TR 93/D10 - Income tax: deductions claimed by employees within the airline industry

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Australian Taxation Office

Draft Taxation Ruling
Income tax: deductions claimed by employees within the airline industry

contents

see paragraph 100 for details

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What this Ruling is about

1. This Ruling deals with deductions for work-related expenses made by employees within the airline industry. In doing so, the Ruling discusses the types of expenditure for which deductions are claimed, and whether or not those deductions are allowable under subsection 51(1), or are depreciable under section 54 of the *Income Tax Assessment Act 1936*, known hereafter as the Act.

2. While employment-related expenses over $300 in total need to be substantiated by documentary evidence to be allowable under subsection 51(1) of the Act, this Ruling does not discuss these substantiation requirements in detail.

Ruling and Explanations

3. Whether or not a deduction is allowable for the claims set out in this ruling is determined by looking at subsection 51(1) of the Act. If the claim satisfies subsection 51(1) then other provisions such as the substantiation provisions must be examined. The words of subsection 51(1) which are relevant to claims made by employees are:

> 'All losses and outgoings to the extent to which they are incurred in gaining or producing the assessable 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, ...'.

4. If a claim does not meet the first positive limb i.e. be 'incurred in gaining or producing the assessable income' then it is not allowable.

Even if the claim meets this test a deduction is still not allowed to the extent it is a loss or outgoing of capital, or of a capital, private or domestic nature.

Anti - glare glasses

5. The purchase of anti-glare glasses and whether they are an expense of a private and domestic nature was addressed in *Case U124* 87 ATC 741; 18 ATR 3624. The case involved a Video Display Unit operator. It was decided in her case that "the glasses could not be equated with conventional clothing or with glasses intended to correct defective vision; they were protective equipment" (p741). The reason for this was that the taxpayer is not required to use the glasses in any other daily function other than those specifically related to her occupation ".....At the end of the working day, she would leave the glasses in her desk drawer" (p742). As a consequence of this, her claim was allowed.

6. The circumstances of flight attendants and other employees in the airline industry do not fall within the decision of *Case U124*(supra); *AAT Case 87* (1987) 18 ATR 3624. In fact, the opposite is true. While flight attendants may use anti-glare glasses while showing passengers onto and off the plane for short periods, we believe the glasses constitute conventional clothing and may also be used outside the work situation and is therefore not allowable under subsection 51(1) of the Act. Our view is supported by the reasoning in Case *U124* (supra). Taxation Ruling IT 2477 discusses this case further.

7. Anti-glare sunglasses known as 'aviation spectacles' are now available to pilots and flight engineers. These glasses have UV filters and are not colour tinted so they do not alter the colour of the control panel lights in the cockpit. Although these glasses are marketed as 'aviation spectacles', they may be equally useful outside work for conventional purposes. Pilots may be equated with drivers and commercial travellers etc in respect of claims for anti-glare glasses. Claims for deductions by employees in these occupations are not allowable as their position is not seen to be unique as in the instance quoted in *Case U124* (supra). The use of anti-glare glasses in their circumstances is conventional protection from the natural environment, not from the hazards of the equipment used in the course of employment. In *Case N84* 81 ATC 451; 25 CTBR (N.S.) *Case 43*, the Board decided that sunglasses possessed no special attributes to take them out of the category of private outlays. **Anti-glare glasses are therefore not an allowable deduction under subsection 51(1).**

8. Research has shown that ground engineers are supplied with glasses by the airline companies. Therefore, no deduction is allowable and the question of deduction claims does not arise.

Overnight bags, suitcases, suitpacks

9. Overnight bags are provided by the airline companies. Therefore, as flight attendants, pilots and flight engineers are not required to purchase their own bags, **a deduction for overnight bags is not allowable under subsection 51(1).**

10. Flight attendants, pilots and flight engineers are required to travel in the course of their employment. Therefore, in order to carry out their duties it is necessary for them to incur the cost of travel bags (suitpacks and suitcases) which are not supplied by their employer.

11. *Case R89* 84 ATC 597; 27 CTBR (N.S) *Case 143* allowed depreciation on the apportioned cost of a suitcase by a ministerial secretary who was required to travel during the course of his work. The cost of the suitcase was to be apportioned according to the taxpayer's business usage. This was based on the principle decision in *Ronpibon Tin N.L. v F. C. of T.* (1949) 78 CLR 47; 8 ATD 431 which stated that "even though such amounts were difficult to apportion because of the inability to divide them 'arithmetically or rateably'....the [task] is therefore to make a fair apportionment to each object of the company's actual expenditure" (p598). **Flight attendants, pilots and flight engineers are therefore allowed a deduction for luggage expenses (for other than luggage provided by the employer) which should be apportioned according to the business usage. This portion is then depreciable.**

12. The Office's practice prior to the 1991/2 tax year in regard to depreciable items such as travel bags and kit bags (Taxation Ruling IT 2261) was to allow the item to be fully deductible in the year of purchase where the cost incurred did not exceed $100. If the cost exceeded $100, the item was depreciated under section 54 of the Act.

13. For the 1992 tax year and subsequent years, subsection 55(2) applies where the depreciable item was purchased on or after 1 July 1991 and the business portion cost less than $300, or has an effective life of less than three years (where the percentage on the item was more than 33 1/3 percent). In these cases the depreciation rate to be applied is 100 percent. This means that the original business portion is fully deductible in the year of purchase.

14. **Ground engineers however, are not allowed a deduction for luggage expenses.** In very isolated instances, ground engineers are

required to travel in order to assist in picking up aircraft. As the incidence of travel is so isolated, it is considered that in these cases, even an apportioned depreciation deduction would not be allowable.

Transport luggage to and from airport

15. Airline employees carry their luggage to and from the airport. However, the expenses incurred are considered to be private in nature and not allowable under subsection 51(1) of the Act.

16. In *Case L49* 79 ATC 339; an airline pilot was disallowed a deduction for expenses incurred in transporting luggage to and from the airport. The pilot relied upon several arguments. These were:

- that he used his home as an office and that the transport was therefore between two places of work;

- that, because the suitcase and satchel were heavy (as in *FC of T v Vogt* 75 ATC 4073; 5 ATR 274 and *FC of T v Ballesty* 77 ATC 4181; 7 ATR 411), public transport was unsatisfactory and illegal; and

- that, to avoid emotional stress before a flight, he used his vehicle, (again using *Ballesty's* (supra) argument when he claimed travel between home and football matches in which he played).

17. Each of these arguments was dismissed by the Tribunal as follows:

The taxpayer's duties commenced when he 'signed on' at the airport for a flight or, on other occasions of mandatory attendance. The other operations which he performed at home were not matters associated with the duties of his office or employment (p342).

"the taxpayer had the normal accoutrements of a travelling businessman, a bulky suitcase and a hand satchel. But this bulk is hardly such as to suggest that the accoutrements were being transported primarily, and the taxpayer obtained an incidental (and 'tax free') ride." (p342) The personal accoutrements were not considered to be the equivalent of 'plant', as in the case of *Vogt* (supra) (musician) (p342).

No evidence was found that the taxpayer used his car to meet the "needs for physical and psychological conditioning" as did *Ballesty* (supra)(professional footballer) (p342);

Finally, regarding the assertion that the transporting of bulky luggage on public transport was 'illegal', it was considered that the articles were of insufficient bulk as to contravene the regulations (p342-343).

18. In *F. C. of T. v Genys,* 87 ATC 4875; 19 ATR 356, the Commissioner appealed against the decision in *Case U17* 87 ATC 175; which allowed a registered nursing sister a deduction for expenses incurred in travelling between home and various hospitals on the basis that her employment was characterised by an agency telephoning her about shifts at very short notice (ie. itinerant worker). The appeal by the Commissioner was upheld. It was stated that the mere receipt of telephone calls from the agency requesting the taxpayer to work was not sufficient to constitute the taxpayer's home as a place of work. The taxpayer had argued that she needed to keep her travel time to a minimum if she were to fulfil the requirements of her particular employer. This argument was not accepted because she was in a similar position to thousands of employees who have to be on stand-by at their homes. Such employees do not have two places of work. Finally, the taxpayer's employment could not be considered to be 'itinerant' in that she simply drove from home to work and back again.

19. By way of contrast, the judgment handed down in *F. C. of T. v Vogt,* 75 ATC 4073; 5 ATR 274 (a musician) supported the claim for travelling expenses to and from home. The reasons given for disallowing the Commissioner's appeal (against Board of Review *Case F32* 74 ATC 183) were that, for the purposes of subsection 51(1) of the Act, the expenditure was incurred as part of the operations by which the taxpayer earned his taxable income. There was no other way for the taxpayer to transport his many and bulky instruments to the places where he was to perform. Thirdly, the expenditure relating specifically to the carriage of the instruments and not to the actual travel by the taxpayer.

20. **It is considered that the pilots', flight attendants' and flight engineers' claims for deductions against expenses incurred in transporting luggage to and from the airport do not satisfy the requirements of subsection 51(1) of the Act and are therefore disallowed**. Taxation Rulings IT 112, 113 and 2543 detail these and further cases on the matter and generally explore the deductibility of the cost of travel to and from work.

Transport tools to and from airport

21. The circumstances of these claims (generally made by ground engineers for the transport of tools to and from the airport) closely parallel those made by pilots for the transportation of luggage to and from the airport. The cases and Taxation Ruling described in the

preceding paragraphs apply here as they did in reference to the pilots' claim for transportation.

22. A case where a deduction was given was heard in 1987. In *Case U107* 87 ATC 650; *AAT Case75* (1987) 18 ATR 3544 a ground maintenance aircraft engineer claimed the costs of transporting his tools to and from the airport. His claim relied upon the fact that the tools were kept in two large boxes, were very expensive and were liable to be stolen if left in the hangar. The hangar was subject only to the employer's general security system and it was stated "that the employer would not generally compensate a worker whose tools had been stolen at work" (p651). It is fair to mention this case in the context of the conditions that existed in the year of the claim (1985). Since that time, general industry conditions have altered to the extent that more secure compounds are provided for the storage of tools at work and that insurance schemes are in place to compensate workers for tool theft. *Case U107* can therefore only be viewed in the light of the situation which prevailed at that time.

23. **There is now no need for ground engineers to transport their tools to and from work. If they choose to do so for one reason or another, the expense so incurred, is considered to be private in nature and therefore a deduction is not available under subsection 51(1) of the Act**. We do not accept either the argument of travelling from office to office, nor the argument that the normal quantity of tools is excessively bulky. Simply put, the claims are for travelling to and from work. These are not allowable under the Act.

Depreciation of tools

24. Claims in respect of tools, whether they belong to apprentice ground engineers or ground engineers out of their apprenticeship are treated in the same way. Tools, in the general course of events will be used for a number of years. This means the initial cost is of a capital nature and cannot be deductible outright. They need to be depreciated progressively over their life in line with the Commissioner's schedule. The option exists, in relation to smaller tools, to claim the full cost on a replacement basis. **The initial cost of tools, therefore is not an allowable deduction, although the cost of replacements may be.**

25. However, an outright deduction is available for the cost of hand tools valued under $300 purchased after 12 March 1991. Items costing in excess of that amount, and purchased after 12 March 1991, will need to be depreciated over their effective life. Taxation Ruling IT 2537 provides pre 12 March 1991 information on depreciation of (apprentices') tools.

Luggage trolleys

26. Flight attendants, pilots, flight and ground engineers may choose to transport their luggage on a portable luggage trolley. **These trolleys are an allowable deduction under subsection 51(1). They are used solely for work purposes.**

Shoes

27. The deductibility of expenses for shoes centres on whether the item satisfies the four tests outlined in *Case U95* 87 ATC 575. If the item satisfies all these tests, then the expense is allowable under subsection 51(1) of the Act. In this case, a shop assistant who claimed a deduction for black and white clothing and shoes as part of her work attire was disallowed the claim on the grounds that it was of a private nature.

28. The four tests to be considered are:

(i) Whether the wearing of clothing, or, in this case, the shoes are an express or implied condition of employment.

(ii) Whether the shoes are "distinctive or unique to the nature of the employment" and whether they are able to be worn by the general public.

(iii) "The extent to which the clothing (or shoes) is used solely for work" and

(iv) "The extent to which the clothing (or shoes) is unsuitable for any activity other than work" (p580)

29. In *Case U95* (supra) the shop assistant was disallowed the expense on the grounds that her claim was of a private and domestic nature and therefore did not satisfy the requirements of subsection 51(1) of the Act. The reasons for this decision were that there was nothing distinctive or unique about the clothing - the colour being acceptable for street dress and that it could be purchased and worn by members of the public who were unassociated with the taxpayer's employment (p580). Additionally, the shoes and clothing did not have any protective qualities.

30. Flight attendants are required to wear shoes of a particular designated colour to match their uniforms. In addition to the colour, the shoes are required to be of a certain style and height. They may also choose to wear a flat pair of shoes on the plane (cabin shoes) which may be slightly larger than their usual shoe size to allow for

swelling of the feet during a flight. These shoes are not peculiar to the industry and do not satisfy the four tests. **Therefore, shoes (including cabin shoes) possess neither protective features nor features which are distinctive or unique to the occupation and are not an allowable deduction.**

31. If a flight engineer is not accompanying the pilot on a flight, the pilot is required to carry out a safety inspection of the aircraft prior to take-off. As the tarmac is sometimes oily and greasy, pilots may elect to wear 'non-slip' footwear. However, when the same tests are applied to this type of footwear, the requirements are not satisfied and accordingly claims for deductions are not allowable under subsection 51(1) of the Act. Taxation Ruling IT 300 also relates to this matter.

Calculators

32. **Flight attendants and pilots may claim expenses for calculators as they are used directly in earning their income and are therefore an allowable deduction under subsection 51(1) of the Act.**

33. Calculators are required by both domestic and international flight attendants to convert accepted foreign currency to Australian dollars for the purchase of drinks, duty free items etc during flights. It should be noted that domestic airlines also accept major foreign currencies from passengers boarding directly after transfer from international flights.

34. In relation to pilots, the expense of the purchase of a calculator is an allowable deduction under subsection 51(1) of the Act as it is considered a 'tool of trade'. Calculators may sometimes need to be used by pilots in cases where an on board computer malfunctions.

Clocks, watches - purchase and maintenance

35. **Claims for travel clock or watch purchase are not allowable under subsection 51(1) of the Act as the expense is considered to be private in nature.**

36. In making this decision, it was taken into consideration that airline employees are required to accurately record their time of arrival according to the local time of their base. To properly do this, times zones and daylight saving arrangements need to be taken into consideration. It is claimed that alarm clocks are necessary to employees to ensure that they wake on time to commence duty.

37. Pilots have access to clocks in the cockpit, and may use them to advise passengers of expected times of arrival etc.

38. In *Case S82* 85 ATC 608; 28 CTBR (N.S) *Case 87* a nursing sister was disallowed a deduction for a watch that was used in the course of her employment. The Board's decision was that the watch was "an item of a private nature ....(and)....the use of a watch or other timepiece....is important to most people in the community whether it be used....to ensure not commencing work too early or finishing too late; or to log overtime...." (p612).

39. In *Case P71* 82 ATC 338; 26 CTBR (N.S) *Case 3* an ambulance officer was disallowed a deduction for a watch claimed under subsection 51(1) of the Act; nor was he allowed the deduction under subsection 54 of the Act. It was decided that the expense was essentially of a private nature and not incurred in gaining assessable income. "The evidence does not provide any basis for concluding that the taxpayer's employment would be threatened by his failure to own a watch and use it for official purposes, or that the level of income was improved by using it for that purpose...." (p341).

40. *In N84* 81 ATC 451; 25 CTBR (N.S) *Case 43* a television cameraman was disallowed a deduction for the purchase of a watch which was used for work. The expense was disallowed on the grounds that the watch did not possess any "special attributes" and although it was used for work, this fact "did not change the essential character as private expenditures." (p453)

41. The contrast can clearly be seen when one examines the decision in *Case Q11* 83 ATC 41; 26 CTBR (N.S) *Case 75* where a self-employed lawn mowing contractor was allowed a deduction for the purchase of a watch under subsection 51(1) of the Act as he priced his labour by the hour and needed a watch to do so.

First aid training

42. Flight attendants are required by their employer to undertake first aid training. Where the expense of such training is borne by the flight attendant it is an allowable deduction under subsection 51(1) of the Act. However, in the case of pilots, ground engineers and flight engineers, there is no employment requirement to undertake first aid training, although some may choose to do so to further their knowledge. **Flight attendants are therefore allowed a deduction for first aid training if any expense is incurred. However, pilots, ground and flight engineers are disallowed a deduction under subsection 51(1).**

Telephone expenses

43. Flight attendants, pilots and flight engineers are required at times to be 'on call'. Additionally, they sometimes need to contact the airline at various intervals to determine if or when they are required for work. For their employer to contact them, they must have a telephone connected. **Therefore, the expenses incurred in business calls and partial rental cost are allowable deductions under subsection 51(1) of the Act**. Documentary evidence however, (e.g. diary entries) must be available to support the making of such calls. **Installation costs, however are considered to be a capital expense and are therefore not allowable**. **Ground engineers are not required by their employer to use the telephone any more than other members of the community and are disallowed telephone deductions.**

44. *Case N57* 81 ATC 282; 25 CTBR (NS) Case 12 reached a decision that supports the apportionment of the rental expenses. The Commissioner's argument against telephone and rental deductions centred upon the 'essential character' test applied in *Handley v F.C. of T. 81*ATC 4165; 11 ATR 644 and *Forsyth v F.C. of T.* 81 ATC 4157; 11 ATR 657, both of which contended that expenses of this nature were domestic in nature. The Board, in *N57*, dismissed the arguments stating "the question....is for what purpose or purposes did the taxpayer have in mind when he incurred the outgoing in respect of the rental of a telephone?" (p296). If that purpose is for both private and work-related calls the Board decided that a portion of the telephone costs incurred would be an allowable deduction. An opinion was given by the Board that the rental cost "is a payment to be made whether any telephone calls are made or received." (p297).

45. In that case, the Commissioner argued that "....the telephone rental must be apportioned according to the use made of the telephone and that an appropriate basis would be according to an estimate of incoming and outgoing private and business calls." (p297). Therefore, rental should be apportioned in the same ratio of business telephone calls to overall telephone calls. For example, if business calls constituted 30 percent of overall calls made, then 30 percent of the telephone rental would be an allowable deduction.

46. Further references supporting the partial allowance of telephone expenses are Taxation Ruling IT 85, *Case Q123* 83 ATC 735; 27 CTBR (N.S) *Case 51*, *Case N5* 81 ATC 35; 24 CTBR (N.S.) Case 78 and *Case R113* 84 ATC 750; 27 CTBR (N.S.) *Case 164*

Beepers, answering machines

47. The purchase and maintenance of a beeper or answering machine by airline employees is a personal choice made by the employee. **These items are therefore private in nature and**

deductions for their purchase and maintenance are disallowed under subsection 51(1) of the Act.

Stationery, diaries

48. As a condition of the Civil Aviation Authority, all pilots are required to maintain log books for all flights undertaken. These are not provided by the airline companies and must, therefore, be purchased by the pilot. Additionally, pilots are often required to purchase their own flying charts (and associated binders), or update those supplied by the company. Diaries are similarly necessary for pilots in the discharge of their daily duties. **Pilots claims for log books, charts, binders and diaries are therefore an allowable deduction under subsection 51(1) of the Act.**

49. Flight attendants, flight engineers and ground engineers are required to use a diary in the course of their employment. This is necessary to record details of all flights undertaken on respective days, work time spent on ground and timetable entries. The employer does not supply diaries to their staff. They are expected to purchase them. 'Flying Diaries' are specifically printed and are available at a cost of $35 (1992). They contain useful information, maps, provision for flight details and receipt envelopes for taxation purposes. The expense is necessarily incurred in earning assessable income and is therefore an allowable deduction under subsection 51(1) of the Act.

50. **We note that in the case of flight attendants, ground engineers and flight engineers, diaries are the only stationery item allowable.**

Technical journals, periodicals

51. For magazines and journals to be an allowable deduction, a sufficient nexus between the nature of the purchase and the employment has to be established.

52. In *Case P124* 82 ATC 629; 26 CTBR (N.S.) *Case 55* an air traffic controller was disallowed a deduction for the purchase of aviation magazines. The members agreed that "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." (pp633, 634).

53. Similarly, in *Case S56* 85 ATC 408; 28 CTBR (N.S.) *Case 60*, a motoring executive was refused deductions in relation to the purchase of motoring magazines because no direct relationship could be established between the magazine content and his occupation.

54. This contrasts with *Case R70* 84 ATC 493; 27 CTBR (N.S.) *Case 123* in which an accountant employed with the public service was allowed a deduction for the cost of publications authored 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 which related to his day to day work. He was, however, disallowed a deduction for the purchase costs of daily newspapers.

55. The airline companies supply staff with all the necessary written information required for them to effectively discharge their daily duties. This applies to pilots as well as other members of the industry. **It follows then, that expenses for journals and periodicals are not allowable under subsection 51(1) of the Act.**

Self education - language studies

56. It is not essential for flight attendants to speak a second language to be employed by the airline. They may, however choose to do so voluntarily. The airline company pays additional salary to those qualified in a relevant second language. Additionally, the knowledge of a second language enhances promotion prospects. **A deduction for self education expenses incurred in relation to the learning of a second language is therefore allowable for flight attendants under subsection 51(1) of the Act.**

57. **Other members of the industry do not qualify for a deduction in respect of language studies as they do not have actual contact with the public**. Taxation Rulings IT 283, IT 2198, IT 2290, IT 2457 and IT 2459 provide additional information on the deductibility of self education expenses.

Renewal of licences

58. Airline employees (except those who do not need licences for work), are required to renew their relevant licences to maintain their employment. **If examinations need to be undertaken to retain a licence, the costs associated are an allowable deduction under subsection 51(1) of the Act provided they are not reimbursed by the employer.**

Medical examinations for licence renewal

59. **The deductibility of the expenditure incurred in undergoing a medical examination is not allowable under subsection 51(1) of the Act as the expense is of a private nature.**

60. The Board of Review indicated in *Case N72* 81 ATC 383; 25 CTBR (N.S.) *Case 26* that the "expenditure is neither relevant nor incidental to the taxpayer's duties as an airline pilot, the activities by which he gained assessable income, even though....the holding of the pilot's licence and the particular expenditure....appear as essential prerequisites of the derivation of income." (p384).

61. Furthermore, we consider the expenditure falls within the category of 'necessities of life', and is therefore excluded from the provision of subsection 51(1) of the Act.

62. **However, the cost (if any) of travel by the pilot between home and the medical practitioner is an allowable deduction under subsection 51(1) of the Act** because it is at the employer's directive. This was confirmed in *Case L69* 79 ATC 550; 23 CTBR (NS) Case 76 where the Board of Review decided that the "journey was necessary by the contract of employment and it was not a journey from home to work and thus it is not within the principle of *Lunney and Hayley*." (p556)

Salary guarantee and loss of licence insurance

63. In respect of salary guarantee and loss of licence insurance the question of the deductibility of the cost of premiums centres around whether the insurance policy stipulates that the insured will be indemnified by way of a lump sum payment or regular payments (weekly, monthly etc.)

64. A benefit received in the form of a lump sum is considered to be capital in nature. **Consequently, the cost of the premium received as a lump sum is not an allowable deduction under subsection 51(1) of the Act**. it being an outgoing of a capital nature. *(Case J45* 77 ATC 417; 21 CTBR (N.S.) *Case 67*).

65. **On the other hand, if the benefits received under the insurance policy are in the form of regular payments, ie. assessable income under subsection 25(1) of the Act, then the cost of the premium is an allowable deduction under subsection 51(1)** to the extent that a proportion of the premium was attributable to potential regular income payments. Taxation Ruling IT 2230 discusses these matters further.

Meal allowances

66. **A contra claim made by airline employees against an overtime meal allowance is allowable providing it is spent in full and providing it is considered to be reasonable in amount (up to $15 per meal in the 1992 year)**. A taxpayer in receipt of an overtime meal allowance is not required to produce documentary evidence to support their claim under subsection 82KZ(4) of the Act. It should be noted that an overtime meal allowance is one that is paid under an industrial award and not just an arrangement that has simply been negotiated between an employer and an employee.

67. Taxation Rulings IT 2644 , IT 2686 and IT 2326 provide additional information on the subject of meal allowances.

Overseas daily travel allowances

68. **Where an employer provides an overseas travel allowance to an employee, a deduction is allowable up to the amount of the allowance as long as the amount is considered to be 'reasonable' and providing the allowance paid relates only to expenses incurred whilst on overseas duty, (subsection 82KZ(5) of the Act).**

69. Additionally, subsection 82KZ(6) of the Act states that firstly, crew members of an international flight are not required to substantiate reasonable meal and incidental expenses in respect of overseas travel and are not required to keep a travel diary. Secondly, crew members who incur overseas accommodation expenses are required to substantiate those expenses by receipts or other documentary evidence. These daily overseas travel allowances are generally shown on group certificates as 'ODTA'.

70. It should be noted that if a deduction is claimed in excess of the allowance, the whole claim must be substantiated under subsection 82KZA(1) of the Act. Taxation Ruling IT 2524 provides information on reasonable overseas travel allowances. IT Rulings 2644 and 2686 also relate to reasonable travel allowances.

Daily domestic travel allowances

71. **Contra claims are also permitted for airline employees in relation to reasonable daily domestic travel allowances under subsection 82KZ(4) of the Act.** These allowances are generally shown on group certificates as 'DTA'.

72. It should be noted that if a deduction is claimed in excess of the allowance, the whole claim must be substantiated under subsection 82KZA(1) of the Act.

Isolated establishment allowances

73. An isolated establishment allowance or 'travel allowance' is provided for airline industry staff who commence their work shifts between the hours of 7pm and 7am. It is designed to cover travel costs incurred due to the limited public transport available at these times. It is not provided for the transportation of bulky equipment or luggage.

71. The leading case for disallowing travel to and from work is in *Lunney and Hayley v FC of T (1958)* 100 CLR 478; 7 AITR 166. In this case it was stated that "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" (p498)....and...."it may be said to be a necessary consequence of living in one place and working in another" (p501). **Isolated Establishment Allowance is therefore not an allowable deduction under subsection 51(1).**

72. In support of this decision, it was stated in *Case U156* 87 ATC 908 that "....the lack of suitable public transport, the erratic hours and times of their employment, the method of calculation of their allowance and the on-call nature of the employment do not, of themselves, transform the character of the outgoing to the type required in terms of subsection 51(1)" (p911).

74. The fact that an airline employee may need to travel considerable distances at irregular times to commence duty when public transport is either limited or unavailable places them in the same circumstances outlined in *Case U156*(supra).

75. *Case U133* 87 ATC 777 further supports the disallowance of such claims as do Taxation Rulings IT 112, IT 2543 and IT 113.

Uniforms - maintenance

76. Flight attendants, pilots, flight engineers and ground engineers are supplied with uniforms of various types by their employer. These uniforms are unique and peculiar to the industry. **As the airlines do not provide cleaning arrangements for their employees, the deductions for expenses incurred in such cleaning and maintenance are allowable under subsection 51(1) of the Act.**

77. Further information can be found in Taxation Ruling 2452 which outlines the method of home laundry calculation and the

necessity for the taxpayer to substantiate laundry expenses where the overall work-related expenses exceeds $300.

78. It should be noted that new conditions regarding the deductibility of corporate wardrobes will shortly come into effect via the recently enacted subsection 51AL of the Act.

79. Currently, Uniform accessories such as ties, handkerchiefs, hair ribbons made of the same unique fabric as the corporate uniform and/or if they have a clearly visible distinguishing feature such as a corporate logo are an allowable deduction (Taxation Ruling IT 2641). Conditions regarding the deductibility of these items will also alter the newly enacted subsection 51AL.

Stockings

80. **Expenses for stockings are non-deductible as they are considered to be of a private nature and not incurred in gaining or producing assessable income.** This decision has taken into consideration the fact that flight attendants are required to wear corporate coloured stockings as part of their uniform and that support-stockings may be worn as a preventative measure against varicose veins and other health problems.

81. The same tests apply to stockings as those that were employed in determining the deductibility of expenses for shoes and clothing . In 25 CTBR (NS) Case 50 *Case N97* 81 ATC 521; (which involved a registered nurse) it was stated that the express condition of employment itself is not sufficient to satisfy subsection 51(1) of the Act. He added that "....there is nothing unique about stockings which would single out a person wearing them as being a nurse .... Stockings by their very nature are part of conventional attire - whether worn under protest or otherwise." (p369).

82. In 20 CTBR (N.S.) *Case 85;* Case H32 76 ATC 280, the expense for stockings damaged at work was disallowed. In the case it was stated that, "true, it is that damage occurs to her stockings during her hours of duty, but that has nothing really to do with procedures and methods relating to the performance of her duties...." (p909).

83. In *Case P117* 82 ATC 591; 26 CTBR (N.S.) *Case 43*, a secretary was disallowed expenses for **support-stockings** which were purchased to overcome an "affliction known as pulmonary embolism" (p593). It was stated that the expense was of a private nature and "....the requirement to wear the supphose was one which was not due to her conditions of employment but to a disability peculiar to the taxpayer." (p593).

Grooming (cosmetics, skin care, hairdressing)

84. A deduction for expenses incurred in the purchase of cosmetics and skin care products is not allowable even if an allowance has been paid by the airline company. In considering this matter, it has been divided into two separate components - the first being purely cosmetics such as lipstick, eyeshadow etc, and the second, skin care products such as moisturisers. **Expenses for cosmetics and skin care products are not allowable under subsection 51(1) of the Act.**

85. In *Case N34* 81 ATC 178; 24 CTBR (N.S.) *Case 104*, a flight attendant was allowed a deduction for cosmetic expenses. This view however, has not been followed in more recent cases which support the decision to disallow the expense as being private in nature.

86. In *AAT Case 4608* (1988) 19 ATR 3872, a marriage celebrant claimed expenses for both personal clothing and cosmetics. Although she was expected to maintain a very high standard of personal grooming for the purpose of her occupation which included the wearing of make-up as part of her overall personal presentation, the claim was disallowed as being a private expense. The Senior Member referred to the four "relevant considerations" from *Case U95* 87 ATC 575 which he applied to the claims for both clothing and cosmetics and upon which he based his decision:

(i) whether the expense is an "express or implied requirement of the employer or business".

(ii) "the extent to which the clothing (in this case, cosmetics) is distinctive or unique to the nature of the employment or business having regard to particular, special....work clothing requirements, including its availability to be worn by members of the general public".

(iii) "the extent to which the clothing (in this case, cosmetics) is used solely for work".

(iv) "the extent to which the clothing is unsuitable for any activity other than work" (p3878).

87. The marriage celebrant fully satisfied the first of the considerations, but failed to satisfy the remaining three. In summing up it was stated that "Important though the contribution....may be to the total presentation of the taxpayer as a marriage celebrant and, despite the fact that neglect in....these matters might destroy the value in otherwise being well-dressed, I am not pursuaded that, in any of these matters, the income-earning activities put the applicant to any expense such as would not ordinarily and properly be understood as being "private" in character." (p3879)

88. The flight attendants' claim for cosmetic expenses directly follows this case. They, too, are required to maintain a particularly high standard of personal grooming whereby cosmetics are a compulsory part of the overall personal presentation of the attendant and consequently the first of the above four considerations is satisfied. However, as in the case of the marriage celebrant, the three remaining considerations are not satisfied. The cosmetics are not unique to the nature of the occupation (they are suitable for most types of employment), they may be readily purchased and worn by the general public and are commonly used for social occasions unrelated to the gaining of assessable income.

89. In *Case U216* 87 ATC 1214, a female waitress claimed cosmetic expenses as it was an express condition of her employment. This claim was also disallowed as private expenditure under subsection 51(1) of the Act. The Member referred to *81* ATC 4114; 11 ATR 538 *F C of T v D.P. Smith* by stating that the expenditure must be both incidental and relevant to the "regular activities" carried out in the production of income (p1215). He found however, that the cosmetic expenses were "neither relevant nor incidental to the very acts or operations directly engaged in by the applicant in the gaining of her assessable income as a waitress" (p1215). He further added, "I regard the purchase of cosmetics by the applicant as a classic example of private expenditure incurred as part of her day to day living expanses". (p1216).

90. Airline employees have argued that skin care products such as moisturisers are necessary for their occupation, as dry skin may result from working in an air conditioned environment with low humidity levels.

91. In *Case P117* 82 ATC 591; 26 CTBR (N.S) *Case 43*, a nurse was disallowed a claim for support stockings which she was required to wear, as she suffered from a medical condition. This claim was disallowed despite the fact that she was required to be on her feet for long periods of time. The Member stated that "the requirement to wear the supphose was one which was not due to her conditions of employment but to a disability peculiar to the taxpayer". (p593). The same principle can be applied to skin care expenses in this case as to the cosmetic expenses as dry skin conditions are also considered to be peculiar to the particular individual concerned.

92. In *Case Q11* 83 ATC 41; 26 CTBR (N.S.) *Case 75*, a lawn mowing contractor claimed expenses for protective sun lotions. As his work was carried on outdoors, he saw it appropriate to protect himself from sunburn by the use of sunscreen creams. In disallowing the claim the Member said: "The Board pointed out....that a man....protecting himself from skin damage is acting in a private capacity and the

expenditure is thus of a private nature and excluded by subsection 51(1) of the Act." (p43).

93. The argument that airline employees requiring protective moisturisers to protect their skin from exposure to a dry, low humidity environment is answered by the decisions reached in both *Case P117* 82 ATC 591 and *Q11* (supra), where the decision to use moisturisers is a personal choice and does not satisfy the requirements of subsection 51(1) of the Act.

94. **Hairdressing expenses incurred by flight attendants are also not allowable under subsection 51(1) of the Act as they are considered to be an expense of a private nature.** This decision is supported by the following cases: *Case N34* 81 ATC 178; 24 CTBR (N.S.) *Case 104*, *Case L61* 79 ATC 488; 23 CTBR (N.S.) *680, Case U217* 87 ATC 1216 and *Case R54* 84 ATC 408; 27 CTBR (N.S.) *Case 108*.

95. It is possible to see the contrast between the cases mentioned above and *Case P90* 82 ATC 431; 26 CTBR (N.S.) Case 24 in which a hairdressing claim was allowed to a theatrical dancer. This case is consistent with the decision to disallow similar claims made by flight attendants in that the dancer's expenses are unique to her employment as she was required to arrange her hair in a certain style in accordance with the theatrical role she was playing. It is not considered that flight attendants hairstyles are unique to their occupation and therefore any expenses incurred are considered to be private in nature.

Cash/bar shortages

96. During the course of their duties, flight attendants are required to deal with monies paid by passengers for refreshments etc. Occasionally, cash/bar shortages occur and the employee is required to make up the shortfall. It is considered that the expense would not have been incurred but for the duties undertaken. **Therefore, a deduction for cash/bar shortages is allowable under subsection 51(1) of the Act**. Receipts for any shortfall are provided by the airline. They should be retained.

Issue/renewal of passport

97. **If it can be established that overseas travel is a requirement of employment, the apportioned cost of the issue and renewal of a passport is an allowable deduction for airline employees under subsection 51(1) of the Act.** The ratio of apportionment between business and private should be considered on a case by case basis.

Protective clothing

98. Research has shown that ground engineers are provided with protective clothing, shoes, sunglasses, hats and wet weather gear by the airline companies. **As no expense is incurred by ground engineers in either the initial purchase or replacement of protective clothing, no deduction is allowable under subsection 51(1) of the Act. Other employees in the industry are unable to claim deductions for protective clothing as the expense is not necessarily incurred in gaining their incomes.** Taxation Ruling IT 297 provides further information on protective clothing.

Date of effect

99. 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).

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