TR 98/6 - Income tax: real estate industry employees - allowances, reimbursements and work-related deductions

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

other Rulings on this topic

IT 112; IT 327; IT 2197; IT 2198; IT 2199; IT 2477; IT 2493; IT 2543; IT 2641; IT 2673; IT 2685; MT 2027; TD 92/142; TD 92/154; TD 92/157; TD 93/34; TD 93/108; TD 93/113; TD 93/115; TD 93/145; TD 93/195; TD 93/230; TD 93/244; TD 94/55; TR 92/15; TR 92/20; TR 93/24; TR 93/30; TR 94/3; TR 94/22; TR 96/17; TR 96/18; TR 97/12; TR 97/14; TR 97/17; TR 97/24; TR 98/5; TR 97/D20

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Preamble

*The number, subject heading, and the **Date of effect** part and **Ruling** part (other than the **Note** in the section headed '**Computers and software**' in paragraph 23) of this document are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** ('TAA') and are legally binding on the Commissioner. The remainder of the document is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain 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 This Ruling replaces Taxation Ruling TR 95/21[1] which is now withdrawn.

2. The significant changes concern deductions for advertising, gifts, greeting cards, property presentation costs, referral expenses and expenditure on wages. The Ruling has also been updated to take account of the new Tax Law Improvement Project legislation.

3. This Ruling applies to the class of persons who are salespeople and property managers employed in the real estate industry (referred to in the Ruling as 'real estate employees'). For the purposes of this Ruling, the phrase 'entitled to earn commission' includes an entitlement to earn performance related payments even if no payments are earned in a year of income because the necessary performance target was not met.

4. This Ruling applies to the following class of arrangements:

   (a) allowances and reimbursements received by real estate employees; and

[1] Income tax: real estate industry employees - allowances, reimbursements and work-related expenses.

(b) work-related expenses incurred by real estate employees.

5. The Ruling discusses the assessability of allowances and reimbursements under sections 6-5 and 6-10 of the *Income Tax Assessment Act 1997* ('the Act') and paragraph 26(eaa) of the *Income Tax Assessment Act 1936* ('the 1936 Act').

6. The Ruling also discusses whether deductions are allowable or are specifically excluded (or limited) under item 1 of section 42-125 or subsections 8-1(2), 26-35(1), 26-45(1), 26-50(1), 42-120(1), 42-170(1) or sections 8-1, 25-10, 26-5, 26-20, 26-30, 32-5, 32-35, 32-65, 34-10, 34-20, 42-15, 42-80, 42-125, 42-130, 42-135, 42-170 or 995-1 of the Act and sections 51AF, 51AGA, 51AH, or 82A of the 1936 Act (see paragraph 225 for a cross reference table of provisions).

7. The tax treatment of allowances and reimbursements is examined at paragraphs 12 to 20 in the **Ruling** section.

8. The common work-related expenses incurred by real estate employees and the extent to which they are allowable deductions are discussed, in alphabetical order, at paragraph 23 in the **Ruling** section. The substantiation provisions are not discussed in depth in this Ruling (see Taxation Ruling TR 97/24[2]).

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

10. Each year the Australian Taxation Office ('ATO') carries out audits of taxpayers' returns. This Ruling will be used by the ATO when it undertakes audits of the returns of real estate employees. Where there is a tax shortfall, any penalties will be imposed in terms of Taxation Ruling TR 94/3[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

11. This Ruling applies to years commencing both before and after its date of issue. However, our views on the deductibility of referral expenses for referring successful business incurred by real estate employees who are not entitled to earn commission (paragraphs 183 and 184) apply only from the date of issue of this Ruling. The Ruling

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[2] Income tax: relief from the effects of failing to substantiate.

[3] Income tax: tax shortfall penalties: calculation of tax shortfall and allocation of additional tax.

does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20[4]). The application of public Rulings where a taxpayer has a private ruling is considered at paragraph 19 of TR 92/20 and also in Taxation Determination TD 93/34[5].

Ruling

Allowances

12. A deduction is not allowable merely because an allowance is received. The term 'allowance' does not include a reimbursement (see paragraphs 17 to 20).

13. Allowances can fall into the following categories:

(a) fully assessable to the employee with a deduction possibly allowable, depending upon individual circumstances (see paragraph 14);

(b) fully assessable to the employee with no deduction allowable even though an allowance is received (not normally paid to real estate employees);

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

(d) not assessable to the employee because the employer may be subject to fringe benefits tax ('FBT'). A deduction is not allowable to the employee for expenses incurred that are covered by such an allowance;

(e) fully assessable to the employee if the allowance is paid wholly or in part for travel expenses. A deduction may be allowable to the employee for expenses incurred against

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[4] Income and other taxes: guidelines on the use of Date of Effect paragraphs in Taxation Rulings and Taxation Determinations.

[5] Income tax and fringe benefits tax : is there a withdrawal of a private ruling by a later inconsistent public ruling if the year of income or fringe benefits tax year to which the private ruling relates has (a) already ended or (b) commenced but not yet ended?

such an allowance (see Taxation Determination TD 93/230[6] and ***Travel expenses***, paragraphs 203 to 208).

Allowances - possible deduction

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

(a) ***Car allowance:*** in those States that do not have an award in place, a car allowance may be part of the employment agreement. A deduction may be allowable for the work-related portion of car expenses (see ***Motor vehicle and other transport expenses***, paragraphs 140 to 166).

(b) ***Locomotion allowance:*** this allowance is paid under industrial awards to real estate employees in New South Wales, South Australia and Victoria. A deduction may be allowable for the work-related portion of transport expenses (see ***Motor vehicle and other transport expenses***, paragraphs 140 to 166).

(c) ***Telephone or mobile phone allowance:*** a deduction may be allowable for the work-related portion of telephone or mobile phone expenses (see ***Telephone expenses***, paragraphs 193 to 200).

Reasonable allowance amounts

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

(a) overtime meal expenses covered by an allowance paid or payable under the terms of an industrial law or award;

(b) domestic travel expenses covered by a travel allowance; and

(c) overseas travel expenses covered by a travel allowance.

16. 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 Commissioner's reasonable

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[6] Income tax and fringe benefits tax: is a camping allowance assessable under section 30 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) or under subsection 25(1) of the *Income Tax Assessment Act 1936* (ITAA)?

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

Reimbursements

17. If a real estate employee receives a payment from his or her employer or any other person for **actual** expenses incurred, the payment is a reimbursement and the employer may be subject to FBT. Subject to paragraph 18 below, if a real estate employee receives a reimbursement from his or her employer or any other person, the amount is not required to be included in his or her assessable income and a deduction is not allowable for the related expense (see Taxation Ruling TR 92/15[7]).

18. However, if car expenses are reimbursed by an employer or an associate and are worked out by reference to the distance travelled by the real estate employee's car (e.g., on a cents per kilometre basis), the amount is included as assessable income of the real estate employee under paragraph 26(eaa) of the 1936 Act. A deduction may be allowable for motor vehicle expenses incurred (see ***Motor Vehicle and other transport expenses***, paragraphs 140 to 166).

19. If the reimbursement by an employer or any other person is for the cost of a depreciable item (e.g., tools and equipment), a deduction is allowable to the real estate employee for depreciation on the item to the extent that it is used for income-producing purposes (see Taxation Determination TD 93/145[8] and ***Depreciation of equipment***, paragraphs 92 to 103).

20. If a payment is received from an employer for an **estimated** expense with no requirement to repay any unspent money, the amount received by the real estate employee is considered to be an allowance (not a reimbursement) and is fully assessable to the real estate employee (see **Allowances**, paragraphs 12 to 16).

Deductions

21. A deduction is only allowable if an expense:

(a) is actually incurred (see paragraph 25);

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[7] Income tax and fringe benefits tax: the difference between an allowance and a reimbursement.

[8] Income tax: is an employee entitled to a deduction for depreciation in relation to an item of plant used for income producing activities when he or she is subsequently reimbursed for the cost of the item?

(b) meets the deductibility tests (see paragraphs 26 to 35); and

(c) satisfies the substantiation rules (see paragraphs 36 and 37).

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

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

***Advertising*:** A deduction is allowable for advertising costs incurred by real estate employees who are entitled to earn commission. A deduction for such costs is not allowable to real estate employees who are not entitled to earn commission (see paragraphs 38 to 43).

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 to the extent that they are used for income-producing purposes (see ***Depreciation of equipment, paragraphs 92 to 103). Initial connection and installation fees are not deductible. The deduction claimed must be reduced by the extent of private use of the equipment. A deduction is not allowable if these items are supplied by the employer or any other person (see paragraph 25).

Automobile Association/Club membership fees*:** If either the log book method or one-third of actual expenses method is used to claim work-related car expenses, then the annual fee for road service can be included in the calculation (see ***Motor vehicle and other transport expenses, paragraph 161).

Bank fees: A deduction is allowable, as a work-related expense, for Financial Institutions Duty that relates to the direct depositing of salary or wages into the real estate employee's bank account(s). A deduction is not allowable as a work-related expense for bank fees, such as account keeping charges (see Taxation Ruling IT 2084[9]).

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 paragraphs 45 and 46; see also ***Depreciation of equipment***, paragraphs 92 to 103).

Car wash expenses: If either the log book method or one-third of actual expenses method is used to claim work-related car expenses,

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[9] Income tax: losses and outgoings: financial institutions duty - bank account debits tax.

the car cleaning costs can be included in the calculation (see ***Motor vehicle and other transport expenses***, paragraph 162).

Certificate of registration: A deduction is allowable for the cost of renewing a certificate of registration held by an employee in respect of his or her employment. A deduction is not allowable for the cost of obtaining the initial certificate of registration (see paragraphs 47 to 50).

Child care: A deduction is not allowable for child care expenses (see paragraphs 51 to 53).

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[10];

(d) non-compulsory and entered on the Register of Approved Occupational Clothing; or

(e) conventional, and satisfy the deductibility tests as explained in Taxation Ruling TR 94/22[11] (see paragraphs 54 to 78).

Club membership fees: A deduction is not allowable for club membership fees (see paragraphs 79 to 81).

Computers and software: A deduction is allowable for depreciation of the cost of computers used for work-related purposes. The deduction must be reduced by the extent of private use. For the period before 10 a.m. on 11 May 1998, a deduction is allowable for:

- depreciation on software if purchased with a computer;
- the cost of software (allowable in full in the year of purchase) if bought separately from a computer;

where the software is used for work purposes. The deduction must be reduced by the extent of private use (see paragraphs 82 to 84).

(**Note:** the 1998 Federal Budget provides that the Government proposes to introduce legislation that broadly will result in the cost of software

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[10] Income tax: corporate wardrobes and corporate uniforms.

[11] Income tax: implications of the *Edwards case* for the deductibility of expenditure on conventional clothing by employees.

purchased for more than $300 (with or without a computer) on or after 10 a.m. on 11 May 1998 having to be claimed as a deduction over:

- two and a half years; or
- the life of the software licence;

whichever is shorter.

These comments are not a public ruling for the purposes of Part IVAAA of the TAA and are not legally binding on the Commissioner. They are provided to alert readers to a potential legislative change.)

Conferences, seminars and training courses: A deduction is allowable for the cost of attending conferences, seminars and training courses to maintain or increase a real estate employee's knowledge, ability or skills in the real estate industry. There must be a relevant connection with the current work activities of the real estate employee (see paragraphs 85 to 91).

Depreciation of equipment: A deduction is allowable for depreciation to the extent of the work-related use of the equipment. An item of equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less, or if its effective life is less than three years (see paragraphs 92 to 103).

Driver's licence: A deduction is not allowable for the cost of acquiring or renewing a driver's licence (see paragraphs 104 to 106).

Fares: A deduction is allowable for the cost of using public transport for work-related travel (see paragraph 107).

Fines: A deduction is not allowable for fines imposed under a law of the Commonwealth, a State, a Territory, a foreign country, or by a court (see paragraph 108).

Functions: A deduction is not allowable for the cost of attending social functions (see paragraphs 109 to 114).

Gifts and greeting cards: A deduction is allowable for the cost of gifts or greeting cards bought for work-related purposes by salespersons or property managers who are entitled to earn commission. A deduction for such costs is not allowable to real estate employees who are not entitled to earn commission. In either case, a deduction is not allowable if the expenditure results in the provision of entertainment. A deduction is not allowable for cards or gifts provided to friends, relatives or associates unless the connection between the outgoing and the production of income can be clearly established (see paragraphs 115 to 117).

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

Grooming: A deduction is not allowable for the costs of grooming (see paragraphs 118 to 120).

Home office expenses: See paragraphs 121 to 132.

Place of business: A deduction is allowable for a portion of the running and occupancy expenses if an area of the home has the character of a 'place of business' (see paragraphs 126 to 128).

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 (see paragraphs 129 to 132).

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

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

Laundry, dry cleaning and maintenance of clothing, uniforms and footwear: A deduction is allowable for the cost of laundry, dry cleaning and maintenance of supplied or purchased clothing, uniforms or footwear if these items are of a kind described under ***Clothing, uniforms and footwear*** (see paragraph 55).

Letters of appointment registration fee**:** A deduction is not allowable for fees paid for registration of letters of appointment when commencing new employment. A deduction is allowable for fees paid for registration of a new letter of appointment resulting from changes, during the course of a real estate employee's current employment, to the conditions of employment or award structure (see paragraphs 133 and 134).

Meals: A deduction is not allowable for the cost of meals eaten during a normal working day (see paragraphs 135 to 139). A deduction may be allowable if meal costs are incurred by an employee who travels overnight for work-related purposes (see ***Travel expenses***, paragraphs 203 to 208).

Motor vehicle and other transport expenses (see also Travel expenses): Transport expenses include public transport fares and the running costs associated with using motor vehicles, motor cycles, bicycles, etc., for work-related travel. They do not include accommodation, meals and incidental expenses (see ***Travel expenses***, paragraphs 203 to 208). The treatment of motor vehicle and other transport expenses incurred by a real estate employee when travelling is considered below:

Travel between home and work: A deduction is not allowable for the cost of travel between home and the normal work place as it is not incurred in the course of producing assessable income and is considered to be a private expense. This principle is not altered by the

performance of incidental tasks during the journey, or if the travel is outside normal working hours or includes a second or subsequent trip (see paragraphs 142 to 144). However, travel undertaken in the following circumstances may be deductible.

Travel between home and work - transporting bulky equipment: A deduction is allowable if the transport expenses can be attributed to the necessary transportation of bulky equipment/material rather than to private travel between home and work. A deduction is not allowable if the equipment is transported to and from work by the employee as a matter of convenience.

A deduction is not allowable if a secure area for the storage of equipment is provided at the work place (see paragraphs 145 to 148).

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 (see paragraph 149).

Travel from the normal work place to an alternative work place while still on duty and back to the normal work place or directly home: A deduction is allowable for the cost of travel from the normal work place to other work places. A deduction is also allowable for the cost of travel from the alternative work place back to the normal work place or directly home. This travel is undertaken in the course of earning assessable income and the cost of the travel is an allowable deduction (see paragraphs 150 and 151).

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 (see paragraphs 152 and 153).

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 (see paragraphs 154 to 160).

Depreciation cost limit for motor vehicles: Section 42-80 of the Act imposes a limit on the depreciable cost base of cars designed mainly for carrying passengers (see paragraph 163).

Calculation of motor vehicle balancing adjustment: A depreciation balancing adjustment may be necessary on the disposal of a motor

vehicle that has been used for income-earning activities (see Taxation Ruling IT 2493[12] and paragraph 164).

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

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

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

(see section 51AF of the 1936 Act and paragraphs 165 and 166).

Newspapers: A deduction is not allowable for the cost of newspapers unless there is a sufficient connection between the duties carried out by the real estate employee and the content of the newspapers. A deduction is allowable for the cost of the work-related portion of those newspapers containing property sections (see paragraphs 167 to 172).

Parking fees: A deduction is allowable for parking fees (but not fines), paid by a real estate employee while travelling in the course of employment, e.g., between the office and client's premises (see paragraphs 173 and 176).

Police clearance certificates: A deduction is not allowable for the cost of obtaining a police clearance certificate (see paragraphs 177 to 179).

Property presentation costs: A deduction is allowable for costs incurred in presenting a property for sale, e.g., replacing a cracked window pane, lawn mowing and repairs to door locks, where the real estate employee is entitled to earn commission (see paragraphs 180 to 182). A deduction is not allowable for such costs to real estate employees who are not entitled to earn commission.

Referral expenses: A deduction is allowable for expenses incurred in rewarding a person who has referred successful business, or for rewarding a person for potential business, by salespersons or property managers who are entitled to earn commission. A deduction for such expenses is not allowable to real estate employees who are not entitled to earn commission. In either case, a deduction is not allowable if the expenditure results in the provision of entertainment. A deduction is not allowable for rewards provided to friends, relatives or associates unless the connection between the outgoing and the production of income can be clearly established (see paragraphs 183 and 184).

Self education expenses: A deduction is allowable for the cost of self education if there is a direct connection between the course of

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[12] Income tax: substantiation rules: calculation of balancing adjustment.

education and the real estate employee's current income-earning activities. Self education costs can include fees, travel, books and equipment (see paragraphs 185 to 188).

In some circumstances the amount allowable under section 8-1 of the Act will need to be adjusted. For further details see paragraph 188.

Stationery: A deduction is allowable for the cost of purchasing street directories, log books, diaries, business cards, pens and other stationery to the extent to which they are used for income-producing purposes (see paragraph 189).

Technical or professional publications: A deduction is allowable for the cost of buying or subscribing to journals, periodicals and magazines that have a content specifically related to the real estate employee's work and are not general in nature (see paragraphs 190 to 192).

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

Cost of calls: A deduction is allowable for the cost of work-related calls (see paragraphs 193 and 194).

Installation and connection costs: A deduction is not allowable for the cost of installing or connecting a telephone, etc., (see paragraphs 195 and 196).

Rental costs: A deduction is allowable for a proportion of telephone/equipment rental costs if an employee can demonstrate that he or she is 'on call', or is required to telephone his or her employer on a regular basis, or is frequently required to contact clients while away from the office (see paragraphs 197 to 199).

Unlisted telephone numbers: A deduction is not allowable for the cost of obtaining an unlisted (silent) telephone number (see paragraph 200).

Tolls: A deduction is allowable for bridge and road tolls paid by a real estate employee when travelling in the course of employment (see paragraph 201).

Tools and equipment: A deduction is allowable for depreciation of the cost of tools and equipment of a real estate employee, e.g., tape measures, tools, cameras. Tools and equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if the cost of a particular item is $300 or less, or its effective life is less than three years (see paragraph 95). A deduction is allowable for the cost of

repairs to tools and equipment to the extent that the tools and equipment are held for income-producing activities (see paragraph 202).

Travel expenses: A deduction is allowable for the cost of travel (fares, accommodation, meals and incidentals) incurred by a real estate employee when travelling overnight in the course of employment, e.g., to a sales conference in another town (see paragraphs 203 to 208). Special substantiation rules apply (see paragraphs 204 to 207).

Travel accompanied by a relative: Section 26-30 of the Act may affect the deduction allowable for the cost of travel of relatives accompanying a real estate employee on work-related travel (see paragraph 208).

Union fees and professional association fees: A deduction is allowable for annual fees paid to unions or professional associations, although a deduction is not allowable for joining fees. A deduction is not allowable for levies or contributions to staff social clubs or similar associations (see paragraph 209).

Wages: A deduction is allowable where real estate salespersons who only earn commission income incur a wages expense to provide services and assistance relating directly to their income. However, a deduction is not allowable if the expenditure is private or domestic in nature, such as payments to a spouse for attending social functions. A deduction is not allowable in any case, to the extent that a payment for wages or other services provided by a relative, exceeds a reasonable amount.

Some uncertainty exists as to whether deductions for wages paid to other persons are allowable to real estate employees in receipt of fixed salaries or retainers with or without an entitlement to earn commission income. For this reason, the Commissioner is seeking to test cases under the ATO Test Case Program for Law Clarification (see paragraphs 210 to 215).

Explanations

Deductibility of work-related expenses

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

    (a) is actually incurred;

    (b) meets the deductibility tests; and

    (c) satisfies the substantiation rules.

Expense actually incurred

25. The expense must actually be incurred by the employee to be considered for deductibility. A deduction is not allowable for expenses not incurred by an employee, e.g., if items are provided free of charge. Under section 51AH of the 1936 Act, a deduction is not generally allowable if expenses are reimbursed (see paragraphs 17 to 20 for exceptions to this rule).

Expense meets deductibility tests

26. The basic tests for deductibility of work-related expenses are set out in subsections 8-1(1) and (2) of the Act. The subsections provide that:

> '(1) You can deduct from your assessable income any loss or outgoing to the extent that:
>
> (a) it is incurred in gaining or producing your assessable income; or
>
> (b) it is necessarily incurred in carrying on a *business for the purpose of gaining or producing your assessable income.'
>
> '(2) However, you cannot deduct a loss or outgoing under this section to the extent that:
>
> (a) it is a loss or outgoing of capital, or of a capital nature; or
>
> (b) it is a loss or outgoing of a private or domestic nature; or
>
> (c) it is incurred in relation to gaining or producing your *exempt income; or
>
> (d) a provision of this Act prevents you from deducting it.'
>
> (* defined term in subsection 995-1(1) of the Act)

27. A deduction allowed under section 8-1 of the Act is called a general deduction (see subsection 8-1(3)). Deductions allowed under other provisions of the Act, are referred to as specific deductions (see section 8-5 of the Act). An example of a specific deduction is depreciation.

28. A number of significant court decisions have determined that, for an expense to satisfy the tests in section 8-1 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; (1949) 8 ATD 431); and

(c) it is necessary to determine the **connection** between the particular outgoing and the operations or activities by which the taxpayer most directly gains or produces his or her assessable income (*Charles Moore & Co (WA) Pty Ltd v. FC of T* (1956) 95 CLR 344; (1956) 11 ATD 147; (1956) 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; (1971) 2 ATR 557).

29. A deduction will be denied under section 8-1 of the Act if the expense is incurred for an item that is:

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

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

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

(d) a provision of the Act or the 1936 Act prevents a deduction being allowed.

30. Costs of living such as food, drink and shelter are considered to be private or domestic expenditure (see *Case T47* 18 TBRD (NS) 242 at 243; 14 CTBR (NS) *Case* 56 at 307), unless the expenses:

- arise from work-related travel away from the person's home for one or more nights; or
- are overtime meal expenses incurred by a person who receives an overtime meal allowance paid under an industrial law or award (see paragraphs 138 and 203).

31. The fact that an expense is voluntarily incurred by an employee does not preclude it from being an allowable deduction (see Taxation Ruling IT 2198[13]).

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

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

34. 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.

35. In *Cooper*'s case, Hill J said (at FCR 200; ATC 4414; ATR 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

36. The income tax law requires substantiation of certain work-related expenses. If the total of these expenses is $300 or less, the employee can claim the amount without getting written evidence (except for certain car, travel allowance and meal allowance expenses), although the employee must be able to show how the claim was worked out (see Taxation Ruling TR 97/14[14]).

37. A deduction is only allowable if the substantiation requirements are met.

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[13] Income tax: allowable deductions: expenditure voluntarily incurred by employee taxpayers.

[14] Income tax: reasonable allowances amounts for the 1997-98 income year.

Common work-related expense claims

Advertising

Newspapers, sponsorships, letter box drops, signage, bunting

38. Real estate employees may spend money on advertising via newspapers, sponsorships and letter box drops.

39. Real estate employees may also incur costs, such as signage and bunting, when advertising a client property or conducting an open inspection or display day.

40. It is accepted that costs for advertising of client properties, including costs for signage and bunting, incurred by real estate salespersons who are entitled to earn commission have a direct connection to the process by which such salespersons earn their income.

41. Such persons have considerable flexibility in deriving their income and can be distinguished from salespersons in receipt of a fixed salary. Accordingly, it is accepted that a deduction is allowable in these circumstances.

42. However, for real estate employees who are not entitled to receive commission, the connection of such expenditure to increased future salary and wage income is too remote to give rise to an entitlement to a deduction (see paragraph 215).

43. **Example:** Phil is a real estate employee who receives part of his income from commissions. His expenditure on advertising for September 1994 was $800. Phil's employer reimbursed $500 of the $800 he had spent. The advertising expense incurred by Phil was for newspaper advertisements advertising the sale of clients' properties. A deduction is allowable for the amount of the expenditure that has not been reimbursed, i.e., $300 (see section 51AH of the 1936 Act). The reimbursement is not assessable (see Taxation Ruling TR 92/15[15]).

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

44. A deduction is allowable for the work-related portion of the rental cost or for depreciation on the purchase price of these items. For information on depreciation see ***Depreciation of equipment*** (paragraphs 92 to 103) and on telephones, etc., see ***Telephone expenses*** (paragraphs 193 to 200).

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[15] Income tax and fringe benefits tax: the difference between an allowance and a reimbursement.

Calculators and electronic organisers

45. A deduction is allowable for the work-related portion of depreciation of the cost of calculators and electronic organisers used for income-producing activities. If the cost of the item is $300 or less, or the effective life of the item is less than three years, an outright deduction is allowable. If the cost of the item is more than $300 and the effective life of the item is three years or more, the item must be depreciated (see ***Depreciation of equipment***, paragraphs 92 to 103).

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

Certificate of registration

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

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

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

50. In *Case Z1* 92 ATC 101; *AAT Case 7541* (1992) 22 ATR 3549, the applicant claimed deductions for expenses that led to her admission as a solicitor. The admission expenses included advertising and travelling costs and the practising certificate fee. The Tribunal held that the admission expenses were of a capital nature and were therefore not an allowable deduction under subsection 51(1) of the 1936 Act. The admission expenses secured the applicant a 'lasting advantage'. The expenses were incurred in getting, not in doing, work as an employee. They came at a point too soon to be regarded as expenses incurred in gaining assessable income.

Child care

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

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

53. Taxation Determination TD 92/154[16] provides further information about these expenses.

Clothing, uniforms and footwear

54. Expenditure on clothing, uniforms and footwear must satisfy the deductibility tests in section 8-1 of the Act and must not be private or domestic in nature (see Taxation Ruling TR 97/12[17]).

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

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

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

(c) the clothing is a **compulsory uniform** and satisfies the requirements of Taxation Ruling IT 2641[18];

(d) the clothing is a **non-compulsory uniform** or wardrobe that has been entered on the Register of Approved Occupational Clothing;

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

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16 Income tax: are childcare expenses paid by a person for that person's children deductible under subsection 51(1) of the *Income Tax Assessment Act 1936*?

17 Income tax and fringe benefits tax: work related expenses: deductibility of expenses on clothing, uniform and footwear.

18 Income tax: corporate wardrobes and corporate uniforms.

(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[19] covering the decision in *FC of T v. Edwards* (1994) 49 FCR 318; 94 ATC 4255; (1994) 28 ATR 87 (*Edwards* case)).

Protective clothing

56. It is our view that heavy duty conventional clothing such as jeans, drill shirts and trousers is not protective. It is considered that the cost of these items is a private expense and is therefore not an allowable deduction (see Taxation Determination TD 92/157[20]).

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

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

59. A deduction is not allowable for the cost of items that provide protection from the natural environment (e.g., sunglasses, sunhats, sunscreen, wet weather gear and thermal underwear). The cost of these items is considered to be a private expense. This view is supported in *Case Q11* 83 ATC 41; 26 CTBR (NS) *Case 75* and in *Case N84* 81 ATC 451; 25 CTBR(NS) *Case 43*. See also Taxation

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[19] Income tax: implications of the *Edwards case* for the deductibility of expenditure on conventional clothing by employees.

[20] Income tax: is the cost of heavy duty clothing such as jeans, drill trousers and drill shirts claimed to be protective clothing deductible as a work expense?

Ruling IT 2477[21], Taxation Determination TD 93/244[22] and Taxation Ruling TR 96/17[23].

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

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

Although this taxpayer was self-employed, the same deductibility tests as set out in paragraphs 26 to 35 applied.

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

Occupation specific clothing

62. Occupation specific clothing is defined in section 34-20 of the Act. It distinctly identifies the employee as belonging to a particular profession, trade, vocation, occupation or calling. It is not clothing that can be described as ordinary clothing of a type usually worn by men and women regardless of their occupation. Examples of clothing that are considered to be occupation specific are a nurse's uniform, chefs' checked pants and a religious cleric's ceremonial robes.

63. Clothing worn by real estate employees would not be occupation specific.

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[21] Income tax: deductibility of tinted eye glasses used by a visual display unit (VDU) operator.

[22] Income tax: work-related expenses: is expenditure to purchase items to provide protection from the sun, ie sunglasses, hats and sunscreen, deductible under subsection 51(1) of the *Income Tax Assessment Act 1936*?

[23] Income tax: work-related expenses: deductibility of expenses on rehydrating moisturiser and rehydrating hair conditioner.

Compulsory uniform or wardrobe

64. A 'corporate' uniform or wardrobe (as detailed in Taxation Ruling IT 2641[24]) is a collection of inter-related items of clothing and accessories that are unique and distinctive to a particular organisation.

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

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

67. 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.'

68. The deduction for clothing was denied because there was (at ATC 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

69. A deduction is not allowable for the purchase and maintenance costs of a non-compulsory uniform or wardrobe **unless** the conditions outlined in Subdivision 34-B of the Act are met. Section 34-10 provides that expenditure on a non-compulsory uniform or wardrobe is

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[24] Income tax: corporate wardrobes and corporate uniforms.

allowable under section 8-1 only if the design of the clothing has been entered on the Register of Approved Occupational Clothing.

70. If employees are provided with uniforms that bear the employer's logo, and it is not compulsory to wear the uniform, a deduction is not allowable for maintenance costs unless the uniform satisfies the requirements of section 34-10 of the Act.

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

Conventional clothing

72. The views of the ATO on the treatment of costs of buying and maintaining conventional clothing are set out in Taxation Ruling TR 97/12[25] Taxation Ruling TR 94/22[26] 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. It is considered that, for real estate employees, expenses for conventional clothing will not meet the deductibility tests of section 8-1 of the Act (see also paragraph 29).

73. There are a number of cases supporting the general principle that the costs of conventional clothing do not meet the deductibility tests of section 8-1.

74. 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

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[25] Income tax and fringe benefits tax: work related expenses: deductibility of expenses on clothing, uniform and footwear.

[26] Income tax: implications of the *Edwards case* for the deductibility of expenditure on conventional clothing by employees.

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 circumstances were similar to the facts in *Edwards'* case.

75. 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 (at ATC 427; ATR 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 (at ATC 428; ATR 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.'

76. In *Case U80* 87 ATC 470; 18 CTBR (NS) *Case 66*, a shop assistant was denied a deduction for the cost of black clothes. Senior Member McMahon stated (at ATC 472):

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

Laundry, dry cleaning and maintenance

77. 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 55. This applies whether the clothing is purchased by the employee or supplied by the employer.

78. Further information can be found in Taxation Ruling TR 98/5[27].

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[27] Income tax: calculating and claiming a deduction for laundry expenses.

Club membership

79. A deduction is not allowable for recreational club membership fees as they are expenses of a private nature.

80. Section 26-45 of the Act specifically denies a deduction for the cost of recreational club membership or the right to enjoy the facilities of such a club.

81. **Example:** Geoff is a member of the local golf club. He pays an annual membership fee of $500. The cost of membership is not an allowable deduction.

Computers and software

82. A deduction is allowable under section 42-15 of the Act for depreciation of the cost of computers used by real estate employees for income-producing purposes (see paragraphs 92 to 103). For example, real estate employees may use a computer at home to prepare rent inspection reports. If the computer is also used for private purposes, the deduction for depreciation is allowable only to the extent of its work-related use (see paragraphs 98 and 99). A deduction is allowable under section 25-10 of the Act for the cost of repairs to the extent that the equipment is used for income-producing purposes.

83. For the period before 10 a.m. on 11 May 1998, a deduction is allowable for:

- depreciation under section 42-15 of the Act on software if purchased with a computer;
- the cost of software under section 8-1 (allowable in full in the year of purchase) if bought separately from a computer;

where the software is used for work purposes. The deduction must be reduced by the extent of private use.

84. It should be noted that in the 1998 Federal Budget the Government proposed to introduce legislation that, broadly, will provide for the cost of all software (whether acquired with or without a computer) purchased for more than $300 on or after 10 a.m. on 11 May 1998 having to be amortised over the shorter of:

- two and a half years; or
- the life of the software licence.

Conferences, seminars and training courses

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

86. In *FC of T v. Finn* (1961) 106 CLR 60; (1961) 12 ATD 348, an architect voluntarily studied architectural development overseas. The High Court held (at CLR 70; ATD 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.'

87. A deduction is allowable for the cost of travel (fares, accommodation and meal expenses), registration and conference material costs incurred in attending work-related conferences or seminars (see paragraphs 203 to 208).

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

89. If part of the cost of a conference, seminar or training course represents the cost of food or drink that is provided, the cost is only an allowable deduction according to the terms of section 32-35 of the Act (see Taxation Determination TD 93/195[28]).

90. If the purpose in incurring the cost is the attendance at the conference, seminar or training course and the existence of any private activity is merely incidental, the cost is 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 section 8-1 of the Act.

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[28] Income tax: to what extent is a registration fee for a Continuing Professional Development (CPD) seminar deductible if a part of the fee represents the cost of food and drink to be provided as part of the seminar?

91. Information on ***Self education expenses*** can be found in Draft Taxation Ruling TR 97/D20[29] (expected to be finalised before 30 June 1998) and in paragraphs 185 to 188 of this Ruling.

Depreciation of equipment

92. A deduction is not allowable under subsection 8-1(2) of the Act for the cost of equipment as it is considered to be a capital expense.

93. A deduction is allowable under section 42-15 for depreciation of equipment owned and used by a real estate employee for income-producing purposes. In addition, a deduction is also allowable for depreciation of items of equipment that are not actually used during the year for income-producing purposes, but are installed ready for use for that purpose and held in reserve.

94. 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.

95. 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 (see section 42-130 of the Act), or if its effective life is less than three years (see section 42-125, item 1). This means an immediate deduction is available for the cost of each item of such equipment in the year in which it is purchased. However, the item may be depreciated at a rate less than 100% if the taxpayer so elects (see subsection 42-120(1)).

96. The depreciation rates are set out in the Act, in table form. General rates are set out in section 42-125. Rates for cars and motor cycles are set out at section 42-135. Current depreciation rates for particular items of plant are set out in Taxation Ruling IT 2685[30].

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

98. If equipment is used partly for work-related purposes and partly for other purposes, the depreciation should be reduced to reasonably reflect the extent to which the equipment was not used to produce assessable income (see section 42-170).

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[29] Income tax: deductibility of self-education expenses.

[30] Income tax: depreciation.

99. **Example:** Jessica buys a camera for $400 to take photographs of client properties for advertising purposes. Jessica and her children also use the camera to take family photographs. Jessica is entitled to a deduction for a proportion of the depreciation based on the work use of the camera.

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

101. 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[31]).

102. **Example:** A bookshelf is purchased on 1 July 1995 for $400. It is not used for work-related purposes until 1 July 1997. It is depreciated at a rate of 20% using the diminishing value method.

103. 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 1997. The depreciation in the 1996 and 1997 years is $80 and $64 respectively. The opening written down value of the bookshelf at 1 July 1997 is $256. In the 1998 tax year, the bookshelf is used for work-related purposes and the depreciation that is an allowable deduction is $256 × 20% = $51.20, rounded to $52.

Driver's licence

104. 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.

105. For example, in *Case R49* 84 ATC 387; 27 CTBR (NS) *Case 104*, it was held that even though travel was an essential element of the work to be performed by the taxpayer, a driver's licence was still an expense that was private in nature and therefore not an allowable deduction under section 8-1 of the Act.

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[31] Income tax: what is the opening value of a unit of property, for the purposes of calculating depreciation, if the unit was previously used for purposes other than producing assessable income?

106. This principle is not altered if the holding of a driver's licence is a condition of employment (see Taxation Determination TD 93/108[32]).

Fares

107. A deduction is allowable for the cost of using public transport for work-related travel (see ***Motor vehicle and other transport expenses***, paragraphs 140 to 166).

Fines

108. A deduction is not allowable for fines imposed under a law of the Commonwealth, a State, a Territory, a foreign country, or by a court (see section 26-5 of the Act).

Functions

109. A deduction is not allowable for expenses incurred in attending social functions. These expenses are considered to be private and relate to the provision of entertainment (see section 32-5 of the Act).

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

111. Section 32-5 applies to deny a deduction if a real estate employee, for example, buys lunch for business associates or attends functions not connected to work.

112. **Example:** Rachael attends a social breakfast organised by the Real Estate Institute. These breakfasts are held every other month to encourage new salespeople in the real estate industry to meet socially with colleagues. Rachael is not entitled to a deduction for the cost of attending the breakfast.

113. 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 1936 Act operated to deny the claim. It did not matter that the expenditure was directly relevant to business transactions.

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[32] Income tax: are taxpayers entitled to a deduction for the cost of renewing a driver's licence?

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

Gifts and greeting cards

115. A deduction is allowable for the cost of gifts or greeting cards bought for work-related purposes by salespersons or property managers who are entitled to earn commission.

116. Although the expenditure will not immediately result in the derivation of assessable income, there is a prospect that it may produce greater assessable income in later years of income (see *FC of T v. Finn* (1961) 106 CLR 60 at 68; (1961) 12 ATD 348 at 351). However, a deduction is not allowable for cards or gifts provided to friends, relatives or associates unless the connection between the outgoing and the production of income can be clearly established. Also, a deduction is not allowable for gifts that satisfy the definition of entertainment provided by way of food, drink or recreation (see section 32-5 of the Act, Taxation Ruling TR 97/17[33] and Taxation Determination TD 94/55[34]).

117. A deduction is not allowable for the costs of greeting cards and gifts to real estate employees who are not entitled to earn income from commission. The connection of such expenditure to increased income is too remote (see paragraph 215).

Grooming

118. A deduction is not allowable for hairdressing and grooming expenses as they are private in nature, unless special circumstances exist to create a sufficient connection between the grooming expenses and the income-earning activities of the real estate employee. Special circumstances would exist where there was a requirement that a person be well groomed and the occasion of the expenditure was found in their harsh working conditions (see Taxation Rulings

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[33] Income tax and fringe benefits tax: entertainment by way of food or drink.

[34] Income tax: when does providing an item of property constitute entertainment within the meaning of subsection 51AE(3) of the *Income Tax Assessment Act 1936*?

TR 96/17[35] and TR 96/18[36]). We do not accept that such special circumstances would exist for real estate employees.

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

120. This view is also supported by the following cases: *Case N34* 81 ATC 178; 24 CTBR (NS) *Case 104*; *Case L61* 79 ATC 488; 23 CTBR (NS) *Case 73* and *Case R54* 84 ATC 408; 27 CTBR (NS) *Case 108*.

Home office expenses

121. A comprehensive explanation of the treatment of home office expenses is contained in Taxation Ruling TR 93/30[37].

122. A deduction is not allowable for the costs associated with an employee's home because they are of a private or domestic nature. However, a deduction may be allowable for a portion of the expenses associated with an employee's home if either:

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

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

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

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

(b) ***Running expenses*** relate to the use of facilities in the home and may be affected by the taxpayer's income-producing activities. These expenses include

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[35] Income tax: work-related expenses: deductibility of expenses on rehydrating moisturiser and rehydrating hair conditioner.

[36] Income tax: cosmetics and other personal grooming expenses.

[37] Income tax: deductions for home office expenses.

heating/cooling and lighting expenses, cleaning costs, depreciation, leasing charges and the cost of repairs to furniture and furnishings in the home office.

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

125. 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; (1972) 3 ATR 165).

Place of business

126. A deduction is allowable for a portion of both occupancy and running expenses if an area of the home has the character of a 'place of business'. Whether an area of a home has the character of a 'place of business' is a question of fact. Paragraphs 5, 7, 11, 12 and 13 of Taxation Ruling TR 93/30[38] provide information on whether or not an area set aside has the character of a 'place of business'.

127. Whether or not an area of a home was a 'place of business' was also looked at in a recent case. In *Case 49/94* 94 ATC 429; *AAT Case 9749* (1994) 29 ATR 1138, a sales representative claimed deductions for home office expenses. The Tribunal found that there was no evidence that the space used was dedicated to the business and separated from the rest of the home. It is not considered that a real estate employee, in their capacity as an employee, would use part of their home as a 'place of business'. However, a real estate employee may conduct a business from home.

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

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[38] Income tax: deductions for home office expenses.

which, and the period for which, the home was used for the purpose of gaining or producing assessable income (see Taxation Ruling IT 2673[39]).

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

129. A deduction is allowable for the additional running expenses if a real estate employee maintains an office or study at home so he or she can carry out work at home normally done at the place of employment, e.g., a salesperson may prepare documents for the sale of a client's property, or a property manager may complete a rental inspection report. For the running expenses to be deductible, the area set aside as a private study must be used exclusively for these activities (see *FC of T v. Faichney* (1972) 129 CLR 38; 72 ATC 4245; (1972) 3 ATR 435).

130. 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. This will be the case if the employee uses a room at a time when others are not present or uses a separate room.

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

132. The amount that Rob is entitled to claim is the difference between what was actually paid for heating, cooling and lighting, and what would have been paid had he not worked from home. Taxation Ruling TR 93/30[40] provides a formula for calculating the additional expense for an appliance such as a heater.

Laundry, dry cleaning and maintenance: See *Laundry, dry cleaning and maintenance* (at paragraphs 77 and 78).

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[39] Income tax: capital gains tax - use of sole or principal residence for income producing purposes.

[40] Income tax: deductions for home office expenses.

Letters of appointment registration fee

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

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

Meals

135. A deduction is not allowable for the cost of meals consumed by a real estate employee in the normal course of a working day. It is our view that the cost of such meals does 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 26 to 35.

136. 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 (at FCR 199-200; ATC 4414; ATR 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 (at FCR 201; ATC 4415; ATR 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.'

137. 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.

138. A deduction is not allowable for the cost of food or meals consumed while on duty as they fail to meet the tests of deductibility described in paragraphs 26 to 35, and are considered to be private in nature. However, if you are temporarily absent for one or more nights from your home on work, you can claim the cost of meals during that absence where you satisfy the necessary substantiation rules (see paragraphs 203 to 208). A deduction is also available for overtime meal expenses if a person receives an overtime meal allowance from their employer which was paid under an industrial law or award. It is understood, however, that such allowances are not paid to real estate employees.

139. In *Case Y8* 91 ATC 166; *AAT Case 6587* (1991) 22 ATR 3037, a police officer claimed a deduction for the cost of meals while performing special duties away from his normal place of residence. It was held that the cost of these meals was private in nature and no deduction was allowable under subsection 51(1) of the 1936 Act.

Motor vehicle and other transport expenses

140. Transport expenses include public transport fares, and the running costs associated with using motor vehicles, motor cycles, bicycles, etc., for work-related travel. They do not include meals, accommodation and incidental expenses (see ***Travel expenses*** at paragraphs 203 to 208).

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

Travel between home and work

142. A deduction is not allowable for the cost of travel by a real estate employee between home and his or her normal work place as it is considered to be a private expense; however, some limited exceptions to this rule are explained in later paragraphs. This principle is not altered by the performance of incidental tasks whilst

travelling between home and work (see paragraph 34 of Taxation Ruling MT 2027[41]).

143. The High Court considered travel expenses incurred between home and work in *Lunney's* case. Williams, Kitto and Taylor JJ stated that (at CLR 498-499; ATD 412-413; ALR 234-235):

> 'The question whether the fares which were paid by the appellants are deductible under s.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 such 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'.

144. 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[42], Taxation Ruling IT 112[43] and Taxation Determination TD 93/113[44].

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

145. A deduction is allowable if the transport costs can be attributed to the transportation of bulky equipment rather than to private travel between home and work (see *FC of T v. Vogt* 75 ATC 4073; (1975) 5 ATR 274).

146. If the equipment is transported to and from work by the employee as a matter of convenience, it is considered that the transport costs are private and a deduction is not allowable.

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41 Fringe benefits tax: private use of cars: home to work travel.

42 Income tax: transport allowances: deductibility of expenses incurred in travelling between home and work.

43 The deductibility of travelling expenses between residence and place of employment or business.

44 Income tax: are the costs incurred by teachers when travelling between their home and their regular school to attend Parent and Teacher meetings, sports and other school functions allowable as a deduction under subsection 51(1) of the *Income Tax Assessment Act 1936*?

147. 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).

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

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

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

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

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

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

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

152. A deduction is allowable for the cost of travel from home to an alternative work place. The cost of travel from the alternative work place to the normal place of employment or directly home is also an allowable deduction (see Taxation Ruling MT 2027[45], paragraphs 32 to 35).

153. **Example:** Patricia is a property manager who looks after a large number of properties. Two mornings a week Patricia travels

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[45] Fringe benefits tax: private use of cars: home to work travel.

directly to different clients' properties to carry out rental inspections. A deduction is allowable for the travel between home and the clients' properties and then on to Patricia's normal work place.

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

154. 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.

155. **Example:** Graham, a real estate salesperson, is selling a number of units in the same block. One unit is furnished for display. It is open for inspection on Wednesday and Saturday mornings and Graham is on site during this time. The cost of travel from the office to the block of units is an allowable deduction as the cost is incurred in travelling between two places of employment (see Taxation Ruling IT 2199[46]).

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

157. 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.

158. 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

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46 Income tax: allowable deductions: travelling expenses between place(s) of employment and/or place(s) of business.

essential character of travel between home and work and therefore the cost of the travel was not an allowable deduction.

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

160. Taxation Rulings IT 2199[47] and MT 2027[48] provide further information on the treatment of travelling expenses between places of employment/ business.

Automobile Association/Club membership fees

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

Car wash expenses

162. If either the log book method or one-third of actual expenses method is used to claim work-related car expenses, then the cost of cleaning a car can be included in the calculation.

Depreciation cost limit for motor vehicles

163. Section 42-80 of the Act imposes a limit on the depreciable cost of cars designed mainly for carrying passengers if the acquisition cost is greater than a specified amount. The depreciable cost limit applies to both new and second hand vehicles (see Taxation Ruling TR 93/24[49]).

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[47] Income tax: allowable deductions: travelling expenses between place(s) of employment and/or place(s) of business.

[48] Fringe benefits tax: private use of cars: home to work travel.

[49] Income tax: the value for depreciation purposes for a subsequent purchaser of a motor vehicle subject to the section 57AF luxury motor vehicle limit.

Calculation of motor vehicle balancing adjustment

164. A depreciation balancing adjustment may be necessary on the disposal of a motor vehicle that has been used for income-producing activities (see Taxation Ruling IT 2493[50]).

Motor vehicle provided by employer

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

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

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

(see section 51AF of the 1936 Act).

166. 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 1936 Act (see *Case Y43* 91 ATC 412; *AAT Case 7273* (1991) 22 ATR 3402). Parking fees and tolls are also discussed in paragraphs 173 to 176 and 201.

Newspapers

167. A deduction is not allowable under section 8-1 of the Act for the cost of newspapers and magazines as it is a private expense, unless there is a sufficient connection between the duties carried out by the real estate employee and the content of the newspapers. In such circumstances, a portion of the cost of relevant newspapers related to work is allowable (see paragraph 172).

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

169. Support for this view is also found in the following cases: *Case K68* 78 ATC 667; 22 CTBR (NS) *Case 86*; *Case N67* 81 ATC 349;

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[50] Income tax: substantiation rules: calculation of balancing adjustment.

25 CTBR (NS) *Case 18*; *Case P114* 82 ATC 586; 26 CTBR (NS) *Case 47* and *Case P124* 82 ATC 629; 26 CTBR (NS) *Case 55*.

170. These cases can be contrasted with *Case R70* 84 ATC 493; 27 CTBR (NS) *Case 124*, where a supervisor in the Commonwealth Auditor-General's Department was allowed a deduction for the cost of specific issues of *The National Times* and *The Australian Financial Review* as there was a sufficient connection between the duties carried out by the taxpayer and the content of these specific publications. However, a deduction for the cost of the local newspaper, *The Canberra Times*, was disallowed as the expense was essentially private in nature.

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

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

Parking fees

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

(a) between two separate places of work;

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

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

174. *Case Y43* 91 ATC 412; *AAT Case 7273* (1991) 22 ATR 3402 supports the view that parking expenses incurred when travelling in the course of duty are deductible.

175. A deduction is not allowable to a real estate employee for certain car parking expenses where the conditions outlined in section 51AGA of the 1936 Act are met.

176. A deduction is not allowable for parking fees and tolls incurred when real estate employees are travelling between their home and their normal place of employment (see *Case C47* 71 ATC 219; 17 CTBR (NS) *Case 44*). The cost of that travel is a private expense and the parking fees and tolls therefore have that same private character. A deduction is allowable for parking fees and tolls if the travel is not

private, e.g., travel between home and work whilst transporting bulky tools or equipment (see paragraphs 145 to 148).

Police clearance certificates

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

178. A deduction is not allowable for the cost of obtaining police clearance certificates.

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

Property presentation costs

180. A deduction is allowable for costs incurred by real estate employees who are entitled to earn commission in presenting a property for sale, e.g., replacing cracked window panes, lawn mowing, repairs to door locks. In our view, where commission income is involved, these costs are incurred in earning the employee's assessable income. However, a deduction is not allowable for such costs for real estate employees who are not entitled to earn commission (see paragraph 215).

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

182. To ensure the sale is not held up and to avoid losing a commission, Jenny pays for the repair herself. Neither the vendor client nor the employer reimburses Jenny. A deduction is allowable for the cost of the repair.

Referral expenses

183. A deduction is allowable for expenses incurred in rewarding a person who has referred successful business or rewarding a person for potential business by salespersons or property managers who are entitled to earn commission. A deduction is not allowable if the expenditure results in the provision of entertainment by way of food, drink or recreation (section 32-5 of the Act, Taxation Ruling

TR 97/17[51] and Taxation Determination TD 94/55[52]). A deduction is not allowable for rewards provided to friends, relatives or associates unless the connection between the outgoing and the production of income can be clearly established. A deduction for rewards provided to any person is not allowable to real estate employees who are not entitled to earn commission. The connection of such expenditure to increased income is too remote (see paragraph 215).

184. **Example:** Angelique is a real estate salesperson who receives a fixed salary and also earns commission income. Angelique has offered to pay Gerald $50 when he referred a client and there was a resulting property sale. A deduction is allowable for the money paid by Angelique in rewarding Gerald. As Gerald has agreed to continue to refer clients to Angelique, she pays him $40 in three months time. Angelique can claim the $40 as a deduction.

Self education expenses

185. A comprehensive explanation of the treatment of self education expenses is contained in Taxation Ruling TR 92/8[53]. This Ruling has been redrafted as Draft Taxation Ruling TR 97/D20[54]. A new Ruling replacing TR 92/8 should be released by 30 June 1998. It is recommended that you refer to that Ruling for guidance. Key points include:

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

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

(c) A deduction is not allowable if the education is to enable an employee to get employment, or to obtain new employment or to open up a new income-earning activity

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[51] Income tax and fringe benefits tax: entertainment by way of food or drink.

[52] Income tax: when does providing an item of property constitute entertainment within the meaning of subsection 51AE(3) of the *Income Tax Assessment Act 1936*?

[53] Income tax: deductibility of self education expenses.

[54] Income tax: deductibility of self-education expenses.

(see *FC of T v. Maddalena* 71 ATC 4161; (1971) 2 ATR 541).

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

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

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

187. The following expenses related to self education are not allowable deductions under section 8-1 of the Act:

(a) a Higher Education Contribution Scheme (HECS) payment (see section 26-20); 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

188. Section 82A of the 1936 Act operates to limit the amount of expenses of self-education otherwise allowable under section 8-1 of the Act. Please refer to Draft Taxation Ruling TR 97/D20 or its replacement Ruling.

Stationery

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

Technical or professional publications

190. A deduction is allowable under section 8-1 of the Act for the cost of buying or subscribing to journals, periodicals and magazines that have a content specifically related to a real estate employee's work and are not general in nature.

191. 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 (at ATC 634; CTBR 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.'

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

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

Cost of calls

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

194. 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

195. A deduction is not allowable for the cost of installing or connecting a telephone, mobile phone, pager, beeper or other telecommunication equipment as it is considered to be a capital expense and/or a private expense.

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

197. A deduction is allowable for some proportion of the cost of telephone rental if taxpayers are either 'on call' or are required to contact their employers on a regular basis.

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

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

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

Unlisted telephone number

200. A deduction is not allowable for the cost of obtaining an unlisted (silent) telephone number as it is a private expense (see Taxation Determination TD 93/115[55]).

Tolls

201. A deduction is allowable for bridge and road tolls paid by a real estate employee when travelling in the course of employment (see also ***Parking fees***, paragraphs 173 to 176).

Tools and equipment

202. A deduction is allowable for depreciation of the cost of tools and equipment, e.g., tape measures, cameras, tools for placing signs, etc. An individual tool or piece of equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less or its effective life is less than three years (see ***Depreciation of equipment***, paragraphs 92 to 103). A deduction is allowable under section 25-10 of the Act for the cost of repairs to tools and equipment to the extent to which they are used for income-producing purposes.

Travel Expenses

203. A deduction is allowable for the costs incurred by a real estate employee in undertaking work-related travel, including meals,

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[55] Income tax: is the cost incurred in maintaining a 'silent' telephone number an allowable deduction?

accommodation and incidental expenses incurred while travelling for work for one or more nights. An example is where an employee attends a seminar interstate and has to stay overnight. Travel expenses include the costs of accommodation, fares, meals and incidentals.

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

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

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

207. 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

208. A deduction is not allowable for the expenses of a relative accompanying a real estate employee whilst travelling (see section 26-30 of the Act). This rule applies even if the accompanying relative is a fellow employee, if that employee performs no substantive duties during the trip.

Union fees and professional association fees

209. 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 Ruling IT 327[56] provides further information on the treatment of union and professional association fees. A deduction is not allowable for payments to staff social clubs or associations (see section 26-45 of the Act).

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[56] Payments by employees to trade unions, associations of employees and professional associations.

Wages

210. A deduction is allowable where real estate salespersons who only earn commission income incur a wages expense to provide services and assistance relating directly to their income. Commission only real estate salespersons perform their work activities under significantly different circumstances to most employees, with considerable flexibility in how they perform their duties. However, a deduction is not allowable to such salespersons if the expenditure is private or domestic in nature, such as payments to a spouse for attending social functions (see *Case M55* 80 ATC 366; 24 CTBR (NS) *Case 30*). A deduction is not allowable in any case, to the extent that a payment for services provided by a relative exceeds a reasonable amount.

211. Subsection 26-35(1) of the Act applies to deductions claimed for amounts paid to a relative (see definition of 'relative' in subsection 995-1(1) of the Act). Under the section, a deduction is only allowable to the extent to which such an amount is no more than a reasonable payment for the services performed. A reasonable payment is the amount that the employee would be expected to pay to an unrelated person with similar skills and experience in performing the same services.

212. **Example:** Emily, a real estate salesperson employed on a commission only basis, pays her son to deliver advertising literature to households in the district in which she operates. Emily pays her son $25 per hour. The market rate for such services is, however, $10 per hour. Therefore, a deduction is only allowable for the cost of the son's wages to the extent of $10 per hour.

213. Uncertainty exists as to whether real estate salespersons who are remunerated by a fixed salary or retainer, with or without an entitlement to earn commission, are entitled to a deduction for wages paid to another person. In *FC of T v. Green* (1950) 81 CLR 313 at 319; (1950) 9 ATD 142 at 147 the High Court concluded that the taxpayer was entitled to a deduction for an annual sum paid to his daughter for her services in acting as a secretary or clerk in relation to the taxpayer's affairs. The amount paid was in part incurred in connection with the earning of the taxpayer's income from directors' fees from directorships at seven companies and for supervising a pharmacy on behalf of a chemist. Latham CJ said (at CLR 319; ATD 147):

> 'His Honour found that it was reasonably necessary for the taxpayer to ... have a person in attendance ... to deal with matters affecting his financial affairs which arose during his absence ... The evidence supported these findings. The expenditure, a deduction of which is claimed, was incurred in relation to the

> management of the income-producing enterprises of the taxpayer. If this is so it is immaterial that there might be a difficulty in holding that the taxpayer was carrying on in a continuous manner an identifiable business of some particular description.
>
> Section 51, it should be observed, is not limited to deductions from income derived as being the proceeds of a business. Section 51 is a general provision relating to deductions claimable in relation to expenses, losses or outgoings incurred in gaining or producing any income whatever and not merely in relation to income derived from a business.'

214. However, the decision in *Green* can be contrasted with *Case M55* 80 ATC 366; 24 CTBR (NS) *Case 30*. In the latter decision, the taxpayer, a medical technologist employed by a large company, was required to be on call after business hours. He paid his wife to take telephone messages relating to his after hours duties. The Board of Review held that the payments made by the taxpayer to his wife for the telephone answering service was expenditure of a private or domestic nature. Dr G W Beck (Member) said (at ATC 368: CTBR (NS) 242):

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

215. Given the contrasting decisions on this issue, the Commissioner is seeking to test cases involving real estate salespersons who are remunerated by a fixed salary or retainer with or without an entitlement to earn commission under the ATO Test Case Program for Law Clarification. The Commissioner will also consider cases under the ATO Test Case Program involving claims by real estate employees who are not entitled to earn commission income for advertising, property presentation costs, gifts, greeting cards and referral expenses.

Alternative views

216. Alternative views have been expressed as follows:

Advertising, property presentation costs, gifts, greeting cards and referral expenses

217. The view was expressed that expenditure on the above items should be allowed in full to all real estate employees as the reason for incurring such expenditure is for earning assessable income. The view of the Commissioner is at paragraphs 38 to 43, 115 to 117 and 180 to 184 respectively. However, the Commissioner will consider cases under the ATO Test Case Program for Law Clarification (see paragraph 215).

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

218. The view was expressed that depreciation on this equipment should be allowed in full as the reason for acquiring these items is for earning assessable income and any private use is purely incidental. The view of the Commissioner is that where property has been used only partly for producing assessable income, the deduction for depreciation should be reduced to reasonably reflect the extent to which the equipment was not used to produce assessable income (see subsection 42-170(1) of the Act and paragraph 98).

Certificate of registration and police clearance certificates

219. The view was expressed that as the granting of these certificates relies on the knowledge and status of the person at the time, they should be regarded as an incidental cost of operating in the industry and the initial costs of these certificates should be an allowable deduction. The view of the Commissioner is at paragraphs 47 to 50 and 177 to 179 respectively.

Driver's licence

220. The view was expressed that because of the extent to which real estate employees have to drive, an appropriate business percentage of the annual renewal costs of the employee's driver's licence should be an allowable deduction. The view of the Commissioner remains unchanged and is supported by *Case R49* 84 ATC 387; 27 CTBR (NS) *Case 104* (see paragraphs 104 to 106).

Newspapers

221. The view was expressed that salespeople look at the property section in the newspaper every day in order to keep abreast of the real

estate market. Considering the compliance burden in apportioning the cost, the limited nature of the deduction, and the likelihood that most claims would be insignificant, a deduction should be allowed for the full cost of the relevant newspapers. Section 8-1 of the Act provides a deduction for expenses '... to the extent to which they are incurred in gaining or producing the assessable income ...'. The view of the Commissioner remains unchanged (see paragraphs 167 to 172).

Protective clothing and equipment

222. The view was expressed that allowable deductions for 'Protective clothing' and 'Protective equipment' should include sunglasses, sunhats, sun screens, wet weather gear, etc., that provide protection against the natural environment. The view of the Commissioner is the expense is a personal or living expense, similar to the cost of travel between home and work, conventional clothing and daily meals. A deduction is allowable for the cost of protective clothing and equipment where the conditions of the work (rather than the natural environment) make it necessary for an employee to provide protection to his or her person or clothing (see paragraphs 56 to 61).

Telephone installation or connection costs

223. 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[57]. The view of the Commissioner is that IT 2197 only applies when the telephone installation costs or connection fees have a revenue nature. Where these expenses are incurred by an employee, they are not on revenue account but are of a capital or private nature (see paragraphs 195 to 196).

Wages

224. The view was expressed that the cost of employing family members and others should be an allowable deduction to all real estate employees. The view of the Commissioner is at paragraphs 210 to 214. However, the Commissioner will consider cases under the ATO Test Case Program for Law Clarification (see paragraph 215).

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[57] Income tax: installation costs of plant and equipment.

Cross references of provisions

225. Provisions of the *Income Tax Assessment Act 1997* ('the Act') to which this Ruling refers, express the same ideas as provisions of the *Income Tax Assessment Act 1936* ('the 1936 Act'). The following table cross references the provisions of the Act to the corresponding provisions of the 1936 Act.

The Act	The 1936 Act
section 6-5	subsection 25(1)
section 6-10	subsection 25(1)
section 8-1	subsection 51(1)
subsection 8-1(2)	subsection 51(1)
section 25-10	section 53
section 26-5	subsection 51(4)
section 26-20	subsection 51(6)
section 26-30	section 51AG
subsection 26-35(1)	subsection 65(1)
subsection 26-45(1)	subsection 51AB(4)
subsection 26-50(1)	subsection 51AB(4)
section 32-5	subsection 51AE(4)
section 32-35	section 51AE
section 32-65	subsections 51AE(1) and (2)
Subdivision 34-B	subsections 51AL(1), (2), (4) and (26)
section 34-10	section 51AL
section 34-20	subsection 51AL(26) occupation specific clothing definition
section 42-15	subsection 54(1)
section 42-80	subsections 57AF(1), (2) and (12)
subsection 42-120(1)	subsections 55(1), (2) and (8)
section 42-125	subsections 55(5) and 56(1)
section 42-125 item 1	subparagraph 55(2)(a)(ii)
section 42-130	subparagraph 55(2)(a)(i)
section 42-135	subsections 55(2) and (6) and 56(1)
subsection 42-170(1)	subsections 56(1A) and (1C), section 61
subsection 995-1(1)	subsection 6(1)

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226. Below is a detailed contents list for all parts of the Ruling, except the **Explanations** part. An **Index of Explanations** follows.

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Index of Explanations

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