

# ***TR 95/21 - Income tax: real estate industry employees - allowances, reimbursements and work-related deductions***



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This document has changed over time. This is a consolidated version of the ruling which was published on *16 June 1995*



## Taxation Ruling

### Income tax: real estate industry employees - allowances, reimbursements and work-related deductions

#### other Rulings on this topic

IT 26; IT 85; IT 112;  
IT 299; IT 327; IT 2062;  
IT 2084; IT 2197; IT 2198;  
IT 2199; IT 2416; IT 2452;  
IT 2477; IT 2493; IT 2543;  
IT 2641; IT 2673; IT 2685;  
MT 2027; TR 92/8;  
TR 92/15; TR 92/20;  
TR 93/24; TR 93/30;  
TR 94/3; TR 94/22;  
TD 92/142; TD 92/154;  
TD 92/157; TD 93/108;  
TD 93/113; TD 93/115;  
TD 93/145; TD 93/195;  
TD 93/230; TD 93/232;  
TD 93/244

*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 salespeople and property managers who are employees in the real estate industry ('real estate employees'). For the purposes of this Ruling an employee salesperson includes a salesperson employed on a commission only basis, or retainer plus commission.
2. This Ruling deals with:
  - (a) the assessability of allowances and reimbursements received by real estate employees; and
  - (b) deductions for work-related expenses generally claimed by real estate employees.
3. The Ruling discusses the assessability of allowances and reimbursements under section 25 and paragraphs 26(e) and 26(eaa) of the *Income Tax Assessment Act 1936* (the Act).
4. The Ruling also discusses whether deductions are allowable or are specifically excluded (or limited) under subsections 51(1), 51(4), 51(6) or 51AB(4), or sections 51AB, 51AE, 51AF, 51AG, 51AGA, 51AH, 51AL, 53, 54, 55, 57AF, 61 or 82A of the Act.
5. The tax treatment of allowances and reimbursements received is examined at paragraphs 11 to 19 in the **Ruling** section.
6. The common work-related expenses incurred by real estate employees and the extent to which they are allowable deductions are discussed, in alphabetical order, at paragraph 22 in the **Ruling** section. The substantiation provisions are not discussed in depth in this Ruling.

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

8. 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 real estate employees. Where there is a tax shortfall, any penalties will be imposed 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

9. This Ruling applies to years commencing both before and after its date of issue. However our views on the deductibility of expenses claimed in relation to:

- (a) advertising (paragraphs 36 to 39);
- (b) gifts (paragraphs 109 to 111);
- (c) property presentations (172 to 174); and
- (d) wages (paragraphs 205 to 208)

apply only to the 1995-1996 and later income years. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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

## Ruling

### Allowances

11. The receipt of an allowance does not automatically entitle a real estate employee to a deduction. The term 'allowance' does not include a reimbursement (see paragraphs 16 to 19).

12. If received, allowances fall into the following categories:

- (a) fully assessable to the employee with a possible deduction allowable, depending upon individual circumstances (paragraph 13);

- (b) fully assessable to the employee with no deduction allowable even though an allowance is received (not normally paid to real estate employees);
- (c) fully assessable to the employee with a deduction allowable for expenses incurred subject to special substantiation rules (paragraph 15);
- (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. If the allowance is paid wholly or in part for travel expenses, it is assessable to the real estate employee and a deduction may be allowable (see Taxation Determination TD 93/230 and *Travel expenses*, paragraphs 198 to 203).

### ***Allowances - possible deduction***

13. The following allowances commonly received by real estate employees are paid to recognise that expenses may be incurred by real estate employees in doing their jobs. These allowances are fully assessable and deductions may be allowable depending on individual circumstances:

- (a) ***Car allowance:*** a car allowance may be part of the employment agreement in those States that do not have an award in place. A deduction is allowable for the work-related portion of car expenses (see ***Motor vehicle and other transport expenses***, paragraphs 134 to 160).
- (b) ***Locomotion allowance:*** this allowance is paid under industrial awards to real estate employees in New South Wales, South Australia and Victoria. A deduction is allowable for the work-related portion of transport expenses (see ***Motor vehicle and other transport expenses***, paragraphs 134 to 160).
- (c) ***Telephone or mobile phone allowance:*** a deduction is allowable for the work-related portion of telephone or mobile phone expenses (see ***Telephone expenses***, paragraphs 188 to 195).

### ***Reasonable allowance amounts***

14. The Commissioner of Taxation publishes a Taxation Ruling annually that indicates amounts considered reasonable in relation to the following expenses:

- (a) overtime meal expenses;
- (b) domestic travel expenses; and
- (c) overseas travel expenses.

15. 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

16. If a real estate employee receives a payment from his or her employer for **actual** expenses incurred, the payment is a reimbursement and the employer may be subject to Fringe Benefits Tax. Generally, if a real estate employee 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).

17. 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 real estate employee under paragraph 26(eaa) of the Act. A deduction may be allowable in relation to motor vehicle expenses incurred (see *Motor Vehicle and other transport expenses*, paragraphs 134 to 160).

18. 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 real estate employee for depreciation (see Taxation Determination TD 93/145 and *Depreciation of equipment*, paragraphs 88 to 97).

19. If a payment is received from an employer for an **estimated** expense, the amount received by the real estate employee is considered to be an allowance (not a reimbursement) and is fully assessable to the real estate employee (see **Allowances**, paragraphs 11 to 15).

### Deductions

20. A deduction is only allowable if an expense:

- (a) is actually incurred (paragraph 24);
- (b) meets the deductibility tests (paragraphs 25 to 33); and
- (c) satisfies the substantiation rules (paragraphs 34 and 35).

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

22. The common work-related expenses incurred by real estate employees and the extent to which they are allowable deductions are discussed below, in alphabetical order.

***Advertising:*** A deduction is not allowable for advertising costs incurred by a real estate employee (paragraphs 36 to 39).

***Answering machines, beepers, mobile phones, pagers 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 (See ***Depreciation of equipment***, paragraphs 88 to 97). 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 40).

***Automobile Association/Club membership fees***

A deduction is allowable for the annual fee for road service either the log book method or one-third of actual expenses method is used to claim work-related car expenses (paragraph 155).

***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 real estate employee's bank account(s). A deduction is not allowable for any other bank fees as a work-related expense (Taxation Ruling IT 2084).

***Calculators and electronic organisers:*** A deduction is allowable for the work-related portion of depreciation on the purchase price of calculators and electronic organisers (paragraphs 41 and 42). (See also ***Depreciation of equipment***, paragraphs 88 to 97).

***Car wash expenses:*** A deduction is allowable for the cost of cleaning a vehicle that is used to produce assessable income if either the log book method or one-third of actual expenses method is used to claim work-related motor vehicle expenses (see ***Motor vehicle and other transport expenses***, paragraph 156).

***Certificate of registration:*** A deduction is allowable for the cost of renewing a certificate of registration held by an employee in respect of his or her employment. A deduction is not allowable for the cost of obtaining the initial certificate of registration (paragraphs 43 to 46).

***Child care:*** A deduction is not allowable for child care expenses (paragraphs 47 to 49).

***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:

- (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 relation 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 test in subsection 51(1) of the Act and must not be private or domestic in nature (paragraphs 50 to 74).

***Club membership and sponsorship fees:*** A deduction is not allowable for club membership fees or for the cost of sponsoring a club (paragraphs 75 to 77).

***Computers and software:*** A deduction is allowable for depreciation of the cost of computers and 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 78 to 80).

***Conferences, seminars and training courses:*** A deduction is allowable for the cost of attending conferences, seminars and training courses to maintain or increase a real estate employee's knowledge, ability or skills in the real estate industry. There must be a relevant connection with the work activities of the real estate employee (paragraphs 81 to 87).

***Depreciation of equipment:*** A deduction is allowable for depreciation to the extent of the work-related use of the equipment. An 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 88 to 97).

***Driver's licence:*** A deduction is not allowable for the cost of acquiring or renewing a driver's licence (paragraphs 98 to 100).

***Fares:*** A deduction is allowable for the cost of using public transport for work-related travel (paragraph 101).

***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 102).

***Functions:*** A deduction is not allowable for the cost of attending social functions (paragraphs 103 to 108).

***Gifts and greeting cards:*** A deduction is not allowable for the cost of gifts or greeting cards bought for clients (paragraph 109 to 111).

***Glasses/contact lenses:*** A deduction is not allowable for the cost of buying prescription glasses or contact lenses.

***Grooming:*** A deduction is not allowable for the costs of grooming (paragraphs 112 to 114).

***Home office expenses:*** See paragraphs 115 to 126.

***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 120 to 122).

***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 123 to 126).

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

***Interest:*** A deduction is allowable for interest on money borrowed to finance the purchase of equipment to the extent to which the equipment is used for work-related purposes.

***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 73 and 74).

***Letters of appointment registration fee:*** A deduction is not allowable for fees paid for registration of letters of appointment when commencing new employment. A deduction is allowable for fees paid for registration of a new letter of appointment resulting from changes, during the course of a real estate employee's current employment, to the conditions of employment or award structure (paragraphs 127 and 128).

***Meals:*** A deduction is not allowable for the cost of meals eaten during a normal working day (paragraphs 129 to 133). A deduction



may be allowable if meal costs are incurred by an employee who travels for work-related purposes (see ***Travel expenses***, paragraphs 198 to 203).

***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***, paragraphs 198 to 203). The treatment of motor vehicle and other transport expenses incurred by a real estate employee 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, or if the travel is outside normal working hours or includes a second or subsequent trip (paragraphs 136 to 138).

*Travel between home and work - transporting bulky equipment:* A deduction is allowable if the transport expenses can be attributed to the necessary transportation of bulky equipment/material 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 as a matter of convenience.

A deduction is not allowable if a secure area for the storage of equipment is provided at the work place (paragraphs 139 to 142).

*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 (paragraph 143).

*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 earning assessable income and the cost of the travel is an allowable deduction (paragraphs 144 and 145).

*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 146 and 147).

*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 148 to 154).

*Travel in connection with self education:* See **Self education expenses** (paragraphs 177 to 183).

*Depreciation cost limit for motor vehicles:* Section 57AF of the Act imposes a limit on the depreciable cost base of motor vehicles (including four-wheel drive vehicles) (paragraph 157).

*Calculation of motor vehicle balancing adjustment:* A depreciation balancing adjustment may be necessary on the disposal of a motor vehicle that has been used for income-earning activities (see Taxation Ruling IT 2493 and paragraph 158).

*Motor vehicle provided by employer:* A deduction is not allowable for car expenses incurred by a real estate employee if:

- (a) the car is provided by the employer for the exclusive use of the real estate employee and/or their relatives; and
- (b) the real estate employee and/or their relatives are entitled to use the car for private purposes.

(see section 51AF of the Act and paragraphs 159 and 160).

**Newspapers:** Generally, a deduction is not allowable for the cost of newspapers (paragraphs 161 to 166).

**Parking fees:** A deduction is allowable for parking fees (but not fines), paid by a real estate employee while travelling in the course of employment, e.g. between the office and client's premises (paragraphs 167 and 168).

**Police clearance certificates:** A deduction is not allowable for the cost of obtaining a police clearance certificate (paragraphs 169 to 171).

**Property presentation costs:** A deduction is not allowable for costs incurred by a real estate employee in presenting a property for sale, e.g. replacing a cracked window pane, lawn mowing, repairs to door locks, etc. (paragraphs 172 to 174).

**Referral expenses:** A deduction is allowable for expenses incurred in rewarding a person who has referred successful business (paragraph 175 and 176). A deduction is not allowable for rewarding a person for potential business.

**Self education expenses:** A deduction is allowable for the cost of self education if there is a direct connection between the course of education and the real estate employee's current income-earning

activities. Self education costs can include fees, travel, books and equipment (paragraphs 177 to 183).

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 181 to 183).

**Stationery:** A deduction is allowable for the cost of street directories, log books, diaries, etc., to the extent to which they are used for income-earning purposes (paragraph 184).

**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 the real estate employee's work and are not general in nature (paragraphs 185 to 187).

**Telephone, mobile phone, pager, beeper and other telecommunications equipment expenses:** A deduction is not allowable if 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 188 and 189).

**Installation and connection costs:** A deduction is not allowable for the cost of installing or connecting a telephone, etc. (paragraphs 190 and 191).

**Rental costs:** A deduction is allowable for a proportion of telephone/equipment rental costs if an employee can demonstrate that he or she is 'on call', or is required to telephone their employer on a regular basis, or is frequently required to contact clients while away from the office (paragraphs 192 to 194).

**Silent telephone number:** A deduction is not allowable for the cost of obtaining a silent telephone number (paragraph 195).

**Tolls:** A deduction is allowable for bridge and road tolls paid by a real estate employee when travelling in the course of employment (paragraph 196).

**Tools and equipment:** A deduction is allowable for depreciation of the cost of tools and equipment of a real estate employee, e.g. tape measures, tools, cameras, etc. Tools and equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if the cost of a particular item is \$300 or less, or its effective life is less than three years (paragraph 89). A deduction is allowable for the cost of repairs to tools and equipment to the extent that the tools and equipment are used in income-producing activities (paragraph 197).

**Travel expenses:** A deduction is allowable for the cost of travel (fares, accommodation, meals and incidentals) incurred by a real estate employee when travelling in the course of employment, e.g. to a sales conference in another town (paragraphs 198 to 203). Special substantiation rules apply (paragraphs 199 to 202).

**Travel accompanied by a relative:** Section 51AG of the Act may affect the deduction allowable for the cost of travel of relatives accompanying a real estate employee on work-related travel (see paragraph 203).

**Union fees and professional association fees:** A deduction is allowable for annual fees paid to unions or professional associations, although a deduction is not allowable for joining fees. A deduction is not allowable for contributions to staff social clubs or associations (paragraph 204).

**Wages:** A deduction is not allowable for wages paid to family members and other persons for work undertaken on behalf of a real estate salesperson (paragraphs 205 to 208).

## **Explanations**

### **Deductibility of work-related expenses**

23. 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***

24. The expense must actually be incurred by the employee to be considered for deductibility. A deduction is not allowable for expenses not incurred by an employee, e.g. if items are provided free of charge. Under section 51AH of the Act, a deduction is not generally allowable if expenses are reimbursed (see paragraphs 16 to 19 for exceptions to this rule).

#### ***Expense meets deductibility tests***

25. 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.'

26. 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; [1958] ALR 225; 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; 2 ATR 557).

27. A deduction will be denied under the exclusion 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).

28. 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...'

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

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

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

32. 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.

33. 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***

34. The income tax law requires substantiation of certain work-related expenses. If the total of these expenses is \$300 or less, the employee can claim 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.

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

### **Common work-related expense claims**

#### ***Advertising***

*Newspapers, letter box drops, signage, bunting*

36. Real estate employees may spend money on advertising through newspapers and for printed matter for letter box drops when they are seeking new clients.

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37. Real estate employees may also incur costs for signage, bunting, etc., when advertising a client property or conducting an open inspection or display day.

38. A deduction is not allowable for costs incurred by real estate employees for advertising, including costs for signage and bunting. These expenses are regarded as expenses associated with the business operation of the employer. They are incurred in deriving the income of the employer, not the income of the employee.

39. **Example:** Bill's expenditure on advertising for September 1994 was \$800. Bill's employer reimbursed him \$500 of the \$800 he had spent. The advertising expense incurred by Bill was for newspaper advertisements advertising the sale of clients' properties. A deduction is not allowable for any part of the \$800. This is an expense of deriving the employer's income, not the employee's income. The reimbursement is not assessable.

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

40. A deduction is allowable for the work-related portion of the rental cost or for depreciation on the purchase price of these items. For information on depreciation see ***Depreciation of equipment*** (paragraphs 88 to 97) and on telephones etc. see ***Telephone expenses*** (paragraphs 188 to 195).

## ***Calculators and electronic organisers***

41. A deduction is allowable for the work-related portion of depreciation of the cost of calculators and electronic organisers used for income-producing activities. If the cost of the item is less than \$300, or the effective life of the item is less than three years, an outright deduction is allowable. If the cost of the item is more than \$300 or the effective life of the item is more than three years, the item should be depreciated (see ***Depreciation of equipment***, paragraphs 88 to 97).

42. A deduction is allowable for the cost of buying batteries and repairing and maintaining calculators and electronic organisers to the extent of the work-related use of the items.

## ***Certificate of registration***

43. In some States a certificate of registration is required before a person can be employed to sell real estate.

44. A deduction is allowable for the cost of renewing a certificate of registration held by an employee in respect of his or her employment. A deduction is not allowable for the cost of obtaining the initial certificate of registration. These costs are incurred too soon to be regarded as incurred in the course of gaining assessable income.

45. In *Case L38* 79 ATC 208; 23 CTBR (NS) *Case 44*, a clerk at a State Treasury Department claimed expenditure incurred by him in gaining admission as a barrister and solicitor of the Supreme Court. His admission as a legal practitioner was an essential qualification for the position of legal officer to which he was subsequently appointed. The Board of Review disallowed the claim. In the Board's opinion the applicant had acquired an asset of enduring benefit, which answered the description of a capital asset or an asset of a capital nature.

46. In *Case Z1* 92 ATC 101; *AAT Case 7541* (1992) 22 ATR 3549, the applicant claimed deductions for expenses that led to her admission as a solicitor. The admission expenses included advertising and travelling costs and the practising certificate fee. The Tribunal held the admission expenses were of a capital nature and were therefore not an allowable deduction under subsection 51(1) of the Act. The admission expenses secured the applicant a 'lasting advantage'. The expenses were incurred in getting, not in doing work as an employee. They came at a point too soon to be regarded as expenses incurred in gaining assessable income.

### ***Child care***

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

48. The High Court held in *Lodge v. FC of T* (1972) 128 CLR 171; 72 ATC 4174; 3 ATR 254 that child care expenditure was neither relevant nor incidental to gaining or producing assessable income and was therefore not 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).

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

### ***Clothing, uniforms and footwear***

50. 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 the *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* (1994) 49 FCR 318; 94 ATC 4255; (1994) 28 ATR 87 (*Edwards* case)).

51. 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.

#### *Protective clothing*

52. 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 (see Taxation Determination TD 92/157).

53. A deduction is allowable for expenditure on footwear specifically designed to provide protection to the wearer at work, e.g. steel-capped boots worn on an industrial site.

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

55. A deduction is not allowable for the cost of items that provide protection from the natural environment (e.g. sunglasses, sunhats, 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; 25 CTBR(NS) *Case 43*. See also Taxation Ruling IT 2477 and Taxation Determination TD 93/244.

56. 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 33 applied.

57. **Example:** Tam has several farming property listings. As it is winter and she expects to be showing clients over the properties, she has bought a pair of gumboots. The cost of the gumboots is not an allowable deduction. They are for normal protection from the natural environment and the expense is therefore private.

### *Occupation specific clothing*

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

59. It is not considered that real estate employees would wear occupation specific clothing.

## *Compulsory uniform or wardrobe*

60. 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.

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

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

'...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.'

63. 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'.

64. 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*

65. 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 of the Act 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.

66. If employees 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.

67. **Example:** Lena is a property manager with a large real estate company. She also works in the reception area for a number of hours each day. Reception staff wear a suit in the company's colours and monogrammed with the company logo. It is not compulsory for a staff member to wear the clothing but the employer encourages staff members to do so. A deduction for the cost of buying and maintaining the suit is allowable if the uniform is entered on the Register of Approved Occupational Clothing or approved in writing by the ATO under the transitional arrangements. It is the employer who seeks registration for the clothing.

#### *Conventional clothing*

68. 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 also paragraphs 27 and 28).

69. 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.

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

Tribunal that her matter could be paralleled to the facts in the *Edwards'* case.

71. Senior Member Barbour distinguished this case from *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.'

72. In *Case U80* 87 ATC 470; 18 CTBR (NS) *Case 66*, 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.'

## *Laundry and maintenance*

73. 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 50. This applies whether the clothing is purchased by the employee or supplied by the employer.

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

***Club membership and sponsorship fees***

75. A deduction is not allowable for club membership fees as they are expenses of a private nature. Subsection 51AB(4) of the Act specifically denies a deduction for the cost of club membership or the right to enjoy the facilities of a club.

76. A deduction is not allowable for club sponsorship costs or for the cost of sponsoring a particular club event. These costs are considered to be private in nature.

77. **Example:** Geoff sponsors the local soccer club by contributing towards the cost of the club jumpers. In return, the club provides Geoff with advertising space on the club notice board. The cost of the sponsorship is not an allowable deduction as it is a private expense.

***Computers and software***

78. A deduction is allowable under subsection 54(1) of the Act for depreciation of computers and related software owned and used by real estate employees for income-producing purposes (paragraphs 88 to 97).

79. For example, real estate employees may use a computer at home to prepare rent inspection reports. If the computer is also used for private purposes, the deduction for depreciation is allowable only to the extent of its work-related use (paragraphs 93 and 94). If software is purchased as part of a computer system, the total cost of the system is depreciable (see Taxation Ruling IT 26 and paragraphs 88 to 97 of this Ruling for further information on depreciation of equipment). A deduction is allowable under subsection 51(1) of the Act if the related software is purchased separately from the computer, to the extent that it is used for income-producing purposes (see Taxation Ruling IT 26).

80. A deduction is allowable under section 53 of the Act for the cost of repairs to the extent that the equipment is used for income-producing purposes.

***Conferences, seminars and training courses***

81. 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 a real estate employee. There must be a relevant connection between the conferences, seminars and training courses and the income-earning activities of the real estate employee.

82. 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):

'...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...!.

83. 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 (paragraph 198 to 203).

84. **Example:** Arthur, a real estate salesperson, attends a sales training seminar delivered by the Real Estate Institute at a venue located away from his workplace and is required to stay overnight. The seminar registration fee of \$150 paid by Arthur includes an amount for morning and afternoon tea and a light luncheon. His employer did not reimburse the fee. A deduction is allowable for the cost of attending the seminar.

85. 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. Taxation Determination TD 93/195 explains the extent to which a seminar registration fee is an allowable deduction, according to section 51AE of the Act, in circumstances where part of the fee represents the cost of food and drink provided at the seminar.

86. 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.

87. Information on *Self education expenses* can be found in Taxation Ruling TR 92/8 and in paragraphs 177 to 183 of this Ruling.

### ***Depreciation of equipment***

88. 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.

89. A deduction is allowable under subsection 54(1) of the Act for depreciation of equipment owned and used by a real estate employee for income-producing purposes. In addition, a deduction is also allowable for depreciation of 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.

90. 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.

91. An 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 of equipment 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.

92. **Example:** Hilary purchases a briefcase for \$250 that she uses only for work, e.g. to carry work-related forms, stationery and brochures. The amount of \$250 is an allowable deduction in the year of purchase.

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

94. **Example:** Jessica uses a computer to record client details and to run the software provided by a multi-listing service. Jessica's children also use the computer for schoolwork. Jessica is entitled to a deduction for a proportion of the depreciation based on the work use of the computer.

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

96. 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).

97. **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



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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 that is an allowable deduction is  $\$299 \times 13.5\% = \$40.36$ , rounded to \$41.

## ***Driver's licence***

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

99. 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.

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

## ***Fares***

101. A deduction is allowable for the cost of using public transport for work-related travel (see ***Motor vehicle and other transport expenses***, paragraphs 134 to 154).

## ***Fines***

102. 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).

## ***Functions***

103. A deduction is not allowable for expenses incurred in attending social functions. These expenses are considered to be private and relate to the provision of entertainment (see subsection 51AE(4) of the Act).

104. Broadly, the 'provision of entertainment' means entertainment by way of food, drink, recreation, accommodation or travel.

105. Subsection 51AE(4) of the Act applies irrespective of who pays for the entertainment and/or who receives the entertainment or

whether the attendance at these functions is in connection with the duties of any office or employment .

106. **Example:** Rachael attends an early breakfast at the Real Estate Institute. These breakfasts are held every other month to encourage new salespeople in the real estate industry. Rachael is not entitled to a deduction for the cost of attending the breakfast.

107. 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.

108. In *Frankcom v. FC of T* (1982) 65 FLR 25; 82 ATC 4599; 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 expenditure was not incidental and relevant to the taxpayer earning his salary and was of a private nature.

### ***Gifts and greeting cards***

109. A deduction is not allowable for the cost of gifts or greeting cards bought for clients or potential clients. In the Commissioner's view there is insufficient connection between the costs incurred and the employee's assessable income. These costs are incurred in earning the employer's income, not the employee's income.

110. An alternative view has been expressed that deductions for gifts should be allowed based on the Commissioner's stated policy in Taxation Ruling IT 2198.

111. In Taxation Ruling IT 2198, which deals with allowable deductions when expenditure is voluntarily incurred by employee taxpayers, it is pointed out that what is decisive in determining claims for income tax deductions under subsection 51 of the Act, is whether the expenditure has been incurred in gaining or producing assessable income. The Commissioner's view is stated above.

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## ***Grooming***

112. A deduction is not allowable for hairdressing and grooming expenses as they are private in nature.

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

114. This view is also supported by the following cases: *Case N34* 81 ATC 178; 24 CTBR (NS) *Case 104*; *Case L61* 79 ATC 488; 23 CTBR (NS) *Case 680* and *Case R54* 84 ATC 408; 27 CTBR (NS) *Case 108*.

## ***Home office expenses***

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

116. Costs associated with an employee's home are normally of a private or domestic nature. However, a deduction may be allowable for a portion of the expenses associated with an employee's home if either:

- (a) part of the home is used for income-earning activities and has the character of a 'place of business'; or
- (b) part of the home is used in connection with the employee's income-earning activities and does not constitute a 'place of business', i.e. an area of the home is a private study.

117. TR 93/30 distinguishes between two types of expenses associated with the home:

- (a) ***Occupancy expenses*** relating to ownership or use of a home that are not affected by the taxpayer's income-producing activities. These include rent, mortgage interest, repairs to the home, municipal and water rates, property taxes and house insurance premiums; and
- (b) ***Running expenses*** relating to the use of facilities in the home. These include heating/cooling and lighting expenses, cleaning costs, depreciation, leasing charges and the cost of repairs to furniture and furnishings in the home office.

118. A deduction is not allowable for the cost of occupancy expenses for real estate employees who maintain an office or study at home, if

they carry out income-earning 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 (*Handley's case*) and *FC of T v. Forsyth* (1981) 148 CLR 203; 81 ATC 4157; 11 ATR 657. In *Handley's case*, the High Court decided that Mr Handley's outgoings on mortgage interest, rates and insurance premiums were related to the building and/or home as a whole, and they would remain the same whether or not he worked at home.

119. This principle is based on the proposition that occupancy expenses are related to the building's primary function as a house, and this is not changed even if a room is set aside exclusively for work-related purposes (see *Thomas v. FC of T* (1972-73) ALR 368; 72 ATC 4094; 3 ATR 165).

#### *Place of business*

120. A deduction is allowable for a portion of both occupancy and running expenses if an area of the home has the character of a 'place of business'. Whether an area of a home has the character of a 'place of business' is a question of fact. 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'.

121. 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 separated from the rest of the home. It is not considered that a real estate employee, in their capacity as an employee, would use part of their home as a 'place of business'. However, a real estate employee may conduct a business from home.

122. 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. 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 home is not a 'place of business')*

123. A deduction is allowable for the additional running expenses if a real estate employee maintains an office or study at home so he or she can carry out work at home normally done at the place of employment e.g. a sales person may prepare documents for the sale of a client's

property, or a property manager may complete a rental inspection report. For the running expenses to be deductible, the area set aside as a private study must be used exclusively for these activities (see *FC of T v. Faichney* (1972) 129 CLR 38; 72 ATC 4245; 3 ATR 435).

124. Additional running costs (e.g. lighting, heating and cooling) may be an allowable deduction even though an area of the home has not been set aside as a private study. The circumstances when this may occur are where the employee uses a room at a time when others are not present or uses a separate room.

125. **Example:** Rob is an employee salesperson who prepares property advertisements in the lounge room while other family members are watching television. The expenditure for lighting and heating/cooling retains its private or domestic character and is not deductible. If Rob uses the room at a time when others are not present, or uses a separate room, he is entitled to a deduction for additional running expenses associated with the work activities. This applies even if the room is not set aside solely as a home office.

126. The amount that Rob is entitled to claim is the difference between what was actually paid for heating, cooling and lighting, and what would have been paid had he not worked from home. Taxation Ruling TR 93/30 provides a formula for calculating the additional expense for an appliance such as a heater.

**Laundry:** See *Laundry and maintenance* (paragraphs 73 and 74).

### ***Letters of appointment registration fee***

127. In New South Wales, under the Real Estate Industry (State) Award, copies of letters of appointment must be lodged with the Real Estate Employers Federation of NSW and with the Real Estate Association of NSW. The letters are lodged prior to commencement of work by the real estate employee. A new letter is lodged if, during the course of employment, there is a change in the conditions of employment or a new award is introduced. On lodgment, both the real estate employer and the employee pay a registration fee.

128. A deduction is not allowable for fees paid for registration of letters of appointment when commencing employment with a new employer. The cost is incurred too soon to be regarded as a cost incurred in the course of gaining assessable income. A deduction is allowable for the cost of registering a letter of appointment resulting from changes, during the course of a real estate employee's current employment, to the conditions of employment or award structure.

***Meals***

129. A deduction is not allowable for the cost of meals consumed by a real estate employee 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 23 to 35.

130. 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.'

131. 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.

132. 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 23 to 33, and are considered to be private in nature.

133. In *Case Y8* 91 ATC 166; *AAT Case 6587* (1991) 22 ATR 3037, a police officer claimed a deduction 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***

134. 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 meals, accommodation and incidental expenses (see ***Travel expenses*** at paragraphs 198 to 203).

135. The treatment of motor vehicle and other transport expenses incurred by a real estate employee when travelling is considered below.

***Travel between home and work***

136. A deduction is not allowable for the cost of travel by a real estate employee 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 (see Taxation Ruling MT 2027, paragraph 34).

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

'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'.

138. 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.

***Travel between home and the normal work place - transporting bulky equipment***

139. 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 (*FC of T v. Vogt* 75 ATC 4073; 5 ATR 274).

If the equipment is transported to and from work by the employee as a matter of convenience, it is considered that the transport costs are private and no deduction is allowable.

140. A deduction is not allowable if a secure area for the storage of equipment is provided at the work place (see *Case 59/94* 94 ATC 501; *AAT Case 9808* (1994) 29 ATR 1232).

141. **Example:** Warren, a salesperson, stores direction signs in his home garage as his employer does not provide storage at the work place. Warren uses the signs when conducting property inspections that are open to the public. He places the signs at crossroads and street corners near the properties he displays. Warren drives from home to his city office carrying a number of direction signs to be used at an 'open home' later that day. As Warren is transporting bulky equipment which he is unable to store at the work place, a deduction is allowable for the cost of the travel from his home to the office.

142. **Example:** Sue is a property manager and she quite often works on her property management reports at home. She does not have a computer but she has permission to borrow one of the portable lap-top computers from the office. She carries the computer home in her car. Sue's car expenses are private as her travel between home and work is not attributable to carrying bulky equipment.

*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.

*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*

144. A deduction is allowable for the cost of travel from an employee's 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 performance of an employee's duties. It is incurred in the course of gaining assessable income and is an allowable deduction.

145. **Example:** Nadeem, a real estate employee, travels from his normal work place to his employer's head office to attend a meeting. After the meeting he travels directly home. The cost of each journey is an allowable deduction to Nadeem.



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

146. 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 Taxation Ruling MT 2027, paragraphs 32 to 35).

147. **Example:** Patricia is a property manager who looks after a large number of properties. Two mornings a week Patricia travels directly to different clients' properties to carry out rental inspections. A deduction is allowable for the travel between home and the clients' properties and then on to Patricia's normal work place.

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

148. 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.

149. **Example:** Graham, a real estate salesperson, is selling a number of units in the same block. One unit is furnished for display. It is open for inspection on Wednesday and Saturday mornings and Graham is on site during this time. The cost of travel from the office to the block of units is an allowable deduction as the cost is incurred in travelling between two places of employment (see Taxation Ruling IT 2199).

150. If an employee 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-producing 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'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 (see Taxation Ruling IT 2199).

151. 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 that is directly related to the part-time activity.

152. 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 the cost of the travel was not an allowable deduction.

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

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

#### *Automobile Association/Club membership fees*

155. A deduction is allowable for the annual fee for road service if either the log book method or one-third 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*

156. A deduction is allowable for the cost of cleaning a vehicle used for income-producing purposes if either the log book method or one-third of actual expenses method of claiming work-related car expenses is used.

#### *Depreciation cost limit for motor vehicles*

157. Section 57AF of the Act imposes a limit on the depreciable cost base of motor cars (including station wagons and four-wheel drive vehicles) if the acquisition cost is greater than a specified amount.

The depreciable cost base limit applies to both new and second hand vehicles (see Taxation Ruling TR 93/24).

### *Calculation of motor vehicle balancing adjustment*

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

### *Motor vehicle provided by employer*

159. A deduction is not allowable for car expenses incurred by a real estate employee if:

- (a) the car is provided by the employer for the exclusive use of the real estate employee and/or their relatives; and
- (b) the real estate employee and/or their relatives are entitled to use the car for private purposes

(see section 51AF of the Act).

160. Costs associated with the operation of the car such as parking fees and tolls are not precluded by the operation of section 51AF of the Act (see *Case Y43* 91 ATC 412; *AAT Case 7273* (1991) 22 ATR 3402). Parking fees and tolls are also discussed in paragraphs 167 and 196.

### *Newspapers*

161. A deduction is generally not allowable under subsection 51(1) of the Act for the cost of newspapers and magazines as it is a private expense. Even though a real estate employee 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.

162. This view is supported by *Case P30* 82 ATC 139; 25 CTBR (NS) *Case 94*, in which a real estate salesman, employed on a commission only basis, was denied a deduction for the cost of four daily newspapers as the expense was essentially private in nature. The salesman was not able to show a clear connection between the use of the newspapers and sales he had made, nor could he provide satisfactory evidence of the expenditure claimed.

163. Support for this view is also found 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*.

164. These cases can be contrasted with *Case R70* 84 ATC 493; 27 CTBR (NS) *Case 124*, where a supervisor in the Commonwealth Auditor-General's Department was allowed a deduction 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, a deduction for the cost of the local newspaper, *The Canberra Times*, was disallowed as the expense was essentially private in nature.

165. **Example:** A real estate employee subscribes to the daily newspaper that he shares with his family. The property section of the paper only appears in the Wednesday, Saturday and Sunday papers in the State in which the employee lives.

166. A deduction is allowable for a portion of the cost of the Wednesday, Saturday and Sunday papers. A deduction is not allowable for the cost of the newspapers for the other days of the week as these are not used for income-earning activities. The expenditure on newspapers on those days is considered to be private.

### ***Parking fees***

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

- (a) between two separate places of work;
- (b) to a place of education for self education purposes (if the self education expenses are an allowable deduction); or
- (c) in the normal course of duty and the travelling expenses are allowable deductions.

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

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

168. A deduction is not allowable for parking fees and tolls incurred when real estate employees are travelling between their home and their normal place of employment (see *Case C47* 71 ATC 219; 17 CTBR (NS) *Case 44*). 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 (paragraphs 139 to 142).

## ***Police clearance certificates***

169. In nearly all States and Territories employers require real estate employees to obtain a Police clearance certificate when entering the industry.

170. A deduction is not allowable for the cost of obtaining Police clearance certificates.

171. Although the Police clearance certificate may be necessary for employment into the industry, the expense is an outgoing that precedes the earning of assessable income. It is not an expense incurred in the course of gaining assessable income.

## ***Property presentation costs***

172. A deduction is not allowable for costs incurred by real estate employees in presenting a property for sale, e.g. replacing cracked window panes, lawn mowing, repairs to door locks, etc. In our view these costs are incurred in deriving the employer's income. They are not costs which are incurred in earning the employee's income.

173. **Example:** Jenny takes a client to a property for a final pre-sale inspection. A glass panel in the front door has a large crack in it. The vendor client is not available to consult and Jenny assures the client that the panel will be replaced.

174. To ensure the sale is not held up, Jenny pays for the repair herself. Neither the vendor client nor the employer reimburses Jenny. The cost of the repair is not an allowable deduction.

## ***Referral expenses***

175. A deduction is allowable for expenses incurred in rewarding a person who has referred successful business. A deduction is not allowable for rewarding a person for potential business.

176. **Example:** Angelique has offered to pay Gerald a sum of money or to give him a carton of wine when he referred a client and there was a resulting property sale. A deduction is allowable for the costs incurred by Angelique in rewarding Gerald. As Gerald has agreed to continue to refer clients to Angelique, she decides to give him a bottle of port for Christmas. Angelique cannot claim the cost of the bottle of port. There is insufficient nexus between the expense and income earned by Angelique.

***Self education expenses***

177. 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 employee's current income-earning activities. This particularly applies if an employee'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 employee's income from his or her current income-earning activities.
- (c) A deduction is not allowable if the education is designed to enable an employee to get employment, or to obtain new employment or to open up a new income-earning activity (*FC of T v. Maddalena* 71 ATC 4161; 2 ATR 541).
- (d) Self education includes courses undertaken at an educational institution (whether leading to a formal qualification or not), attendance at work-related conferences or seminars, self-paced learning and study tours.
- (e) Self education expenses include fees, travel expenses (e.g. attending a conference interstate), transport costs, books and equipment.

178. **Example:** Jane is a real estate salesperson who would like to go into business for herself. She is doing a part-time course in Business Administration. Jane is not allowed a deduction for the costs of this course as the course is not related to her current income-earning activities.

179. 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

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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

180. 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*

181. 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 an allowable deduction, i.e., the first \$250 is not an allowable deduction.

182. '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.

183. **Example:** While employed as a real estate salesperson, Joan enrolled in the Associate Diploma in Business (Real Estate) at the local university with a view to obtaining her Real Estate Agent's Licence. Joan has also completed several short courses that the Real Estate Institute ran specifically for real estate employees. She can claim the cost of the short courses under subsection 51(1) of the Act. The costs incurred for the Associate Diploma fall within the definition of 'expenses of self-education' in section 82A of the Act and therefore Joan cannot claim the first \$250 of this cost.

### ***Stationery***

184. A deduction is allowable for the cost of purchasing street directories, log books, diaries, business cards, pens, etc., to the extent to which they are used for income-earning purposes.

### ***Technical or professional publications***

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

186. 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'.

187. 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*

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

189. 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*

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

191. 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*

192. 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.

193. A deduction will also be allowable if an employee can demonstrate that he or she is frequently required to contact clients while away from the office.

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

Business calls (incoming and outgoing)  
Total calls (incoming and outgoing).

*Silent telephone number*

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

***Tolls***

196. A deduction is allowable for bridge and road tolls paid by a real estate employee when travelling in the course of employment. (See also ***Parking fees***, paragraphs 167 and 168).

***Tools and equipment***

197. A deduction is allowable for depreciation of the cost of tools and equipment e.g. tape measures, cameras, tools for placing signs, etc. An individual tool or piece 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 its effective life is less than three years. (See ***Depreciation of equipment***, paragraphs 88 to 97). A deduction is allowable under section 53 of the Act for the cost of repairs to tools and equipment to the extent to which they are used for income-producing purposes.

***Travel Expenses***

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

199. 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 the employee receives a travel allowance.

200. Receipt of an allowance does not automatically entitle an employee to a deduction for travel expenses. A work-related travel expense must be incurred and only the amount actually spent is an allowable deduction.

201. 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 a Taxation

Ruling annually that sets out the amount of reasonable expenses covered by a travel allowance.

202. 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*

203. A deduction is not allowable for the expenses of a relative accompanying a real estate employee whilst travelling (see section 51AG of the Act). This rule applies even if the accompanying relative is a fellow employee, if that employee performs no substantive duties during the trip.

### *Union fees and professional association fees*

204. A deduction is allowable for the cost of annual union or 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. 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 payments to staff social clubs or associations (subsection 51AB(4) of the Act).

### *Wages*

205. A deduction is not allowable to a real estate employee for wages paid to family members or other persons.

206. These expenses are incurred in deriving the assessable income of the employer, not the employee. The purpose of the expenditure is not to produce the employee's income, but to lighten the load of the employee in the performance of their duties. Although expenses of this nature may be an allowable deduction for a taxpayer carrying on a business, they are not considered to be an allowable deduction for an employee. This view is supported by *Case M55* 80 ATC 366; 24 CTBR (NS) *Case 30*.

207. In *Case M55* the taxpayer, a medical technologist employed by a large company, was required to be on call after business hours. He paid his wife to take, telephone messages relating to his after hours duties. The Board of Review held that the payments made by the taxpayer to his wife for the telephone answering service was expenditure of a private or domestic nature. Dr G.W. Beck (Member) said (ATC at 368; CTBR (NS) at 242):

'If an employee pays another party to render some of the services for which the employee is paid this expenditure is not a cost of deriving the income. It can be regarded as a cost of lightening the work load, of gaining time off, of filling a gap in the employee's competence or, as perhaps is the case here, of rendering service beyond that which he is being paid for, and all expenditure of this kind is private and hence specifically excluded by sec. 51. I really cannot envisage any circumstances in which the payments would not classify as private expenditure, but there might be some.'

208. **Example:** Emily, a real estate salesperson employed on a retainer plus commission basis, pays her son to deliver advertising literature to households in the district in which she operates. Emily pays her son a reasonable hourly rate. A deduction is not allowable for the cost of the son's wages.

## **Alternative views**

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209. During consultation on this Ruling, alternative views were expressed as follows:

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

210. The view was expressed that depreciation on this equipment should be allowed in full as the reason for acquiring these items is for earning assessable income and any private use is purely incidental. The view of the Commissioner is that where property has been used only partly for producing assessable income, the deduction for depreciation should be apportioned to the extent of the income-producing use of the equipment (see section 61 of the Act and paragraph 93).

### **Certificate of registration and Police clearance certificates**

211. The view was expressed that as the granting of these certificates relies on the knowledge and status of the person at the time, they should be regarded as an incidental cost of operating in the industry and the initial costs of these certificates should be an allowable deduction. The view of the Commissioner is at paragraphs 43 and 169 respectively.

**Driver's licence**

212. The view was expressed that because of the extent to which real estate employees have to drive, an appropriate business percentage of the annual renewal costs of the employee's driver's licence should be an allowable deduction. The view of the Commissioner remains unchanged and is supported by *Case R49* 84 ATC 387; 27 CTBR (NS) *Case 104*.

**Newspapers**

213. The view was expressed that salespeople look at the property section in the newspaper every day in order to keep abreast of the real estate market. Considering the compliance burden in apportioning the cost, the limited nature of the deduction, and the likelihood that most claims would be insignificant, a deduction should be allowed for the full cost of the relevant newspapers. Subsection 51(1) of the Act provides a deduction for expenses '... to the extent to which they are incurred in gaining or producing the assessable income...' The view of the Commissioner remains unchanged (paragraphs 161 to 166).

**Protective clothing and equipment**

214. The view was expressed that allowable deductions for 'Protective clothing' and 'Protective equipment' should include sunglasses, sunhats, sun screens, wet weather gear, etc., that provide protection against the natural environment. The view of the Commissioner is that the expense is a personal or living expense, similar to the cost of travel between home and work, conventional clothing and daily meals. A deduction is allowable for the cost of protective clothing and equipment where the conditions of the work (rather than the natural environment) make it necessary for an employee to provide protection to his or her person or clothing.

**Telephone installation or connection costs**

215. The view was expressed that deductions for telephone installation or connection costs should be allowable based on the Commissioner's stated policy in Taxation Ruling IT 2197. The view of the Commissioner is that IT 2197 only applies when the telephone installation costs or connection fees have a revenue nature. Where these expenses are incurred by an employee, they are not on revenue account but are of a capital or private nature.

**Wages**

216. The view was expressed that the cost of employing family members and others should be an allowable deduction. The view of the Commissioner is at paragraphs 205 to 208.

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