as to the range of work sites he or she may be called upon to attend over a period (*Case T106*).

(d) the taxpayer is required by the nature of the job itself to do the job in more than one place (*Taylor v. Provan*). The taxpayer does not choose to do part of the work in more than one place. The separate places of work are a necessary obligation arising from the nature of the special duties of the job (*Collings* case).

151. In *Case T106*, the taxpayer worked at sites 'at many different compass points'. On any one day it was not unusual for him to attend at 2 sites and often he was required to attend at different sites on successive days. P M Roach (Senior Member) said (ATC at 1194; ATR at 3095):

> 'In each case the question to be determined is how the travelling between the place of residence and place of duty is to be characterised...He does not work to any regular pattern as to work site; there is no long-term plan by which he can predict what will be required of him in the future; and there is no certainty as to the range of work sites he may be called on to attend over a period. In my view his occupation is that of an itinerant worker...As such his travelling is to be distinguished from the travel of "ordinary people to enable them to go day by day to their regular places of employment or business and back to their homes..." '

152. In cases where no deduction was allowed for the cost of travel between home and work, the following characteristics were noted:

(a) the taxpayer knew in advance where he was going to work (*Case U97* 87 ATC 584; *AAT Case 68* (1987) 18 ATR 3491);

(b) the taxpayer had 'a home station' (*Case U97*);

(c) the taxpayer had a principle place of duty as a matter of routine, even though that may have changed at intervals of several months (*Case U29* 87 ATC 229; *AAT Case 32* (1987) 18 ATR 3181);

(d) there was a settled pattern of employment (*Case U97*);

(d) there was not 'a web of work places' (*Case U97*);

(e) there is not the constant unsettled transition from one workplace to another, the element of uncertainty, the

> official recognition by the employer of the essential nature of the travel, or even the requirement to carry tools of trade (*Case U97*).

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

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

Senior Member McMahon went on to say:

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

154. **Example:** Dan, a builder's labourer, is regularly dispatched by his employer to a different site each day. On occasions he may stay at a site for a few days, but quite frequently he has to travel to more than one site on a given day. The sites are all at varying distances from his home and he often receives only short notice of the location of his next job. A deduction is allowable for Dan's transport costs as he has shifting places of work. It is not considered that his home is a base of operations.

155. The reasons for this view are:

(i) Dan does not work to any regular pattern;

(ii) There is no long term plan by which he can predict what will be required of him in the future;

(iii) There is no certainty as to the range of work sites he will attend over a period.

156. **Example:** Sally, a plumber's offsider, is dispatched to work on various sites giving assistance to plumbers. Sally usually knows well in advance the sites that she will be required to attend, although she does get an occasional emergency telephone call dispatching her to a different site on the following day. Once she arrives at a site, Sally remains there for the day. A deduction is not allowable for Sally's transport expenses.

157. The reasons for this view are:

(i) The settled pattern of employment does not lead to a conclusion that there are shifting places of work, even

though Sally is not required to work at the same work site every day;

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

(iii) There is not a constant unsettled dispatch from one work place to another;

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

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

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

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

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

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

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

162. **Example:** David, a building supervisor, travels from his normal work site to his employer's head office to attend a meeting. After the meeting he travels directly home. The cost of each journey is an allowable deduction to David.

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

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

164. **Example:** Janet, an apprentice electrician, is required to travel from home to assist with some emergency repairs at her employer's head office. She then travels to her normal work place. The cost of travelling from home to the head office and then on to the normal work place is an allowable deduction. However, the cost of travelling home from the normal work place is not an allowable deduction.

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

165. A deduction is allowable for the cost of travelling directly between two places of employment or between a place of employment and a place of business. This is provided that the travel is undertaken for the purpose of engaging in work-related activities.

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

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

168. A deduction is not allowable for the cost of travel between a person's home at which a part-time work-related activity is carried on, and a place of full-time employment, unless there is some aspect of the travel that is directly related to the part-time activity (*Case N44* 81 ATC 216; 24 CTBR (NS) *Case 114*).

169. In this case, a qualified accountant, employed by a firm of accountants, conducted a limited private practice from his home. He set up a separate room in his home as an office. The taxpayer claimed a deduction for car expenses incurred in travelling between his residence/office and his place of employment. The fact that the

taxpayer's home was, incidentally, used in the production of income was insufficient to make the travel between his home and his place of employment an outgoing incurred in the production of assessable income. The travel retained its essential character of travel between home and work and therefore, it was not an allowable deduction.

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

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

Calculation of motor vehicle balancing adjustment

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

Travel expenses

173. Travel expenses include the costs of accommodation, fare, meals and incidentals. A deduction is not allowable for travel expenses unless documentary evidence is obtained.

174. A deduction is allowable for the costs incurred by a building worker in undertaking work-related travel. An example is where a building worker attends a seminar interstate.

175. No substantiation is required if the building worker receives a travel allowance that the Commissioner considers is reasonable and the deduction claimed does not exceed the amount of the allowance.

176. If the building worker receives an allowance that is less than the reasonable rates, a deduction up to the amount of the allowance received is allowable without the need for substantiation.

177. Claims that exceed a reasonable allowance must be substantiated in full (Taxation Ruling TR 94/23).

Union or professional association fees and levies

178. A deduction is allowable for the cost of union or professional association fees. Taxation Rulings IT 299, IT 327, IT 2062 and IT 2416 provide further information on the deductibility of union and professional association fees.

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

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

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

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

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Your Comments

183. If you wish to comment on this Draft Rulings, please send your comments by: 5 May 1995
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