TR 95/D4 - Income tax: employee machine operators - allowances, reimbursements and work-related deductions

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This document has been finalised by TR 95/12.

Draft Taxation Ruling
Income tax: employee machine operators - allowances, reimbursements and work-related deductions

other Rulings on this topic

IT 85; IT 112; IT 113; IT 299; IT 327; IT 2062; IT 2198; IT 2199; IT 2416; IT 2452; IT 2477; IT 2493; IT 2543; IT 2641; IT 2685; IT 2493; MT 2027; TR 92/8; TR 92/15; TR 92/20; TR 94/22; TR 94/23; TD 92/142; TD 92/154; TD 92/157; TD 93/108; TD 93/113; TD 93/115; TD 93/145; TD 93/232; TD 93/244

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Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office.

DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings which represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office.

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What this Ruling is about

Class of person/arrangement

1. This Ruling applies to employee machine operators. A 'machine operator' is a person who is employed to operate discrete items of stationary mechanical processing equipment performing a single function, typically a single stage of a manufacturing process.

2. This Ruling does not apply to plant operators, data processing and business machine operators, tradespersons, and chemical, petroleum and gas plant operators.

3. Machine operators are engaged in processing metal, rubber, glass, wood, food, plastics, paper and photographic products, hides and skins, clay and stone products, yarn, textiles and fabric.

4. For the purposes of this Ruling, tasks performed by machine operators include the following:

(a) affixing attachments, setting controls, loading material to be processed and preparing surfaces prior to operation;

(b) starting machines, observing machine operation and adjusting controls to regulate temperature, pressure, blend of ingredients and speed of operation;

(c) cleaning and lubricating machinery and repairing minor defects;

(d) sampling output and checking quality;

(e) unloading and storing output; and

(f) maintaining production records.

5. This Ruling deals with:

(a) the assessability of allowances and reimbursements received by machine operators; and

(b) deductions for work-related expenses generally claimed by machine operators.

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

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

8. The tax treatment of allowances and reimbursements received is examined at paragraphs 14 to 23 in the **Ruling** section.

9. The common work-related expenses incurred by machine operators and the extent to which they are allowable deductions are discussed, in alphabetical order, at paragraph 26 in the **Ruling** section.

10. The substantiation provisions are not discussed in depth in this Ruling.

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

Date of effect

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

13. If a taxpayer has a more favourable private ruling (whether legally or administratively binding), this Ruling applies to that

taxpayer to the extent of the inconsistency only from and including the 1995-1996 year of income.

Ruling

Allowances

14. The receipt of an allowance does not automatically entitle a machine operator to a deduction.

15. Allowances received by employees fall into the following categories:

(a) fully assessable, with a possible deduction allowable depending upon individual circumstances (paragraph 16);

(b) fully assessable, with no deduction allowable even though an allowance is received (paragraph 17);

(c) fully assessable, with a deduction allowable for expenses incurred:

(i) up to the extent of the allowance without substantiation; or

(ii) in excess of the allowance, subject to substantiation of the whole claim (paragraph 18);

(d) not assessable to the employee because the employer may be subject to Fringe Benefits Tax. A deduction is not allowable to the employee for expenses incurred against such an allowance (paragraph 19).

Allowances - possible deduction

16. The following allowances commonly received by machine operators are paid to recognise that expenses may be incurred by machine operators in doing their jobs. These allowances are fully assessable and a deduction may be allowable depending on individual circumstances.

Allowance	**Possible allowable deduction (see Explanations section)**
Motor vehicle	Transport expenses Motor vehicle Fares

Tools	Repairs to tools Depreciation of tools Replacement of tools

Allowances - no deduction allowable

17. Some allowances received by machine operators are paid for carrying out work that may be considered unpleasant, special or dangerous, in recognition of holding special skills, or to compensate for industry peculiarities. These allowances are fully assessable and no deduction is allowable.

Reasonable allowances

18. The Commissioner of Taxation publishes Taxation Rulings annually that indicate amounts considered reasonable for the following allowances:

(a) overtime meal expenses;

(b) domestic travel expenses; and

(c) overseas travel expenses.

These allowances are fully assessable. If an allowance is received that is equal to or less than an amount considered to be reasonable, a deduction for expenses incurred is allowable up to the amount of the allowance, without substantiation. If a deduction is claimed in excess of the allowance, the whole claim must be substantiated.

Allowances - not assessable and no deduction allowable

19. A deduction is not allowable to a machine operator in respect of expenses incurred against the following allowances:

(a) living away from home;

(b) camping;

(c) caravan;

(d) distant work.

Note: These allowances are paid to a machine operator who:

- is required to live away from home for extended periods;
- receives the allowance as compensation for the cost of having to live away from home; and

- does not receive the allowance as a form of travel allowance.

These allowances are not assessable to the machine operator as the employer may be subject to Fringe Benefits Tax in respect of the allowance.

Reimbursements

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

21. However, if motor vehicle expenses are reimbursed by an employer on a cents per kilometre basis, the amount is included as assessable income of the machine operator under paragraph 26(eaa) of the Act and a deduction may be allowable for the actual expenses incurred (see ***Transport expenses,*** paragraph 117).

22. If the reimbursement from an employer is for the cost of a depreciable item (e.g. tools and equipment), a deduction is allowable to the machine operator for depreciation (see Taxation Determination TD 93/145 and ***Depreciation of tools and equipment***, paragraphs 68 to 75 of this Ruling).

23. If a payment is received from an employer for an **estimated** expense, the amount received by the machine operator is considered to be an allowance (not a reimbursement) and is fully assessable to the machine operator (see **Allowances**, paragraphs 14 to 19).

Deductions

24. A deduction is only allowable if an expense:

(a) is actually incurred (paragraph 28);

(b) meets the deductibility tests (paragraphs 29 to 36); and

(c) satisfies the substantiation rules (paragraphs 37 and 38).

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

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

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

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

(a) protective;

(b) occupation specific;

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

(d) non-compulsory and registered with the Textile Clothing Footwear Development Authority (TCFDA) or approved in writing by the Australian Taxation Office (ATO); or

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

(paragraphs 42 to 65).

Depreciation of tools and equipment: A deduction is allowable for depreciation to the extent of the work-related use of the tools or equipment (paragraphs 68 to 75).

Driver's licence: A deduction is not allowable for the cost of acquiring or renewing a driver's licence. A deduction is allowable for the cost of a premium that is paid in addition to the cost of a standard licence required for work purposes (paragraphs 76 to 79).

Fares: See ***Transport expenses***.

Fines**:** A deduction is not allowable for fines imposed under any law of the Commonwealth, a State, a Territory, a foreign country, or by a court (paragraph 80).

First aid courses: If it is necessary for a machine operator to undertake first aid training to assist in emergency work situations and the cost is met by the machine operator, the expenses of such training are an allowable deduction (paragraph 81).

Glasses/contact lenses: A deduction is not allowable for the cost of buying prescription glasses or contact lenses (paragraph 82). A deduction is allowable for the cost of safety glasses (see ***Protective equipment***, paragraph 97).

Laundry and maintenance of clothing, uniforms and footwear: A deduction is allowable for the cost of laundry and maintenance of supplied or purchased clothing, uniforms or footwear, if these items are of a kind described under ***Clothing, uniforms and footwear*** (see also paragraphs 66 and 67).

Licences and certificates: A deduction is allowable for the cost of licences and certificates held by a machine operator in respect of his or her employment (paragraph 83).

Meals: A deduction is not allowable for the cost of meals eaten during a normal working day, as meal expenses are considered to be private (paragraphs 84 to 89). If an award overtime meal allowance has been paid, a deduction may be allowable (see paragraphs 91 to 94). A deduction may be allowable for the cost of meals incurred by a machine operator who travels for work-related purposes (see ***Travel expenses***, paragraphs 140 to 144).

Motor vehicle expenses: See ***Transport expenses***.

Newspapers: Generally, a deduction is not allowable for the cost of newspapers (paragraph 90).

Overtime meal allowance: A deduction is allowable for the cost of meals bought while working overtime if an award overtime meal allowance is received and the expenditure is not of a private nature (paragraphs 91 to 94). Special substantiation rules apply.

Parking fees: A deduction is allowable for parking fees paid by a machine operator while travelling in the course of employment (paragraphs 95 and 96).

Protective equipment: A deduction is allowable for the cost of safety equipment such as safety glasses, goggles, breathing masks, helmets, etc. (paragraph 97). A deduction is not allowable for the cost of sunglasses, sunhats, sunscreens and wet weather gear that are worn to provide protection from the natural environment.

Radios, cassette players, walkmans, etc.: A deduction is not allowable for the cost of these items.

Repairs to tools and equipment: A deduction is allowable under section 53 of the Act for the cost of repairs to tools and equipment to the extent of the work-related use of the item (paragraph 98).

Self education expenses: A deduction is allowable for the cost of self education if there is a direct connection between the self education and the work-related activities. Self education costs can include fees, travel, books and equipment (paragraphs 99 to 103).

If self education expenses are allowable but also fall within the definition of 'expenses of self education' in section 82A of the Act, the first $250 is not an allowable deduction (paragraphs 104 and 105).

Stationery: A deduction is allowable for the cost of buying log books, diaries etc., used for work-related purposes.

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 machine operators and are not general in nature (paragraphs 106 to 108).

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

Cost of calls: A deduction is allowable for the cost of work-related calls (paragraphs 110 and 111).

Installation and connection costs: A deduction is not allowable for the cost of installing or connecting a telephone, etc., as it is a capital expense (paragraphs 112 and 113).

Rental costs: A deduction is allowable for a proportion of telephone rental costs if the machine operator can demonstrate that he or she is 'on call', or required to telephone their employer on a regular basis (paragraphs 114 and 115).

Silent telephone numbers: A deduction is not allowable for the cost of obtaining a silent telephone number (paragraph 116).

Tolls: A deduction is allowable for bridge and road tolls paid by a machine operator when travelling in the course of employment (paragraph 95 and 96).

Tools: A deduction is allowable for depreciation of the cost of tools. Tools bought after 1 July 1991 are able to be depreciated at a rate of 100% if the cost of a particular tool is $300 or less, or its effective life is less than three years (paragraph 71). A deduction is allowable for the cost of repairs to tools, to the extent of their work-related use (paragraph 98).

Transport expenses: Transport expenses include public transport fares and the costs associated with using a motor vehicle, motor cycle, bicycle, etc. They do not include meals, accommodation and incidental expenses (see ***Travel expenses***, paragraph 140). The deductibility of transport expenses incurred by a machine operator when travelling is considered below.

Travel between home and work: A deduction is not allowable for the cost of travel between home and the normal work place as it is generally considered to be a private expense. The fact that the travel is outside normal working hours or involves a second or subsequent trip does not change this principle. This principle is also not altered by the performance of incidental tasks en route (paragraphs 118 to 120).

Travel between home and the normal work place but transporting bulky equipment: A deduction is allowable if the transport expenses can be attributed to the transportation of bulky equipment rather than to private travel between home and work.

A deduction is not allowable if an employer:

(a) provides a secure area for the storage of equipment at the workplace; or

(b) provides insurance cover for stolen equipment; or

(c) has a policy of compensating for, or replacing, stolen equipment

(paragraphs 121 to 123).

Travel between two separate work places if there are two separate employers involved: A deduction is allowable for the cost of travelling directly between two places of employment (paragraphs 124 and 125).

Travel from the normal work place to an alternate 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 alternate work place back to the normal work place or directly home. This travel is undertaken in the course of gaining assessable income and the cost is an allowable deduction (paragraphs 126 and 127).

Travel from home to an alternate 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 alternate work place and then on to the normal work place or directly home (paragraphs 128 and 129).

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 work-related activities (paragraphs 130 to 136).

Travel between home and work while 'on call': A deduction is allowable for the cost of travelling between home and a place of employment while 'on call' (paragraphs 137 and 138).

Travel in connection with self education: See ***Self education expenses*** (paragraphs 101 and 102).

Travel expenses: A deduction is allowable for the cost of travel expenses (fares, accommodation, meals and incidentals) incurred by a machine operator when travelling in the course of employment (paragraphs 140 and 141). Special substantiation rules apply (paragraphs 142 to 144).

Union/professional association fees and levies: A deduction is allowable for union or professional association fees, although a

deduction is not generally allowable for levies (paragraphs 145 to 148).

Wet weather gear: A deduction is not allowable if this clothing is worn to provide conventional protection from the natural environment. A deduction is allowable if the nature of the work creates conditions that make it necessary for the machine operator to provide protection to his or her person or clothing (paragraphs 48 and 49).

Explanations

Deductibility of work-related expenses

27. 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

28. The expense must actually be incurred by the machine operator to be considered for deductibility. A deduction is not allowable for expenses not incurred by a machine operator, e.g. if items are provided free of charge. Under section 51AH of the Act, a deduction is not generally allowable if expenses are reimbursed (see paragraphs 21 to 22 for exceptions to this rule).

Expense meets deductibility tests

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

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

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

    (a) it must have the **essential character** of an outgoing incurred in gaining assessable income or, in other words, of an income-producing expense ((*Lunney v. FC of T;*

Hayley v. FC of T (1958) 100 CLR 478; 11 ATD 404 (*Lunney's* case));

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

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

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

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

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

(c) incurred in earning tax exempt income (e.g. income of Army Reserve personnel).

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

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

33. The fact that an expense is voluntarily incurred by a machine operator does not preclude it from being an allowable deduction (Taxation Ruling IT 2198).

34. **Example:** Spiro, a metal press operator, is supplied with protective overalls by his employer and also voluntarily buys another pair. The cost of the protective overalls and the laundry costs of both pairs are allowable deductions.

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

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

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

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.

Expense satisfies the substantiation rules

37. The income tax law requires substantiation of certain work-related expenses. If the total of these expenses exceeds $300, the records that must be kept include receipts, invoices or similar documents, diaries or log books (e.g. in relation to car expenses).

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

Common work-related expense claims

Car expenses

See ***Transport expenses*** (paragraphs 117 to 139).

Child care

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

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

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

Clothing, uniforms and footwear

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

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

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

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

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

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

(ii) approved in writing by the ATO under the transitional arrangements contained in section 51AL of the Act (all such approvals cease to have effect from 1 July 1995); or

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

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

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

(iii) the expenditure is not of a private nature

(see Taxation Ruling TR 94/22 covering the decision in *FC of T v. Edwards* 94 ATC 4255; (1994) 28 ATR 87 (*Edward's* case)).

Protective clothing

43. Protective clothing must satisfy the deductibility tests in subsection 51(1) of the Act and must not be private or domestic in nature.

44. Machine operators may be provided with protective clothing by their employer (e.g. overalls for the protection of their conventional clothing). Machine operators may also buy additional items of protective clothing and the cost of this clothing is an allowable deduction under subsection 51(1).

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

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

47. 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.

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

49. An exception to this general rule can arise if the nature of the work (rather than the natural environment) creates conditions that make it necessary for the machine operator to provide protection to his or her person or clothing (e.g. using chemicals or high pressure water hoses).

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

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

Although this taxpayer was self-employed, the same deductibility tests as set out in paragraphs 29 to 36 applied.

Occupation specific clothing

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

nurses' traditional uniforms, chefs' checked pants and a religious cleric's ceremonial robes.

52. It is not envisaged that machine operators would wear clothing that is considered to be occupation specific.

Compulsory uniform or wardrobe

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

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

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

> '...conventional clothing of a particular colour or style does not necessarily, because of those factors alone, assume the character of a uniform. Likewise, ordinary clothing is not converted into a uniform by the simple process of asserting that it fills that role or by the wearing of a name plate, etc. attached to clothing' (ATC at 416; CTBR at 874).

56. 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:

> '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' (ATC at 577).

57. The deduction for clothing was denied because there was:

> '...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' (ATC at 580).

Non-compulsory uniform or wardrobe

58. A deduction is not allowable for the purchase and maintenance costs of a non-compulsory uniform or wardrobe **unless** the conditions

outlined in section 51AL of the Act are met. Section 51AL provides that expenditure on a non-compulsory uniform or wardrobe will be allowable under subsection 51(1), only if the design of the clothing has been entered on the Register of Approved Occupational Clothing kept by the TCFDA, or if the design of the clothing is approved in writing by the ATO under Taxation Ruling IT 2641. Transitional arrangements enabling the ATO to approve designs of non-compulsory uniforms and wardrobes will expire on 30 June 1995.

59. If machine operators are provided with uniforms by their employers, that bear the employer's logo , and it is not compulsory to wear the uniform, no deduction is allowable unless the uniform is approved or registered.

Conventional clothing

60. The views of the ATO on the deductibility of costs of buying and maintaining conventional clothing are set out in Taxation Ruling TR 94/22. That Ruling sets out our views on the implications of the decision of the Full Federal Court of Australia in *Edwards* case. Mrs Edwards was the personal secretary to the wife of a former Queensland Governor. She was able to establish that her additional clothing expenses were allowable in her particular circumstances. In most cases, expenses for conventional clothing will not meet the deductibility tests of subsection 51(1) of the Act as they are of a private nature (see also paragraphs 31 and 32).

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

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

63. Senior Member Barbour distinguished this case from *Edwards* case on the basis of the emphasis placed by the Tribunal and Court on Mrs Edwards' additional changes of clothes throughout a work day - a fact not present in this one - and found the essential character of the expense to be private, saying (ATC at 427; ATR at 1082):

> 'While the A list clothes [those used exclusively for work] assisted in creating an image compatible with the applicant's perceptions of her clients' and audiences' expectations, her activities productive of income did not turn upon her wearing A list clothes, however important the applicant may have perceived these clothes to be in her presentation activities. There is not the requisite nexus between her income-earning activities and the A list clothing expenses.'

Senior Member Barbour went on to say (ATC at 428; ATR at 1083):

> '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 find the nature of the expense is essentially private.'

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

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

65. A deduction is not allowable for the cost of conventional clothing commonly worn by machine operators, such as singlets, T shirts, flannelette shirts, drill shirts, drill trousers, shorts, jeans, socks, running shoes (joggers) and other conventional footwear.

Laundry and maintenance

66. 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 42. This applies whether the clothing is purchased by the machine operator or supplied by the employer.

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

Depreciation of tools and equipment

68. A deduction is not allowable under subsection 51(1) of the Act for the cost of tools and equipment as it is an expense of a capital nature.

69. However, a deduction is allowable under subsection 54(1) of the Act for depreciation on tools and equipment owned and used by the machine operator for work-related purposes. A deduction is also allowable for depreciation on tools and equipment that are not actually used during the year for work-related purposes but are installed ready for use for that purpose and held in reserve.

70. There are two methods to calculate a deduction for depreciation. These are the prime cost method and the diminishing value method. Prime cost depreciation is calculated as a percentage of the cost of the equipment. Diminishing value depreciation is calculated initially as a percentage of the equipment's cost and thereafter as a percentage of the written down value.

71. Any individual item of equipment bought on or after 1 July 1991 is able to be depreciated at a rate of 100% if the cost is not more than $300, or if the effective life is less than three years (section 55 of the Act). This means an immediate deduction is available for the cost of each item in the year in which it is purchased. However, the item may be depreciated at a rate less than 100% if the taxpayer so elects (subsection 55(8)). The current depreciation rates are set out in Taxation Ruling IT 2685.

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

73. **Example:** Stanley is a wood processing machine operator who owns an electric saw. He uses this electric saw at work during the week and at home on weekends for his home renovations. He is entitled to a deduction for a proportion of the depreciation based on the work use of the electric saw. A reasonable apportionment might be 5/7 business use.

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

75. 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).

Driver's licence

76. 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.

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

78. Taxation Determination TD 93/108 confirms that a deduction is not allowable for the cost of renewing a driver's licence even if the holding of a driver's licence is a condition of employment.

79. Some machine operators may need an endorsed licence to perform their duties. In some states, these types of endorsements do not add to the cost of the licence. However, a deduction is allowable for the cost of a premium paid in addition to the cost of a standard licence that is required for work purposes.

Fares

See ***Transport expenses*** (paragraphs 117 to 139).

Fines

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

First aid courses

81. A deduction is allowable for the cost of a first aid course if it is necessary for a machine operator to undertake first aid training to assist in emergency work situations and the cost is met by the machine operator.

Glasses/contact lenses

82. A deduction is not allowable for the cost of buying prescription glasses or contact lenses as the expense relates to a personal medical condition. The cost of safety glasses is an allowable deduction (see ***Protective equipment***, paragraph 97).

Licences and certificates

83. A deduction is allowable for the cost of licences and certificates held by a machine operator in respect of his or her employment.

Meals

84. A deduction is not allowable for the cost of meals consumed by machine operators in the normal course of a working day. It is our view that the cost of meals will not have sufficient connection with the work-related activity and, in any case, the cost is a private expense and fails to meet the tests of deductibility described in paragraphs 29 to 36.

85. 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:

> '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' (ATC at 4414; ATR at 1636).

Hill J went on to say:

> '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' (ATC at 4415; ATR at 1638).

86. 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.

87. A deduction is generally not allowable for the cost of food or meals consumed while on duty. These costs fail to meet the tests of deductibility described in paragraphs 29 to 36, and are considered to be private in nature.

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

89. A deduction is allowable for the cost of meals bought while working overtime, if an award overtime meal allowance has been paid (paragraphs 91 to 94).

Motor vehicle expenses

See ***Transport expenses*** (paragraphs 117 to 139).

Newspapers

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

Overtime meal allowance

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

92. A deduction is allowable for the cost of meals bought while working overtime if the expenditure meets the deductibility tests in paragraphs 29 to 36, and it is not of a private nature.

93. The general rule is that no deduction is allowable for overtime meal expenses unless documentary evidence, such as a receipt, is obtained. However, special substantiation rules apply if a machine operator receives an overtime meal allowance paid under an industrial

award. A deduction is allowable without substantiation, provided the claim does not exceed the allowance received and the allowance is considered reasonable by the Commissioner of Taxation (Taxation Ruling TR 94/23).

94. If a deduction claimed is more than the allowance received the machine operator must have documentary evidence to support the total claim, not only the excess.

Parking fees and tolls

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

(a) between two separate places of work;

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

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

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

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

96. A deduction is not allowable for parking fees and tolls incurred when machine operators are travelling between their home and their normal place of employment. The cost of that travel is a private expense and the parking fees and tolls therefore have that same private character (see exception in paragraphs 121 to 123).

Protective equipment

97. A deduction is allowable for the cost of protective equipment used at work. Protective equipment includes safety helmets, ear muffs, face masks, safety glasses, goggles, breathing masks, etc.

Repairs to tools and equipment

98. A deduction is allowable under section 53 of the Act for the cost of repairs to tools and equipment to the extent of the work-related use of the items.

Self education expenses

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

(a) A deduction is allowable for self education expenses if the education is directly relevant to the taxpayer's income earning activities. This particularly applies if a machine operator'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 machine operator's income from his or her current income earning activities.

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

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

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

100. **Example:** Sophie is a fabric production machine operator and is doing a part-time language course to improve her English speaking skills. Sophie is not allowed any deduction for the costs of this course as there is insufficient connection with her current income earning activities.

Transport costs

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

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

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

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

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

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

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

102. **Example:** Frank is an apprentice metal machinist who travels a long distance to a technical college to undertake his apprenticeship course for two consecutive days each fortnight. He is allowed a deduction for the cost of travel to and from his place of education, overnight accommodation, meals and incidentals.

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

(a) a Higher Education Contribution Scheme (HECS) payment (subsection 51(6));

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

Limit on deductibility

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

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

Example: Frank, an apprentice metal machinist, incurs self education expenses totalling $1650 in connection with his apprenticeship course at a technical college. Frank is allowed a deduction for the remaining $1,400.

Technical or professional publications

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

107. 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:

> 'His work did not require him to buy the papers and magazines...[and although]. There might be some tenuous connection between the cost of aviation magazines and the maintenance of knowledge necessary for holding a flying licence...but it seems to me that the possible connection is altogether too remote' (ATC at 633-634; CTBR at 422).

108. This can be contrasted with *Case R70* 84 ATC 493; 27 CTBR (NS) *Case 124*, in which an accountant employed with the Public Service was allowed a deduction for the cost of publications produced by a business and law publisher. The nexus between the expense and the accountant's occupation was established, as the publications contained current technical information that related to her day-to-day

work. She was, however, not allowed a deduction for the cost of daily newspapers and periodicals.

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

109. A deduction is allowable for the rental cost or depreciation on the purchase price of these items if they are not supplied by the employer. If these items are not used 100% for work-related purposes, then only a proportionate deduction will be allowable.

Cost of calls

110. A deduction is allowable for the cost of telephone calls made by a machine operator in the course of carrying out his or her duties.

111. Work-related calls may be identified from the 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

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

113. In *Case M53* 80 ATC 357; 24 CTBR (NS) *Case 29* it was held that (ATC at 359; CTBR at 236):

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

Rental costs

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

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

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

Silent telephone number

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

Transport expenses

117. Transport costs include public transport fares and the costs associated with using a motor vehicle, motor cycle, bicycle, etc. They do not the cost of include meals, accommodation and incidental expenses (see ***Travel expenses***, paragraphs 140 to 144). The deductibility of transport costs incurred by a machine operator when travelling is considered below.

Travel between home and work

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

119. The High Court considered travel expenses incurred between home and work in *Lunney's* case. In a joint judgment, Williams, Kitto and Taylor JJ stated the following:

> 'The question whether the fares which were paid by the appellants are deductible under section 51 should not and, indeed, cannot be solved simply by a process of reasoning which asserts that because expenditure on fares from a taxpayer's residence to his place of employment or place of business is necessary if assessable income is to be derived, such expenditure must be regarded as "incidental and relevant" to the derivation of income...But to say that the expenditure on fares is a prerequisite to the earning of a taxpayer's income is not to say that such income is incurred in or in the course of gaining or producing his income' (CLR at 498-499; ATD at 412-413).

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

Travel between home and normal work place but transporting bulky equipment

121. A deduction is allowable if the transport costs can be attributed to the transportation of bulky equipment rather than to private travel between home and work. See *FC of T v. Vogt* 75 ATC 4073; 5 ATR 274; *Case 59/94,* 94 ATC 501.

122. A deduction is not allowable if an employer:

(a) provides a secure area for the storage of equipment at the workplace; or

(b) provides insurance cover for stolen equipment; or

(c) has a policy of compensating for, or replacing, stolen equipment.

123. **Example:** Geoffrey uses his car to travel to and from work, but the only work equipment he carries are his steel-capped boots and some hand tools. Geoffrey's car expenses are private as his travel from home to work is not attributable to carrying bulky equipment.

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

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

125. **Example:** Mick has a part-time bar job to which he commutes directly after finishing his factory duties. The cost of the travel from the factory to the hotel is an allowable deduction.

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

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

127. **Example:** David travels from the factory where he normally works to his employer's head office to attend a supervisor's meeting. After the meeting he travels directly home. The cost of each journey is an allowable deduction to David.

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

128. A deduction is allowable for the cost of travel from home to an alternate work place. The cost of travel from the alternate work place to the normal place of employment or directly home is also an allowable deduction. See paragraphs 32 to 35 of Taxation Ruling MT 2027.

129. **Example:** Janet is required to travel from home to her employer's warehouse to organise the supply of goods and other materials. She then travels to her normal work place. The cost of travelling from home to the warehouse and then on to the normal work place is an allowable deduction. However, the cost of travelling home from the normal work place is not an allowable deduction.

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

130. A deduction is allowable for the cost of travelling directly between two places of employment or between a place of employment and a place where the machine operator carries on a business. This is provided that the travel is undertaken for the purpose of engaging in work-related activities.

131. **Example:** Graham, a food processing machine operator, works at his employer's Peach Street factory. His employer has another factory in Wheat Street. The cost of travel from one factory to another is an allowable deduction as the cost is incurred in travelling between two places of employment (see Taxation Ruling IT 2199).

132. If the machine operator 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 work-related 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 machine operator's home is used in association with employment or business conducted elsewhere will not be sufficient to establish entitlement to a deduction for travel between two places of work (IT 2199).

133. **Example:** Virginia, a textile sewing machinist, teaches guitar at her home in the evenings. The cost of travelling from the work place to home is not an allowable deduction. It is a private expense rather than an expense incurred in deriving assessable income.

134. A deduction is not allowable for the cost of travel between a person's home, at which a part-time work-related 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 (*Case N44* 81 ATC 216; 24 CTBR (NS) *Case 114*).

135. In this case, a qualified accountant, employed by a firm of accountants, conducted a limited private practice from his home. He set up a separate room in his home as an office. The taxpayer claimed a deduction for car expenses incurred in travelling between his residence/office and his place of employment. The fact that the taxpayer's home was, incidentally, used in the production of income was insufficient to make the travel between his home and his place of employment an outgoing incurred in the production of assessable income. The travel retained its essential character of travel between home and work and therefore, it was not an allowable deduction.

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

Travel between home and work while 'on call'

137. Machine operators may be contacted after regular hours for shiftwork or to attend to machinery breakdowns. Although a taxpayer may be required to travel to work in response to a call while on standby, this would not ordinarily alter the private character of that travel. In *FC of T v Genys* 87 ATC 4860; (1987) 19 ATR 356, a nursing sister was denied the cost of travelling to and from work. She worked relief shifts in intensive care and the shifts were arranged by telephone. It was held there was nothing about the travel that distinguished it from normal travel to and from work.

138. In some instances, duties commence upon receipt of a phone call. In *FC of T v Collings* 76 ATC 4254; 6 ATR 476, the taxpayer was engaged in the conversion of a computer facility and often used a personal computer at home that was connected by telephone to her employer's computer. If the problem could not be fixed through the telephone connection, the taxpayer was required to travel to the site. It was held that travel from home to the site was an allowable deduction as the performance of duties had commenced and the travel was effectively between two work sites (see Taxation Rulings IT 112 and IT 113).

Calculation of motor vehicle balancing adjustment

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

Travel expenses

140. Travel expenses include the costs of fares, accommodation, meals and incidentals. A deduction is not allowable for travel expenses unless documentary evidence is obtained.

141. A deduction is allowable for the costs incurred by a machine operator in undertaking work-related travel. An example is where a machine operator attends a seminar interstate.

142. A deduction is allowable for travel expenditure incurred if a machine operator receives a travel allowance that the Commissioner considers reasonable. No substantiation is required if the deduction claimed is equal to or less than the reasonable travel allowance.

143. If the machine operator receives an allowance that is less than the reasonable rates, a deduction up to the amount of the allowance received is allowable without the need for substantiation.

144. Claims that exceed a reasonable allowance must be substantiated in full (see Taxation Ruling TR 94/23).

Union or professional association fees and levies

145. A deduction is allowable for the cost of union or professional association fees. Taxation Rulings IT 299, IT 327, IT 2062 and IT 2416 provide further information on the deductibility of union and professional association fees.

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

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

147. A deduction is allowable for a levy paid to enable a trade union or professional association to provide finance to acquire or construct

new premises, to refurbish existing premises or to acquire plant and equipment to conduct their activities (see IT 2416).

148. A deduction is allowable for a levy if it is paid into a separate fund and it can be clearly shown that the monies in that fund are solely for protecting the interests of members and their jobs, and for the obtaining of legal advice or the institution of legal action, etc., on their behalf (see IT 299).

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Your Comments

150. If you wish to comment on this Draft Ruling, please send your comments by:

31 March 1995

to:

Contact Officer	Melinda Ricketts
Telephone	(077) 53 7512
Facsimile	(077) 53 7270
Address	Australian Taxation Office GPO Box 9990 Townsville QLD 4810 Attention: Ms Melinda Ricketts.

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