

TR 93/19 - Income tax: employees' work-related deductions within the airline industry

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Taxation Ruling

Income tax: employees' work-related deductions within the airline industry

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

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What this Ruling is about

1. This Ruling deals with deductions for work-related expenses generally claimed by certain employees within the airline industry, viz flight attendants, flight engineers, pilots and ground engineers. The Ruling discusses whether or not deductions are allowable under either subsection 51(1) or section 54 of the *Income Tax Assessment Act 1936*.

2. While employment-related expenses over \$300 in total need to be substantiated by documentary evidence (section 82KZ) to be allowable under subsection 51(1), this Ruling does not discuss these substantiation requirements in detail.

Ruling

3. Deductions in respect of these work-related expenses are treated in the following ways:

Luggage: Depreciation deductions are allowable for the purchase costs of luggage for flight attendants, pilots and flight engineers. Deductions are not allowable for ground engineers.

Transportation of luggage: Deductions for the cost of transporting luggage to and from the airport are not allowable.

Luggage trolleys: The cost of the purchase of luggage trolleys is an allowable deduction to flight attendants, pilots and flight engineers.

Transportation of tools: Deductions for cost of transporting tools to and from the airport are allowable providing there is insufficient security at the airport, providing there is not an insurance or compensation scheme to cover theft and providing they are too bulky to be reasonably transported on public transport.

Depreciation of tools: Depreciation deductions are allowable for the cost of tools.

Anti-glare glasses: Deductions are allowable for the cost of anti-glare glasses in respect of pilots and flight engineers.

Stockings: Deductions are not allowable for the cost of purchasing stockings.

Shoes: In respect of flight attendants, deductions are not allowable for the cost of purchasing shoes. Deductions are available to pilots and flight engineers for expenditure on special non-slip footwear.

Protective clothing: In respect of ground engineers, deductions for the cost of purchasing protective clothing are allowable.

Uniform maintenance: Deductions for the cost of maintaining a uniform are allowable.

Grooming: Deductions for the cost of grooming, including cosmetics, skin care products and hairdressing are not allowable.

Calculators: Deductions for the cost of calculators and calculator batteries are allowable.

Timepieces: Deductions for the cost and maintenance of timepieces are not allowable.

Telephones and mobile telephones: The cost of business calls are an allowable deduction. Deductions for the cost of telephone rental are to be apportioned on business/private usage.

Beepers and answering machines: These items are dealt with in the same manner as telephones.

Stationery and diaries: Deductions for the cost of certain items of stationery are allowable.

Technical journals and periodicals: Deductions are allowable for the cost of technical journals and periodicals providing a close nexus between the nature of the publication and the day to day duties of the job is demonstrated.

Language studies: Deductions are allowable to flight attendants for the costs incurred in undertaking relevant language studies.

First aid training: Deductions are allowable for flight attendants for the costs incurred in obtaining first aid training.

Licences: Deductions for the cost and renewal of relevant business licences are allowable.

Medical examinations for licence renewal: Deductions for the costs associated with medical examinations for the renewal of relevant business licences are allowable.

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Salary guarantee and loss of licence insurance: Premiums in respect of salary guarantee and loss of licence insurance are allowable deductions in circumstances where the eventual benefits are assessable.

Overtime meal allowances: Deductions are allowable against reasonable overtime meal allowances.

Travelling allowances: Deductions are allowable against eligible travelling allowances.

Isolated establishment allowances: Deductions against an isolated establishment allowance are not allowable.

Cash/bar shortages: Deductions are allowable for the cost of making up cash or bar shortages.

Explanations

4. Whether or not a deduction is allowable for the type of expenditure set out in this Ruling is determined by looking at subsection 51(1) or section 54. If the deduction satisfies subsection 51(1) or section 54, then other provisions such as the substantiation provisions need to be satisfied, although detailed explanations of the substantiation provisions are not generally provided in this Ruling.

Luggage

5. Flight attendants, pilots and flight engineers need to travel in the course of their employment. Therefore, in order to carry out their duties it is necessary for them to incur the cost of travel bags, overnight bags, suitpacks, navigation bags and suitcases.

6. Generally speaking, the cost of items such as travel bags and kit bags is capital and not allowable as a general income tax deduction. Instead, depreciation deductions are allowable under section 54. It has been longstanding Office practice to allow an immediate deduction in the year of purchase for such items where the cost did not exceed \$100 (Taxation Ruling IT 2261). If the cost exceeded \$100, the cost would be depreciated. The annual rate of depreciation has varied over time. The current rates are set out in Taxation Ruling IT 2685. Earlier rates are set out in Income Tax Order 1217.

7. However, under amendments to the depreciation provisions, the depreciation rate is now 100% for items purchased on or after 1 July 1991 if the cost is not more than \$300 or if the effective life is less than three years (section 55). This means that an immediate deduction is available for the cost of such items in the year they are first used for

income-producing purposes. Accordingly, the practice mentioned in the preceding paragraph only applies to items purchased before 1 July 1991.

8. Ground engineers however, are not allowed a deduction for luggage expenses. Only in very isolated instances, are ground engineers required to travel in order to assist in picking up aircraft. As the incidence of travel is so isolated, it is considered that the essential character of the expenditure is private in these cases, and therefore a deduction is not allowable.

Transport luggage to and from airport

9. The expenses incurred by airline employees in transporting luggage to and from the airport are considered to be private in nature and are not an allowable deduction under subsection 51(1).

10. In *Case L49*, 79 ATC 339, 23 CTBR (NS) *Case 56*; an airline pilot was not allowed a deduction for expenses incurred in transporting luggage to and from the airport. The pilot relied upon several arguments. These were:

- that he used his home as an office and that the transport was therefore between two places of work;
- that, because the suitcase and satchel were heavy (as in *FC of T v. Vogt* 75 ATC 4073; 5 ATR 274 and *FC of T v. Ballesty* 77 ATC 4181; 1977 ATR 411), public transport was unsatisfactory and illegal; and
- that, to avoid emotional stress before a flight, he used his vehicle.

11. The majority of the Board of Review dismissed these arguments for the reasons set out in the following paragraphs.

12. The taxpayer's duties commenced when he 'signed on' at the airport for a flight or, on other occasions of mandatory attendance. The other operations which he performed at home were not matters associated with the duties of his office or employment (at ATC p. 342; CTBR p. 469).

13. 'The taxpayer had the normal accoutrements of a travelling businessman, a bulky suitcase and a hand satchel. But this bulk is hardly such as to suggest that the accoutrements were being transported primarily, and the taxpayer obtained an incidental (and "tax free") ride.' (at ATC p. 342; CTBR p. 469). The personal accoutrements were not considered to be the equivalent of 'plant', as in the case of *Vogt* (at ATC p. 342; CTBR p. 469).

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14. No evidence was found that the taxpayer used his car to meet the 'needs for physical and psychological conditioning' as was held in *Ballesty* (at ATC p. 342; CTBR p. 469).

15. Finally, regarding the assertion that the transporting of bulky luggage on public transport was 'illegal', it was considered that the articles were of insufficient bulk to contravene the regulations (at ATC p. 342-343; CTBR p. 470).

16. In *FC of T v. Genys*, 87 ATC 4875; (1987) 19 ATR 356, the Commissioner appealed against the decision in *Case UI7*, 87 ATC 175, AAT Case 26 (1986) 18 ATR 3151 which allowed a registered nursing sister a deduction for expenses incurred in travelling between home and various hospitals on the basis that her employment was characterised by an agency telephoning her about shifts at very short notice (i.e., it was argued that she was an itinerant worker). The appeal by the Commissioner was upheld. It was stated that the mere receipt of telephone calls from the agency requesting the taxpayer to work was not sufficient to constitute the taxpayer's home as a place of work. The taxpayer had argued that she needed to keep her travel time to a minimum if she were to fulfil the requirements of her particular employer. This argument was not accepted because she was in a similar position to thousands of employees who have to be on standby at their homes. Such employees do not have two places of work. Finally, the taxpayer's employment could not be considered to be 'itinerant' in that she simply drove from home to work and back again.

17. By way of contrast, the Supreme Court of N.S.W. in *FC of T v. Vogt*, 75 ATC 4073; (1975) 5 ATR 274 allowed a deduction for travelling expenses to and from home by a musician. The reasons given were that, for the purposes of subsection 51(1), the expenditure was incurred as part of the operations by which the taxpayer earned his taxable income. There was no other way for the taxpayer to transport his many and bulky instruments to the places where he was to perform. Thirdly, the expenditure related specifically to the carriage of the instruments and not to the actual travel by the taxpayer.

18. It is considered that the circumstances involving the airline employees' transportation of luggage to and from the airport are consistent with those outlined in *Case L49*; *Case 56* and the conclusion reached therein, and not consistent with those of *FC of T v. Vogt*.

19. It is considered that the pilots', flight attendants' and flight engineers' deductions for expenses incurred in transporting luggage to and from the airport do not satisfy the requirements of subsection 51(1) and are therefore not allowable. Taxation Rulings IT 112, IT 113 and IT 2543 detail the cases mentioned above and further cases

on the matter and generally explore the deductibility of the cost of travel to and from work.

Luggage trolleys

20. Flight attendants, pilots, flight engineers may, while on business, choose to transport their luggage on a portable personal luggage trolley. The cost of these trolleys is an allowable deduction under subsection 51(1).

Transport tools to and from airport

21. Ordinarily, the cost of travel between a taxpayer's home and place of work is not deductible - *Lunney v. FC of T*; *Hayley v. FC of T* (1958) CLR 478; 7 AITR 166. Our policy on the deductibility of expenses incurred in travelling between home and work is set out in Taxation Rulings IT 112, 113 and 2543.

22. In relation to the specific situation of a ground engineer incurring expenses in travelling between home and work whilst carrying tools, the following factors are considered to be relevant:

- i) Whether the employer has a policy of compensation for, or replacement of, or insurance cover for tools stolen from the airport;
- ii) Whether the employer provides a secured compound or area at the airport to store the tools after work; and
- iii) Whether the weight and/or bulkiness of the tools transported allows them to be carried on public transport.

23. In *Case Z22*, 92 ATC 230; *AAT Case 7944*, 23 ATR 1189 involving an aircraft maintenance engineer with a 15kg tool bag, the Tribunal stated that '... he carries the bag over his shoulder and, although it gets heavy after carrying it for an extended period, no other valid reason for not using public transport was presented. ... [The aircraft maintenance engineer] ... would not have to carry or hold the bag once on public transport and it is difficult to see why it should be regarded as being especially awkward; for example, in comparison to a heavy attache or briefcase.' (at ATC p. 233; ATR p. 1193). A secured compound did exist at the airport and he left the larger tools there. A major consideration in the Tribunal's not allowing the claim was that the taxpayer could have kept the tools "more" secure at the airport security compound than at home and that he could have used public transport.

24. In *Case UI07*, 87 ATC 650; *AAT Case 75*, 18 ATR 3544 a ground maintenance engineer was allowed a deduction for the expense

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of transporting his tools to and from the airport on the grounds that the two substantial tool boxes were of such size and weight that they could not reasonably have been transported on public transport. Additionally, there was evidence that the tools could have been stolen from the compound and that their replacement value was not covered by the employer.

25. Conditions at airports vary considerably across the country. In situations where the employer provides a secured compound or insurance coverage, or has a policy of compensation or replacement of tools stolen, it is our view that expenses incurred in travelling between work and home are not allowable. Where no security etc., is provided, the circumstances of each case must be examined to decide whether the expense is allowable. One factor would be whether the tools actually transported on a particular journey are of such weight and bulk as to make it impracticable for them to be carried on public transport.

Depreciation of tools

26. The cost of tools by both apprentice ground engineers and ground engineers out of apprenticeship is treated in the same way. Tools are generally capable of being used for a number of years and so their cost is considered to be capital and not immediately deductible as a general deduction. Instead, depreciation deductions are allowable. The current depreciation rates are set out in Taxation Ruling IT 2685. Earlier rates are set out in Income Tax Order 1217.

27. For some items, there is an option of claiming the cost of replacements instead of depreciating the cost of initial purchases. Under this replacements basis, no deduction is allowed for the cost of initial purchases but the cost of replacements is fully deductible. Items for which the replacements basis is acceptable are also identified in Taxation Ruling IT 2685 and Income Tax Order 1217.

28. The tools mentioned in the two preceding paragraphs are subject to the 100% depreciation rate available for items purchased on or after 1 July 1991 and costing not more than \$300 or with an effective life of three years or less.

Anti - glare glasses

29. The purchase of anti-glare glasses and whether they are an expense of a private and domestic nature was addressed in *Case U124 87 ATC 741*; AAT Case 87 (1987) 18 ATR 3624. The case involved a visual display unit operator. It was decided in this case that '... the glasses cannot be equated with conventional clothing or with glasses

intended to correct defective vision: they are protective equipment .' (at ATC p. 743; ATR p. 3625). The reason for allowing the deduction was that the taxpayer is not required to use the glasses in any other daily function other than those specifically related to her occupation. 'At the end of the working day, she would leave the glasses in her desk drawer.' (at ATC p. 742; ATR p. 3625). As a consequence of these factors, a deduction was allowed.

30. The circumstances in this case are consistent with the those of pilots and flight engineers in the airline industry. These employees are subject to extreme levels of glare experienced at the altitude at which they fly. This intensity of glare is not normally found at ground level. The special aviation glasses are not normal sun glasses and are used only while flying. Like the visual display unit operator, pilots and flight engineers are required to closely and constantly monitor instrument panels on the flight deck in respect of navigation, blind flying and engine information. In that sense and in the sense that the glasses are worn because of the extra glare experienced at extreme heights, the wearing of anti-glare glasses is a safety measure, and distinguishes their circumstances from those of drivers at ground level. Consequently, the expense incurred by pilots and flight engineers in purchasing anti-glare glasses is allowable under subsection 51(1).

31. The conditions referred to in the preceding paragraph do not apply to flight attendants and ground engineers and deductions in respect of anti-glare glasses are not allowable.

Stockings

32. Expenditure on stockings is non-deductible as it is considered to be of a private nature and not incurred in gaining or producing assessable income. This decision has taken into consideration the fact that flight attendants are required to wear corporate coloured stockings as part of their uniform and that support-stockings may be worn as a preventative measure against varicose veins and other health problems.

33. The same tests apply to stockings as those that were employed in determining the deductibility of expenses for shoes and clothing . In *Case N97*, 81 ATC 521; 25 CTBR (NS) Case 50 (which involved a registered nurse) Dr Gerber (Member) stated that 'Stockings, by their very nature, are part of conventional attire - whether worn under protest or otherwise ...' and added later '... there is nothing unique about stockings which would single out a person wearing them as being a nurse ...' (at ATC p. 524; CTBR p. 369).

34. *Case U95*, 87 ATC 575 refers to a shop assistant's deduction for the purchase of black and white uniform, shoes and stockings. The

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deduction was not allowed on the basis that it was of a private and domestic nature.

35. In *Case H32*, 76 ATC 280; 20 CTBR (NS) *Case 85*, the expense for stockings damaged at work was not allowed. In the case it was stated that, 'True, it is that damage occurs to her stockings during her hours of duty, but that has nothing really to do with procedures and methods relating to the performance of her duties ...' (at ATC p. 282; CTBR p. 909).

36. In *Case P117*, 82 ATC 591; 26 CTBR (NS) *Case 43*, a secretary was not allowed expenses for support-stockings which were purchased to overcome an '... affliction known as pulmonary embolism' (at ATC p.593; CTBR p. 352). It was stated that the expense was of a private nature and '... the requirement to wear the supphose was one which was not due to her conditions of employment but to a disability peculiar to the taxpayer.' (at ATC p. 593; CTBR p. 352).

Shoes

37. The deductibility of expenses for shoes was considered in *Case U95*, 87 ATC 575. In this case a shop assistant was not allowed the expense on the grounds that her claim was of a private and domestic nature and therefore did not satisfy the requirements of subsection 51(1). The reasons for this decision were that there was nothing distinctive or unique about the clothing - the colour being acceptable for street dress and that it could be purchased and worn by members of the public who were unassociated with the taxpayer's employment (p580). Additionally, the shoes and clothing did not have any protective qualities.

38. The deductibility of shoes was considered in Taxation Ruling IT 2641, paragraph 10(i) where the Commissioner considered the cost of shoes to be generally of a private nature.

39. Flight attendants currently wear shoes of a particular designated colour to match their uniforms. In addition to the colour, the shoes need to be a certain style and height. They may also choose to wear a flat pair of shoes on the plane (cabin shoes) which may be slightly larger than their usual shoe size to allow for swelling of the feet during a flight. These shoes are not peculiar to the industry and are not unsuitable for activities other than work. Therefore, shoes (including cabin shoes) possess neither protective features nor features which are distinctive or unique to the occupation and are not an allowable deduction.

40. It is the current practice for pilots or flight engineers carry out a safety inspection of the aircraft prior to take-off. As the tarmac is sometimes oily and greasy, pilots and flight engineers may elect to

wear special non-slip footwear. We accept that expenditure by pilots and flight engineers on these special non-slip shoes is deductible under subsection 51(1) on the basis that it is expenditure on protective clothing.

Protective clothing

41. Ground engineers are often provided with clothing by their employer for the protection of their conventional clothing, for example overalls and wet weather gear. However, they may choose to purchase additional items in certain instances. The cost of this type of clothing and its maintenance is an allowable deduction under subsection 51(1).

42. Taxation Determination TD 92/157 provides further information on the deductibility of expenditure on clothing.

Uniform maintenance

43. Under current arrangements, flight attendants, pilots, flight engineers and ground engineers are supplied with uniforms of various types by their employer. These uniforms are unique and peculiar to the industry. The airlines do not provide cleaning arrangements for their employees and deductions for the expenses incurred in the cleaning and maintenance of these uniforms are allowable under subsection 51(1).

44. Further information can be found in Taxation Ruling IT 2452 which outlines the method of home laundry calculation and the necessity for the taxpayer to substantiate laundry expenses where the total work-related expenses exceeds \$300.

Grooming (cosmetics, skin care, hairdressing)

45. A deduction for expenses incurred in the purchase of cosmetics and skin care products is not allowable even if an allowance has been paid by the airline company. In considering this matter, it has been divided into two separate components - the first being purely cosmetics such as lipstick, eyeshadow etc., and the second, skin care products such as moisturisers. Expenses for cosmetics and skin care products are not allowable as they do not satisfy the provisions of subsection 51(1) because they are essentially of a private nature.

46. In *Case N34*, 81 ATC 178; 24 CTBR (NS) *Case 104*, a flight attendant was allowed a deduction for cosmetic expenses. However, the reasoning in this decision is inconsistent with that in more recent Administrative Appeals Tribunal decisions involving expenditure on cosmetics by employees who are required to maintain very high

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standards of personal grooming. We consider *Case N34*; *Case 104* to be incorrect in so far as it relates to expenditure on cosmetics for the reasons set out in the following paragraphs.

47. In *Case V143* 88 ATC 899; *AAT Case 4608* (1988) 19 ATR 3872, a marriage celebrant claimed expenses for both personal clothing and cosmetics. Although she was expected to maintain a very high standard of personal grooming for the purpose of her occupation which included the wearing of make-up as part of her overall personal presentation, the claim was not allowed as being a private expense. The Senior Member referred to the four 'relevant considerations' from *Case U95*, 87 ATC 575 (at p. 580) which he applied to the claims for both clothing and cosmetics and upon which he based his decision:

- i) express or implied requirement of the employer or business', concerning the expenditure.
- ii) the extent to which the ... [cosmetics] ... is distinctive or unique to the nature of the employment or business having regard to particular, special or accepted work ... requirements, including its availability to be worn by members of the general public'.
- iii) the extent to which the ...[cosmetics are] ... used solely for work'.
- iv) the extent to which the ... [cosmetics are] ... unsuitable for any activity other than work' (at ATC p. 905; ATR p.3878).

48. The marriage celebrant fully satisfied the first of the considerations, but failed to satisfy the remaining three. In summing up it was stated that 'Important though the contribution ... may be to the total presentation of the taxpayer as a marriage celebrant and, despite the fact that neglect in ... these matters might destroy the value in otherwise being well-dressed, I am not persuaded that, in any of these matters, the income-earning activities put the applicant to any expense such as would not ordinarily and properly be understood as being "private" in character.' (at ATC p. 906; ATR p. 3879).

49. The flight attendants' claim for cosmetic expenses directly follows this case. They, too, are required to maintain a particularly high standard of personal grooming whereby cosmetics are a compulsory part of the overall personal presentation of the attendant and consequently the first of the above four considerations is satisfied. However, as in the case of the marriage celebrant, the three remaining considerations are not satisfied. The cosmetics are not unique to the nature of the occupation (they are suitable for most types of employment), they may be readily purchased and worn by the general public and are commonly used for social occasions unrelated to the gaining of assessable income.

50. In *Case U216*, 87 ATC 1214, a female waitress claimed cosmetic expenses as it was an express condition of her employment. This claim was not allowed because it was private expenditure under subsection 51(1). The Tribunal referred to *FC of T v. D.P. Smith*, 81 ATC 4114; 11 ATR 538 and in that case it was decided that the expenditure must be both incidental and relevant to the regular activities carried out in the production of income. The Tribunal found however, that the cosmetic expenses were '... neither relevant nor incidental to the very acts or operations directly engaged in by the applicant in the gaining of her assessable income as a waitress' (p.1215). The Tribunal added, '... I regard the purchase of cosmetics by the applicant as a classic example of private expenditure incurred as part of her day to day living expenses'. (p1216).

51. It is not sufficient to say that unless the expenditure is incurred, the taxpayer cannot earn his or her income and that, therefore, the expenditure is deductible. The correct legal position was described by Lockhart J in the decision of the Full Federal Court in *FC of T v. Cooper* 91 ATC 4396 at pp. 4401 to 4402; (1991) 21 ATR 1616 at p. 1622:

'The question whether the additional expenditure of the taxpayer is deductible under s.51(1) cannot be answered simply by a process of reasoning that, because expenditure of this kind is a prerequisite to the earning of the taxpayer's assessable income (in the sense that it is necessary if assessable income is to be derived), it must be incidental and relevant to the derivation of income. It does not follow that such expenditure is incurred in or in the course of gaining or producing the income. The deductibility of the expenditure depends upon determining the essential character of the expenditure itself and not upon the fact that, unless it is incurred, the taxpayer will not be able to engage in the activity from which his income is derived'.

52. Airline employees have argued that skin care products such as moisturisers are necessary for their occupation, as dry skin may result from working in an air conditioned environment with low humidity levels.

53. In *Case Q11*, 83 ATC 41; 26 CTBR (NS) *Case 75*, a lawn mowing contractor claimed expenses for protective sun lotions. As his work was carried on outdoors, he saw it appropriate to protect himself from sunburn by the use of sunscreen creams. In not allowing the deduction the Board of Review said: '... a man ... protecting himself from skin damage is acting in a private capacity and the expenditure is thus of a private nature and excluded by subsection 51(1).' (at ATC p. 43; CTBR p. 525).

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54. We consider that the decision to use moisturisers is a personal choice and the expenditure does not satisfy the requirements of subsection 51(1) being essentially of a private nature.

55. Hairdressing expenses incurred by flight attendants are also not allowable under subsection 51(1) as they are considered to be an expense of a private nature. This decision is supported by the following cases: *Case N34*, 81 ATC 178; 24 CTBR (NS) *Case 104*, *Case L61*, 79 ATC 488; 23 CTBR (NS) 680, *Case U217*, 87 ATC 1216 and *Case R54*, 84 ATC 408; 27 CTBR (NS) *Case 108*.

56. It is possible to see the contrast between the cases mentioned above and *Case P90*, 82 ATC 431; 26 CTBR (NS) *Case 24* in which a hairdressing deduction was allowed to a theatrical dancer. This case is consistent with the decision not to allow similar deductions made by flight attendants in that the dancer's expenses are unique to her employment as she was required to arrange her hair in a certain style in accordance with the theatrical role she was playing. It is not considered that flight attendants hairstyles are unique to their occupation and therefore any expenses incurred are considered to be private in nature.

Calculators

57. Flight attendants, pilots, ground engineers and flight engineers are entitled to a deduction for the cost of calculators, and calculator batteries where they are used directly in earning their income.

58. Calculators are required by both domestic and international flight attendants to convert accepted foreign currency to Australian dollars for the purchase of drinks, duty free items etc., during flights. It should be noted that domestic airlines also accept major foreign currencies from passengers boarding directly after transfer from international flights.

59. In relation to pilots and flight engineers, the cost of a calculator is an allowable deduction, as calculations need to be made constantly in relation to air speed against approaching storms, conversions from miles to kilometres etc.

Timepieces

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

61. In making this decision, it was taken into consideration that airline employees need to accurately record their time of arrival

according to the local time of their base. To properly do this, time zones and daylight saving arrangements need to be taken into consideration. Also it has been argued that alarm clocks are necessary for employees to ensure that they wake on time to commence duty.

62. Pilots have access to clocks in the cockpit, and may use them to advise passengers of expected times of arrival etc.,.

63. In *Case S82*, 85 ATC 608; 28 CTBR (NS) *Case 87* a nursing sister was not allowed a deduction for a watch that was used in the course of her employment. The Board's decision was that the watch was 'an item of a private nature ... [and] ... The use of a watch or other timepiece ... is important to most people in the community whether it be used ... to ensure not commencing work too early or finishing too late; or to log overtime ...' (at ATC p. 612; CTBR p. 682).

64. In *Case P71*, 82 ATC 338; 26 CTBR (NS) *Case 3* an ambulance officer was not allowed a deduction for a watch claimed under subsection 51(1); nor was he allowed the deduction under section 54. It was decided that the expense was essentially of a private nature and not incurred in gaining assessable income. 'The evidence does not provide any basis either for concluding that the taxpayer's employment would be threatened by his failure to own a watch and use it for official purposes, or that the level of income was improved by using it for that purpose ...' (at ATC p. 341; CTBR p. 17)

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

Telephones and mobile telephones

66. Flight attendants, pilots, licensed aircraft maintenance engineers and flight engineers need, at times, to be on hand for additional shifts. They need to contact the airline, or be contacted by the airline on a regular basis to determine if or when they are required for work. For these contacts to be made, the use of a telephone or mobile telephone is necessary. Therefore, the expense incurred in the making of business calls is an allowable deduction under subsection 51(1). Installation costs, however, are considered to be a capital expense and are therefore not allowable.

67. Deductions for the cost of telephone rental should be apportioned according to the use made of the telephone and that an appropriate basis for such apportionment would be the ratio of incoming and outgoing business calls to private calls.

Beepers and answering machines

68. Beepers and answering machines may be used by employees so that they may be contacted by their employer. We consider that these items fall into the same category as telephones. Accordingly, the calculation of the allowable portion of any rental expenditure incurred is the same as for telephone rental expense. If an item is purchased, the cost is depreciable and the relevant business portion is allowable.

Stationery and diaries

69. As a current condition of the Civil Aviation Authority, all pilots and flight engineers are required to maintain log books for all flights undertaken. Additionally, pilots may require flying charts (and associated binders), or update those supplied by the airline company. The cost of log books for flight engineers and log books, charts and binders for pilots, are allowable deductions under subsection 51(1).

70. Flight attendants, flight engineers, pilots and ground engineers use a diary in the course of their employment. This is necessary to record details of all flights undertaken on respective days, work time spent on ground and timetable entries. 'Flying Diaries' are specifically printed and are available at a cost of \$35 in 1992. The expense incurred in the purchase of diaries is an allowable deduction under subsection 51(1).

Technical journals and periodicals

71. For the purchase of technical journals and periodicals to be an allowable deduction under subsection 51(1), there must be a sufficient nexus between the nature of the article purchased and the occupation and day to day duties of the employee.

72. 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. The members agreed that '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.' (at ATC pp 633-634; CTBR p. 422).

73. This contrasts with *Case R70*, 84 ATC 493; 27 CTBR (NS) *Case 123* 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 which related to his day to day work. He was, however, not allowed a deduction for the purchase costs of daily newspapers.

74. It can be seen from the cases outlined above that there needs to be a very close relevancy of the material purchased to the day to day duties of an airline employee for a deduction to be allowable for its cost.

Language studies

75. While it is currently not essential for flight attendants to speak a second language, they may choose to do so voluntarily. Airline companies currently pay additional salary to those qualified in a relevant second language. Additionally, the knowledge of a second language enhances promotion prospects. A deduction for self education expenses incurred in relation to the learning of a relevant second language is therefore allowable for flight attendants under subsection 51(1).

76. Other members of the industry do not qualify for a deduction in respect of the cost of acquiring a second language as they do not have actual contact with the public. Knowledge of a second language is not sufficiently connected with their actual duties. Taxation Rulings IT 283, IT 2290 and TR 92/8, provide additional information on the deductibility of self education expenses.

First aid training

77. It is necessary for flight attendants to undertake first aid training to assist in emergency situations. Where the expense of such training is borne by the flight attendant it is an allowable deduction under subsection 51(1). However, in the case of pilots, ground engineers and flight engineers, it is not necessary to undertake first aid training, although some may choose to do so to further their knowledge. Deductions for the costs incurred by pilots, ground and flight engineers in obtaining first aid training are not allowable under subsection 51(1).

Licences

78. Certain airline employees need to renew relevant business licences to maintain their employment and thus earn assessable income. The cost of these licences and their renewal is an allowable deduction under subsection 51(1).

Medical examinations for licence renewal

79. Expenses incurred in undergoing a medical examination for the renewal of a relevant business licence are allowable deductions under subsection 51(1). These expenses include the cost of the travel to and from the medical practitioner.

Salary guarantee and loss of licence insurance

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

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

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

Overtime meal allowances

83. We will accept deductions for the cost of overtime meals incurred by an airline employee where an overtime meal allowance is paid under an industrial award.

84. A taxpayer in receipt of an overtime meal allowance that is 'reasonable' in the opinion of the Commissioner, is not required to produce documentary evidence to support their claim of a deduction if it does not exceed the allowance (subsection 82KZ(4)). Where the claim is greater than the allowance received or the allowance is in excess of a 'reasonable overtime meal allowance' (\$15 per meal in the 1992 - 93 year) documentary evidence of the expenditure incurred must be retained

85. Taxation Rulings IT 2326, IT 2644 , and IT 2686 provide additional information on the subject of meal allowances.

Travelling allowances

86. Currently, several types of travelling allowances are paid to airline industry employees. Included amongst these are Overseas Daily Travelling Allowance, Australian Daily Travelling Allowance and Standard Daily Travelling Allowance. Each of these allowances is currently made up of various components some of which relate to 'eligible expenses' and some of which do not . Deductions against the eligible components of the allowance are allowable providing the expense has been incurred.

87. Subsection 82KT(1) defines "eligible expenses" in this context as being 'in relation to a travel allowance - an outgoing incurred, by a taxpayer to whom the allowance was paid or is payable, in respect of the travel to which the allowance relates, being an outgoing in respect of accommodation, in respect of the purchase of food or drink, or in respect of expenditure incidental to the travel.'

88. It should be noted that if an amount is being claimed in excess of that portion of a travelling allowance which is eligible, the whole of the allowable claim must be substantiated under section 82KZ.

Isolated establishment allowances

89. Currently, an isolated establishment allowance is paid to airline staff who commence their work shifts between the hours of 7pm and 7am. It is designed to cover travel costs incurred due to the limited public transport available at these times. It is not provided for the transportation of bulky equipment or luggage.

90. In *Case UI56*, 87 ATC 908 it was stated that ' ... the lack of suitable public transport, the erratic hours and times of their employment, the method of calculation of their allowance and the on-call nature of the employment do not, of themselves, transform the character of the outgoing to the type required in terms of subsection 51(1) ... ' (p. 911).

91. The fact that an airline employee may need to travel considerable distances at irregular times to commence duty when public transport is either limited or unavailable places them in the same circumstances outlined in *Case UI56*.

92. Therefore, deductions against an isolated establishment allowance are not allowable under subsection 51(1).

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93. *Case U133*, 87 ATC 777 further supports the non allowance of such claims as do Taxation Rulings IT 112, IT 113 and IT 2543.

Cash/bar shortages

94. During the course of their duties, flight attendants are required to deal with monies paid by passengers for refreshments etc.,.

Occasionally, cash/bar shortages occur and the employee is required to make up the shortfall. A deduction for cash/bar shortages is allowable under subsection 51(1). Receipts for any shortfall are provided by the airline. They should be retained by the employee making the claim.

Date of effect

95. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

96. 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 1993-1994 year of income.

Commissioner of Taxation

17 June 1993

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