TR 95/9 - Income tax: employee lawyers - allowances, reimbursements and work-related deductions

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

other Rulings on this topic

IT 26; IT 85; IT 112; IT 208; IT 299; IT 327; IT 2062; IT 2084; IT 2197; IT 2198; IT 2199; IT 2230; IT 2261; IT 2354; IT 2406; IT 2416; IT 2452; IT 2477; IT 2481; IT 2493; IT 2543; IT 2566; IT 2614; IT 2641; IT 2673; IT 2685; MT 2027; TR 92/8; TR 92/15; TR 93/24; TR 93/30; TR 94/3; TR 94/22; TR 94/23; TD 92/142; TD 92/151; TD 92/154; TD 92/157; TD 93/108; TD 93/113; TD 93/115; TD 93/145; TD 93/159; TD 93/230; TD 93/232; TD 93/244;

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

What this Ruling is about

Class of person/arrangement

1. This Ruling applies to employee lawyers. For the purposes of this Ruling, an employee lawyer is a person who is employed as a solicitor, articled clerk, law clerk, or as a paralegal.

2. This Ruling deals with:

   (a) the assessability of allowances and reimbursements received by employee lawyers; and

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

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). The tax treatment of allowances and reimbursements is examined at paragraphs **Error! Reference source not found.** to **Error! Reference source not found.** in the **Ruling** section.

4. The Ruling also discusses whether deductions are allowable or are specifically excluded (or limited) under subsections 51(1), 51(4), 51(6), or sections 51AB, 51AE, 51AF, 51AG, 51AGA, 51AH, 51AJ, 51AK, 51AL, 53, 54, 55, 57AF, 59, 60, 61, or 82A of the Act.

5. The common work-related expenses incurred by employee lawyers and the extent to which they are allowable deductions are discussed, in alphabetical order, at paragraph 20 in the **Ruling** section. The substantiation provisions are not discussed in depth in this Ruling.

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

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

Date of effect

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

9. 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

10. The receipt of an allowance does not automatically entitle an employee lawyer to a deduction. The term 'allowance' does not include a reimbursement (see paragraphs 14 to 17).

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

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

(b) fully assessable to the employee with no deduction allowable even though an allowance is received (paragraphs 146 to 150);

(c) fully assessable to the employee with a deduction allowable for expenses incurred subject to special substantiation rules (paragraph 12);

(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 employee

lawyer and a deduction may be allowable (see Taxation Determination TD 93/230 and ***Travel expenses***).

The allowances referred to in (a) and (d) above are not normally received by employee lawyers and are not discussed in this Ruling.

Reasonable allowance amounts

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

(a) overtime meal expenses;

(b) domestic travel expenses; and

(c) overseas travel expenses.

13. 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

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

15. However, if motor vehicle expenses are reimbursed by an employer on a cents per kilometre basis, the amount is included as assessable income of the employee lawyer under paragraph 26(eaa) of the Act. A deduction may be allowable in relation to motor vehicle expenses incurred (see ***Transport expenses***, paragraphs 183 to 209).

16. If the reimbursement by an employer is for the cost of a depreciable item (e.g., a laptop computer), a deduction is allowable to the employee lawyer for depreciation (see Taxation Determination TD 93/145 and ***Depreciation of equipment***, paragraphs 71 to 96).

17. If a payment is received from an employer for an **estimated** expense, the amount received by the employee lawyer is considered to be an allowance (not a reimbursement) and is fully assessable to the employee lawyer (see **Allowances**, paragraphs 10 to 13).

Deductions

18. A deduction is only allowable if an expense:

(a) is actually incurred (paragraph 22);

(b) meets the deductibility tests (paragraphs 23 to 30); and

(c) satisfies the substantiation rules (paragraphs 31 and 32).

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

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

Admission fees: A deduction is not allowable for the cost of admission fees (paragraph **Error! Reference source not found.** to **Error! Reference source not found.**).

Annual Practising certificate: A deduction is allowable for the cost of renewing Annual Practising Certificates (paragraph 37).

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***). An apportionment must be made between work-related and private use. A deduction is not allowable if these items are supplied by the employer.

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

Briefcases: A deduction is allowable for depreciation on the cost of a briefcase, to the extent of its work-related use (see ***Depreciation of equipment*** and paragraphs **Error! Reference source not found.** and 74).

Calculators and electronic organisers: A deduction is allowable for the work-related portion of depreciation on the purchase price of calculators and electronic organisers (see ***Depreciation of equipment***, paragraphs 71 to 96).

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

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

(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 tests in subsection 51(1) of the Act and must not be private or domestic in nature (paragraphs 42 to 57).

Club membership fees: A deduction is not allowable for club membership fees (paragraph 60).

Computers and software: A deduction is allowable for depreciation on 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 61 to 64).

Conferences and seminars: A deduction is allowable for the cost of attending conferences, seminars and training courses to maintain or increase an employee lawyer's knowledge, ability or skills in the legal field. There must be a relevant nexus with the current work activities of the employee lawyer (paragraphs 65 to 70).

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 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 (paragraphs 71 to 96).

Driver's licence: A deduction is not allowable for the cost of acquiring or renewing a driver's licence (paragraphs 97 to 99).

Fares: A deduction is allowable for the cost of using public transport for work-related travel (see ***Transport expenses***, paragraphs 183-209).

Fines: A deduction is not allowable for fines imposed under a law of the Commonwealth, a State, a Territory or a foreign country, or by a court (paragraph 100).

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

Glasses and contact lenses: A deduction is not allowable for the cost of buying prescription glasses or contact lenses (paragraph 101).

Home office expenses:
Place of business: A deduction is allowable for a proportion of the running and occupancy expenses if an area of the home has the character of a 'place of business' (paragraphs 107 to 110).

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 111 to 114).

Insurance - income continuance: A deduction is allowable for insurance premiums to the extent that they are paid to cover the loss of income (paragraphs 115 and 116).

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

Interest: A deduction is allowable for interest on money borrowed to finance the purchase of equipment to the extent to which 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 58 and 59).

Meals: A deduction is not allowable for the cost of meals eaten during a normal working day (paragraphs **Error! Reference source not found.** to **Error! Reference source not found.**). A deduction may be allowable if meal costs are incurred by an employee lawyer who travels for work-related purposes (***Travel expenses***, paragraphs 210 to 214).

Motor vehicle expenses: A deduction is allowable for the cost of using a motor vehicle for work-related travel (see ***Transport expenses***, paragraphs 183 to 208). However, there are a number of statutory limitations to the above; these are:

Depreciation cost limit: Section 57AF of the Act imposes a limit on the depreciable cost base of motor vehicles (see paragraph 128).

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 work-related activities (see Taxation Ruling IT 2493 and paragraph 129).

Motor vehicle provided by employer: A deduction is not allowable for car expenses incurred by an employee lawyer in certain circumstances where a motor vehicle is provided by an employer (paragraph 130).

Newspapers: A deduction is not allowable for the cost of newspapers (paragraphs 132 and 133).

Parking fees and tolls: A deduction is allowable for the cost of parking fees (but not fines), bridge and road tolls paid by an employee lawyer while travelling in the course of employment, e.g., between work places (paragraphs 134 and 135).

Practising certificate: A deduction is allowable for the cost of renewing an Annual Practising certificate (paragraph 37).

Professional indemnity insurance: A deduction is allowable for the cost of professional indemnity insurance taken out by an employee lawyer. If the cost is met by the employer, or is reimbursed to the employee lawyer, no deduction is allowable (paragraph 136).

Professional library: A deduction is allowable for depreciation of a professional library to the extent of its work-related use. The content of reference material must be directly relevant to the income-earning activities (paragraphs 137 to 145).

Removal and relocation expenses: A deduction is not allowable for the cost of taking up a transfer in existing employment or in taking new employment with a different employer (paragraphs 146 to 150).

Repairs: A deduction is allowable for the cost of repairs to equipment to the extent that the equipment is used in income-producing activities (paragraph 151).

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 employee lawyer's current income-earning activities. Self education costs include fees, travel, books and equipment (paragraphs 152 to 158).

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 159 to 161).

Social functions: A deduction is not allowable for the cost of attending staff dinners, client gatherings or similar functions if food, drink or recreation is provided (paragraphs 162 to 167).

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

Supreme Court library fees: A deduction is allowable if Supreme Court library fees are paid on an annual basis. A deduction is not allowable if Supreme Court library fees are paid once only upon admission to practice (paragraph 168).

Suspension from practice: A deduction is not allowable for the cost of defending the right to practise (paragraph 169 and 170).

Technical or professional publications: A deduction is allowable for the cost of buying or subscribing to journals, periodicals and magazines that have a content specifically related to an employee lawyer's work and are not general in nature (paragraphs 171 to 175).

Telephone, mobile phone, pager, beeper and other telecommunications equipment expenses: A deduction is not allowable where these items are supplied by the employer. If they are not supplied, a deduction is allowable for the rentals 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 176 and 177).

Installation or connection costs: A deduction is not allowable for the cost of installing or connecting a telephone, etc. (paragraphs 178 and 179).

Rental costs: A deduction is allowable for a proportion of telephone/equipment rental costs if an employee lawyer can demonstrate that he or she is 'on call', or required to telephone their employer on a regular basis (paragraphs 180 and 181).

Silent telephone number: A deduction is not allowable for the cost of obtaining a silent telephone number (paragraph 182).

Transport expenses: Transport expenses include public transport fares and the costs associated with using a motor vehicle, motor cycle, bicycle, etc for work-related travel. They do not include accommodation, meals and incidental expenses (see ***Travel expenses*** paragraphs 210 to 214). The treatment of transport expenses incurred by an employee lawyer 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 184 to 190).

Travel between home and the normal work place - 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 lawyer 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 191 to 195).

Travel between two separate work places if there are two separate employers involved: A deduction is allowable for the cost of travelling directly between two places of employment (paragraphs 196 and 197).

Travel from the normal work place to an alternative work place while still on duty and back to the normal work place or directly home: A deduction is allowable for the cost of travel from the normal work place to other work places. A deduction is also allowable for the cost of travel from the alternative work place back to the normal work place or directly home. This travel is undertaken in the course of gaining assessable income and is allowable as a deduction (paragraphs 198 and 199).

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 200 and 201).

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 202 to 208).

Travel in connection with self education: See ***Self education expenses*** (paragraphs 152 to 161).

Travel expenses: A deduction is allowable for the cost of travel (fares, accommodation, meals and incidentals) incurred by an employee lawyer when travelling in the course of employment, e.g., to a conference interstate (paragraphs 210 to 214). Special substantiation rules apply (paragraphs 212 to 214).

Travel accompanied by a relative: Section 51AG of the Act may affect the deduction allowable for the travel expenses of relatives accompanying an employee lawyer on work-related travel (paragraph 215).

Union fees and professional association fees: A deduction is allowable for annual fees paid to unions and professional associations, although a deduction is not allowable for joining fees. A deduction is not generally allowable for levies (paragraphs 216 to 219).

Wigs worn by lawyers for appearances in court: A deduction is allowable for depreciation of the cost of wigs worn by employee lawyers for court appearances (paragraph 220).

Explanations

Deductibility of work-related expenses

21. 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

22. The expense must actually be incurred by the employee lawyer to be considered for deductibility. A deduction is not allowable for expenses not incurred by an employee lawyer, 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 14 to 17 for exceptions to this rule).

Expense meets deductibility tests

23. 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.'

24. 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 (*Ronpibon Tin*)); 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 223; 93 ATC 4508; (1993) 26 ATR 76; *FC of T v. Hatchett* (1971) 125 CLR 494; 71 ATC 4184; 2 ATR 557 (*Hatchett's* case)).

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

(a) private or domestic in nature (e.g., medical expenses);

(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).

26. 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...'

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

28. **Example:** Spiro, an employee lawyer, is provided with writing materials by his employer and also voluntarily buys a $200 fountain pen for use at work. A deduction is allowable for depreciation on the cost of the pen. As the cost is less than $300, depreciation at the rate of 100% is allowable.

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

30. 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.

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

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

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

Common work-related expense claims

Admission fees

33. A deduction is not allowable under subsection 51(1) of the Act for employee lawyers' admission fees, as they are considered to be capital or of a capital nature.

34. In *Case J30* 77 ATC 282; 21 CTBR (NS) *Case 52*, a law clerk claimed a deduction for admission fees to practise as a solicitor. After admission he continued in the same employment performing the same duties on increased salary. The claim was disallowed by majority. Mr N Dempsey of the Board of Review applied the reasoning of Menzies J in the High Court decision of *FC of T v. Maddalena* 71 ATC 4161; 2 ATR 541 (*Maddalena's* case). It was considered that the

expense was not incurred in doing work as a law clerk but in obtaining work as a solicitor and this would be so notwithstanding that it was with the same employer. *Hatchett's* case was distinguished on the basis that admission amounted to a change in the applicant's status. Taxation Board of Review Member Dr Gerber noted the change in status (ATC at 287; CTBR at 583):

> '...transmuted from the dross of clerkship to the gold of an Officer of the Court'.

35. In *Case Z1* 92 ATC 101; *AAT Case 7541* (1992) 22 ATR 3549, the applicant, a public service clerk who completed a 6 month course at the college of law, claimed a deduction for expenses that led to her admission as a solicitor. The admission fees included advertising and travelling costs and the practising certificate fee. The Tribunal held the admission fees 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'. They also secured her the status of a solicitor that was considered a 'profit yielding subject' (*Sun Newspapers Ltd and Associated Newspapers Ltd v. FC of T* (1938) 61 CLR 337; 5 ATD 23; [1939] ALR 10 (*Sun Newspapers*)). In applying *Maddalena*, the Tribunal held that the admission expenses were also incurred in getting, not in doing, work as an employee. They came at a point too soon to be properly regarded as incurred in gaining assessable income.

36. In *Case L38* 79 ATC 208; 23 CTBR (NS) *Case 44*, an officer at a State Treasury Department claimed expenditure on admission fees incurred by him in gaining admission as a barrister and solicitor of a State 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 claim was disallowed by the tribunal on the grounds that upon admission the applicant had acquired an asset of enduring benefit, that answered the description of a capital asset or asset of a capital nature.

Annual Practising certificate

37. A deduction is allowable for the cost of renewing Annual Practising certificates.

Briefcases

38. A deduction is allowable for depreciation on the cost of a briefcase under subsection 54(1) of the Act to the extent that the briefcase is used for work-related activities. For example, an employee lawyer may use a briefcase to carry books and files,

confidential material or legal information to court hearings or meetings (see Taxation Ruling IT 2261 and paragraphs 71 to 96 of this Ruling).

Child care

39. A deduction is not allowable for child care expenses, even if it is a prerequisite for an employee lawyer 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 lawyer to undertake studies relevant to his or her employment.

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

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

Clothing, uniforms and footwear

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

(a) the clothing is **protective** in nature (not discussed in this ruling);

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

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

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

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

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

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

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

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

(iii) the expenditure is not of a private nature

(see Taxation Ruling TR 94/22 covering the decision in *FC of T v. Edwards* (1994) 49 FCR 318; 94 ATC 4255; (1994) 28 ATR 87 (*Edwards* case)).

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

Occupation specific clothing

43. 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 or women regardless of their occupation. Examples of clothing that are considered to be occupation specific are female nurses' traditional uniforms, chefs' checked pants, a religious cleric's ceremonial robes and a barrister's robes.

Compulsory uniform or wardrobe

44. 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.

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

46. 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...'

47. 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.'

48. 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

49. A deduction is not allowable for the purchase and maintenance costs of a non-compulsory uniform or wardrobe **unless** the conditions outlined in section 51AL of the Act are met. Section 51AL provides that expenditure on a non-compulsory uniform or wardrobe will be allowable under subsection 51(1) of the Act only if the design of the clothing has been entered on the Register of Approved Occupational Clothing, or if the design of the clothing is approved in writing by the ATO under the transitional arrangements.. These transitional arrangements cease to have effect from 1 July 1995. A deduction will not be allowable for expenditure incurred after 30 June 1995 in relation to clothing approved under the transitional arrangements.

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

Conventional clothing

51. The views of the ATO on the treatment of costs of buying and maintaining conventional clothing are set out in Taxation Ruling TR 94/22. That Ruling sets out our views on the implications of the decision of the Full Federal Court of Australia in *Edwards* case. Ms Edwards was the personal secretary to the wife of a former

Queensland Governor. She was able to establish that her additional clothing expenses were allowable in her particular circumstances. In most cases, expenses for conventional clothing will not meet the deductibility tests of subsection 51(1) of the Act as they are of a private nature (see paragraphs 25 and 26).

52. 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.

53. 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.

54. 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.'

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

> 'The fact that the employer requires garments of a particular colour to be worn and would even terminate the employment if

another colour was substituted, does not in any way detract from the character of the garments as conventional attire, the cost of which must be regarded as a private expense.'

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

57. **Example:** Jim, a government lawyer, provides advice in a policy branch of a public service department. He wears trousers and a shirt to work, and keeps a suit handy in case he is needed to advise the Minister at Parliament House. Jim derives his income by giving advice on government policies to a wide range of people -the Australian public, other departments, businesses, and sometimes, Ministers. There is not a sufficient connection between those activities and expenditure on Jim's clothing. There is no direct nexus between Jim's clothing expenditure and his income producing activities of providing advice on government policies.

Laundry and maintenance

58. 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 **Error! Reference source not found.**. This applies whether the clothing is purchased by the employee lawyer or supplied by the employer.

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

Club membership fees

60. 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.

Computers and software

61. A deduction is allowable under subsection 54(1) of the Act for depreciation of computers and related software owned and used by employee lawyers for work-related purposes (paragraphs 71 to 96).

62. For example, an employee lawyer may use a computer at home to prepare submissions, reports or for self education purposes. If the computer is also used for private purposes, the deduction for depreciation is allowable only to the extent of the work-related use (paragraphs 76 and 77). 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 71 to 96 of this Ruling for further information on depreciation of equipment).

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

64. 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 relates to use for work-related purposes (see Taxation Ruling IT 26).

Conferences, seminars and training courses

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

66. 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...'

67. A deduction is allowable for travel expenses (fares, accommodation and meal expenses), registration and conference material costs incurred in attending work-related conferences and seminars (paragraphs 210 to 215).

68. 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.

69. If the dominant purpose in incurring the costs 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.

70. Information on ***Self education expenses*** can be found in Taxation Ruling TR 92/8 and in paragraphs 152 to 161.

Depreciation of equipment

71. 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.

72. A deduction is allowable under subsection 54(1) of the Act for depreciation of equipment owned and used by an employee lawyer 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.

73. 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.

74. Any item of equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less, or if its effective life is less than three years (section 55 of the Act). This means that an immediate deduction is available for the cost of each item of equipment in the year in which it is purchased. However, items 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.

75. **Example:** Fred, an employee lawyer, pays $250 for a briefcase that is used only for work, e.g., carrying reference books, notes and

client files. The amount of $250 is an allowable deduction in the year of purchase.

76. If equipment is used partly for work-related purposes and partly for other purposes, then the depreciation should be apportioned based on an estimate of the percentage of work-related use (section 61 of the Act). For example, this principle would apply to equipment such as computers, printers, word processors, fax machines, typewriters, answering machines, video recorders and tape recorders that are used both for work-related and private purposes.

77. **Example:** Alison is an employee lawyer who owns a laptop computer. She uses this computer at work during the week and at home on weekends for writing personal letters. She is entitled to a deduction for a proportion of the depreciation based on the work use of the laptop computer. A reasonable apportionment might be 5/7 business use.

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

79. 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).

80. **Example:** A bookshelf is purchased on 1 July 1991 for $400 but 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.

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

82. Where a unit of depreciated property is disposed of, scrapped, destroyed or lost, a balancing adjustment is usually made.

83. Section 59 of the Act provides that where the consideration receivable is less than the property's depreciated value, the difference shall be an allowable deduction. Conversely, where the consideration exceeds the depreciated value, the excess to the extent of the depreciation allowed (also referred to as 'balancing charge') is included

in the assessable income or alternatively deducted from the initial written down value of any replacement item acquired.

84. **Example**	**$**	**$**
A desk bought at commencement of year 1 for	600	
Depreciation for year 1 at, say, 20%, diminishing value	(120)	
Depreciated value at commencement of year 2	480	
Depreciation for year 2 at 20% diminishing value	(96)	
Depreciated value at commencement of year 3	384	384
Sold at commencement of year 3 for		(300)
Excess of depreciated value over consideration receivable		**84**

This amount of $84 is an allowable deduction for year 3. If the consideration receivable in the above example is $400, the difference of $16 is to be **included** in assessable income for year 3.

Cost base of depreciated plant (second-hand plant)

85. The basic rule in subsection 60(1) of the Act is that a purchaser of depreciable property is not entitled to any greater income tax deduction for depreciation than the income tax deduction to which the vendor would have been entitled had he retained the depreciable property.

86. In practice, the depreciated value of the property in the hands of the vendor is carried over to the purchaser and is the amount upon which the purchaser bases income tax deductions for depreciation.

87. Where there is a balancing charge included in the vendor's assessable income under subsection 59(2) of the Act, or where it is set off under subsections 59(2A) or 59(2D) of the Act against the cost or depreciated value of other property of the vendor, the purchaser is allowed depreciation on the sum of the amount and the depreciated value of the property immediately prior to the change of ownership.

88. However, subsection 60(1) of the Act does not apply where the Commissioner is of the opinion that the circumstances are such that the depreciation should be calculated some other way (see subsection 60(2) of the Act).

89. In paragraph 6 of Taxation Ruling IT 2354, the Commissioner indicated that discretion would usually be exercised pursuant to subsection 60(2) of the Act, to permit the purchaser to claim depreciation on the basis of the purchase price of the item, where:

(a) the sale is *bona fide* (i.e., it is an ordinary arm's length sale);

(b) the purchase price represents the fair market value of the depreciable item; and

(c) the depreciable item is for use in the purchaser's income producing activities and is no longer used in the vendor's income-producing activities.

Where purchase price is greater than written down value

90. Subsection 60(1) of the Act only applies where the purchaser acquires the second-hand plant for an amount greater than the written down value.

91. The opening value to be used by an employee lawyer for depreciation purposes is not market value or the amount an employee lawyer pays to the vendor, except where the Commissioner exercises discretion under subsection 60(2) of the Act (see paragraph 89).

92. **Example** Employee lawyer **A** purchases a set of law reports for $2,000 from retiring judge **B** on 1/7/94. **B** purchased the law reports on 8/9/91 for $2,300. The law reports were depreciated and the written down value at 30/6/94 was $1,500.

The cost base for depreciation claims by **A** would be:

	$
Cost of law reports to **B**	2,300
Less depreciation allowed	800
Depreciated value of law reports to **B**	1,500
Add back subsection 59(2) balancing charge	500
A's basis for depreciation of law reports	**2,000**

Note: **B** would include the $500 in her assessable income.

93. **Example** same as above except **A** paid $3,000

The cost base for depreciation claims by **A** would be:

	$
Cost of law reports to **B**	2,300
Less depreciation allowed	800
Depreciated value of law reports	1,500
Add back subsection 59(2) balancing charge	800
A's basis for depreciation	**2,300**

Note: **B** would include the $800 in her assessable income. Also, there may be a capital gain since the unit of property was sold for more than the original purchase price.

If the Commissioner exercised discretion in the above example, lawyer **A**'s opening cost base would be $3,000.

Where purchase price is less than or equal to written down value

94. Subsection 60(1) of the Act does not apply where the purchaser acquires the second-hand plant for an amount less than or equal to the written down value. The basis for depreciation to be used by the purchaser is the actual amount paid by the purchaser for the plant.

95. **Example** Employee lawyer **A** purchased a set of law reports for $1,000 from retiring judge **B** on 1/7/94. **B** purchased the law reports on 8/9/91 for $2,300. The law reports were depreciated and the written down value at 30/6/94 was $1,500.

A's basis for depreciation of the law reports is $1,000

96. For the sake of completeness, the following relates to retiring judge **B**. This is the same calculation as in the previous example:

	$
Cost of law reports to **B**	2300
Less depreciation allowed	800
Depreciated value of law reports to **B**	1500
unit sold for $1,000	1000
subsection 59(1) loss	500

B would be able to claim a deduction of $500.

Driver's licence

97. 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.

98. 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 the cost was not an allowable deduction under subsection 51(1) of the Act.

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

Fines

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

Glasses and contact lenses

101. A deduction is not allowable for the cost of buying prescription glasses or contact lenses as the expense relates to a personal medical condition and is private in nature.

Home office expenses

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

103. Costs associated with an employee lawyer's home are normally of a private or domestic nature. However, a deduction may be allowable for a proportion of the expenses associated with an employee lawyer'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 lawyer's income-earning activities and does not constitute a 'place of business', i.e., an area of the home is a private study.

104. 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-earning activities. These include rent, mortgage interest, municipal and water rates, property taxes, house insurance premiums and repairs to the home; 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.

105. A deduction is not allowable for the cost of occupancy expenses for employee lawyers 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.

106. 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

107. A deduction is allowable for a proportion of both occupancy and running expenses if an area of the home has the character of a 'place of business'.

108. 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 TR 93/30 provide information on whether or not an area set aside has the character of a 'place of business'.

109. 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* ATC 429; *AAT Case 9749* (1994) 29 ATR 1138, a sales representative claimed a deduction for home office expense. 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 an employee lawyer, in his or her capacity as an employee, would use part of their home as a place of business. However, an employee lawyer may also conduct a business from home.

110. If an 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 lawyer. 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')

111. A deduction is allowable for work-related running expenses if an employee lawyer maintains an office or study at home (e.g., carrying out research, reading client briefs, preparing submissions, etc.). For the running expenses to be deductible, the area of an employee lawyer's home 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).

112. 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 lawyer uses a room at a time when others are not present or uses a separate room.

113. **Example:** Mary is an employee lawyer who reads her client briefs in the lounge room where other family members are able to watch television. The expenditure for lighting and heating/cooling retains its private or domestic character and is not deductible. If she uses the room at a time when others are not present, or uses a separate room, she 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.

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

Insurance

115. A deduction is allowable for the cost of the annual premium if an employee buys insurance against loss of an income stream if the periodical payments receivable under the policy constitute assessable income (see *FC of T v. Smith* (1981) 147 CLR 578; 81 ATC 4114; 11 ATR 538).

116. In Taxation Rulings IT 208 and IT 2230 the Commissioner has advised that if the policy provides for both income and capital benefits, the premium needs to be apportioned, and only that portion of the premium referable to the income benefits is an allowable deduction.

Meals

117. A deduction is not allowable for the cost of meals consumed by employee lawyers 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 30.

118. 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.'

119. 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.

120. 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 30, and are considered to be private in nature.

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

122. A deduction is allowable for the cost of meals bought while working overtime if an award overtime meal allowance is received and the expenditure meets the deductibility tests in paragraphs 23 to 30.

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

124. The general rule is that no deduction is allowed for work-related expenses unless written evidence, such as a receipt, is obtained.

125. However, special substantiation rules apply to overtime meal expenses if an employee lawyer receives an overtime meal allowance paid under an industrial award. A deduction is allowable without substantiation for expenses incurred, provided the claim does not

exceed the amount considered reasonable by the Commissioner of Taxation. Reasonable amounts are published annually by the Commissioner in a Taxation Ruling.

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

Motor vehicle expenses (see also ***Transport expenses***)

127. A deduction is allowable for the cost of using a motor vehicle for travel in the course of gaining or producing assessable income (paragraphs 183 to 208).

Depreciation cost limit

128. Section 57AF of the Act imposes a limit on the depreciable cost base of motor vehicles (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

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

Motor vehicle provided by employer

130. A deduction is not allowable for car expenses incurred by an employee lawyer if:

(a) the car is provided by the employer for the exclusive use of the employee lawyer and/or their relatives; and

(b) the employee lawyer and/or their relatives are entitled to use the car for private purposes

(see section 51AF of the Act).

131. 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 at paragraphs 134 and 135.

Newspapers

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

133. **Example:** Simone, an employee lawyer, often buys a particular newspaper because it contains law lists. Any work-related purpose of buying the newspaper is considered to be incidental to her overall private purpose, and no deduction is allowable.

Parking fees and tolls

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

(a) between two separate places of work;

(b) to a place of education for self education purposes (if the self education expenses are 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 an employee lawyer for certain car parking expenses where the conditions outlined in section 51AGA of the Act are met.

135. A deduction is not allowable for parking fees and tolls incurred when employee lawyers 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 191 to 195).

Professional indemnity insurance

136. A deduction is allowable for the cost of professional indemnity insurance taken out for work-related purposes. If the cost is met by

the employer, or is reimbursed to the employee lawyer, no deduction is allowable.

Professional library

137. A deduction is allowable under section 54 of the Act for depreciation of the cost of a professional library.

138. In *Munby v. Furlong (Inspector Of Taxes)* [1976] WLR 410; [1976] 1 All ER 753, it was held that the word 'plant' was not confined to objects that were used physically by a professional man but extended to objects used by him intellectually in the course of carrying on his profession and therefore included books purchased by a barrister for the purpose of his practice.

139. Further, Lord Denning MR, in that case indicated that the cost of textbooks having a life of four to nine years, was capital expenditure. A deduction is therefore allowable for depreciation on the cost of books in a professional library, to the extent that they are used for income-earning purposes.

140. For depreciation purposes, reference books may only be included in the professional library if their content is directly relevant to the duties performed. For example, encyclopaedias would not be included, as they are too general in nature. Dictionaries would be included where purchased for income-earning purposes.

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

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

142. If an individual reference book is purchased after 1 July 1991, and its cost does not exceed $300, or its effective life is less than 3 years, it may be depreciated at 100% in the year of purchase (see Taxation Determination TD 93/159).

143. A distinction must be drawn between textbooks purchased for use in a course of study and books forming part of a professional library. A student's books will generally be used only during the course of study, and in most cases only during the year of purchase. A deduction is allowable for the cost of the books in the year of purchase providing there is a nexus between the study and the earning of assessable income.

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

145. Paragraphs 71 to 96 of this Ruling provide further information on depreciation.

Removal and relocation expenses

146. A deduction is not allowable under subsection 51(1) of the Act for removal or relocation expenses incurred by an employee lawyer to take up a new posting within an existing employment or in taking up new employment with a different employer. This applies whether the transfer of employment is voluntary or at the employer's request.

147. An employee lawyer may receive an allowance from his or her employer as compensation for the costs of relocating. The allowance is assessable under subsection 25(1) or paragraph 26(e) of the Act and no deduction is allowable under subsection 51(1) of the Act. It is considered that the expense is not incurred in deriving assessable income and/or is of a private or domestic nature.

148. In *Fullerton v. FC of T* (1991) 32 FCR 486; 91 ATC 4983; (1991) 22 ATR 757, the taxpayer worked for the Queensland Forest Service (QFS) as a professional forester for over 20 years. In that time, QFS transferred him to a number of different locations. As a result of a reorganisation, his position ceased to exist. He had no choice but to accept a transfer as he may have been retrenched. The QFS reimbursed a portion of the relocation expenses and the taxpayer claimed the remainder of his expenses as a tax deduction. It was held that the expenditure on the taxpayer's domestic or family arrangements was not an allowable deduction under subsection 51(1) of the Act, even though the expenditure had a causal connection with the earning of income.

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

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

Repairs

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

Self education expenses

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

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

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

(c) A deduction is not allowable if the education is designed to enable a taxpayer to get employment, or to obtain new employment or to open up a new income earning activity (*Maddalena's* case).

(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.

153. In *Case U186* 87 ATC 1066; 18 ATR 3943 *Case 129*, the applicant was an employee lawyer working with a legal firm, and a part-time law lecturer. He was offered a place in a Masters course in the United States and after accepting the offer, he resigned both jobs in August 1982. Both employers were willing to re-employ him when he returned and, on his return in June 1983, he resumed employment with the same legal firm. In 1984 he resigned and took up employment with a law firm in Hong Kong. In August 1985 he returned to Australia and commenced to practise law on his own account.

154. The Tribunal held that the applicant was not entitled to a deduction for travel, study and living expenses on the ground that they were not incurred 'in the course of' the derivation of any relevant income. In addition they were denied on the ground that they were incurred at a point too soon in time.

155. **Example:** James is an employee law clerk who would like to go into business for himself and is taking a part-time course in Business Administration. James is not allowed any deduction for the costs of this course as there is insufficient connection with his current income-earning activities.

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

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

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

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

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

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

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

157. **Example:** Effie is an employee lawyer who travels a long distance to a university to undertake her course for two consecutive days each fortnight. This course is related to her current income-earning activities. She is allowed a deduction for the cost of travel to and from her place of education, overnight accommodation, meals and incidentals (but see paragraph 159).

158. 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

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

160. '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.

161. **Example:** Keith, an employee lawyer, incurs self education expenses totalling $1,650 in connection with his law course at a university. The costs fall within the definition of 'expenses of self-education in section 82A of the Act and Keith cannot claim the first $250 of the costs. He is allowed a deduction for the remaining $1,400.

Social Functions

162. A deduction is generally not allowable for expenses incurred in attending social functions if the expenses relate to the provision of entertainment (see subsection 51AE(4) of the Act). Broadly, the 'provision of entertainment' means entertainment by way of food,

drink, recreation, accommodation or travel. This subsection applies irrespective of who pays for the entertainment and/or who receives the entertainment.

163. A deduction is not allowable for the cost of an employee lawyer's meals while travelling away from home, if the taxpayer also buys a meal for a client (see subsection 51AE(4) of the Act). A deduction is not allowable for expenses incidental to the meal (see Taxation Determination TD 92/151).

164. **Example:** Joe, who is currently in America on an overseas business trip, has dinner with his business client Fred and pays for Fred's meal. Joe is not entitled to a deduction for any of the costs associated with his dinner with Fred, including the cost of his own meal.

165. 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.

166. 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 they were also of a private nature.

167. A deduction is not allowable to an employee lawyer for the cost of providing morning or afternoon tea or light refreshments to other staff members. These expenses are not incurred in producing assessable income and are also of a private nature. Even if the provision of refreshment is part of 'team building', the essential character of the expense remains private.

Supreme Court library fees

168. A deduction is not allowable under subsection 51(1) of the Act for Supreme Court library fees payable as a 'once-only' fee on admission to practice, as they are of a capital nature. A deduction is allowable under subsection 51(1) of the Act if the fees are paid annually or periodically.

Suspension from practice

169. A deduction is not allowable under subsection 51(1) of the Act for expenses incurred by an employee lawyer in defending his or her right to practise. The expenses are considered to be capital or of a capital nature.

170. In *Case V140* 88 ATC 874; *AAT Case 4596* (1988) 19 ATR 3859, a solicitor was suspended from practice for one year and ordered to pay the costs of the Law Society. The Tribunal applied the tests described in *Sun Newspapers* by Dixon J, namely, that the advantage sought (the right to practise as a solicitor) was a lasting one; the manner in which that right was to be used was to derive recurring income; and the means adopted to obtain (in this case retain) that right was a 'once and for all' payment.

Technical or professional publications

171. 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 an employee lawyer's work and are not general in nature. For example, a deduction is not allowable for the cost of buying magazines such as *Time*, *The Bulletin* and *Reader's Digest* as they are general interest publications.

172. 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.'

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

174. **Example:** Tania, an employee taxation lawyer in a large company, subscribes to the *Taxation in Australia* journal. The cost is an allowable deduction as there is sufficient nexus between the expense and Tania's job.

175. **Example:** Rachel, an employee lawyer, subscribes to *The International Manager*. The cost would not be an allowable deduction as there is insufficient nexus between the expense and Rachel's job.

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

Cost of calls

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

177. 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

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

179. 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

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

181. 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:

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

Silent telephone number

182. 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).

Transport expenses

183. Transport costs include public transport fares and the costs associated with using a motor vehicle, motor cycle, bicycle, etc., for work-related travel. They do not include accommodation, meals and incidental expenses (see ***Travel expenses***, paragraphs 210 to 214). The treatment of transport costs incurred by an employee lawyer when travelling is considered below.

Travel between home and work

184. A deduction is not allowable for the cost of travel by an employee lawyer 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).

185. 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.'

186. 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.

187. **Example:** Nigel, an employee lawyer, is phoned at his home outside normal working hours as a client has been arrested. He travels from his home to his office in response to this call. A deduction is not allowable for the cost of travel between his home and the office.

188. On other occasions, Nigel travelled from the office to the police station and then back to the office or directly home. A deduction is allowable for the cost of this travel (see paragraphs 198 and 199).

189. An employee lawyer may be regularly employed at various legal aid offices on some days (e.g., Mondays and Tuesdays) and at his or her normal work place on other days (Wednesdays, Thursdays and Fridays). As the employee lawyer performs normal duties at the various legal aid offices and the normal work place in a set pattern, all of these locations are considered to be the normal work place. No deduction is allowable for the cost of travel between home and these work places.

190. **Example:** Bill is an employee lawyer who works in his employer's city office and also commutes to a suburban branch office every Friday. A deduction is not allowable for the cost of travel between Bill's home and either of these locations as it is travel to and from his normal work place (but see paragraphs 191 to 195).

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

191. A deduction is allowable if the transport costs can be attributed to the transportation of bulky articles or equipment rather than to private travel between home and work (see *FC of T v. Vogt* 75 ATC 4073; 5 ATR 274). If the equipment is transported to and from work by the employee lawyer as a matter of convenience, it is considered that the transport costs are private and no deduction is allowable.

192. 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).

193. A deduction is not allowable where, as a matter of convenience, the employee lawyer performs some work at home and transports papers, materials, etc. (whether bulky or not), between home and work for that purpose (see *Case Q1* 83 ATC 1: *Case 65* 26 CTBR (NS) 469 and see also paragraph 38 of Taxation Ruling MT 2027).

194. **Example:** Charlie, an employee lawyer, has to attend a hearing at a country court. He uses his car to enable him to carry 50 kg of working papers home so that he can travel directly to court the next day. Charlie would be entitled to a deduction for his car expenses when transporting the bulky working papers.

195. **Example:** Geoffrey, an employee lawyer, chooses to do some work at home and carries 50 kg of working papers and a notebook computer in his car when travelling to and from work. Geoffrey's car expenses are private, as his travel between home and work is not attributable to necessarily carrying bulky articles or items of equipment.

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

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

197. **Example:** Julian, an employee lawyer, is allowed a deduction for the cost of travel from his office directly to a university to give night lectures, for which he is paid.

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

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

199. **Example:** Bonnie, an employee lawyer, travels from her normal office to her employer's head office to attend a meeting. After the meeting she travels directly home. The cost of each journey is an allowable deduction to Bonnie.

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

200. 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 an allowable deduction. (see Taxation Ruling MT 2027, paragraphs 32 to 35).

201. **Example:** Anna, an employee lawyer, is required to travel from home to assist with an urgent brief at her employer's head office. She then travels to her normal work place. The cost of travelling from home to the head office and then on to the normal work place is an allowable deduction. However, the cost of travelling home from the normal work place is not an allowable deduction.

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

202. 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.

203. **Example:** Kirsten, an employee lawyer, works at two branch offices each day. The cost of travel from one office to another is an allowable deduction as the cost is incurred in travelling between two places of employment (see Taxation Ruling IT 2199).

204. If the employee lawyer 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 lawyer'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 IT 2199).

205. 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.

206. 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 it was not an allowable deduction.

207. **Example:** Virginia, an employee lawyer, teaches guitar at her home on Monday evenings. The cost of travelling from her office to

home is not an allowable deduction. It is a private expense rather than an expense incurred in deriving assessable income.

208. 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

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

Travel expenses

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

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

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

213. If a travel allowance is received and the amount of the claim for expenses incurred is no more than a reasonable amount, substantiation is not required. The Commissioner of Taxation publishes annually a Taxation Ruling that sets out the amount of reasonable expenses covered by a travel allowance.

214. 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

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

Union fees or professional association fees and levies

216. 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.

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

> '...where levies are paid by employees to a trade union or professional association it is necessary to have regard to the purposes for which the payments are made in order to determine whether they satisfy the terms of subsection 51(1). It is not decisive that the levies may be compulsory. What is important is the connection between the payment of the levy and the activities by which the assessable income of the employee is produced.
>
> Levies made specifically to assist families of employees suffering financial difficulties as a result of employees being on strike or having been laid off by their employers are not considered to be allowable deductions under subsection 51(1) - they are not sufficiently connected with the activities by which the assessable income is produced to meet the requirements of the subsection' (IT 2062 paragraphs 2 and 3).

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

219. A deduction is allowable for a levy if it is paid into a separate fund and it can be clearly shown that the monies in that fund are solely for protecting the interests of members and their jobs, and for the obtaining of legal advice or the institution of legal action, etc. on their behalf (see IT 299). A deduction is not allowable for payments to staff social clubs or associations (subsection 51AB(4) of the Act).

Wigs

220. The cost of a wig is considered to be a capital expense. A deduction is allowable under section 54 of the Act for depreciation of the cost of a wig. If a wig is purchased after 1 July 1991 and its cost does not exceed $300 or its effective life is less than 3 years, it may be depreciated at 100% in the year of purchase (see Taxation Determination TD 93/159).

Alternative views

Telephone installation or connection costs

221. 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 lawyer, they are not on revenue account but are of a capital or private nature.

Admission fees

222. The view was expressed that a deduction should be allowable for the cost of admission fees incurred by an employee lawyer who undertakes articles of clerkship rather than a course of study at the College of Law, Leo Cussen Institute or an equivalent institution. The Commissioner's view is at paragraphs 33 to 36 of this Ruling.

Clothing

223. The view was expressed that a deduction should be allowable for the extra costs incurred by an employee lawyer of buying and maintaining suits, as suits must be worn for court appearances. The Commissioner's view is at paragraphs 51 to 57 of this Ruling.

Library fines

224. The view was expressed that a deduction should be allowable for the cost of library fines incurred by an employee lawyer for the late return of law books. The Commissioner's view is that the expense is private and is not an allowable deduction.

Newspapers

225. The view was expressed that a deduction should be allowable for the cost of newspapers incurred by an employee lawyer if the newspapers are bought for the sole purpose of obtaining law lists. The Commissioner's view is at paragraphs 132 and 133 of this Ruling.

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