



TR 94/17 - Income tax: employee work-related deductions within the nursing industry

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 This document has changed over time. This is a consolidated version of the ruling which was published on *23 June 1994*



Taxation Ruling

Income tax: employee work-related deductions within the nursing industry

other Rulings on this topic

IT 85; IT 112; IT 300; IT 327; IT 2096; IT 2115; IT 2198; IT 2199; IT 2290; IT 2452; IT 2543; IT 2673; IT 2685; MT 2027; MT 2038; TR 92/8; TR 93/22; TR 93/30; TR 94/22; TD 92/157; TD 92/163; TD 93/244; TD 93/49; TD 93/74; TD 93/97; TD 93/108; TD 93/121; TD 93/145; TD 93/147; TD 93/154; TD 93/159; TD 93/174; TD 93/243.

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

What this Ruling is about

1. This Ruling deals with deductions for work-related expenses generally claimed by employees within the nursing industry. However, ward helpers, cleaners and kitchen workers employed in hospitals and nursing homes are not covered by this Ruling.
2. The Ruling discusses whether deductions are allowable under subsection 51(1), sections 54 and 55 of the *Income Tax Assessment Act 1936* (ITAA).
3. The Ruling also gives guidance on substantiation for work-related expenses claims.
4. Deductions for nurses' work-related expenses are listed below in alphabetical order. For further explanation, refer to the paragraph references in brackets in the explanations section.

Date of effect

5. 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).
6. 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 1994-95 year of income.

Ruling

Allowances and Reimbursements

7. The receipt of an allowance does not normally entitle a nurse to deductions for expenses incurred in relation to the allowance.
8. A claim can only be made against an allowance if expenditure is incurred, it is allowable as a deduction, and the requirements of the substantiation provisions are satisfied.
9. If the expenses incurred are allowable, and the substantiation requirements are satisfied, the amount allowable is not limited by the amount of allowance received.
10. If an employee receives a reimbursement, the amount is not included in assessable income, and a deduction is not allowable. However, if motor vehicle expenses are reimbursed on a cents per kilometre basis then the amount is included in assessable income and a deduction is allowable. If the reimbursement is for the cost of a depreciable item, a depreciation expense is allowable. See Taxation Determination TD 93/145 and paragraphs 197 to 203 of this Ruling.
11. Allowances commonly received in the nursing profession by nurses, and their tax treatment are listed below in alphabetical order.

District allowance: No deduction can be claimed against this allowance, (paragraphs 59 to 62).

Living out allowance: Where an allowance is paid as a result of inconvenience, isolation or discomfort, no deduction is allowable, (paragraphs 59 to 62).

Motor vehicle allowance: Deductions against a motor vehicle allowance can be claimed where the travel is work-related, (paragraphs 59 to 62).

On call allowance: No deduction can be claimed against this allowance, (paragraphs 59 to 62).

Overtime meal allowance: A deduction is allowable equal to the amount of the allowance where it is paid pursuant to an industrial award, (paragraphs 59 to 62).

Shift allowance: No deduction can be claimed against this allowance, (paragraphs 59 to 62).

Stocking allowance: No deduction can be claimed against this allowance, (paragraphs 59 to 62).

Telephone allowance: If an allowance is paid, deductions for the cost of work-related telephone calls are allowable, (paragraphs 59 to 62).

Travelling allowance: Deductions for travelling expenses incurred in connection with an allowance are allowable, (paragraphs 59 to 62).

Uniform and maintenance allowance: If an allowance is paid, deductions for uniform and maintenance are allowable only in circumstances where the uniform itself is deductible, (paragraphs to 62).

12. Work-related expenses commonly incurred by nurses, and their tax treatment are listed below in alphabetical order.

Agency commissions or fees: In circumstance where a commission is payable to the nursing agency, that commission is only deductible to the nurse if he or she actually incurs the expense. Up-front fees, joining fees or search fees paid to a nursing agency are not deductible, (paragraphs 63 to 66).

Agency nurses: The costs associated with obtaining employment through an agency are not deductible. These include preparation of resumes, calls to the agency, telephone rental, beeper or pager, answering machine and travel to and from any employer hospitals. An exception to this treatment may be in the rare circumstance that the nurse is actually employed by the agency. (paragraphs 67 to 83).

Annual practicing certificate fees: A deduction for the cost of obtaining an Annual Practicing Certificate and fees paid for initial registration are allowable, (paragraph 84).

Beeper, paging units, mobile phones and answering machines: Deductions for the purchase cost and rental cost of such items are allowable deductions, where it can be shown that the nurse is either on call or required to contact their employer on a regular basis. An apportionment must be made between work-related and private use (paragraphs 85 to 87).

Calculators and electronic organisers: Deductions are allowable by way of depreciation. The depreciation charge is to be apportioned between work-related and private usage, (paragraphs 88 to 90).

Child care expenses: A deduction for child care expenses is not allowable (paragraphs 91 to 93).

Clothing, uniforms and footwear: Expenditure on the purchase and maintenance of a nurse's uniform is allowable where it is:

- (a) protective
- (b) occupation specific;
- (c) compulsory and meets the requirements of IT 2641;
- (d) non compulsory and registered with the TCFDA or approved in writing by the Australian Taxation Office; or

- (e) conventional but satisfies the deductibility tests as explained in TR 94/22) (paragraphs 94 to 132).

The cost of special non slip footwear is an allowable deduction, (paragraph 97).

The cost of stockings is not an allowable deduction, (paragraphs 129 to 131).

The cost of maintaining clothing for which a deduction can be claimed is allowable (paragraph 128).

Computers and software: A depreciation expense on computers and related software used for work-related purposes is allowable as a deduction. However, if the related software is purchased separately from the computer, the portion of the cost that relates to work-related purposes is deductible in full in the year of purchase (paragraphs 133 to 137).

Conferences seminars and training courses: Expenses incurred to attend conferences, seminars and training courses to maintain or increase the knowledge, ability or skills in the teaching profession are allowable deductions provided there is a nexus with the duties performed by the nurse (paragraphs 138 to 144).

Depreciation of equipment: A deduction for depreciation is allowable only to the extent of the income producing use of the equipment. (paragraphs 145 to 156).

Driver's licence: Expenses incurred in acquiring or renewing a driver's licence are not allowable. Where a premium is paid on top of the cost of a standard licence, this premium is deductible (paragraphs 157 to 160).

Equipment

Scissors, clamps, stethoscopes etc: Deductions for the costs of purchasing instruments for use in performing duties are allowable, (paragraph 161). See also Depreciation of Equipment (paragraphs 145 to 156)

Stationery : Deductions for the cost of items of stationery, ie, pens, paper, diaries, etc are allowable to the extent that they are used for work-related purposes, (paragraph 162).

Fines: Fines imposed under law of the Commonwealth, a State, a Territory or a foreign or by a court are not allowable as deductions (paragraph 163).

First aid courses: The expenses associated with first aid courses are an allowable deduction (paragraph 164).

Glasses and/or contact lenses The cost of purchasing prescription glasses or contact lenses is not deductible as the expense relates to a personal medical condition (see paragraph 165).

Grooming: Deductions for the cost of grooming, including the cost of cosmetics and skin care products are not allowable, (paragraphs 166 to 167).

Hairdressing: Deductions for the cost of hairdressing are not allowable (paragraphs 168 to 170).

Home office expenses (paragraphs 171 to 189)

Private Study: Deductions for the running expenses of a private study are allowable where work is performed at home (paragraphs 176 to 184).

Place of business: Deductions for running and occupancy expenses are allowable where an area of the home has the character of a place of business (paragraphs 185 to 189).

Meals: A deduction is not normally allowable for the cost of meals. Meal expenses are considered to be private. Where an allowance (such as an overtime meal allowance) has been paid, a deduction is allowable (paragraphs 190 to 196).

Motor vehicle expenses:

Travel from home to work: The cost of travel from home to the normal place of employment is generally considered to be a private expense and is not deductible. The fact that the travel is outside hours or involves a second or subsequent trip does not change this principle (paragraphs 197 to 199).

Incidental tasks on the way from home to the regular place of employment: Expenses incurred in travelling between home and the regular place of employment are private and not deductible. This principle is not altered by the performance of incidental tasks en route (paragraph 200).

Travel to and from regular place of employment but transporting bulky equipment: Where the travel can be attributed to the transportation of bulky equipment rather than to travel from home to work, then the costs are allowable (paragraph 201).

Travel between two separate places of work where there are two separate employers involved: The cost of travelling directly between two places of employment is generally deductible (paragraph 202).

Travel from the regular place of employment to an alternative location while still on duty and back to the regular place of employment or directly home: The cost of travel from the regular place of employment to other venues (other than the nurse's home) is

deductible. The cost of travel from the alternative venue back to the regular place of employment or directly home is also deductible. This travel is undertaken in the course of gaining assessable income and is allowable as a deduction (paragraph 202).

Travel from home to an alternative place of employment for work-related purposes and then to the normal place of employment or directly home: The cost of travel from home to an alternative place of employment and then to the normal place of employment or directly home is deductible as the travel is to/from an alternative destination which is not itself a regular place of employment (paragraph 202).

Travel between two places of employment or venues: The cost of travelling directly between two places of employment or a place of employment and a place of business is generally deductible under subsection 51(1) provided that the person does not live at either of the places and the travel is undertaken for the purpose of engaging in income-producing activities (paragraph 202).

Travel between home and a place of employment while 'on call': (paragraph 202).

Travel to a place of education: The cost of travel between home and the place of education and back home again is deductible. The cost of travel between work and the place of education and back to work again is deductible. If a nurse travels from home to the place of education and then on to work, only the first leg of the trip is deductible. If a nurse travels from work to the place of education and then home, only the first leg of the trip is deductible (paragraph 202).

Newspapers: Generally, the cost of newspapers is not deductible. However, where the main reason for the purchase is for use in the course of nursing and that use can be clearly demonstrated, then the work-related portion of the cost is allowable (paragraphs 204 to 206).

Parking fees and toll fees: Deductions for the cost of parking fees (but not fines) and toll fees may be allowable (paragraphs 207 to 209).

Professional library: Depreciation of a professional library is allowable as a deduction provided the content of the reference books is directly relevant to the duties performed (paragraphs 210 to 213).

Removal and relocation expenses: Deductions for storage, removal and depreciation expenses incurred by nurses' when transferring from one district to another are not allowable (paragraphs 214 to 220).

Self-education expenses: Expenses incurred for self-education are deductible if there is a direct connection between the course of self education and the income earning activities. Where self-education expenses are allowable but also fall within the definition of 'expenses

of self-education', the first \$250 is not deductible (paragraphs 221 to 242).

Technical or professional publications: A deduction is allowable for the purchase or subscription cost of journals, periodicals and magazines which have a content specifically related to a nurse's work and are not general in nature (paragraphs 243 to 245).

Telephone expenses

Telephone installation : Installation costs are not deductible as they are capital expenditure (paragraphs 246 to 247).

Telephone rental : Deductions for telephone rental expenses may be allowable, where it can be shown that the nurse is either on call or required to contact their employer on a regular basis. An apportionment must be made between work-related and private use (paragraphs 248 to 259).

Telephone calls: Deductions for the cost of work-related telephone calls are allowable (paragraphs 260 to 261).

Telephone silent number: Deduction for the cost of obtaining a silent telephone number is not allowable (paragraphs 262 to 263).

Unions or professional associations fees: Deductions for unions or professional associations fees are allowable (paragraphs 264).

Watches : A deduction for the cost and maintenance of a nurses' fob watch is allowable. Costs associated with a conventional wrist watch are not deductible, (paragraph 265 to 271).

Explanations

Deductibility of work related expenditure

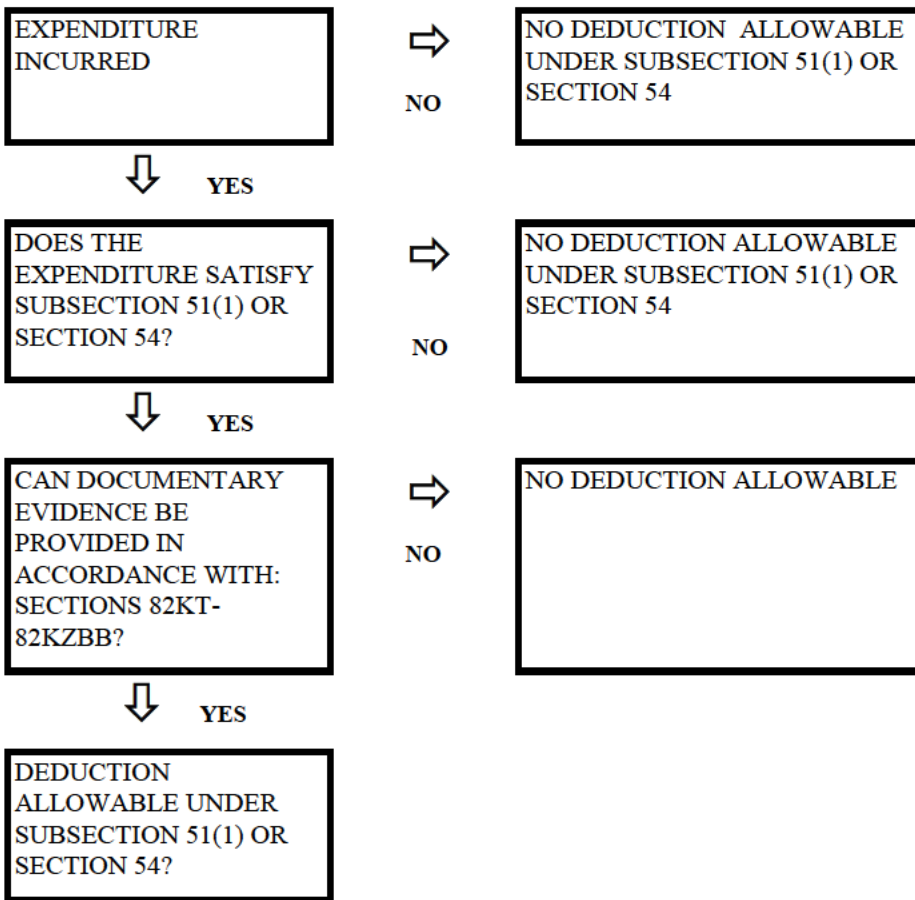
13. Whether or not a deduction is allowable for the types of work-related expenses set out in this ruling, is determined by looking at subsection 51(1), section 54 , 55 and sections 82KT to 82KZBB.

14. Under subsection 51(1), a deduction is available for all losses and outgoings to the extent to which they are:

- incurred in gaining or producing assessable income; or
- incurred in carrying on a business for the purpose of gaining or producing assessable income

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 producing of exempt income.

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15. In short, for expenditure on an item to be a tax deduction, the expense must:

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

Expense actually incurred

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

Expenses meet deductibility tests

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

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

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

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

'The question whether the fares which were paid by the taxpayers are deductible under s51(1) should not and, indeed, cannot be solved simply by a process of reasoning which asserts that because expenditure on fares from a taxpayer's residence to his place of business is necessary if assessable income is to be derived, such expenditure must be regarded as "incidental and relevant" to the derivation of such income...

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

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

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

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

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

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

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

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

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

25. Expenditure on items that are private or domestic in nature is expressly denied under the exclusionary clauses of subsection 51(1). Private or domestic expenditure is considered to include costs of living such as food, drink, shelter and clothing. In *Case T47* TBRD 1968 243; 14 CTBR (NS) 56 J F McCaffrey stated (TBRD at 243; CTBR at 307):

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

Expense satisfies the substantiation rules

26. The following paragraphs give guidance on general rules of substantiation.

\$300 limit for substantiation

27. If the total claim for work related expenses is less than \$300 then the substantiation provisions do not apply in accordance with subsection 82KZB(2) of the ITAA.

28. Expenses that are related to Overtime Meal Allowances and Award Travel Allowances and car expenses that are claimed using the Set Rate per km or 12% of cost method are not included in the \$300 limit [82KZB(2)].

29. Where the total of 'employment-related' expenses, travel and car expenses exceeds \$300, then the total of the claims must be substantiated, not just the excess (see TD 92/163).

What records must be kept

30. Receipts for expenses must be kept which have the following details:

- name of the person or business who supplied the goods or services;
- date on which the expense was incurred;
- amount in the currency in which the expense was incurred;
- nature of the goods and services supplied;
- date on which the document was made out.

31. In addition the document must be in the English language. If the expense was incurred outside Australia the document must be in a language of the country where the expense was incurred [82KU(1)].

Diaries

32. An entry in a diary or similar document:

- (i) is required in addition to receipts for activities undertaken while travelling where you either received a travelling allowance or you incurred travel expenses [82KZ(2)];
- (ii) may be used instead of receipts for expenses of \$10 or less up to a total of \$200 [82KU(6) and (7)]; or
- (iii) may be used instead of receipts for expenses which the Commissioner is satisfied are undocumentable expenses (such as tollway or parking meter expenses) [82KU(6), (7) and (8)].

What entries must be made in a diary

33. In relation to an eligible expense, a travel allowance or a travel expense the following entries must be made for each activity engaged in by the taxpayer:

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- date the entry was made;
- place where the activity was undertaken;
- date and approximate time when the activity started;
- duration of the activity; and
- nature of the activity.

When must entries be made

34. The entries must be in the English language and must be made before, at the time of, or reasonably soon after the activity ended [82KZ(2)].

When do entries need to be signed

35. Diary entries in a **travel diary** do not need to be signed by the person making the entry. However **diary entries for expenses** mentioned in paragraphs 36 and 37 need to be signed at the time of making the entry [82KU(6)]. Where a number of entries are made on the same day only one signature at the time of the last entry is required.

Small amounts under \$10 per expense

36. Where a taxpayer incurs expenses under \$10 per item and the total expenses in a year of income is less than \$200 the taxpayer does not need to provide receipts [82KU(7)].

37. In relation to these expenses an entry must be made in a diary which records:

- the same details required for a receipt;
- the date of the entry; and
- the name of the person making the entry and their signature [82KU(6)].

38. Examples of such expenses would be take-away meals, writing materials or trade magazines.

Undocumentable expenses

39. A taxpayer does not need to provide receipts for expenses incurred where the Commissioner is satisfied that it would be unreasonable to expect the taxpayer to get a receipt [82KU(8)].

40. A signed diary entry recording the same details as a receipt, the name of the person making the entry and the date of the entry must be made at the time the expense was incurred or as soon as is reasonably practical to the time of incurring the expense.

Methods of claiming motor vehicle expenses***Quick reference guide***

41. The following table is a quick reference to the four available methods:

Method	Available if	Requirements
Set rate per kilometre subsection 82KX	Up to 5000 business km. Not if leased for less than 12 months.	Reasonable estimate of business km travelled.
12% of cost subsection 82KW(3) and (4)	More than 5000 business km. Not if leased for less than 12 months.	Reasonable estimate that more than 5000 business km travelled. Documentary evidence of cost of car. Limited to 12% of \$48,415 (section 57AF).
1/3 of actual car expenses subsection 82KW(2)	More than 5000 business km. Not if leased for less than 12 months.	Reasonable estimate that more than 5000 business km travelled. Documentary evidence of car expenses or, for fuel and oil expenses, odometer records.

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Log book method subsections 82KUA to KV	Any business km.	At first, keep log book for 12 continuous weeks. May need to repeat if more cars, changed use. Odometer records at start and end of log book period. Odometer records for start and end of subsequent years. Documentary evidence of car expenses or, for fuel and oil, odometer records.
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Definition of Car

42. A car is a motor vehicle (including a four wheel drive vehicle), being:

- a motor car, station wagon, panel van, utility truck or a similar vehicle, or
- any other road vehicle designed to carry a load of less than 1 tonne or fewer than 9 passengers,

but does not include:

- a motor cycle or similar vehicle;
- a taxi taken on hire;
- a motor vehicle on short term hire [82KT(1)].

43. Expenses of operating trucks and commercial vehicles are not usually covered by the substantiation provisions.

Definition of Car Expenses

44. Car expenses include:

- operating costs;
- repairs;
- depreciation;
- interest on money borrowed to buy the car;
- other borrowing costs;

- lease costs including preparation, registration and stamping of the lease or of assignment or surrender of the lease; and
 - costs (other than principal or interest) of discharging a mortgage given as security for repayment of money borrowed to buy the car [82KT(1)].
45. Car expenses do not include:
- expenses incurred in respect of travel outside Australia; or
 - a taxi fare or similar expense [82KT(1)].

Elections

46. A taxpayer can elect one of the four methods for substantiating motor vehicle expenses. That election should be made before the date of lodgment of the return to which the election relates.

The Commissioner will allow further time for this election to be made [82KY(1)]. A taxpayer can change the method for substantiating motor vehicle expenses from year to year.

47. The election should be held with the calculations of the car expenses by the taxpayer and must be produced when requested by the Tax Office. In the case of an electronically lodged return the election should be held with the paper return.

48. Where no election is made the claim for car expenses will be the greater of:-

- one third of actual expenses; or
 - 12% of cost of the car; or
 - set rate per kilometre where the car has travelled less than 5000 kilometres for business purposes [82KY(2)].
49. The substantiation requirements of each of these methods must still be met for the claim to be allowed.

Log books

50. A daily log book must have the following particulars:

- date of the journey;
- odometer readings at the beginning and end of the journey;
- number of kilometres travelled;
- purpose of the journey;
- name of the driver;
- date on which the journey was made; and
- name of the person making the journey (see MT 2026).

The entry must be signed by the person making the entry [82KT(1)].

51. Where a number of journeys are made in the one day, it is acceptable for the last entry of the day to be signed. Where the car makes several consecutive business journeys during the day, those consecutive trips can be treated as one for log book purposes [82KT(2)].

52. For a more detailed explanation of the Log Book Method see IT 2549 and MT 2026.

Retention periods for documents

53. For car or travel expenses which are incurred in the course of producing assessable income which is not salary or wages the retention period is from when the expense was incurred or record was commenced to 7 years after the return of income was lodged.

54. For salary and wage earners the record retention period is 3 years 6 months after the date of the lodgment of the return of income in which the claim is made.

55. If an objection, request for amendment, review or appeal arising out of an objection decision has not been finalised at the end of the retention period, the retention period extends until the matter is determined or disposed of [82KT(1) and 82KZA].

When do records need to be produced

56. Subsection 82KZA(2) requires the Commissioner to serve a notice in writing on a taxpayer which gives a specified period of not less than 28 days to produce documentary evidence relating to expenses to the Tax Office.

What form of records must be produced

57. When a notice has been served, the taxpayer must produce the documentary evidence related to the expenses including:

- receipts;
- odometer records;
- log books;
- travel diaries; and
- expense diaries.

58. In addition the taxpayer must produce a schedule in the English language and in a form approved by the Commissioner:

- a cross-reference to the documentary evidence of the expense;

- in relation to the cross-reference, a summary of the particulars set out in the documentary evidence together with, in a case where the expense was incurred in a foreign currency, particulars of the amount of the expense in Australian currency [82KZA(3)]

Allowances

59. Nurses are paid some allowances peculiar to their jobs:

- District allowance
- Living out allowance
- Meal allowance
- Motor vehicle allowance
- On call allowance
- Shift allowance
- Stocking allowance
- Telephone allowance
- Travelling allowance
- Uniform and maintenance allowance

60. It is important to note that these allowances are taxable under paragraph 26(e) of the Act and must be included as assessable income when completing a tax return for the relevant year (see Tax Pack for further details).

61. Payments by way of allowances do not necessarily entitle the employee to a deduction. The receipt of an allowance imparts no greater degree of deductibility to an expense which is incurred in relation to that allowance. This is so even if the allowance is paid pursuant to an industrial award. It is the nature of the outgoing itself which determines whether the expenditure is deductible under the provisions of subsection 51(1).

62. Can tax deductions be claimed by nurses against allowances received?

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Allowance	Why is it paid?	Can deductions be claimed?
District allowance	To compensate for the inconvenience, isolation and discomfort encountered during the course of the employment	No deduction is allowable under subsection 51(1). It has been held that additional expenses incurred in living out remain private in nature and therefore not deductible; (<i>Lunney v. FC of T; Hayley v. FC of T</i> (1958) 100 CLR). TD 93/49 provides further information on the deductibility of similar allowances.
Living out allowance	To compensate for the inconvenience, isolation and discomfort encountered during the course of the employment	No deduction is allowable under subsection 51(1). It has been held that additional expenses incurred in living out remain private in nature and therefore not deductible; (<i>Lunney v. FC of T; Hayley v. FC of T</i> (1958) 100 CLR). TD 93/49 provides further information on the deductibility of similar allowances.
Overtime meal allowance	Paid in respect of overtime meals under an industrial award	Yes. A deduction equal to the amount of the allowance, where it is reasonable, is allowed if the allowance is expended (subsection 82KZ(4)). An allowance of \$15 for the 1993/94 period is considered reasonable (TR 93/22).
Motor vehicle allowance	Paid where a nurse is required to use his or her own motor vehicle in the performance of his or her duties during normal working hours	Yes. Deductions may be claimed where a nurse uses his or her motor vehicle in the course of his or her employment.

On call allowance	Paid when a nurse is required to be on-call when off-duty	No deduction is allowable under subsection 51(1). The allowance does not in any way relate to expenditure that a nurse may incur while on call.
Shift allowance	Paid to nurses whose hours of ordinary duty finish outside what is considered to be standard working hours	No deduction is allowable under subsection 51(1). The allowance does not in any way relate to expenditure that a nurse may incur while undertaking shift work.
Stocking allowance	Paid to compensate for the purchase of stockings worn during the course of work	No deduction is allowable under subsection 51(1). Stocking expenditure is considered to be private in nature, even where it is a condition of employment. (<i>Case N97 87, ATC 521; 25 CTBR(NS) Case 50</i>).
Telephone allowance	Paid to nurses for the purpose of being on call	Yes. Where a nurse is required to be on call a proportion of rental plus the costs of any work-related calls are deductible.
Travelling allowance	Paid for fares, car expenses or other transport costs incurred in travelling between two places of work under an award	Yes. Deductions may be allowable to a nurse whose duties require his or her to travel between two places of work. TD 93/174 and Taxation Ruling IT 2543 provide further information on the deductibility of travelling expenses.
Uniform & maintenance allowance	Paid to compensate for expenses associated with purchasing and maintaining a nurses' uniform	Deductions can only be claimed where the uniform itself is of a deductible type.

Agency commissions or fees

63. Where a hospital engages the services of a nurse through an agency, the agency is remunerated by way of a commission. The amount will be a percentage of what the nurse is paid. This amount will not be an allowable deduction to the nurse unless he or she actually incurs the expense.

64. **Example:** A nurse works one night at a hospital and the total remuneration is \$100. The nurse must pay 8% commission to the agency which is \$8. Hence his or her assessable income will include the \$100 but the \$8 commission is an allowable deduction.

65. **Example:** As per the above but the hospital pays the nurse \$100 and then pays the agency its commission of \$8. In this situation the nurse cannot claim the \$8 as an allowable deduction because the amount is not included in her assessable income. The expense has been incurred by the hospital and not the nurse. She has not sacrificed any of her pay to the agency as she has received the full \$100.

Agency fees

66. Where a nurse is required to pay an up-front, joining or search fee to the agency, this amount is not deductible. It is incurred too soon to be regarded as incurred in the production of assessable income. It is a cost of obtaining employment rather than a cost incurred in the course of employment. This will be so regardless of how any such fee is described.

Agency nurses

67. Through discussions with the nursing industry, it has been established that there are a number of different arrangements agency nurses work under. For the purposes of this Ruling an agency nurse is considered to be one who seeks and obtains employment (whether full time, part time or casual) through the services of a nursing agency.

68. Whilst the agency nurse is generally employed by the organisations for which they work (e.g., hospital, clinic etc.), there is a view within the industry that some nurses are actually employed by the agency itself. On the basis of discussions, we understand that the latter situation would be less common than the former. Nevertheless, the following paragraphs deal with the tax treatment of work-related expenses under these two arrangements.

Agency not the employer

69. Under this arrangement, where an agency nurse is offered work with a hospital, nursing home or other place where their services are required, they will be employed at that particular place. This will be the case even where the agency pays the nurses salary and deducts the tax.

70. On occasions agency nurses will perform duties at a private residence. If this is organised through the agency by the Department of Veterans' Affairs (DVA) then DVA will be the employer. If the work is not organised through the DVA the nurse will have no employer in respect of that shift even though it may be the practice of the agency to deduct tax from those particular earnings.

71. It was argued in *FC of T v. Genys* 87 ATC 4875 that because an agency nurse is required to work at a number of different locations, their home is their base of operations. This argument was rejected and it is not considered that nurses who are not employed by an agency can treat their home as a base of operations.

72. The following expenses are not allowable as deductions to nurses who find work through agencies but are not employed by them:

- travel to and from work;
- preparation of resume for agency;
- costs of telephone calls as well as phone/mobile rental, beepers, pagers and answering machines.

73. The above expenses are incurred at a point too soon to be regarded as necessarily incurred in the production of assessable income see *FC of T v. Maddalena* 71 ATC 4161 where Barwick CJ stated (at ATC 4162):

'The costs to an employee of obtaining his employment does not form an outgoing in the course of earning the wages payable in the employment.'

74. The following expenses would be allowable as deductions:

- travel between two places of work;
- commission where the nurse actually incurs the expense;
- equipment purchased for use in performing duties;
- self education expenses; and
- union fees, registration and practicing certificate fees.

75. With respect to claiming travel to and from work, a nurse not employed by an agency generally will not be regarded as itinerant. This view is supported in *FC of T v. Genys*. However, it may be the case that the nurse is required to work at several different locations within the one shift, for example a nurse performing wound management. It will be necessary to attend a number of places of work one after the other. We consider that the nurse would be regarded as itinerant for any such shift she performs and travel to and from home is allowable as a deduction.

Agency as the employer

76. In the nursing industry, some agency nurses are actually employed by the agency. By the very nature of the employer/employee relationship it is rare for agencies to be employers. Normally, nurses who are placed by agencies are employed by the organisation for which they perform duties(e.g, hospitals, clinics etc.).

77. The following paragraphs detail the characteristics that would exist if the nurse and the agency were engaged in an employer/employee relationship.

78. Further information can be found in IT 2129, particularly Appendix B.

79. **Control test:** Generally, the master/servant or employer/employee relationship exists where the 'control test' is satisfied. With respect to agency nurses this would mean that the agency possessed the right to control how, where and when the work is carried out. The greater the obligation the nurse has to obey the orders of the agency as to the performance of the work, the greater the weight attached to the control test and the more likely they are an employee of the agency.

80. It is our view that nursing agencies predominantly act as a 'go-between' and simply assist nurses in obtaining short term or casual employment. They do not normally control how, where or when the work is carried out. These decisions will be made by the nurse in the sense that they control which days they work, whether they work days or nights and which hospitals they work at, obviously subject to shift availability. Once they obtain a shift they are then controlled by the organisation for whom they are performing duties. The agency merely advises the nurse that a shift is available. Nevertheless, it is open to individual taxpayers to provide evidence that they meet the control test and are in fact employed by the agency.

81. Where the nurse is employed by the agency they will be able to claim deductions on the same basis as a nurse not employed by an agency.

82. Examples of expenses that would be deductible:

- travel between two places of work;
- costs of telephone calls as well as phone/mobile rental. beepers, pagers and answering machines where the nurse is required to contact the employer on a regular basis or is 'on-call' as per IT 85;
- travel to and from home where it is considered that the nurse has no fixed place where they carry on their trade but

move from one place to another in the exercise of that trade on a purely temporary basis, that is the job is itinerant;

- equipment purchased for use in performing duties;
- self education expenses;
- union fees, registration and practicing certificate fees.

83. The following expenses would not be deductible:

- preparation of resume for agency.
- commission, as the nurse would not be required to pay any if she were employed by the agency; the salary paid to her would already have those factors taken into account.

Annual practicing certificate fees

84. Where a nurse is required to obtain a Annual Practicing Certificate, the cost of such is considered deductible under subsection 51(1), as costs relevant and incidental to the earning of assessable income.

Beepers, pagers, mobile phones and answering machines

85. These items are used by nurses so they may contact, or be contacted by, hospitals and nursing homes on a regular basis for work-related purposes. Refer also to paragraphs 246 to 263 of this Ruling.

86. The purchase cost of beepers, paging units and answering machines are allowable deductions under subsection 54(1). If such an item is purchased on or after 1 July 1991 for \$300 or less or has an effective life of less than three years, the portion of the cost that relates to use for work-related purposes is deductible in full in the year of purchase. If the item cost more than \$300 and has an effective life of more than three years, the portion of the cost that relates to use for work-related purposes is deductible as depreciation. The rate of depreciation depends on the effective life of the item. These items ordinarily have an effective life of 7 years.

87. Rental expenses are allowable deductions under subsection 51(1) which must be apportioned between work-related and private use.

Calculators or electronic work organisers

88. The cost or replacement cost of calculators and electronic work organisers, used for work-related purposes, are allowable as an outright depreciation deduction where the expenditure on the item is less than \$300 or the effective life of the item is less than three years.

89. Costs incurred in the purchase of batteries and in repairs and maintenance are allowable under subsection 51(1).

90. Where a nurse is supplied with a calculator or work organiser but chooses to purchase his or her own calculator which he or she finds more functional than the one supplied, he or she would be entitled to claim a deduction in accordance with paragraph 22.

Child care expenses

91. A deduction for child care expenses is not allowable under subsection 51(1), even if it is a prerequisite for a taxpayer to obtain and pay for child care so that he or she can go to work and earn income. Similarly, these expenses are also not deductible if incurred by a taxpayer to undertake studies relevant to his or her employment.

92. The High Court held in *Lodge v. FC of T* (1972) 128 CLR 171; 72 ATC 4174; 46 ALJR 575; 3 ATR 254, that child care expenditure was neither relevant nor incidental to gaining or producing assessable income and therefore not deductible. The expenditure was also of a private or domestic nature.

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

Clothing, uniforms and footwear

94. Deductions for clothing are allowable in the following circumstances where:

- (a) the clothing is **protective** in nature;
- (b) the clothing is **occupation specific** and not conventional in nature; or
- (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 Textile, Clothing, Footwear Development Authority (TCFDA); or

- (ii) approved in writing by the Australian Taxation Office (ATO) under the transitional arrangements contained in section 51AL (all such approvals cease to have effect from 1 July 1995);
- (e) the clothing is conventional and the taxpayer is able to show that expenditure on the clothing has the essential character of an outgoing incurred in gaining or producing assessable income, there is an nexus between the outgoing and the assessable income so that the outgoing is incidental and relevant to the gaining of assessable income, and that 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; 28 ATR 87).

It is our view that in most cases expenditure on conventional clothing will not be deductible. If the taxpayer is able to show in his or her case that a sufficient connection does exist between expenditure on conventional clothing and the gaining of assessable income, it may be necessary to apportion the claim for deduction. A reasonable estimate of the work use relative to private use of clothing should be applied.

Protective clothing

95. Protective clothing must satisfy the deductibility tests in subsection 51(1) and must not be private or domestic in nature. Expenditure on pinafores, aprons or white medical coats are considered protective in nature and deductible under subsection 51(1).

96. Protective clothing as defined in subsection 51AL(26) is any garment that is of a kind which is for use wholly or principally to protect:

- (a) the wearer or another person from, or from risk of:
 - (i) death; or
 - (ii) the contraction, aggravation, acceleration or recurrence of a disease; or
- (b) the wearer from, or from risk of:
 - (i) injury (including the aggravation, acceleration or recurrence of an injury); or
 - (ii) loss or destruction of, or damage to:
 - (A) other clothing worn by the wearer; or
 - (B) an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance, used by the wearer.

97. Expenditure on **special non-slip shoes** is deductible as expenditure on protective clothing under subsection 51(1).

98. Expenditure on conventional shoes eg. running or aerobic shoes, sports shoes, dress shoes and casual shoes are not an allowable deduction under subsection 51(1).

99. The protective clothing criteria do not extend to conventional protection from the natural environment. Items which provide such protection (i.e., sunglasses, sun hats and sunscreen; raincoats, umbrellas and other wet weather clothing) are a private expense even if it is a requirement of employment. The purchase costs of these items are not allowable deductions under subsection 51(1). This view is supported in *Case Q11*, 83 ATC 41; (1983) 26 CTBR (NS) *Case 75* and *Case N84*, 81 ATC 451; (1981) 25 CTBR(NS) *Case 43*.

100. The purchase cost of normal sunglasses bought by nurses is not an allowable deduction under subsection 51(1) as it is private in nature. This is supported in *Case N84*, 81 ATC 451; (1981) 25 CTBR(NS) *Case 43*, where a news cameraman was denied a deduction for the cost of sunglasses used in his work due to the essential private nature of the sunglasses.

101. This is in contrast to the decision in *Case 10/94*, 94 ATC 168; *AAT Case 9254* (1994) 27 ATR (date of decision; 18 January 1994) where a police motorcycle patrolman was allowed a deduction for a pair of wrap-around sunglasses. In this case, the additional safety features of the wrap-around sunglasses protected the taxpayer from foreign particles. They were purchased for their protective function and were used as protective eye wear by the police officer in the course of performing his duties.

102. Taxation Ruling IT 2477 and Taxation Determination TD 93/244 provide information on the tax treatment of sunglasses.

Occupation specific clothing

103. Occupation specific clothing in relation to an employee, means clothing that, disregarding any features of the clothing that distinctively identifies the employee as a person associated, directly or indirectly, with:

- the employer of the employee; or
- a group consisting of:
 - (i) the employer of the employee; and
 - (ii) one or more associates of the employer (within the meaning of section 26AAB);

distinctively identifies the employee as a member of a particular profession, trade, vocation, occupation or calling (subsection 51AL(26)).

104. Occupation specific clothing must be distinctive and unique, in the sense that by its nature or physical condition it is readily identified as belonging to a particular profession, trade, vocation, occupation or calling. The clothing must be non-conventional in nature to fall within this category. That is, it is not clothing which can be described as ordinary clothing of a type usually worn by men and women regardless of their occupation. Examples of clothing which is considered to be occupation specific are nurses' traditional uniforms, chefs' checked pants and a religious cleric's ceremonial robes.

105. Clothing which could belong to a number of occupations would not fall within the definition of occupation specific clothing. An example of this is a white jacket or coat worn with white trousers. While a white jacket or coat worn with white trousers may indicate that the wearer belongs to the health profession, it is not sufficiently distinctive in design or appearance to readily identify the specific or particular occupation of the wearer. That is, the wearer could be a pharmacist, dentist, laboratory technician, or a number of other occupations.

106. Expenditure on a female nurse's traditional uniform (for example a set of clothing consisting of a cap, white uniform (dress), cardigan and special non-slip shoes) is deductible under subsection 51(1). This is because the clothing is considered to be peculiar to, and incidental and relevant to, the gaining of assessable income from the specific occupation of nursing Taxation Determination TD 93/121).

107. A female nurse's traditional uniform is not considered to be protective clothing, rather it is occupation specific clothing which is not conventional in nature.

108. A male nurse's uniform for example consisting of a white jacket or coat worn with white trousers is not considered to be occupation specific clothing, for the reasons mentioned in paragraph 103, however the items would be deductible under subsection 51(1) where:

- (a) it is a compulsory uniform or wardrobe that satisfies the requirements of Taxation Ruling IT 2641; or
- (b) it is a non-compulsory uniform or wardrobe that has been registered or approved in accordance with paragraphs 114.

Compulsory uniform or wardrobe

109. A 'corporate' uniform or wardrobe (as detailed in Taxation Ruling IT 2641) is a collection of inter-related items of clothing and

accessories which are unique and distinctive to a particular organisation.

110. Taxation Ruling IT 2641, paragraph 10, lists the factors to be considered in determining whether clothing constitutes a 'corporate' wardrobe or uniform.

111. In *Case R55 84 ATC 411; 27 CTBR(NS) Case 109*, K P Brady (Chairman), J E Stewart and D J Trowse in a joint statement of reasons came to the following conclusions:

'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).

112. In *Case U95 87 ATC 575*, a shop assistant employed by a retail merchant was 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 to be worn.' (ATC at 577).

113. The deduction for clothing was denied, because there was 'nothing distinctive or unique about the combination of clothing which would identify the wearer' as an employee of the organisation, or even a shop assistant from another department store. Further, '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 or food waiting staff'.

Non-compulsory uniform or wardrobe

114. A deduction is allowable for the purchase and maintenance costs of clothing if that clothing meets the criteria of a non-compulsory uniform or wardrobe under subsection 51AL. This section provides that expenditure on non-compulsory uniforms or wardrobes will only be allowable under 51(1) if the design of the clothing has been entered on the Register of Approved Occupational Clothing kept by the Textiles, Clothing and Footwear Development Authority (TCFDA) or if the design of the clothing is approved in writing by the Tax Office under IT 2641. Transitional arrangements enabling the Tax Office to approve designs of non-compulsory uniforms and wardrobes will expire on 30 June 1995.

115. To illustrate the concepts outlined above, the following example is provided as a guide and considers a variety of scenarios regarding the deductibility of expenditure on uniforms.

116. **Example:** Tara is a nurse, her uniform requirements and the deductibility thereof is considered in the following:

Apparel Policy 1:

COMPULSORY/ NON-COMPULSORY	UNIFORM	COLOUR
Non-Compulsory (Registered Nurses)	(i) Dress, (nurses' traditional uniform - short sleeves, action back, zip front, front pockets, front pleat)	White
	(ii) Cap	White
	(iii) Cardigan, long sleeves	Navy Blue
	(iv) Special non slip shoes	Black or White
Non-Compulsory (State Enrolled Nurse)	(i) Dress, (nurses' traditional uniform - short sleeves, action back, zip front, front pockets, front pleat)	Mint
	(ii) Cap	Mint
	(iii) Cardigan, long sleeves	Navy Blue
	(iv) Special non slip shoes	Black or White

117. Tara's uniform requirements fit the criteria established for occupation specific clothing (paragraph 103, i.e. the items are to be worn as a set and distinctively identify the employee as a member of a particular profession, trade, vocation, occupation or calling). She can claim a deduction for the cost and maintenance of the uniform under subsection 51(1).

TR 94/17**Apparel Policy 2:**

COMPULSORY/ NON-COMPULSORY	UNIFORM	COLOUR
Non-Compulsory (Registered Nurses)	(i) Floral blouse, with plain culottes. Clothing was introduced five years ago.	Purple, pink and green
	(ii) Cardigan, long sleeves	Green
	(iii) Special non slip shoes	Black or White
Non-Compulsory (State Enrolled Nurse)	(i) Floral blouse and plain skirt Clothing introduced five years ago	Purple, pink and green
	(ii) Cardigan, long sleeves	Green
	(iii) Special non slip shoes	Black or White

118. Tara's uniform requirements do not fit the criteria as established in paragraph 103, that is the clothing does not identify her as a member of the nursing profession. In this example, a deduction for the cost and maintenance of the clothing would only be allowable under section 51(1) if the provisions of section 51AL are met, that is, the non-compulsory uniform or wardrobe is registered or approved as set out in paragraph 114.

Apparel Policy 3:

COMPULSORY/ NON-COMPULSORY	UNIFORM	COLOUR
Compulsory (Registered Nurses) (Note: uniform must be purchased from authorised supplier)	(i) Dress, short sleeves (must conform with design, style, fabric & colour specifications), or	Cream with Red & Green vertical stripes
	(ii)(a) Blouse, short sleeves (must conform with design, style, fabric & colour specifications) and	Cream with Red & Green vertical stripes
	(ii)(b) Skirt (must conform with design, style, fabric & colour specifications)	Bottle Green
	(ii)(c) Cardigan, long sleeves (must conform with design, style, fabric & colour specifications)	Bottle Green

119. The hospital uniform in this example is a compulsory condition of employment; is not conventional in nature and conforms with accepted design, style, fabric and colour specifications of the hospital, and further meets the requirements of Taxation Ruling IT 2641.

120. In this example, Tara can claim a deduction for the cost and maintenance of the uniform under subsection 51(1).

Apparel Policy 4:

COMPULSORY/ NON-COMPULSORY	UNIFORM	COLOUR
Non-compulsory	Blouse, short sleeves	White
	Skirt or Slacks	Navy Blue
	Cardigan, pullover or polo top	Navy Blue

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121. The uniform in this example is non-compulsory and will only be allowable under subsection 51(1) if the provisions of section 51AL are met

122. Without the clothing being registered or approved, Tara cannot claim deduction for the cost and maintenance of the uniform under subsection 51(1), as the clothing is essentially conventional in nature. It is not considered that in this case the tests for deductibility of conventional clothing would be met (see Taxation Ruling TR 94/22).

123. **Example:** Bryan is a nurse, his uniform requirements and the deductibility thereof is considered in the following:

Apparel Policy 1:

COMPULSORY/ NON-COMPULSORY	UNIFORM	COLOUR
Compulsory (Registered Nurse) (Note: uniform must be purchased from authorised supplier)	Jacket (must conform with design, style, fabric & colour specifications i.e. medical jacket - short sleeves, zip front/side opening fastened with studs or buttons, patch pockets)	White
	Trousers (must conform with design, style, fabric & colour specifications i.e. plain front trousers)	White
Compulsory (State Enrolled Nurse) (Note: uniform must be purchased from authorised supplier)	Jacket (must conform with design, style, fabric & colour specifications i.e. medical jacket - short sleeves, zip front/side opening fastened with studs or buttons, patch pockets)	Mint
	Trousers (must conform with design, style, fabric & colour specifications i.e. plain front trousers)	White

124. Bryan's uniform is worn as a compulsory condition of employment. The uniform is not conventional in nature and conforms with accepted design, style, fabric and colour specifications of the hospital, and further meets the requirements of Taxation Ruling IT 2641.

125. Bryan can claim deductions for the cost and maintenance of the uniform under subsection 51(1).

TR 94/17**Apparel Policy 2:**

COMPULSORY/ NON-COMPULSORY	UNIFORM	COLOUR
Non-Compulsory	Shirt (with collar)	White; or Navy/white (patterned); or White/navy (patterned)
	Trousers or	Navy; or White
	Shorts (knee length)	Navy; or White
	Cardigan; or Jumper; or Vest	Navy

126. The uniform requirements are non-compulsory and will only be allowable under subsection 51(1) if the provisions of section 51AL are met.

127. Without the clothing being registered or approved, Bryan cannot claim deductions for the cost and maintenance of the uniform under subsection 51(1), as the clothing is essentially conventional in nature. It is not considered that in this case the tests for deductibility of conventional clothing would be met (see Taxation Ruling TR 94/22).

Laundry expenses

128. Deductions for home laundry and dry cleaning costs will be allowable for maintaining clothing, the cost of which is allowable under subsection 51(1), see paragraph 94. For guidance on how to calculate home laundry expenses, refer to Taxation Ruling IT 2452.

Stockings

129. The cost of acquiring and maintaining stockings is not deductible under subsection 51(1), as it is considered to be expenditure of a private nature and not incurred in gaining or producing assessable income. This view takes into consideration the fact that, in some cases, nurses are required to wear coloured stockings as part of their uniform or as a preventative measure against health problems.

130. *Case N97 81 ATC 521; 25 CTBR(NS) Case 50* considered the question of whether a nurse could claim a deduction under subsection

51(1) for the cost of acquiring stockings for work purposes.

Dr P. Gerber (Member) stated that:

'... notwithstanding the condition of employment that they must be worn on duty. Stockings, by their very nature, are part of conventional attire - whether worn under protest or otherwise...there is nothing unique which would single out a person wearing them as being a nurse....'(ATC at 524; CTBR at 369).

131. In *Case P117* 82 ATC 591; 26 CTBR (NS) *Case 43*, an employee claimed the cost of 'suppose' stockings on the grounds that they were prescribed by a medical practitioner to assist in overcoming a medical condition. It was determined that the expenditure incurred by the taxpayer in the purchase of these stockings was clearly of a private nature and it was not incurred in gaining or producing assessable income.

Socks

132. The cost of acquiring and maintaining socks required as a part of a uniform are not deductible under subsection 51(1), as it is considered to be expenditure of a private nature and not incurred in gaining or producing assessable income.

Computers and software

133. Expenses incurred by nurses when purchasing computers and related software for work-related purposes are allowable deductions under either subsection 51(1) or section 54.

134. By way of example, a unit manager may use a computer in his or her home office for the preparation of reports or rosters; or a clinical teacher may use his or her private computer to prepare course materials.

135. Nurses may also incur such expenses in relation to self-education expenses. Paragraphs 221 to 242 of this ruling provides further information on the deductibility of self-education expenses.

136. As a computer would normally cost more than \$300 and has an effective life of more than three years, the portion of the cost that relates to use for work-related purposes is deductible as depreciation. The rate of depreciation depends on the effective life of the item. These items ordinarily have an effective life of 5 years.

137. If the related software is purchased separately from the computer, the portion of the cost that relates to use for work-related purposes is deductible in full in the year of purchase.

Conferences, seminars and training courses

138. Expenses incurred by nurses in maintaining or increasing their knowledge, ability or skills in their particular profession are allowable deductions under subsection 51(1).

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

' . . . a taxpayer who gains income by the exercise of his skill in some profession or calling and who incurs expenses in maintaining or increasing his learning, knowledge, experience and ability in that profession or calling necessarily incurs those expenses in carrying on his profession or calling . . .' (CLR at 70; ATD at 352).

140. Therefore costs incurred in attending conferences, seminars and training courses qualify as allowable deductions provided there is a relevant nexus with the duties performed by the nurse.

The conferences, seminars and training courses may be held in Australia or overseas.

141. Deductions would include fares to and from the venue regardless of the mode of transport, accommodation expenses, meals, registration fees and other expenditure associated with the attendance at the conferences, seminars or training courses. Payments received by nurses from employers as partial or full reimbursement of such expenses must be returned as assessable income.

142. If the dominant purpose in incurring the expenses is the attendance at the conference, seminar or training course then the existence of any private activity would be merely incidental and the expenses would be fully deductible.

143. If the attendance to the conference, the seminar or training course was only incidental to a private activity (ie a holiday) then only the expenses directly attributable to the conference, the seminar or the training course are deductible. Expenses incurred on accommodation, meals and travel directly relating to the private activity are not allowable deductions under subsection 51(1).

144. Taxation Ruling TR 92/8 provide further information on the deductibility of the cost of attending conferences. Paragraphs 221 to 242 of this Ruling provide information on the deductibility of self-education expenses.

Depreciation of Equipment

145. Certain items of a capital nature, used for income-producing purposes, are not deductible under subsection 51(1). Equipment that comes within the definition of plant or articles under section 54 may be depreciated. The type of equipment for which depreciation is allowable includes computers, furniture and fittings used in a home office and professional libraries.

146. A deduction for depreciation is allowable under subsection 54(1) on plant and articles used during the year for the purpose of producing assessable income. In addition, a depreciation deduction is allowable on plant and articles which are not actually used during the year for income-producing purposes but are installed ready for use for that purpose and held in reserve.

147. 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.

148. Any equipment or articles purchased on after 1 July 1991 is able to 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(2)). This means an immediate deduction is available for the cost of such items in the year in which they are purchased. However, the article may be depreciated at a rate less than 100% if the taxpayer so elects (subsection 55(8)).

149. **Example:** A clinical teacher purchases a briefcase for \$250 which she uses only for work purposes to carry reference books, notes and student assignments. The amount of \$250 is allowable as an immediate deduction.

150. If the equipment or articles purchased on or after 1 July 1991 cost more than \$300 of the effective life is three years or more, then a deduction for depreciation is allowable based on the rates in subsection 55(5). However, the article may be depreciated at a rate less than this rate if the taxpayer so elects (subsection 55(8)). The current depreciation rates are set out in taxation Ruling IT 2685

151. Where the property 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 income-producing use (section 61).

152. **Example:** A nurse uses a desk in her study partly for work and partly for private purposes. Thus, the depreciation expense should be appropriately apportioned between the private and work-related use.

153. Where the property used is purchased part way through the year, then the yearly depreciation expense should be reduced accordingly.

154. An arbitrary figure is not acceptable when determining the value of equipment for depreciation purposes (*Case R62*, 84 ATC 454; (1984) 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 expense that would have been allowed if the unit had been used, since purchase, to produce assessable income. Refer to Taxation Determination TD 92/142.

155. **Example:** A bookshelf is purchased on 1 July 1991 for \$400. It is not used for work-related purposes until 1 July 1993. It is depreciated at a rate of 13.5% using the diminishing value method.

156. To determine the opening written down value of the bookshelf for taxation purposes, it should be depreciated at the specified rate from the date of purchase to 30 June 1993. The depreciation in the 1992 and 1993 years is \$54 and \$47 respectively. The opening written down value of the bookshelf at 1 July 1993 is \$299. In the 1994 tax year the bookshelf is used for work-related purposes and the depreciation expense that is deductible is $\$299 \times 13.5\% = \40.36 , rounded to \$41.

Driver's licence

157. The expenses incurred in acquiring or renewing a driver's licence are not allowable under subsection 51(1). The cost associated with obtaining a driver's licence is a capital expense. The cost of renewing such a licence is a private expense. However where a premium is paid on top of the cost of a standard licence, this premium is deductible.

158. 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 private in nature and therefore not deductible under subsection 51(1).

159. However, where a premium is paid on top of the cost of a standard licence, this premium is deductible.

160. Taxation Determination TD 93/108 confirms that no deductions are allowable for the cost of renewing a driver's licence even if the driver's licence is a condition of employment.

Equipment***Scissors, clamps, stethoscopes etc.***

161. Equipment such as scissors, clamps and stethoscope purchased for use in the ordinary course of duties are an allowable deduction under subsection 51(1). No deduction allowed for expenses to the extent to which they reimbursed by the employer or where they constitute expenditure of a capital, private or domestic nature. See also Depreciation of Equipment (paragraphs 146 to 156).

Stationery, pens, diaries

162. Expenses incurred on the purchase of stationery, diaries, paper, and pens which are used for work-related purposes are allowable under subsection 51(1).

Fines

163. Fines imposed under any law of the Commonwealth, a State, a Territory or a foreign country or by a court are not allowable deductions. Subsection 51(4) expressly excludes these payments from deductibility under subsection 51(1).

First Aid Courses

164. If it is necessary for nurses to undertake first aid training to assist in emergency situations, the expenses of such training are an allowable deduction under subsection 51(1). However, if the cost of the course is reimbursed or paid for by the employer then a deduction is not allowable.

Glasses and/or contact lenses

165. The cost of purchasing prescription glasses or contact lenses is not deductible as the expense relates to a personal medical condition and is therefore private in nature.

Grooming

166. Costs for personal items such as makeup, shaving equipment, deodorant, hair products, hair nets, clips and bobby pins are not allowable deductions under subsection 51(1) as they are private in nature.

167. In *Case U216* ATC 1214 a food and drink waitress was required to wear makeup while at work. She claimed excess costs for makeup.

It was found that the makeup was neither relevant nor incidental to the earning of the taxpayer's assessable income.

Hairdressing

168. Hairdressing expenses incurred by nurses are not allowable under subsection 51(1) as they are considered to be an expense of a private nature.

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

170. In *Case L61 79* ATC 488; 23 CTBR (NS) 73 an army officer was denied a deduction for his haircuts. It was held that although it was a condition of employment to be well groomed, the expense related to lifestyle and was therefore private in nature. 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 and *Case R54 84* ATC 408; 27 CTBR(NS) *Case 108*.

Home office expenses

171. Our policy on home office expenses has been consolidated in Taxation Ruling TR 93/30 and is summarised below.

172. Generally, expenses associated with a taxpayer's home are of a non-deductible, private or domestic nature. However, a portion of expenses associated with a taxpayer's home are allowable deductions where either:

- (a) part of the home is used in connection with the taxpayer's income-producing activities but does not constitute a place of business, ie., an area of the home is a private study or
- (b) part of the home is used for income-producing activities and has the character of a 'place of business'

173. The Ruling distinguishes between two broad categories of deductible expenses.

- *Occupancy expenses* relating to ownership or use of a home. These include rent, mortgage interest, municipal and water rates and house insurance premiums.
- *Running expenses* relating to the use of facilities in the home. These include heating/cooling and lighting expenses,

cleaning costs, depreciation, leasing charges and the cost of repairs of furniture and furnishings in the office.

174. Where taxpayers maintain an office or study at home where they can do income-producing work which is not convenient to carry out at their normal place of work, the occupancy expenses referable to their home office are not deductible. This is clearly established by the High Court decisions in *Handley v. FC of T* 81 ATC 4165; (1981) 11 ATR 644 and *Forsyth v. FC of T* 81 ATC 4157; (1981) 11 ATR 657.

175. However, where it is considered that an area of a home is a place of business, a portion of the expenses from both categories may be claimed as a deduction.

Private study

176. If a nurse maintains an office or study at home where income-producing work can be more conveniently carried out at home (e.g., rosters), deductions for the running expenses incurred as a result of the income-producing activities are allowable.

Heating/cooling and lighting expenses

177. For the running expenses to be deductible, the area of a nurse's home set aside as an office or private study must be used *exclusively* for these activities, *FC of T v Faichney* (1992) 129 CLR 38; (1972) 3 ATR 435; 72 ATC 4245. For example, if a nurse performs work related duties in the lounge room where other family members are able to watch television, the expenditure for lighting and heating/cooling retains its private or domestic character and is not deductible. However, if the nurse uses the room at a time when others are not present or uses a separate room, he or she is entitled to a deduction. This applies even if the room is not set aside solely as a home office.

178. A deduction may be allowable where *additional* heating/cooling and lighting expenses are incurred as a result of work duties performed at home. The formula for calculating the additional expense for an appliance is: **A x B x C**

A is the cost per unit of power used;

B is the average units used per hour; and

C is the total annual hours used for income-producing purposes.

179. An estimate based on a reasonable percentage of the household annual bill will be acceptable. In determining a 'reasonable percentage', consideration must be given to the fact that the number of appliances in a private study and the total units used by these appliances is generally small in comparison to the total units used by all other appliances in the home.

Equipment

180. Equipment including computers, printers, word processors and typewriters used in the course of a nurse's duties are generally depreciable under subsection 54(1) of the Act. Where items used for income-producing purposes are also used for domestic or private purposes, the depreciation claim should be apportioned on the basis of an estimate of the percentage of income-producing use. Paragraphs 145 to 156 of this Ruling provide information on the deductibility of depreciation of this equipment.

181. **Example:** A nurse uses her personal computer to prepare schedules and work-related reports. The computer is also used by her children to complete their school work and to play computer games. She is only entitled to a deduction for depreciation based on the income-producing use of the computer.

182. The purchase cost of software is an allowable deduction in the year of purchase. Where the software is used partly for producing income and partly for private purposes, the cost can be apportioned. Taxation Ruling IT 26 provides further information on the deductibility of software expenses.

183. The cost of repairs to such equipment will generally be deductible under subsection 53(3) of the Act to the extent to which the equipment is used for income-producing purposes.

184. In addition, if money has been borrowed to finance the purchase of an item of equipment, for which depreciation is allowable, then the interest payments are deductible under subsection 51(1). The deduction is to be apportioned on the basis of income-producing and private usage of the equipment.

Place of business

185. Whether an area of a home has the character of a place of business is a question of fact. Paragraphs 5, 11, 12 and 13 of Taxation Ruling TR 93/30 provide information on whether or not an area set aside has the character of a 'place of business'.

186. The taxpayer may be entitled to deduct a portion of both the running and occupancy expenses. Paragraphs 177 to 179 of this Ruling provide an explanation for the calculation of the running expenses. The amount of occupancy expenses allowable is based on the ratio of the business area to the total floor area of the dwelling.

187. Where the area set aside has the character of a 'place of business' then a capital gain may accrue or capital loss may be incurred on the disposal of the dwelling by the taxpayer. The amount of capital gain or capital loss will depend on the extent to which, and the period for

which, the dwelling was used for the purposes of gaining or producing assessable income (see Taxation Ruling IT 2673).

188. **Example:** Vanessa is a registered nurse in the cardiac ward at the Royal Perth Hospital. She often makes short presentations to her work colleagues on topics affecting their day-to-day work. While some time is made available to her at work for her preparation, she spends further time at home preparing her notes. She has a spare bedroom which she has converted to a study by fitting it out with a desk (\$140), a chair (\$90), a bookshelf (\$400), a personal computer (\$2,200) and a small fan heater (\$50).

189. What can she claim?

- (a) **Desk:** deduction can be claimed by way of depreciation.
- she uses the desk 70% for work and 30% for private
 - therefore 70% of the annual depreciation charge is allowed
 - as the item cost less than \$300 the rate is 100% (subsection 55(2))
 - it follows that 70% of \$140, or \$98, is allowable.
- (b) **Chair:** the same reasoning applies to the chair as applies to the desk.
- hence 70% of \$90, or \$63, is allowable.
- (c) **Bookshelf:** a deduction can be claimed by way of depreciation
- the bookshelf stores 30% work material and 70% private
 - therefore 30% of the annual depreciation charge is allowable
 - the rate of depreciation is 13%
 - it follows that 30% of (13% of \$400), or \$16, is allowable.
- (d) **Computer:** a deduction can be claimed by way of depreciation as Vanessa uses the computer for typing notes for her presentations.
- computer is used 50% for work and 50% for private purposes
 - therefore 50% of the annual depreciation charge is allowable
 - the rate of depreciation is 27%

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- so 50% of (27% of \$2200), or \$297, is allowable.
- (e) **Fan heater:** a deduction can be claimed by way of depreciation.
- heater is used 25% for work and 75% for private purposes
 - therefore 25% of the annual depreciation charge is allowable
 - as the amount is below \$300 the depreciation rate is 100%
 - it follows that 25% of \$50, or \$13, is allowable.
- (f) **Electricity:** the computer, heater and lighting are drawing electricity while she is performing work-related activity
- the deduction may be based on formula in Taxation Ruling TR 93/30
 - a reasonable percentage of the annual electricity bill. may also be used
 - the annual electricity bill is \$400
 - she proposes to claim 5%, or \$20, on the basis that this would be a reasonable estimate of her work-related electricity usage.

Meals

190. Deductions for the cost of meals consumed while on duty are generally not allowable. These costs fail to meet the tests of deductibility described in paragraphs 17 to 25, and are considered to be private in nature.

191. Costs for meals will be allowed where an allowance (e.g. Overtime Meal Allowance has been paid (see paragraphs 62).

192. The Full Federal Court considered the deductibility of food in *FC of T v. Cooper* 91 ATC 4396. 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 (at ATC 4414; ATR 1636) said:

"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 include the taking of food, albeit that unless that food is eaten, the player would be unable to play.

Expenditure on food, even here as "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 4415; ATR 1638):

'Food and drink are ordinarily private matters, and the essential character of expenditure on food 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.'

193. It is our view that expenditure on meals consumed in the normal course of a working day will not have sufficient connection with income-producing activities of nurses and is in any case a private expense.

194. 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.

195. In *Case Y8 91* ATC 166; *Case 6587* (1991) 22 ATR 3037, a police officer claimed deductions for expenditure incurred on meals while performing special duties away from his normal place of residence. The expense incurred on these meals was held to be private in nature and no deduction was allowable under subsection 51(1).

196. Paragraph 62 of this Ruling provides further information on the deductibility of an overtime meal allowance.

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Motor vehicle expenses

Travel from home to work

197. The costs of travel by a nurse from home to his or her normal place of employment is generally considered to be a private expense and is not deductible under subsection 51(1). This principle was established in *Lunney v. FC of T*; *Hayley v. FC of T* 100 CLR 478; 7 AITR 166.

198. In each of these cases, travel expenses incurred in travel between home and work were claimed on the basis that the expenditure was incurred in producing income. A joint judgment on both cases by 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 assessable his income.' (at 498-499).

199. The fact that the travel is outside normal business/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 and Taxation Determination TD 93/113.

Incidental tasks on the way from home to regular place of employment

200. Collecting mail or supplies, and performing other comparable incidental tasks while travelling between the and the regular place of employment does not, of itself, transform private travel into work-related travel. The cost of this travel is not deductible under subsection 51(1). This is confirmed in paragraph 34 of Taxation Ruling MT 2027.

Travel to and from regular place of employment but transporting bulky equipment

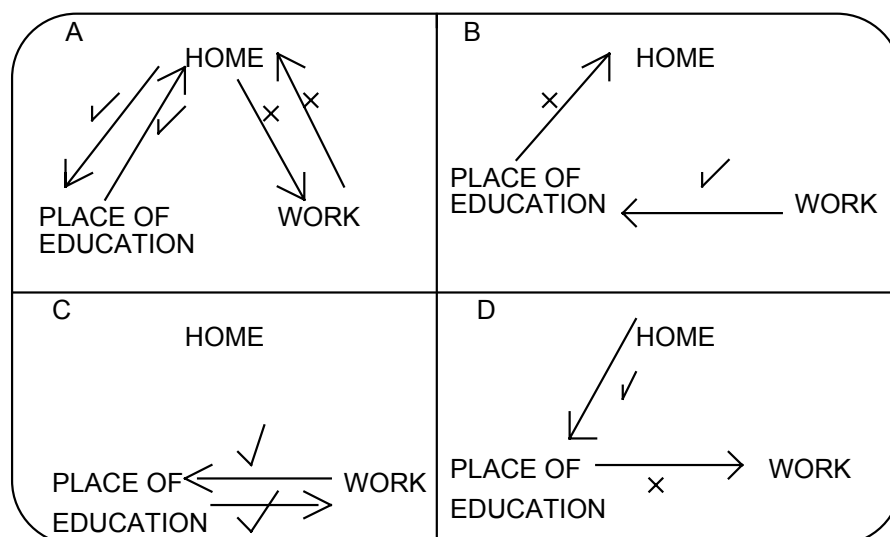
201. A taxpayer is generally entitled to a deduction under subsection 51(1) for travel when transporting bulky equipment even if travelling from home to his or her regular place of employment. In this case, the costs are attributed to the transport of the bulky equipment rather than to the travel to and from work. See *FC of T v. Vogt* 75 ATC 4073; (1975) 5 ATR 274.

202. Deductions may be allowable when nurses are required to use their private motor vehicle and travel:

- (a) between two separate places of work where there are two separate employers involved;
- (b) from the regular place of employment to an alternative location while still on duty and back to the regular place of employment, or directly home;
- (c) from home to an alternative place of employment for work-related purposes and then to the normal place of employment;
- (d) between two places of employment or venues;
- (e) between home and a place of employment while "on call"
- (f) to a place of education. For self-education purposes:

- the cost of travel between home and the place of education and back home again is deductible;
- the cost of travel between work and the place of education and back to work again is deductible;
- if the nurse travels from home to the place of education and then on to work, only the first leg of the trip is deductible;
- if the nurse travels from work to the place of education and then home, only the first leg of the trip is deductible.

Travel in relation to self-education



203. **Example:** Suzanne is a State Enrolled Nurse and lives at the Murray Bridge Nurses' Residence, which is attached to the Murray Bridge Local Hospital. The treatment of her travel costs are considered in the following instances:

- **Travel to and from work:** If Suzanne is employed at the Warragul Private Hospital situated twenty-five kilometres away from the Murray Bridge Nurse's Residence, her travel costs from the nurses' residence to her place of employment would not be deductible, being travel from home to work and in accordance with the general principles established in *Lunney & Hayley*;
- **Travel from a regular place of employment to an alternative location while still on duty and back to the regular place of employment or home:** If Suzanne is employed at the Murray Bridge Local Hospital, and is required to travel to the Warragul Private Hospital during

the course of her duties to give a lecture on rheumatoid arthritis, the costs associated with her travel from the Murray Bridge Local Hospital to the Warragul Private Hospital (and back to resume her duties at the Murray Bridge Local Hospital or directly home) are deductible, being work-related travel.

- **Between two separate places of work where there are two separate employers involved:** If Suzanne is employed at the Murray Bridge Local Hospital and is also employed on a part-time basis at a local fast food outlet as a kitchen hand from 6.00 pm to 9.00 pm Mondays to Thursdays. Her travel expenses are considered in the following:

Suzanne finishes her shift at the hospital at 5.30 pm and travels directly to the fast food outlet to commence duties at 6.00 pm. The cost of direct travel from the hospital to the fast food outlet is deductible as work-related travel.

Suzanne finishes her shift at the fast food outlet at 9.00 pm and travels directly to the hospital to commence duties at 10.00 pm. The cost of direct travel from the fast food outlet to the hospital is deductible as work-related travel.

Suzanne finishes her shift at the hospital at 3.00 pm, goes shopping at a local complex, and then travels to the fast food outlet to commence duties at 6.00 pm. Travel expenses incurred between the hospital and fast food outlet are not deductible, because there was no direct travel between the two places of employment.

Newspapers

204. The cost of daily newspapers is generally not allowable as a deduction under subsection 51(1). It is a private expense. A taxpayer may be able to use some part of the information derived in the course of his or her duties. However, in most circumstances the benefit gained is remote and the proportion of expenditure on newspapers that relates directly to the duties undertaken is incidental to the private expenditure. This view is supported in *Case P30*, 82 ATC 139; 25 CTBR(NS) *Case 94*, *Case P114*, 82 ATC 586; (1982) 26 CTBR(NS) *Case 47 Case K68* 78 ATC 667; 22 CTBR(NS) *Case 8*; *Case N67* 81 ATC 349; 25 CTBR(NS) *Case 18*; *Case P124* 82 ATC 629; 26 CTBR (NS) *Case 55*.

205. These cases can be contrasted with *Case R70* 84 ATC 493; 27 CTBR(NS) *Case 124* where a supervisor in the Commonwealth Auditor-General's Department was allowed deductions for the cost of

specific issues of *The National Times* and *The Australian Financial Review* as there was a sufficient connection between the duties carried out by the taxpayer and the content of these specific publications. However deductions for the cost of the local newspaper, *The Canberra Times*, were disallowed as the expense was essentially private in nature.

206. However, where the main reason for the purchase of the newspapers is for their use in the course of nursing and that use can be clearly demonstrated, then the work-related portion of the cost is allowable. Reference is made to *Case S12*, 85 ATC 165; (1985) 28 CTBR(NS) *Case 18* and *Case U5*, 87 ATC 124.

Parking fees and tolls

207. Parking fees (but not fines) and tolls are expenses which form part of the travelling expenses incurred by nurses. This decision is supported by *Case Y43* 91 ATC 412; *Case 7273* (1991) 22 ATR 3402.

208. These expenses are generally considered to be private in nature when nurses are travelling between their normal place of residence and their regular place of employment and deductions are not allowable under subsection 51(1).

209. Deductions for parking fees (but not fines) and tolls are allowable if the expenses are incurred while travelling:

- (a) between two separate places of work,
- (b) to a place of education for self-education purposes,
- (c) in the normal course of duty and the travelling expenses are allowable deductions. Paragraphs 197 to 203 of this Ruling provides further information on the deductibility of motor vehicle expenses.

Professional library

210. Depreciation on a professional library may be claimed as a deduction under section 54. If an individual reference book is purchased after 1 July 1991, and the cost does not exceed \$300 or its effective life is less than 3 years, it may be depreciated at 100% in the year of purchase under section 55. See Taxation Determination TD 93/159.

211. For depreciation purposes, reference books may only be included in the professional library if their content is directly relevant to the duties performed. Encyclopaedias and general reference books are too general in nature to warrant a deduction.

212. In *Case P26*, 82 ATC 110; 25 CTBR(NS) *Case 90*, a university lecturer was allowed a claim for depreciation expenses on legal books but denied a deduction for depreciation on general reading and fiction books. 'No doubt the illustrations and anecdotes which he was able to use did serve as useful teaching aids but in my view these were not plant or articles within the meaning of section 54 of the Act, as they were not used or installed ready for use for the purposes of producing assessable income' (ATC at 112; CTBR at 661).

213. Where the cost of a textbook has been claimed as a deduction previously, its cost may not be subsequently added to the value of a professional library and depreciated. For example, a nurse may have claimed a deduction for cost of a textbook as part of her self-education expenses. The cost of this textbook is not able to be included in the value of a professional library for depreciation purposes. See also Depreciation deductions in paragraphs 145 to 156.

Removal and relocation expenses

214. When nurses are transferred from one district to another, deductions are not allowable for expenses incurred as the result of the transfer (ie removal and storage expenses).

215. In some instances, nurses are paid an allowance from their employer as compensation for depreciation, disturbance, removal and storage expenses. This allowance is assessable in full and no deductions are allowable under subsection 51(1). If a reimbursement is received for the actual expenses incurred by a nurse, the amount is not assessable and deductions are not allowable under subsection 51(1)

216. The non-deductible expenses that may be incurred include temporary board and lodging; freight to consign personal and educational items; insurance and hire of vehicles to transport items. These expenses come at a point of time too early to be regarded as being incurred in gaining or producing assessable income.

217. We consider that where a taxpayer transfers employment from one locality to another and incurs expenditure in moving from one place of residence to a new place to take up duties of the new position, that expenditure is not incurred in gaining or producing assessable income and is not deductible under subsection 51(1). The taxpayer is travelling to his work and not between two places of employment.

218. Our view is supported in the following two cases:

In *Fullerton v. FC of T* 91 ATC 4983; (1991) 22 ATR 757, the taxpayer worked for the Queensland Forest Service (QFS) as a professional forester for over 20 years. In that time, QFS transferred

him to a number of different locations. As a result of a reorganisation his position ceased to exist. He had no choice but to accept a transfer as he may have been retrenched. The QFS reimbursed a portion of the relocation expenses and the taxpayer claimed the remainder as a tax deduction. It was held that the expenditure on the taxpayer's domestic or family arrangements is not deductible under subsection 51(1), even though the expenditure had a causal connection with the earning of income.

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

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

Self-education expenses

221. Self-education expenses are deductible under subsections 51(1) and 54(1), if the self-education is directly relevant to the activities by which a taxpayer currently derives assessable income or is likely to lead to an increase in income from those activities. 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.

222. Expenses incurred in attending courses, seminars or conferences designed to update the knowledge of the taxpayer in his or her particular occupational field so that the taxpayer may become more proficient in his or her occupation, or improve his or her chances of promotion are deductible. Our policy on the deductibility of self-education expenditure has been consolidated in Taxation Ruling TR 92/8.

223. On occasions, it is difficult to determine whether self-education expenses have a sufficient connection with income production to justify a deduction. The following Court decisions outline the various principles that have emerged.

224. In *FC of T v. Finn* (1961) 106 CLR 60; 12 ATD 348, the High Court held that the expenditure incurred by a senior government architect on an overseas tour devoted to the study of architecture was allowable. Although the Full High Court recognised that the tour expenses were relevant to the activities by which the taxpayer was currently producing income and to the likelihood of his actually

gaining more income in the future, the expenditure was also regarded as a professional obligation to keep up to date.

225. In *FC of T v. Hatchett* 71 ATC 4184; (1971) 2 ATR 557, a primary school teacher incurred expenditure in relation to the submission of a thesis to gain a Teacher's Higher Certificate and university fees for an Arts Degree. It was held that the Certificate expenses were allowable as they related to the actual gaining of income. Possession of the Certificate entitled the taxpayer to earn more money in the future and entitled him to be paid more for doing the same work without any change in grade.

226. The university fees were not deductible. There was no connection between these expenses and the activities by which the taxpayer gained his income as a primary school teacher. Even though, his employer contributed towards payment of the fees and it was accepted that the course was likely to make the taxpayer a better teacher in a general sense, this was not sufficient to make the fees deductible.

227. In *FC of T v. Studdert* 91 ATC 5006; (1991) 22 ATR 762, the taxpayer, a Qantas flight engineer, sought a deduction for expenses incurred on flying lessons leading to a private pilot's licence. The Administrative Appeals Tribunal (AAT) at first instance was prepared to accept that it was part of the taxpayer's duties to understand the overall workings of aircraft flight. The AAT allowed the expenditure on the basis that the lessons improved his proficiency in those duties.

228. The Federal Court upheld the AAT's decision allowing the deduction. His Honour, Hill J, relying on the decision in *Finn*, held that the cost of the flying lessons were deductible as they improved the taxpayer's proficiency as a flight engineer. This was sufficient on its own, without reference to the effect of the lessons on the taxpayer's opportunities for promotion in his current occupation.

229. A deduction is not allowable for self-education expenses if the study, viewed objectively, is designed to enable a taxpayer to get employment, to obtain new employment or to open a new field of income-producing activity. In this case, self-education expenses are incurred at a point too soon to be regarded as incurred in gaining or producing assessable income. This is supported by the decision of the High Court in *FC of T v. Maddalena* 71 ATC 4161; (1971) 2 ATR 541.

230. The intention or purpose of a taxpayer in incurring the self-education expenses can be an element in determining deductibility. If the main purpose of a study tour or attendance at a conference or seminar is related to the gaining or producing of income and the

private purpose is merely incidental, apportionment of the expenses is not appropriate.

231. If the self-education is undertaken equally for income-producing purposes and for private purposes, it is appropriate to equally apportion the self-education expenses between the purposes. If the income-producing purpose is merely incidental to the main private purpose, only those expenses directly attributable to the income-producing purpose are allowable.

232. Whether or not the particular self-education expense has the necessary connection with the production of assessable income depends upon the relevant facts and circumstances of each particular case. Where a nurse is planning an overseas study tour, he or she is encouraged to apply for a private ruling on the deductibility of the expenses prior to undertaking the trip.

233. Subject to the general tests under subsection 51(1) being met, the following types of expenses related to self-education are allowable under the subsection:

- (i) course or tuition fees of attending an educational institution or of attending work-related conferences or seminars. These fees include student union fees.
- (ii) the cost of textbooks, of professional and trade journals, of technical instruments and equipment and of clerical activities (eg. word-processing and photocopying).
- (iii) fares, accommodation and meal expenses incurred on overseas study tours, on work-related conferences or seminars attended away from a taxpayer's home or attending an educational institution away from the taxpayer's home.
- (iv) interest incurred on moneys borrowed to pay for the expenses listed above in subparagraphs (i) - (iii).
- (v) deductions for running expenses of a private study used in connection with self-education. See paragraphs 176 to 179 of this Ruling.

234. The following expenses related to self-education are not allowable under subsection 51(1):

- (i) a higher education contribution payment (subsection 51(6)).
- (ii) meals purchased by a taxpayer, while attending a course at an educational institution in the course of normal travel to and from home.

235. Travel is only allowed in certain circumstances, see paragraph 202.

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Limit on deductibility

236. Where self-education expenses are allowable under subsection 51(1) as discussed in paragraph 221 of this Ruling, 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.

237. 'Expenses of self-education' are defined under section 82A as all expenses (other than higher education contributions (HECS), Open Learning charges and debt repayments under the tertiary student financial supplement scheme) necessarily incurred by a taxpayer in connection with a course of education provided by a school, college, university or other place of education and undertaken by the taxpayer to gain qualifications for use in the carrying on of a profession, business, trade or in the course of any employment.

238. Where the expenses are allowable under subsection 51(1) and they are not 'expenses of self-education' as defined, the full amount will be deductible.

239. **Example:** A registered nurse holds a Diploma of Nursing. She decides to undertake study to advance her career prospects by completing a Bachelor of Nursing Degree. She incurs \$1470 in expenses whilst completing the course.

240. The expenses associated with her study are allowable under subsection 51(1) as the degree is directly relevant to her income-earning activities. As the expenses also fall within the definition of expenses of self-education under section 82A, the total claim for the self-education expenses under subsection 51(1) is limited to \$1,220. The first \$250 is denied due to the operation of section 82A.

241. A registered nurse attends a two day conference run by the Transplant Nurses' Association. The conference is designed to keep her abreast of developments in the field of transplant nursing. The cost of the conference is \$500 and this includes the conference fees, travel to and from the conference as well as accommodation and meals whilst at the conference location.

242. The expenditure is deductible under subsection 51(1) but as they are not expenses of self-education under the definition in section 82A the full amount is deductible.

Technical or professional publications

243. A deduction is allowable under subsection 51(1) for the purchase or subscription cost of journals, periodicals and magazines which have a content specifically related to a nurse's work and are not general in nature. For example, expenditure on magazines such as *Time*,

The Bulletin, *National Geographic* and *Readers Digest* are not allowable as a deduction as they are general interest publications.

244. In *Case P124*, 82 ATC 629; (1982) 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 be that the possible connection is altogether too remote' (ATC at 633-634; CTBR at 422).

245. This can be contrasted with *Case R70*, 84 ATC 493; (1984) 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 her day-to-day work. She was, however, not allowed a deduction for the purchase cost of daily newspapers.

Telephone expenses***Installation costs***

246. Installation costs for telephones are not deductible under subsection 51(1) as they are considered to be a capital expense, also see IT 85.

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

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

Telephone rental

248. Generally, the use of a phone and hence the rental costs would have a private or domestic character and not be allowable deductions. But consider *Case N5* 81 ATC 35; 24 CTBR(NS) 682 where the Board said that:

'...expenditure on maintaining the use of a telephone can, because of its very nature, be properly deductible under section 51, obviously so when installed and used in a place of business and not infrequently when installed in private premises so long as it is used in the production of assessable income.' (ATC at 37; CTBR at 684).

249. The situations where telephone rental will be deductible, especially in the employee context, is summarised at paragraph 3 of Taxation Ruling IT 85. It identifies 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.

250. **Example:** An example of an on call nurse could be a theatre nurse. In order to equip itself for emergency after hours surgery theatre nurses will be rostered on call. This could be for a limited or an indefinite period. This means they must be contactable at all times whether it be by phone, paging unit, beeper or answering machine.

256. Compare this situation to the taxpayer in *Case N5*, who was an ambulance driver. On his days off he may be called to perform extra shifts should one of the other drivers call in sick. He was not designated as being on call in the same way as the nurse in the above example. It was only a general understanding between the taxpayer and his employer that he would be available for work on his days off.

257. **Example:** An example of a nurse who is not on call will be an agency nurse (not employed by the agency). Telephone rental will be incurred at a point too soon to be regarded as incurred in the production of assessable income.

258. Where the phone, beeper or answering machine is not used 100% for work-related purposes then a proportionate deduction only will be allowable for telephone rental. The proportion can be calculated using the following formula:

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

259. **Example:** A theatre nurse is on call for 8 weeks in any given year. During this period she received and made 10 calls for work-related purposes. Over the year there were 300 calls made and received in total. Therefore the work-related percentage is 3.33%. If the total phone rental for the year was \$150 then 3.33% amounts to \$5. As well as claiming this amount as a phone rental deduction the direct cost of the outgoing business calls are also deductible.

Telephone calls

260. The cost of work-related telephone calls is an allowable deduction under subsection 51(1). For example, a nurse calls her

ward, after her shift, from home as she has forgotten to pass on information about a patient to her associate charge nurse.

261. See paragraphs 85 to 87 for the deductibility of beepers, pagers, mobile phones and answering machines.

Telephone silent number

262. The cost of obtaining a silent number listing is considered to be private in nature and no deduction is allowed under subsection 51(1).

263. Taxation Determination TD 93/115 provides further information on the tax treatment of the cost associated with obtaining a silent telephone number.

Unions or professional associations fees

264. Union or professional associations fees are fully deductible under subsection 51(1). Income Tax Rulings IT 327, IT 2062 and IT 2416 provide further information on the deductibility of unions and professional associations fees.

Watches

265. The cost of purchasing and repairing ordinary wrist watches, including water-proof watches is considered to be of a private nature and no deduction is allowed under subsection 51(1).

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

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

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

268. A deduction for the depreciation of nurses' fob watches are allowable, under subsection 51(1). Where the cost of the fob watch is less than \$300 an immediate 100% depreciation deduction is available under subsection 55(2). Expenses incurred in the purchase of batteries and for repairs and maintenance of fob watches are also deductible under subsection 51(1).

269. In *Case S82* 85 ATC 608; 28 CTBR(NS) *Case 87* a qualified nurse was denied the costs associated with the replacement of a conventional wrist watch. Regardless of statements made by the taxpayer, that the watch (which had a second hand) was specifically purchased for, and used constantly, in her work, as well as being worn

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at other times, it was determined that the such expenditure was private in nature.

270. In *Case P71* 82 ATC 338; 26 CTBR(NS) *Case 3* an ambulance officer was denied a deduction for the cost of a digital wrist watch. It was determined 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 that purpose...' (ATC at 341; CTBR at 17).

271. In *Case N84* 81 ATC 451; 25 CTBR(NS) *Case 43* a television cameraman was denied a deduction for the cost of a normal digital watch. It was determined that the watch did not possess any 'special attributes to take it out of the category of private outlays' and although the item was 'used by the taxpayer in his work, the fact did not change their essential character as private expenditures' (ATC at 453; CTBR at 309).

Alternate Views

272. During consultation on this Ruling views were expressed as follows:

Agency Nurses: Should be treated similar to shearers are in IT 2273. See paragraphs 67 to 83 for our view on this matter.

Culottes: The cost of should be deductible as culottes and a white blouse are a traditional nurse's uniform. See paragraphs 94 to 132 for our view the deductibility of clothing costs.

Driver's Licence: The cost should be deductible where the nurse is required to drive a car to in the course of his /her employment, as this meets the necessarily incurred test. See paragraphs 157 to 160 for our view on this matter

Motor Vehicle: The cost of travelling to and from work should be deductible where it is a second or subsequent trip. See paragraphs 197 to 199 for our view on this matter.

Telephone Installation Costs: The cost of installing or connecting a telephone line should be deductible as it is an installation cost of leased plant, being the telephone line. See paragraphs 246 to 247 for our view on this matter.

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