# *TR 95/14 - Income tax: employee teachers - allowances, reimbursements and work-related deductions*

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# Taxation Ruling
Income tax: employee teachers - allowances, reimbursements and work-related deductions

**other Rulings on this topic**

**IT 85; IT 112; IT 327; IT 2084; IT 2198; IT 2199; IT 2406; IT 2452; IT 2477; IT 2481; IT 2543; IT 2566; IT 2614; IT 2641; IT 2673; IT 2685; MT 2027; TR 92/8; TR 92/15; TR 93/30; TR 94/3; TR 94/22; TD 92/142; TD 92/154; TD 92/157; TD 93/108; TD 93/109; TD 93/113; TD 93/114; TD 93/115; TD 93/145; TD 93/159; TD 93/232; TD 93/244**

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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

### Class of person/arrangement

1. This Ruling applies to employee teachers, tutors, early childhood, primary, secondary, special education, technical and further education (TAFE) and relief employee teachers.

2. This Ruling does not address work-related expenses that are unique to lecturers at higher education institutions and employee teachers on exchange programs.

3. This Ruling deals with:

   (a) the assessability of allowances and reimbursements received by employee teachers, and

   (b) deductions for work-related expenses generally claimed by employee teachers.

4. The Ruling discusses the assessability of allowances and reimbursements received under section 25 and paragraphs 26(e) and 26(eaa) of the *Income Tax Assessment Act 1936* (the Act).

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

6. The tax treatment of allowances and reimbursements received is examined at paragraphs 13 to 20 in the **Ruling** section.

7. The common work-related expenses incurred by employee teachers, and the extent to which they are allowable deductions, are

discussed in alphabetical order at paragraph 23 in the **Ruling** section. The substantiation provisions are not discussed in depth in this Ruling.

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

9. Each year the Australian Taxation Office (ATO) carries out audits of taxpayers' returns. This Ruling will be used by the ATO when it undertakes audits of the returns of employee teachers. Where there is a tax shortfall, any penalties imposed will be in terms of Taxation Ruling TR 94/3 on the basis that the views of the ATO on the correct operation of the law have been expressed in a public ruling.

# Date of effect

10. 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).

11. 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 1994-1995 year of income.

# Previous Rulings

12. This Ruling was previously released as Taxation Ruling TR 94/21. There have been no substantial changes to the technical views contained in that Ruling. The Ruling has been re-drafted to clarify some issues and to revise the commentary on the substantiation rules which were amended subsequent to the issue of TR 94/21. This Ruling withdraws Taxation Ruling TR 94/21.

# Ruling

**Allowances**

13. The receipt of an allowance does not automatically entitle an employee teacher to a deduction. The term 'allowance' does not include a reimbursement (see paragraphs 17 to 20).

14. If received, allowances fall within the following categories:

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

(b) fully assessable to the employee with no deduction allowable, even though an allowance is received (paragraphs 180 to 187);

(c) fully assessable to the employee with a deduction allowable for expenses incurred, subject to special substantiation rules (paragraph 16); or

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

### *Allowances - possible deduction*

15. The following allowances are paid to employee teachers. These allowances are fully assessable and deductions may be allowable depending on individual circumstances:

(a) travel allowance (based on a cents per kilometre basis for use of vehicle for work-related purposes); and

(b) meals allowance.

For circumstances where deductions are allowable see ***Motor vehicle and other transport expenses*** (paragraphs 130 to 164) and ***Overtime meals allowance*** (paragraphs 169 to 172).

### *Reasonable allowances*

16. The Commissioner of Taxation publishes annually Taxation Rulings that indicate amounts considered reasonable in relation to the following expenses:

(a) overtime meal expenses;

(b) domestic travel expenses; and

(c) overseas travel expenses.

Allowances received in relation to these expenses are fully assessable. If an allowance is received and the amount of the claim for expenses **incurred** is no more than the reasonable amount, substantiation is not required. If the deduction claimed is more than the reasonable amount, the whole claim must be substantiated, not just the excess over the reasonable amount.

**Reimbursements**

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

18. However, if motor vehicle expenses are reimbursed by an employer on a cents per kilometre basis, the amount is included as assessable income of the employee teacher under paragraph 26(eaa) of the Act. A deduction may be allowable for the actual expenses incurred (see ***Motor vehicle and other transport expenses,*** paragraphs 130 to 164).

19. If the reimbursement by an employer is for the cost of a depreciable item (e.g., tools and equipment), a deduction is allowable to the employee teacher for depreciation (see Taxation Determination TD 93/145 and ***Depreciation of equipment***, paragraphs 76 to 85).

20. If a payment is received from an employer for an **estimated** expense, the amount received by the employee teacher is considered to be an allowance (not a reimbursement) and is fully assessable to the employee teacher (see **Allowances**, paragraphs 13 to 16).

**Deductions**

21. A deduction is only allowable if an expense:

(a) is actually incurred (paragraph 25);

(b) meets the deductibility tests (paragraphs 26 to 34); and

(c) satisfies the substantiation rules (paragraphs 35 and 36).

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

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

***Answering machines, mobile phones, pagers, beepers and other telecommunications equipment:*** A deduction is allowable for the work-related portion of the rental cost or for depreciation on the purchase price of these items. An apportionment must be made between work-related and private use. A deduction is not allowable if

these items are supplied by the employer (paragraph 37). See also ***Depreciation of equipment***, paragraphs 76 to 85.

***Bank fees:*** A deduction is allowable, as a work-related expense, for Financial Institutions Duty that relates to the direct depositing of salary and wages into the employee teacher's bank account(s). A deduction is not allowable for any other bank fees as a work-related expense (Taxation Ruling IT 2084).

***Briefcases:*** A deduction is allowable for the work-related portion of depreciation on the purchase price of a briefcase. A briefcase bought on or after 1 July 1991 can be depreciated at the rate of 100% if its cost is $300 or less or its effective life is less than 3 years.

***Calculators and electronic organisers:*** A deduction is allowable for the work-related portion of depreciation on the purchase price of these items (see ***Depreciation of equipment***, paragraphs 76 to 85).

***Car wash expenses:*** A deduction is allowable for the cost of cleaning a car if it is used to produce assessable income (paragraph 164).

***Child care*** **:** A deduction is not allowable for child care expenses (paragraphs 39 to 41).

***Clothing, uniforms and footwear*****:** A deduction is allowable for the cost of buying, hiring or replacing clothing, uniforms or footwear ('clothing') if these items are either:

(a) protective;

(b) occupation specific;

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

(d) non-compulsory and entered on the Register of Approved Occupational Clothing or approved in writing by the ATO before 1 July 1995. These transitional arrangements cease to have effect from 1 July 1995. A deduction will not be allowable for expenditure incurred after 30 June 1995 in relations to clothing approved under the transitional arrangements; or

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

Expenditure on clothing, uniforms and footwear must satisfy the deductibility tests in subsection 51(1) of the Act and must not be private or domestic in nature (paragraphs 42 to 64).

***Computers and software****:* A deduction is allowable for depreciation on the cost of computers and related software, if purchased together, that are used for work-related purposes. If the software is bought

separately from the computer, a deduction is allowable in full in the year of purchase. The deduction must be apportioned between work-related and private use (paragraphs 68 to 70).

***Conferences, seminars and training courses**:* A deduction is allowable for the cost of attending conferences, seminars and training courses. There must be a relevant nexus with the current income-earning activities of the employee teacher (paragraphs 71 to 75).

***Depreciation of equipment**:* A deduction is allowable for depreciation to the extent of the work-related use of the equipment. Any item of equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less, or if its effective life is less than three years (paragraphs 76 to 85).

***Driver's licence**:* A deduction is not allowable for the cost of acquiring or renewing a driver's licence. A deduction is allowable only for the cost of a premium, if any, that is paid in addition to the cost of a standard licence required for work purposes (paragraphs 86 to 90).

***Excursion, school trips and camps**:* A deduction is allowable for the costs incurred when accompanying students on excursions, educational and sporting trips and camps only if these trips have an educational benefit and are related to the curriculum or extra-curricular activities of the school (paragraphs 91 to 109).

The deductibility of expenses may be affected if relatives accompany an employee teacher on these occasions (paragraph 110).

***Fares:*** A deduction is allowable for the cost of using public transport for work-related travel (paragraph 111). See ***Motor vehicle and other transport expenses*** (paragraphs 130 to 164).

***Fines*:** A deduction is not allowable for fines imposed under a law of the Commonwealth, a State, a Territory, a foreign country, or by a court (paragraph 112).

***First aid courses*:** A deduction is allowable if it is necessary for an employee teacher, as a designated first aid person, to undertake first aid training to assist in emergency work situations. If the cost of the course is met by the employer, or is reimbursed to the employee teacher, no deduction is allowable.

***Fitness expenses*:** A deduction is not allowable for expenses incurred in keeping fit (paragraph 113).

***Glasses and contact lenses:*** A deduction is not allowable for the cost of buying prescription glasses or contact lenses (paragraph 114).

***Home office expenses:*** See paragraphs 115 to 124.

*Place of business:* A deduction is allowable for a portion of the running and occupancy expenses if an area of the home has the character of a 'place of business' (paragraphs 117 and 118).

*Private study:* A deduction is allowable for the running expenses of a private study to the extent that the private study is used for work performed at home (paragraphs 119 to 124).

***Insurance of tools and equipment:*** A deduction is allowable for the cost of insurance of equipment to the extent of its work-related use.

***Laundry and maintenance of clothing, uniforms and footwear:*** A deduction is allowable for the cost of laundry and maintenance of supplied or purchased clothing, uniforms or footwear if these items are of a kind described under ***Clothing, uniforms and footwear*** (paragraphs 65 to 67).

***Meals:*** A deduction is not allowable for the cost of meals eaten during a normal working day (paragraphs 125 to 129). A deduction may be allowable where an overtime meal allowance has been paid (see paragraphs 169 to 172). A deduction may be allowable if meal costs are incurred by an employee teacher who travels for work-related purposes (see paragraphs 219 to 223).

***Motor vehicle and other transport expenses:*** Transport expenses include public transport fares, and the running costs associated with using motor vehicles, motor cycles, bicycles, etc., for work-related travel. They do not include accommodation, meals and incidental expenses (see ***Travel expenses*** at paragraphs 219 to 223). The treatment of motor vehicle and other transport expenses incurred by an employee teacher when travelling is considered below:

*Travel between home and work:* A deduction is not allowable for the cost of travel between home and the normal work place as it is generally considered to be a private expense. This principle is not altered by the performance of incidental tasks en route and the principle is not changed if the travel is outside normal working hours or includes a second or subsequent trip (paragraphs 132 to 134).

*Travel between home and work - transporting bulky equipment:* A deduction is allowable if the motor vehicle expenses can be attributed to the transportation of bulky equipment rather than to private travel between home and work. A deduction is not allowable if the equipment is transported to and from work by the employee teacher as a matter of convenience (paragraphs 136 to 142). A deduction is not allowable if a secure area for the storage of equipment is provided at the workplace.

*Travel between two separate work places if there are two separate employers involved:* A deduction is allowable for the cost of

travelling directly between two places of employment (paragraphs 143 and 144).

*Travel from the normal work place to an alternative work place while still on duty and back to the normal work place or directly home:* A deduction is allowable for the cost of travel from the normal work place to other work places. A deduction is also allowable for the cost of travel from the alternative work place back to the normal work place or directly home. This travel is undertaken in the course of gaining assessable income and is allowable as a deduction (paragraphs 145 and 146).

*Travel from home to an alternative work place for work-related purposes and then to the normal work place or directly home:* A deduction is allowable for the cost of travel from home to an alternative work place and then on to the normal work place or directly home (paragraphs 147 and 148).

*Travel between two places of employment or between a place of employment and a place of business:* A deduction is allowable for the cost of travelling directly between two places of employment or a place of employment and a place of business, provided that the travel is undertaken for the purpose of carrying out income-earning activities (paragraphs 149 to 155).

*Travel between home and a place of employment while 'on call':* A deduction is not allowable for the cost of travel from home to a place of employment for an employee teacher who is 'on call' (paragraphs 156 to 162).

*Travel in connection with self education:* See ***Self education expenses*** (paragraphs 188 to 194).

***Newspapers:*** A deduction is not allowable for the cost of newspapers (paragraphs 165 to 168).

***Overtime meal expenses:*** A deduction is allowable for the cost of meals bought while working overtime if an award overtime meal allowance is received. Special substantiation rules apply (paragraphs 169 to 172).

***Parking fees and tolls:*** A deduction is allowable for parking fees (but not fines), bridge and road tolls paid by an employee teacher while travelling in the course of employment, e.g., between work places (paragraphs 173 and 174).

***Professional library:*** A deduction is allowable for depreciation of a professional library to the extent of its work-related use. The content of reference material must be directly relevant to the income-earning activities (paragraphs 175 to 179).

***Removal and relocation expenses:*** A deduction is not allowable for the cost of taking up a transfer in existing employment or in taking up an appointment with a new employer (paragraphs 180 to 187).

***Repairs to equipment:*** A deduction is allowable for the cost of repairs to equipment, to the extent of the work-related use of the item.

***Self education expenses:*** A deduction is allowable for the cost of self education if there is a direct connection between the self education and the employee teacher's current income-earning activities. Self education costs can include fees, travel, books and equipment (paragraphs 188 to 191).

If self education expenses are allowable but also fall within the definition of 'expenses of self-education' in section 82A of the Act, the first $250 is not an allowable deduction (paragraphs 192 to 194).

***Social functions:*** A deduction is not allowable for expenditure incurred in attending staff dinners, school formals or similar functions if the cost of the ticket provides for food, drink or recreation. A deduction is also not allowable for the cost of providing morning/ afternoon teas or light refreshments (paragraphs 195 to 201).

***Student expenses:*** A deduction is not allowable for expenditure on items supplied to students for their own individual needs, gifts purchased for students, or to meet students' personal costs (paragraphs 202 to 204).

***Teaching aids:*** A deduction is allowable for the cost of teaching aids to the extent they are used for work-related purposes (paragraphs 205 to 207).

***Technical or professional publications:*** A deduction is allowable for the cost of buying or subscribing to journals, periodicals and magazines that have a content specifically related to an employee teacher's employment and are not general in nature (paragraphs 208 to 210).

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

*Cost of calls:* A deduction is allowable for the cost of work-related calls (paragraphs 211 and 212).

*Installation or connection costs:* A deduction is not allowable for the cost of installing or connecting a telephone, etc., (paragraphs 213 and 214).

*Rental costs:* A deduction is allowable for a proportion of telephone/ equipment rental costs if an employee teacher can demonstrate that he or she is 'on call', or required to telephone his or her employer, students etc., on a regular basis while away from school (paragraphs 215 to 217).

*Silent telephone numbers:* A deduction is not allowable for the cost of obtaining a silent telephone number (paragraph 218).

***Travel expenses:*** A deduction is allowable for the cost of travel (fares, accommodation, meals and incidentals) incurred by an employee teacher when travelling in the course of employment e.g., to a conference interstate (paragraphs 219). Special substantiation rules apply (paragraphs 220 to 223).

***Travel accompanied by a relative:*** Section 51AG of the Act may affect the deduction allowable for travel expenses where relatives accompany an employee teacher on work-related travel (paragraph 224).

***Union or professional association fees:*** A deduction is allowable for annual fees paid to unions and professional associations, although a deduction is not allowable for joining fees. A deduction is not generally allowable for levies (paragraph 225). A deduction is not allowable for contributions to staff social clubs or associations.

***Watches:*** A deduction is not allowable for the costs of purchasing and repairing ordinary wrist watches, including waterproof watches. A deduction is allowable for the cost of purchase, repairs and batteries of dedicated stop watches (paragraphs 226 to 230).

# Explanations

**Deductibility of work-related expenses**

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

(a) is actually incurred,

(b) meets the deductibility tests, and

(c) satisfies the substantiation rules.

***Expense actually incurred***

25. The expense must actually be incurred by the employee teacher to be considered for deductibility. A deduction is not allowable for expenses not incurred by an employee teacher, e.g., items provided free of charge. Under section 51AH of the Act, a deduction is not

generally allowable if expenses are reimbursed (see paragraphs 18 to 20 for exceptions to this rule).

***Expense meets deductibility tests***

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

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

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

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

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

(c) it is necessary to determine the **connection** between the particular outgoing and the operations or activities by which the taxpayer most directly gains or produces his or her assessable income (*Charles Moore & Co (WA) Pty Ltd v. FC of T* (1956) 95 CLR 344; 11 ATD 147; 6 AITR 379; *FC of T v. Cooper* (1991) 29 FCR 177; 91 ATC 4396; (1991) 21 ATR 1616 (*Cooper's* case); *Roads and Traffic Authority of NSW v. FC of T* (1993) 43 FCR 233; 93 ATC 4508; (1993) 26 ATR 76; *FC of T v. Hatchett* (1971) 125 CLR 494; 71 ATC 4184; (1971) 2 ATR 557 (*Hatchett's* case)).

28. A deduction will be denied under the exception provisions of subsection 51(1) of the Act if the expense is incurred for an item that is either:

(a) private or domestic in nature (e.g., sunscreen or driver's licence);

(b) capital, or capital in nature (e.g., purchase of a computer); or

(c) incurred in earning tax exempt income (e.g., expenses related to income from membership of the Army Reserve).

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

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

30. The fact that an expense is voluntarily incurred by an employee teacher does not preclude it from being an allowable deduction (see Taxation Ruling IT 2198).

31. **Example:** Maria's employer has supplied her with a mobile telephone to use for work. Maria voluntarily buys a spare battery for the telephone. The cost of the spare battery is an allowable deduction.

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

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

34. In *Cooper's* case, Hill J said (FCR at 200; ATC at 4414; ATR at 1636):

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

### *Expense satisfies the substantiation rules*

35. The income tax law requires substantiation of certain work-related expenses. If the total of these expenses is $300 or less, the employee teacher can deduct the amount without getting written evidence (except for certain car, travel allowance and meal allowance expenses), although a record must be kept of how the claim was calculated.

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

## Common work-related expense claims

### *Answering machine, telephone, mobile phone, pager, beeper and other telecommunications equipment*

37. A deduction is allowable for depreciation of the work-related portion if these items are used by employees for work-related purposes. For information on depreciation see ***Depreciation of equipment***, paragraphs 76 to 85, and for information on telephones see ***Telephone expenses***, paragraphs 211 to 218.

### *Briefcases*

38. A deduction is allowable for depreciation on the cost of a briefcase under subsection 54(1) of the Act to the extent that the briefcase is used for work-related activities. A briefcase bought on or after 1 July 1991 can be depreciated at the rate of 100% if its cost is $300 or less or its effective life is less than 3 years.

### *Child care*

39. A deduction is not allowable for child care expenses, even if it is a prerequisite for an employee teacher to obtain and pay for child care so that he or she can go to work and earn income. These expenses are also not deductible if incurred by an employee teacher to undertake studies relevant to his or her employment.

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

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

### *Clothing, uniforms and footwear*

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

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

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

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

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

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

(ii) approved in writing by the ATO under the transitional arrangements contained in *Taxation Laws Amendment Act No 82 of 1994*. These transitional arrangements cease to have effect from 1 July 1995. A deduction will not be allowable for expenditure incurred after 30 June 1995 in relation to clothing approved under the transitional arrangements; or

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

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

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

(iii) the expenditure is not of a private nature;

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

43. Expenditure on clothing, uniforms and footwear must satisfy the deductibility tests in subsection 51(1) of the Act and must not be capital, private or domestic in nature.

*Protective clothing*

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

45. A deduction is allowable for expenditure on footwear specifically designed to provide protection to the wearer at work, e.g., steel-capped boots or special non-slip shoes.

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

47. A deduction is not allowable for the cost of items that provide protection from the natural environment (e.g., sunglasses, sun hats, sunscreen, wet weather gear and thermal underwear). The cost of these items is considered to be a private expense. This view is supported in *Case Q11* 83 ATC 41; 26 CTBR (NS) *Case 75*, and in *Case N84* 81 ATC 451; (1981) 25 CTBR (NS) *Case 43* (see also Taxation Ruling IT 2477 and Taxation Determination TD 93/244).

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

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

Although this taxpayer was self-employed, the same deductibility tests as set out in paragraphs 25 to 36 applied.

49. **Example:** Tam is an employee teacher. As it is winter and she is taking the students on a farm visit, she buys herself a pair of gumboots. The purchase cost of the gumboots is not an allowable deduction. They are conventional protection from the natural environment.

*Occupation specific clothing*

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

51. It is not envisaged that employee teachers would generally wear clothing that is occupation specific. However, if an employee teacher wears a graduation gown at school, it would be considered occupation specific.

*Compulsory uniform or wardrobe*

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

53. Paragraph 10 of IT 2641 lists the factors that should be considered in determining whether clothing constitutes a 'corporate' wardrobe or uniform.

54. In *Case R55* 84 ATC 411; 27 CTBR (NS) *Case 109*, it was concluded (ATC at 416; CTBR at 874) that:

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

55. In *Case U95* 87 ATC 575, a shop assistant employed by a retail merchant was required to dress according to the standard detailed in the staff handbook. The prescribed dress standards were as follows (ATC at 577):

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

56. The deduction for clothing was denied because there was (ATC at 580):

> '...nothing distinctive or unique about the combination of clothing which would identify the wearer as a [name of employer] shop assistant or even a shop assistant from another department store. The colour combination of the clothing would be included in the range of acceptable street dress unassociated with business or employment, as well as a combination of colours sometimes worn by female drink or food waiting staff.'

*Non-compulsory uniform or wardrobe*

57. A deduction is not allowable for the purchase and maintenance costs of a non-compulsory uniform or wardrobe **unless** the conditions outlined in section 51AL of the Act are met. Section 51AL provides that expenditure on a non-compulsory uniform or wardrobe will be allowable under subsection 51(1) of the Act only if the design of the clothing has been entered on the Register of Approved Occupational Clothing, or if the design of the clothing is approved in writing by the ATO under the transitional arrangements. These transitional

arrangements cease to have effect from 1 July 1995. A deduction will not be allowable for expenditure incurred after 30 June 1995 in relation to clothing approved under the transitional arrangements.

58. If employee teachers are provided with uniforms by their employers, that bear the employer's logo, and it is not compulsory to wear the uniform, no deduction is allowable for maintenance costs unless the uniform satisfies the requirements of section 51AL of the Act.

*Conventional clothing*

59. The views of the ATO on the treatment of costs of buying and maintaining conventional clothing are set out in Taxation Ruling TR 94/22. That Ruling sets out our views on the implications of the decision of the Full Federal Court of Australia in *Edwards* case. Ms Edwards was the personal secretary to the wife of a former Queensland Governor. She was able to establish that her additional clothing expenses were allowable in her particular circumstances. In most cases, expenses for conventional clothing will not meet the deductibility tests of subsection 51(1) of the Act as they are of a private nature (see paragraphs 28 and 29).

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

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

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

> 'While the A list clothes [those used exclusively for work] assisted in creating an image compatible with the applicant's perceptions of her clients' and audiences' expectations, her

> activities productive of income did not turn upon her wearing A list clothes, however important the applicant may have perceived these clothes to be in her presentation activities. There is not the requisite nexus between her income-earning activities and the A list clothing expenses.'

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

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

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

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

64. Expenditure by employee teachers on sports clothes (e.g., tracksuits, T-shirts, aerobics clothing, swimming costumes, shorts, socks and running/aerobic shoes) is expenditure on conventional clothing and is not an allowable deduction. See Taxation Determination TD 93/109.

*Laundry and maintenance*

65. A deduction is allowable for the cost of cleaning and maintaining clothing that falls into one or more of the categories of deductible clothing listed in paragraph 40 and that satisfies the deductibility tests in subsection 51(1) of the Act. This applies whether the clothing is purchased by the employee or supplied by the employer.

66. A deduction is not allowable for cleaning chalk, food or paint marks on conventional clothing. If conventional clothing is damaged in an accident at work, it does not convert the cost of cleaning the clothing into an allowable deduction.

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

### *Computers and software*

68. A deduction is allowable under subsection 54(1) of the Act for depreciation of computers and related software owned and used by employee teachers for work-related purposes. If the software is bought separately from the computer a deduction is allowable in full in the year of purchase. The deduction must be apportioned between work-related and private use (paragraphs 76 to 85 of this Ruling provide further information on ***Depreciation of equipment***).

69. A deduction is allowable under section 53 of the Act for the cost of repairs to computer equipment to the extent that the computer equipment is used for work-related purposes.

70. A deduction is allowable for interest paid on money borrowed to finance the purchase of a computer. The deduction must be apportioned to the extent that the computer equipment is used for private purposes.

### *Conferences, seminars and training courses*

71. A deduction is allowable for the cost of attending conferences, seminars and training courses to maintain or increase the knowledge, ability or skills required by an employee teacher. There must be a relevant connection between the conference, seminar or training course and the current income-earning activities of the employee teacher.

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

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

73. A deduction is allowable for the cost of travel (fares, accommodation and meal expenses), registration and conference material costs incurred in attending work-related conferences or seminars (paragraphs 219 to 223). If part of the cost of a conference, seminar or training course represents the cost of food and drink that is provided, the cost is only an allowable deduction according to the terms of section 51AE of the Act (see Taxation Determination TD 93/195 for further explanation).

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

deductible. If the attendance at the conference, seminar or training course is only incidental to a private activity (e.g., a holiday) then only the costs directly attributable to the conference, seminar or training course are an allowable deduction. The cost of accommodation, meals and travel directly relating to the private activity is not allowable under subsection 51(1) of the Act.

75. Information on ***Self education expenses*** can be found in Taxation Ruling TR 92/8 and in paragraphs 188 to 194 of this Ruling.

***Depreciation of equipment***

76. A deduction is not allowable under subsection 51(1) of the Act for the cost of equipment as it is considered to be a capital expense.

77. A deduction is allowable under subsection 54(1) of the Act for depreciation on equipment owned and used by an employee teacher during the year for income-producing purposes. In addition, a deduction is also allowable for depreciation on items of equipment that are not actually used during the year for income-producing purposes, but are installed ready for use for that purpose and held in reserve.

78. There are two methods to calculate depreciation. These are the prime cost method and the diminishing value method. Depreciation using the prime cost method is calculated as a percentage of the cost of the equipment. Depreciation using the diminishing value method is calculated initially as a percentage of the equipment's cost and thereafter as a percentage of the written down value.

79. Any item of equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less, or if its effective life is less than three years (section 55 of the Act). This means an immediate deduction is available for the cost of each item in the year in which it is purchased. However, the item may be depreciated at a rate less than 100% if the taxpayer so elects (subsection 55(8) of the Act). The current depreciation rates are set out in Taxation Ruling IT 2685.

80. **Example:** Susan, a TAFE employee 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 a deduction in the year of purchase.

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

82. **Example:** Darren, an employee music teacher, plays the guitar for his enjoyment. He also uses the guitar in his music lessons at school. The instrument is used partly for work and partly for private purposes. Thus, the depreciation expense should be appropriately apportioned between the private and work-related use.

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

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

85. **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.

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 × 13.5% = $40.36, rounded to $41.

### *Driver's licence*

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

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

88. This principle is not altered if the holding of a driver's licence is a condition of employment (Taxation Determination TD 93/108).

89. Some employee teachers may need an endorsed licence to perform their duties. In some states, these types of endorsements do not add to the cost of the licence. However, a deduction is allowable

only for the cost of a premium, if any, that is paid in addition to the cost of a standard licence required for work purposes.

90. **Example:** Tina, an employee teacher, requires an endorsement to drive the school bus for excursions. A deduction is allowable for the premium paid on top of the cost of the standard licence. However, a deduction is not allowable for the costs of the lessons in obtaining the licence as these costs are a capital expense.

### *Excursions, school trips and camps*

91. A deduction is allowable under subsection 51(1) of the Act for the costs incurred by an employee teacher when accompanying students on excursions, educational and sporting trips and camps only if these trips are undertaken by an employee teacher in the course of gaining assessable income and they are not private, domestic or capital in nature.

92. Some factors that would be considered in determining the relevance of these trips to an employee teacher's employment would include the purpose of the trip, the activities undertaken, and the duties of the employee teacher while on the trip. The purpose of the trip and the activities undertaken should have an educational benefit and be related to the curriculum or syllabus of the school.

93. It would also be expected that the employee teacher participates in the task of supervising students. If the trip does not have a direct connection to the syllabus of the school, an employee teacher's supervisory role would not be sufficient to make the employee teacher's expenses deductible.

94. The deductibility of the expenses incurred in undertaking an excursion, school trip or camp will depend on the specific circumstances of each case. The conclusion in all the examples provided are based on the specific given facts.

95. **Example:** Fred, an employee teacher, accompanies a class of primary school students on a day excursion to visit Parliament House, the Museum and Art Gallery as part of the social studies curriculum.

96. **Example:** Sandra, a science teacher, accompanies a group of students enrolled in biology on a camp to a national park. The purpose of the trip is to study the ecology of a rain forest.

97. In both these examples, the expenses incurred by the employee teacher would be allowable as a deduction because the purpose of the trip and the activities undertaken have a direct relevance to the curriculum.

98. In *Case R42* 84 ATC 357; (1984) 27 CTBR (NS) *Case 97*, a lecturer at a college of advanced education was allowed a deduction after he was able to demonstrate that his expenses in accompanying a group of trainee students on a trip to Fiji were incurred in the course of his duties. He demonstrated that the excursion formed part of the official college program; was compulsory for all students, and that staff involved in teacher-education courses were expected, as part of their employment, to participate in various out-of-college activities.

99. Although the trips may be approved by the school and the opportunity to go on these trips provide social and cultural benefits to the students and employee teacher, these factors alone do not suffice to make the expenses in relation to the trip deductible.

100. **Example:** A school in Australia has a sister school in an overseas country. Every second year an employee teacher accompanies a group of students on a trip to visit the sister school. Attendance on the trip is open to any student of the school. Whilst on the trip, 6 of the 10 days are spent at the sister school engaging in social, classroom and sporting activities. The remaining days are spent touring the country.

101. The trip is open to all students and is not part of the curriculum of any particular course at the school. While the students may have engaged in classroom or sporting activities, these do not form part of the curriculum of a subject studied by the students undertaking the trip. Even though the trip may provide social and cultural benefits to the students, the expenses incurred by the employee teacher in relation to the trip are not deductible.

102. Whilst relevance to the school curriculum is an important factor in determining the character of such trips, a deduction is not necessarily denied in the absence of this factor. In some instances, the reason for the trip and the activities undertaken will not be curriculum-related but may be an integral part of the extra-curricula activities of the school. If an employee teacher is involved in such activities and accompanies students as a representative of the school, the expenses incurred by the employee teacher would be allowable. Examples of such activities would be attendance at school-related sporting events, tours conducted by the school band and attendance at competitions by student representatives of the school.

103. **Example:** Peter is the coach of a school sports team. He accompanies this team on a trip to another town to participate in an interschool competition. The team is representing the school and he is attending as the coach. Accommodation, fares, meals and incidental costs incurred in attending such a tour are allowable.

104. In cases where the trip is undertaken by an employee teacher in gaining or producing assessable income, the expenses allowable as a deduction may include accommodation and meals while on the trip, airfares, bus and train fares, motor vehicle expenses, public transport costs, entrance fees, guide books/information books, film/developing costs, photo albums used in the class room and teaching aids. A deduction is not allowable for meals if the excursion is undertaken during the normal course of a working day.

105. Expenses incurred by an employee teacher prior to the excursion, trip or camp to arrange or plan the event are allowable. These include, for example, postage and telephone expenses to obtain information or reserve accommodation. The deductibility of expenses incurred to inspect the venue prior to taking the students depends on the purpose and reasons for undertaking such an inspection.

106. **Example:** Beverley, an employee history teacher, plans a school excursion to a sugar mill in the local area. A prior inspection of the venue is necessary to ensure that it meets safety requirements. The expenses associated with the prior visit are allowable.

107. **Example:** Bronwyn, an employee primary school teacher, visits an animal sanctuary with her family on the weekend. After the visit, she decides that it would be of educational benefit to her students and suitable for a class excursion. The expenses of this visit are not allowable under subsection 51(1) of the Act as the primary purpose of the visit was private.

108. Expenses incurred which are not allowable would include expenditure on clothing purchased specifically for the excursion, trip or camp, for example, outdoor/indoor and thermal clothing (see paragraph 47).

109. If the trip has both private and work-related purposes, the expenses should be apportioned accordingly. For example, if the employee teacher undertakes sightseeing or recreational activities, the expenses incurred on these activities are private and not allowable under subsection 51(1) of the Act.

*Accompanying relatives' expenses*

110. A deduction is not allowable for the expenses of relatives accompanying an employee teacher whilst on excursions, school trips and camps (see section 51AG of the Act) This rule applies whether or not the accompanying relatives are fellow employees (if those employees perform no substantive duties during the trip).

### *Fares*

111. A deduction is allowable for the cost of using public transport for work-related travel (see ***Motor vehicle and other transport expenses*** (paragraphs 130 to 164)).

### *Fines*

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

### *Fitness expenses*

113. A deduction is not allowable under subsection 51(1) of the Act for expenses of keeping fit such as gym fees and aerobic class fees. It is not a requirement that employee teachers, including employee physical education teachers, maintain a high level of fitness. This type of expense does not have the essential character of being incurred in the course of gaining or producing assessable income (see Taxation Determination TD 93/114).

### *Glasses and contact lenses*

114. A deduction is not allowable under subsection 51(1) of the Act for the cost of purchasing prescription glasses or contact lenses as the expense relates to a personal medical condition and is, therefore, private in nature.

### *Home office expenses*

115. A comprehensive explanation of the deductibility of home office expenses is contained in Taxation Ruling TR 93/30.

116. Key points include:

(a) Costs associated with the home are normally of a private or domestic character (*Thomas v. FC of T* (1972-73) ALR 368; 72 ATC 4094; 3 ATR 165 and *FC of T v. Faichney* (1972) 129 CLR 38; 72 ATC 4245; 3 ATR 435 (*Faichney's* case).

(b) There are two exceptions. A deduction is allowable if:

(i) part of the home is used for income-producing activities and has the character of a 'place of business'; or

(ii) part of the home is used in connection with the taxpayer's income-producing activities and does not constitute a 'place of business' i.e., an area of the home used as a private study.

(c) There are two types of expenses associated with the home:

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

(ii) ***Running expenses*** relate to the use of facilities in the home and may be affected as a result of income-producing activities. These include heating/cooling and lighting expenses, cleaning costs, depreciation, leasing charges and the cost of repairs of furniture and furnishings in the home office.

A deduction is not allowable for the cost of occupancy expenses for employee teachers who maintain an office or study at home, if they carry out income-producing activities at home as a matter of convenience. This is clearly established by the High Court decisions in *Handley v. FC of T* (1981) 148 CLR 182; 81 ATC 4165; 11 ATR 644 and *FC of T* v *Forsyth* (1981) 148 CLR 203; 81 ATC 4157; 11 ATR 657.

*Place of business*

117. Whether an area of a home has the character of a 'place of business' is a question of fact. If a home has the character of a 'place of business', a deduction is allowable for a portion of running and occupancy expenses. Paragraphs 5, 7, 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'. Whether or not an area of a home was a 'place of business' was also looked at in a recent case. In *Case 49/94* 94 ATC 429; *AAT Case 9749* (1994) 29 ATR 1138, a sales representative claimed deductions for home office expenses. The Tribunal found that there was no evidence that the space used was dedicated to the business and separate from the rest of the home. It is not considered that employee teachers, in their capacity as employees, use part of their home as a place of business. However, an employee teacher may also conduct a business from home.

118. If the area of the home set aside has the character of a 'place of business', then a capital gain may accrue or a capital loss may be incurred on the disposal of the home by the employee teacher. The amount of the capital gain or capital loss will depend on the extent to

which, and the period for which, the home was used for the purpose of gaining or producing assessable income (see Taxation Ruling IT 2673).

*Private study (if a home is not a place of business)*

119. Employee teachers may maintain an office or study at home (e.g., for lesson preparation, student assessment, marking essays and setting examinations).

120. A deduction is not allowable for running expenses if the employee teacher merely shares a room with his or her family (e.g., the lounge room) and at the same time does some work-related activity. Running expenses retain their private or domestic character (see *Faichney's* case). If an employee teacher uses the room for work-related purposes at a time when others are not present, a deduction for running expenses is allowable.

121. A deduction is allowable for the additional running expenses associated with the use of a separate room/study used for work-related activities.

122. This reflects the fact that running costs of that part of the home result from the taxpayer carrying out work at home. The extra expenditure must relate to facilities provided exclusively for the taxpayer's benefit while he or she works.

123. To calculate additional running expenses resulting from using the home/study office for work-related purposes, see paragraphs 19 to 24 of Taxation Ruling TR 93/30.

124. Deductibility of other expenses related to home offices such as depreciation are set out in paragraphs 76 to 85 of this Ruling.

### *Laundry*

See *Laundry and maintenance* (paragraphs 65 to 67).

### *Meals*

125. A deduction is not allowable for the cost of meals consumed by an employee teacher in the normal course of a working day. It is our view that the cost of meals will not have sufficient connection with the income-earning activity and, in any case, the cost is a private expense and fails to meet the tests of deductibility described in paragraphs 24 to 36 of this Ruling.

126. The Full Federal Court considered the deductibility of food costs in *Cooper's* case. In that case, a professional footballer had been

instructed to consume large quantities of food during the off-season to ensure his weight was maintained. By majority, the Full Federal Court found that the cost of additional food to add to the weight of the taxpayer was not allowable. Hill J said (FCR at 199-200; ATC at 4414; ATR at 1636):

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

Hill J went on to say (FCR at 201; ATC at 4415; ATR at 1638):

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

127. 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.

128. A deduction is generally not allowable for the cost of food or meals consumed while on duty. These costs fail to meet the tests of deductibility described in paragraphs 24 to 36, and are considered to be private in nature.

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

### *Motor vehicle and other transport expenses*

130. Transport expenses include public transport fares, and the running costs associated with using motor vehicles, motor cycles, bicycles, etc., for work-related travel. They do not include accommodation, meals and incidental expenses (see ***Travel expenses***, paragraphs 219 to 223).

131. The treatment of motor vehicle expenses incurred by an employee teacher when travelling is considered below.

*Travel between home and work*

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

133. The High Court considered travel expenses incurred between home and work in *Lunney's* case. A joint judgment by Williams, Kitto and Taylor JJ stated (CLR at 498-499; ATD at 412-413) that:

> '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 expenditure on fares is a prerequisite to the earning of a taxpayer's income is not to say that such expenditure is incurred in or in the course of gaining or producing his income.'

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

*Incidental tasks on the way from the employee teacher's home to regular place of employment*

135. Collecting mail, stationery supplies, educational resources and performing other incidental tasks while travelling between the employee teacher's home and his or her regular place of employment does not, of itself, transform private travel into work-related travel. The cost of this travel is not allowable under subsection 51(1) of the Act (see paragraph 34 of MT 2027).

*Travel between home and work - transporting bulky equipment or transporting students*

136. A deduction is allowable if the transport costs can be attributed to the transportation of bulky equipment rather than to private travel

between home and work (see *FC of T v. Vogt* 75 ATC 4073; 5 ATR 274).

137. **Example:** On a particular day, Belinda, an employee drama teacher, drives from home to her regular school with bulky props and costumes needed for the school play. She is entitled to a deduction for her travelling costs. Her travel that day relates to getting the costumes, and not herself, to work.

138. An employee teacher is not entitled to a deduction for transport costs if, as a matter of convenience, work is performed at home and items such as papers, books and material (whether bulky or not) are transported between home and work for that purpose. In *Case Q1* 83 ATC 1; (1983) 26 CTBR (NS) *Case 65*, the use of a car by a school principal in these circumstances was treated as private use as it was travel from home to the place of employment.

139. A deduction is allowable for the cost of travel attributable to the transport of students in the course of producing assessable income. This is so, even if the travel begins at the employee teacher's home and ends at his or her regular place of employment. The cost of the total distance travelled (beginning at home and ending at school) is allowable.

140. **Example:** On Saturday afternoon, the school rugby union team plays a competition match at the sporting field located on the school's grounds. As part of his duties as a coach, Winston collects several players on the trip from home to the sporting field. After the match, he then takes the players home and continues his journey home. The teacher is entitled to a deduction for the cost of travel between his home and the sporting field. The cost is an allowable deduction in this circumstance because it is attributable to the transport of the players rather than to his travel to and from home.

141. However, a deduction is not allowable if the travel is not incurred in the course of producing assessable income.

142. **Example:** Maureen is employed at the same school where her children and the neighbour's children are students. As a matter of convenience, she transports the children to and from school. The travel is attributed to her relationship to the children and not to the transport of the students in the course of producing assessable income. The cost of this travel is not an allowable deduction.

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

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

144. **Example:** Bruce, an employee teacher, travels directly from the school where he is employed to the TAFE college where he gives night lectures. A deduction is allowable for the cost of his travel from the school to the TAFE college.

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

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

146. **Example:** Wayne, an employee teacher, travels from his normal school to a regional administrative centre for a meeting. After the meeting, he travels directly home. The cost incurred in travelling from the normal school to the administrative centre and then directly home is an allowable deduction.

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

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

148. **Example:** Herbert, an employee teacher, travels from home to a marking centre to mark exams and then travels to the normal school. The expense incurred in travelling from home to the marking centre and then to the normal school is allowable. However, the cost of travel incurred from the normal place of employment to home is not deductible.

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

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

150. **Example:** Rosetta, an employee teacher, performs regular teaching duties on campuses at two separate locations. The cost of travel from one campus to the other is allowable as the cost is incurred in travelling between two places of employment (see Taxation Ruling IT 2199).

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

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

153. In *Case N44* 81 ATC 216; 24 CTBR (NS) *Case 114*, a qualified accountant employed by a firm of accountants, conducted a limited private practice from his home. He set up a separate room in his home as an office. The taxpayer claimed a deduction for car expenses incurred in travelling between his residence/office and his place of employment. The fact that the taxpayer's home was, incidentally, used in the production of income was insufficient to make the travel between his home and his place of employment an outgoing incurred in the production of assessable income. The travel retained its essential character of travel between home and work and therefore, that cost of the travel was not an allowable deduction.

154. **Example:** Virginia, an employee teacher, teaches guitar at her home on Monday evenings. The cost of travelling from the school to home is not an allowable deduction. It is a private expense rather than an expense incurred in deriving assessable income.

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

*Travel between home and a place of employment while 'on call'*

156. Supply and relief employee teachers are those employee teachers who are required to replace the regular classroom teacher at various schools at short notice. Generally, the employee teacher will be telephoned at home and asked to attend a particular school for the day.

The cost of travelling between home and the various schools is not allowable as a deduction.

157. Even though a relief employee teacher will travel from home to the particular school in response to a telephone call, this does not alter the character of that travel, i.e., it remains private. Home is not considered to be a place of work as the employee teacher's duties commence upon arrival at the school and not on receipt of the telephone call (*Case U112* 87 ATC 672).

158. This decision is also supported by the Federal Court in *FC of T v. Genys* 87 ATC 4875; (1987) 19 ATR 356. This case involved a nursing sister employed at various hospitals through an agency, but who did not travel to more than one hospital each day. Her travel from home to hospital was not allowable. Northrop J said (ATC at 4883; ATR at 364):

> 'In conclusion, in my opinion, the mere fact that the taxpayer in this case does not have a regular place of employment in the sense of a permanent employment at one hospital is not sufficient to take her outside the general principles expressed in *Lunney*'.

159. Special circumstances apply if the employee teacher's employment is inherently of an itinerant nature such as that of the employee teacher in *FC of T v. Wiener* 78 ATC 4006; (1978) 8 ATR 335.

160. The employee teacher in that case was engaged in a pilot scheme involving the teaching of foreign languages. From Monday to Thursday, she taught at five different schools, spending about one hour a day at each school. The Court held that she was entitled to a deduction not only for the cost of the travel between schools but also for the cost of travel between home and the first school at the beginning of the day and between the last school and home at the end of the day.

161. This was because the taxpayer's employment was inherently itinerant and she was travelling in the performance of her duties from the moment of leaving home to the moment of returning there. The travel was not a prerequisite to the earning of assessable income but incurred in gaining or producing the assessable income.

162. We consider that this principle will only apply in special circumstances if it is considered that the employee teacher's employment is inherently itinerant.

*Automobile Association/Club membership fees*

163. A deduction is allowable for the annual fee for road service if either the log book method or one-third of actual expenses method of claiming work-related car expenses is used. Membership of an Automobile Association/Club usually entitles members to additional benefits such as a magazine and legal advice. These benefits are considered to be incidental to the main purpose of membership, which is the provision of roadside or breakdown service. The entitlement to a deduction for the annual subscription fee is not affected by this arrangement. A deduction is not allowable for a joining fee or for any additional fees paid to gain entitlement to benefits other than road service.

*Car wash expenses*

164. A deduction is allowable for the cost of cleaning a vehicle used to produce assessable income.

***Newspapers***

165. A deduction is not allowable under subsection 51(1) of the Act for the cost of newspapers and magazines, as it is a private expense. Even though an employee shop assistant may be able to use part of the information in the course of his or her work, the benefit gained is usually remote and the proportion of the expense that relates directly to work is incidental to the private expenditure.

166. This view is supported in the following cases: *Case K68* 78 ATC 667; 22 CTBR (NS) *Case 86*; *Case N67* 81 ATC 349; 25 CTBR (NS) *Case 18*; *Case P114* 82 ATC 586; 26 CTBR (NS) *Case 47* and *Case P124* 82 ATC 629; 26 CTBR (NS) *Case 55*.

167. These cases can be contrasted with *Case R70* 84 ATC 493; (1984) 27 CTBR (NS) *Case 124*, where a supervisor in the Commonwealth Auditor-General's Department was allowed 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.

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

### *Overtime meal expenses*

169. A deduction is allowable for the cost of meals bought while working overtime if an award meal allowance is received and the expenditure meets the deductibility tests in paragraphs 26 to 34.

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

171. The general rule is that no deduction is allowed for work-related expenses unless written evidence, such as a receipt, is obtained. However, special substantiation rules apply to overtime meal expenses if an employee teacher receives an overtime meal allowance paid under an industrial award. A deduction is allowable without substantiation for expenses incurred, provided the claim does not exceed the amount considered reasonable by the Commissioner of Taxation. Reasonable amounts are published annually by the Commissioner in a Taxation Ruling.

172. If the deduction claimed is more than the reasonable amount, the whole claim must be substantiated, not just the excess over the reasonable amount.

### *Parking fees and tolls*

173. A deductions is allowable for parking fees (but not fines) and tolls if the expense is incurred while travelling:

(a) between two separate places of work;

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

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

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

**Note:** A deduction is denied to an employee teacher for certain car parking expenses if the conditions outlined in section 51AGA of the Act are met.

174. A deduction is not allowable for parking fees incurred when employee teachers are travelling between their home and their normal place of employment. The cost of that travel is a private expense and the parking fees and tolls therefore have that same private character. A deduction is allowable for parking fees and tolls if the travel is not private, e.g., travel between home and work - transporting bulky

equipment or transporting students, travel between two separate work places if there are two separate employers involved, travel from the normal work place to an alternative work place while still on duty and back to the normal work place or directly home, travel from home to an alternative work place for work related purposes and then to the normal work place or directly home, travel between two places of employment or between a place of employment and a place of business (paragraphs 132 to 155).

### *Professional library*

175. A deduction is allowable under section 54 of the Act for depreciation of a professional library. If an individual reference book is purchased after 1 July 1991, and its 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 of the Act (see Taxation Determination TD 93/159).

176. 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 and no deduction is allowable for their cost.

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

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

178. If the cost of a textbook has been claimed as a deduction, its cost may not be added to the value of a professional library and depreciated. For example, an employee teacher may have claimed a deduction for cost of a textbook as part of her self-education expenses. The cost of this textbook cannot be included in the value of a professional library for depreciation purposes.

179. Paragraphs 76 to 85 of this Ruling provide further information on depreciation.

### *Removal and relocation expenses*

180. A deduction is not allowable under subsection 51(1) of the Act for removal or relocation expenses incurred by an employee teacher to

take up a transfer in existing employment or to take up an appointment with a new employer. This applies whether the transfer of employment is voluntary or at the employer's request.

181. In some instances, an employee teacher is paid an allowance from the employer as compensation for depreciation, disturbance, removal and storage expenses. This allowance is assessable in full under subsection 25(1) or paragraph 26(e) of the Act and no deductions are allowable under subsection 51(1) of the Act. It is considered that the expense is not incurred in deriving assessable income and/or is of a private or domestic nature.

182. If a reimbursement is received for the actual expenses incurred by an employee teacher, the amount is not assessable and deductions are not allowable under subsection 51(1) of the Act.

183. The 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.

184. We consider that if an employee teacher 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 allowable under subsection 51(1) of the Act.

185. 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 his total 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 was not an allowable deduction under subsection 51(1) of the Act, even though the expenditure had a causal connection with the earning of income.

186. 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-earning process to be incurred in gaining or producing assessable income.

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

***Self education expenses***

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

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

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

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

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

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

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

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

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

(b) the first leg of the trip, if a taxpayer travels from home to the place of education and then on to work (the cost of

travelling from the place of education to work is not a self education expense);

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

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

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

| | Deductible as self education expense? | | Deductible as self education expense? | |
|---|---|---|---|---|
| Home | YES → | Place of Education | YES → | Home |
| Home | YES → | Place of Education | NO → | Work |
| Work | YES → | Place of Education | NO → | Home |
| Work | YES → | Place of Education | YES → | Work |

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

(a) a Higher Education Contribution Scheme (HECS) payment (subsection 51(6) of the Act); and

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

*Limit on deductibility*

192. If self education expenses are allowable under subsection 51(1) of the Act but also fall within the definition of 'expenses of self-

education' in section 82A of the Act, only the excess of the expenses over $250 is deductible, i.e., the first $250 is not an allowable deduction.

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

194. **Example:** Maxine, an employee teacher, holds a Diploma of Education. She decides to undertake studies to advance her career prospects by completing a Bachelor of Education course with the view to becoming a subject master. She incurs costs $950 to complete the course. The expenses associated with her study are allowable under subsection 51(1) of the Act because the obtaining of the Education degree is likely to lead to an increase in her income from teaching in the future. The expenses also fall within the definition of 'expenses of self-education' under section 82Aof the Act. The first $250 of the expenditure is disallowed as a deduction under section 82A of the Act and she is only entitled to a deduction of $700 as self education expenses.

### *Social functions*

195. A deduction is not allowable under subsection 51(1) of the Act for expenditure incurred in attending staff dinners, school formals or similar functions. Such expenditure qualifies as an entertainment expense under section 51AE of the Act. The costs of attending functions such as staff dinners and farewell dinners are not incurred in the course of producing income and they are essentially a private expense.

196. A deduction is not allowable for the cost of providing entertainment by way of food, drink or recreation (whether to the taxpayer or another person). This is irrespective of whether the attendance at these functions is in connection with the duties of any office or employment (subsection 51AE(3) and paragraph 51AE(4)(d)) of the Act.

197. A deduction is not allowable under subsection 51(1) of the Act for the cost of the tickets and any travel costs incurred to attend social functions, even though the attendance at, for example, school formals

by an employee teacher may be considered part of the duties of employment, if the cost of the ticket provides for food, drink or recreation.

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

199. If the expenditure incurred does not qualify as an entertainment expense under section 51AE of the Act then it may be allowable. For example, an employee teacher attends a student function in his official capacity as an employee teacher. The cost of the ticket to the function does not include the provision of food, drink or recreation. The costs incurred in attending the function are allowable as a deduction.

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

201. A deduction is not allowable to an employee teacher for the cost of providing morning or afternoon tea or light refreshments to other staff members as it is not incurred in producing assessable income and also it is a private expense. Even if the provision of refreshment is part of 'team building', it is not sufficiently connected to the duties by which an employee teacher produces assessable income and remains a private expense.

### *Student expenses*

202. Employee teachers may outlay their own money to supply items to students for their own individual needs (e.g., books and uniforms); purchase gifts for students (e.g., Christmas gifts); purchase food and drinks for special occasions (e.g., student birthdays) and replace money lost by students (e.g., money for bus fares and lunch).

203. While employee teachers may feel a moral, personal or social obligation to outlay these expenses, there is no connection between the expenditure incurred by the employee teacher and the gaining or

producing of assessable income and it is also considered to be of a private nature. Therefore, a deduction is not allowable under subsection 51(1) of the Act for expenditure of this nature.

204. A deduction is not allowable under subsection 51(1) of the Act for expenditure incurred in purchasing gifts for other employee teachers.

### *Teaching aids*

205. A deduction is allowable under subsection 51(1) of the Act if an employee teacher purchases teaching aids to be used in the course of carrying out the duties of employment and that expenditure is not of a private, domestic or capital nature. The items purchased must have a direct and relevant use in carrying out those duties.

206. If an item or article is used for both work-related and other purposes, then the cost must be apportioned and a deduction claimed only for that proportion which is work-related.

207. A deduction is allowable for expenditure incurred on items or teaching aids used in the everyday duties of an employee teacher. Examples of this type of expenditure would include:

(a) pens, pencils, textas/markers/highlighters, colouring pencils/pens, stamps/stamp pads, stickers, paints, stationery, posters, maps, laminating, etc.;

(b) storybooks, jigsaws, games, toys used by early childhood, primary school or special education employee teachers;

(c) items used in cooking or sewing classes or science experiments;

(d) prizes purchased to reward achievement and encourage students;

(e) entrance fees for school excursions;

(f) whistles and stopwatches used by physical education employee teachers; conventional watches with a stopwatch function are not deductible (see paragraphs 226 to 230);

(g) calculators/calculator batteries if the calculator is used in teaching relevant subjects such as mathematics, physics, accounting or business practices; and

(h) costs of maintaining classroom or school pets.

***Technical or professional publications***

208. A deduction is allowable under subsection 51(1) of the Act for the cost of buying or subscribing to journals, periodicals and magazines which have a content specifically related to an employee teacher's work and are not general in nature.

209. In *Case P124* 82 ATC 629; 26 CTBR (NS) *Case 55*, an air traffic controller was not allowed a deduction for the purchase of aviation magazines. Dr G W Beck (Member) said (ATC at 633-634; CTBR at 422):

> 'There might be some tenuous connection between the cost of aviation magazines and the maintenance of knowledge necessary for holding a flying licence...but it seems to me that the possible connection is altogether too remote.'

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

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

*Cost of calls*

211. A deduction is allowable for the cost of telephone calls made by an employee teacher in the course of carrying out his or her duties.

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

*Installation or connection costs*

213. A deduction is not allowable for the cost of installing or connecting a telephone, etc., as it is considered to be a capital expense (see Taxation Ruling IT 85) and/or a private expense.

214. In *Case M53* 80 ATC 357; 24 CTBR (NS) *Case 29*, Dr P Gerber (Member) stated (ATC at 359; CTBR at 236):

> '...on payment of the connection fee, this taxpayer brought into existence an advantage for the enduring benefit of his newly established medical practice...It follows that it is "like" an expenditure of a capital nature.'

*Rental costs*

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

216. A deduction will also be allowable if an employee teacher can demonstrate that he or she is frequently required to contact students etc. while away from the school.

217. A proportionate deduction is allowable if the telephone is not used 100% for work-related purposes. The proportion can be calculated using the following formula:

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

*Silent telephone number*

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

***Travel expenses***

219. A deduction is allowable for the costs incurred by an employee teacher in undertaking work-related travel. An example is where an employee teacher attends a seminar interstate. Travel expenses include the costs of accommodation, fares, meals and incidentals.

220. Receipt of an allowance does not automatically entitle an employee teacher to a deduction for travel expenses. A work-related travel expense must be incurred and only the amount actually spent can be claimed as a deduction.

221. The general rule is that no deduction is allowed for work-related travel expenses unless written evidence, such as a receipt, is obtained. However, special substantiation rules apply to travel expenses if an employee teacher receives a travel allowance.

222. If a travel allowance is received and the amount of the claim for expenses incurred is no more than a reasonable amount, substantiation

is not required. The Commissioner of Taxation publishes annually a Taxation Ruling that sets out the amount of reasonable expenses covered by a travel allowance.

223. If the deduction claimed is more than the reasonable amount, the whole claim must be substantiated, not just the excess over the reasonable amount.

*Accompanying relatives' travel expenses*

224. A deduction is not allowable for the expense of relatives accompanying an employee teacher whilst travelling (see section 51AG of the Act). This rule applies whether or not the accompanying relatives are fellow employees (if those employees perform no substantive duties during the trip).

***Union and professional association fees***

225. A deduction is allowable for the cost of annual union or professional association fees. Taxation Rulings IT 299, IT 327, IT 2062 and IT 2416 provide further information on the treatment of union and professional association fees. A deduction is not allowable for a fee paid to join a union or professional association as it is a capital expense. A deduction is not allowable for contributions to staff social clubs or associations.

***Watches***

226. A deduction is not allowable under subsection 51(1) of the Act for the costs of purchasing and repairing ordinary wrist watches, including waterproof watches, as they are considered to be of a private nature.

227. In *Case S82* 85 ATC 608; (1985) 28 CTBR (NS) *Case 87*, a nursing sister claimed a deduction for the cost of replacing a conventional wrist watch specifically purchased for and used in her work, although it was also worn at other times. It was held that the cost of the watch was private in nature and no deduction was allowable.

228. In *Case P71* 82 ATC 338; (1982) 26 CTBR (NS) *Case 3*, an ambulance officer claimed a deduction for the cost of a digital wrist watch. The Board of Review found that a deduction was not allowable under subsection 51(1) of the Act. It was held that the expense was essentially of a private nature and not incurred in gaining assessable income.

229. In *Case N84* 81 ATC 451; (1981) 25 CTBR (NS) *Case 43*, a television cameraman was not allowed a deduction for the purchase of a watch which was used for work. The deduction was denied on the grounds that the watch did not possess any special attributes and although it was used for work, this fact did not change their essential character as private expenditure.

230. A dedicated stop watch is an item which can be directly related to the work-related activities of, for example, a physical education employee teacher. A deduction is allowable under subsection 51(1) of the Act for the cost of purchase, repairs and batteries of these watches.

## Alternative views

231. During industry consultation on Taxation Ruling TR 94/21 alternative views were expressed as follows:

232. **Clothing:** that a deduction is allowable for the cost of purchasing and replacing sports clothing because this clothing is not conventional. Sunglasses, sunhats and sunscreen are protective and should not be distinguished from protective clothing. Our view is at paragraphs 42 to 64.

233. **Motor vehicle:** that a deduction is allowable for travel to and from the regular place of employment outside normal school hours or which involves a second or subsequent journey. Our view is at paragraphs 130 to 164.

234. **Social functions:** that the expenditure incurred in attending these functions do not qualify as entertainment expenses as teachers attend these functions to supervise students and carry out their legal responsibility as an employee teacher. Our view is at paragraphs 195 to 201.

235. Subsequent to the release of the draft version of TR 94/21 the following views were expressed:

236. **Driver's licence:** that the cost of gaining and maintaining an endorsed licence is an allowable deduction. Our view is at paragraphs 86 to 90.

237. **Child care expenses:** that expenditure on child care incurred when attending out of hours meeting or school related activities is an allowable deduction. Our view is at paragraphs 39 to 41.

238. **Clothing, uniforms and footwear:** that physical education and swimming employee teachers be allowed a deduction for the costs of specialised clothing used in their profession. Our view is at paragraphs 42 to 64.

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- ITAA 51(6)
- ITAA 51AE
- ITAA 51AE(3)
- ITAA 51AE(4)
- ITAA 51AG
- ITAA 51AGA
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