

TR 95/D6 - Income tax: real estate industry employees - allowances, reimbursements and work-related deductions



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Draft Taxation Ruling

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

other Rulings on this topic

IT 85; IT 112; IT 327;
IT 2062; IT 2198; IT 2199;
IT 2416; IT 2452; IT 2477;
IT 2493; IT 2543; IT 2641;
IT 2673; IT 2685; MT 2027;
TR 92/8; TR 92/15;
TR 92/20; TR 93/24;
TR 93/30; TR 94/22;
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 93/195; TD 93/232;
TD 93/244

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What this Ruling is about

Class of person/arrangement

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

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

Date of effect

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

- (a) gifts and greeting cards (paragraph 108); and
- (b) wages (paragraph 202)

apply only to the 1995/96 and later income years. Furthermore, this Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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

Ruling

Allowances

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

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

- (a) fully assessable to the employee with a possible deduction allowable, depending upon individual circumstances (paragraph 13);
- (b) fully assessable to the employee with no deduction allowable even though an allowance is received (not normally paid to real estate employees);
- (c) fully assessable to the employee with a deduction allowable for expenses incurred:
 - (i) up to the extent of the allowance without substantiation; or

- (ii) in excess of the allowance, subject to substantiation of the whole claim;
(paragraphs 14 and 15)
- (d) not assessable to the employee because the employer is required to pay Fringe Benefits Tax. A deduction is not allowable to the employee for expenses incurred against the allowance (not normally paid to real estate employees).

Allowances - possible deduction

13. The following allowances are paid to real estate employees. These allowances are fully assessable and deductions may be allowable depending on individual circumstances:

- (a) *Car allowance*: a car allowance may be part of the employment agreement in those States that do not have an award in place. A deduction is allowable for the work-related portion of car expenses (see ***Motor vehicle and other transport expenses***, paragraphs 132 to 157).
- (b) *Locomotion allowance*: This allowance is paid under industrial awards to real estate employees in New South Wales, South Australia and Victoria. A deduction is allowable for the work-related portion of transport expenses (see ***Motor vehicle and other transport expenses***, paragraphs 132 to 157).
- (c) *Telephone or mobile phone allowance*: A deduction is allowable for the work-related portion of telephone or mobile phone expenses (see ***Telephone expenses***, paragraphs 185 to 192).

Reasonable allowances

14. 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.

15. 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

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claimed in excess of the allowance, the whole claim must be substantiated.

Reimbursements

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

17. However, if motor vehicle expenses are reimbursed by an employer on a cents per kilometre basis, the amount is included as assessable income of the real estate employee under paragraph 26(eaa) of the Act and a deduction may be allowable for the actual expenses incurred (see *Motor Vehicle and other transport expenses*, paragraphs 132 to 157).

18. If the reimbursement by an employer is for the cost of a depreciable item (e.g. tools and equipment), a deduction is allowable to the real estate employee for depreciation (see Taxation Determination TD 93/145 and *Depreciation of equipment*, paragraphs 86 to 96 of this Ruling).

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

Deductions

20. A deduction is only allowable if an expense:

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

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

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

Advertising: A deduction is allowable for costs voluntarily incurred by an employee for advertising if the expense is directly related to

earning the employee's income and the expense has not been reimbursed (paragraphs 36 to 39).

Answering machines, beepers, mobile phones, pagers and other telecommunications equipment: A deduction is allowable for the work-related portion of the rental cost or the depreciation on the purchase price of these items. A deduction is not allowable if these items are supplied by the employer (paragraph 40). (See also ***Depreciation of equipment***, paragraphs 86 to 96).

Automobile club membership fees: A deduction is not allowable for automobile club membership fees (see ***Motor vehicle and other transport expenses***, paragraph 152).

Calculators and electronic organisers: A deduction is allowable for the work-related portion of depreciation on the purchase price of these items (paragraphs 41 and 42). (See also ***Depreciation of equipment***, paragraphs 86 to 96).

Car wash expenses: A deduction is allowable for the cost of cleaning a vehicle that is used to produce assessable income (see ***Motor vehicle and other transport expenses***, paragraph 153).

Certificate of registration: A deduction is not allowable for certificate of registration costs (paragraphs 43 to 46).

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

Clothing, uniforms and footwear: A deduction is allowable for the cost of buying, 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 50 to 73).

Club membership fees: A deduction is not allowable for club fees and club sponsorships (paragraphs 74 and 75).

Computers and software: A deduction is allowable for depreciation of computers and software used for work-related purposes. If the

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software is bought separately from the computer a deduction is allowable in full in the year of purchase. The deduction must be apportioned between work-related and private use (paragraphs 76 to 78).

Conferences, seminars and training courses: A deduction is allowable for the cost of attending conferences, seminars and training courses when there is sufficient connection between the conference, seminar or training course and the work-related activities of real estate employees (paragraphs 79 to 85).

Depreciation of equipment: A deduction is allowable for depreciation to the extent of the work-related use of the equipment (paragraph 86 to 96).

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

Fares: A deduction is allowable for the cost of using public transport for work-related travel (paragraph 100).

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 101).

Functions: A deduction is not allowable for the cost of attending social functions (paragraphs 102 to 107).

Gifts and greeting cards: A deduction is not allowable for the cost of gifts or greeting cards bought for clients (paragraphs 108 and 109).

Grooming: A deduction is not allowable for the costs of grooming, including cosmetics, hair and skin care products (paragraphs 110 to 114).

Home office expenses: See paragraphs 115 to 124.

Place of business: A deduction is allowable for a portion of the running and occupancy expenses if an area of the home has the character of a place of business (paragraphs 117 and 118).

Private study: A deduction is allowable for the running expenses of a private study used for work performed at home (paragraphs 119 to 124).

Laundry and maintenance of clothing, uniforms and footwear: A deduction is allowable for the cost of laundry and maintenance of supplied or purchased clothing, uniforms or footwear if these items are of a kind described under ***Clothing, uniforms and footwear*** (paragraphs 72 and 73).

Letters of appointment registration fee: A deduction is not allowable for fees paid for registration of letters of appointment (paragraphs 125 and 126).

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 127 to 131).

Motor vehicle and other transport expenses: Transport expenses include public transport fares, and the costs associated with using motor vehicles, motor cycles, bicycles, etc. The deductibility of motor vehicle and other transport expenses incurred by a real estate employee when travelling is considered below:

Travel between home and work: A deduction is not allowable for the cost of travel between home and the office as it is generally considered to be a private expense. This principle is not altered by the performance of incidental tasks en route (paragraphs 134 to 136).

Travel between home and the office - transporting bulky equipment: A deduction is allowable if the motor vehicle expenses can be attributed to the transportation of bulky equipment rather than to private travel between home and work (paragraphs 137 to 139).

Travel between two separate work places if there are two separate employers involved: A deduction is allowable for the cost of travelling directly between two places of employment (paragraph 140).

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 of the travel is allowable as a deduction (paragraphs 141 and 142).

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 143 and 144).

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 145 to 151).

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Travel in connection with self education: see **Self education expenses** (paragraphs 174 to 180).

Travel accompanied by a relative: Section 51AG of the Act may affect the deductibility of expenses if relatives accompany a real estate employee on work-related travel (see paragraph 200).

Depreciation cost limit for motor vehicles: Section 57AF of the Act imposes a limit on the depreciable cost base of motor cars (including station wagons and four-wheel drive vehicles) if the acquisition costs are greater than a specified amount. The depreciable cost base limit applies to both new and second hand vehicles (see Taxation Ruling TR 93/24).

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

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

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

(see section 51AF of the Act).

Newspapers: Generally, a deduction is not allowable for the cost of newspapers (paragraphs 158 to 163).

Parking fees: A deduction is allowable for parking fees paid by a real estate employee while travelling in the course of employment, e.g. between the office and client's premises (paragraphs 164 and 165).

Police clearance certificates: A deduction is not allowable for the cost of obtaining a police clearance certificate (paragraphs 166 to 168).

Property presentation costs: A deduction is allowable for costs incurred by a real estate employee in presenting a property for sale, e.g. replacing a cracked window pane, lawn mowing, repairs to door locks, etc. (paragraphs 169 to 172).

Referral expenses: A deduction is allowable for payments for the referral of successful business (paragraph 173).

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 income earning activities. Self education costs can include fees, travel, books and equipment (paragraphs 174 to 180).

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 178 to 180).

Stationery: A deduction is allowable for the cost of purchasing street directories, log books, diaries, etc., used for work-related purposes (paragraph 181).

Technical or professional publications: A deduction is allowable for the cost of, or subscription cost of, journals, periodicals and magazines that have a content specifically related to a real estate employee's employment and are not general in nature (paragraphs 182 to 184).

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

Cost of calls: A deduction is allowable for the cost of work-related calls (paragraphs 185 and 186).

Installing or connecting a telephone, mobile phone, pager, beeper or other telecommunications equipment: A deduction is not allowable for the cost of installing or connecting a telephone, etc., as it is a capital expense (paragraphs 187 and 188).

Rental costs: A deduction is allowable for a proportion of telephone rental costs if an employee can demonstrate that he or she is 'on call', or required to telephone their employer on a regular basis, or frequently required to contact clients while away from the office (paragraphs 189 to 191).

Silent telephone numbers: A deduction is not allowable for the cost of obtaining a silent telephone number (paragraph 192).

Tolls: A deduction is allowable for bridge and road tolls paid by a real estate employee when travelling in the course of employment (paragraph 193).

Tools and equipment: A deduction is allowable for depreciation of the cost of tools and equipment of a real estate employee, e.g. tape measures, tools, cameras, etc. Tools and equipment bought after 1 July 1991 are able to be depreciated at a rate of 100% if the cost of a particular item is \$300 or less, or its effective life is less than three years (paragraph 89). A deduction is allowable for the cost of repairs to tools and equipment to the extent of the work-related use of the items (paragraph 194).

Travel expenses: A deduction is allowable for the cost of travel expenses (fares, accommodation, meals and incidentals) incurred by a real estate employee when travelling in the course of employment (paragraphs 195 to 200). Special substantiation rules apply (paragraphs 197 to 199).

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Union fees and professional association fees: A deduction is allowable for union or professional association fees. A deduction is not allowable for contributions to staff social clubs or associations (paragraph 201).

Wages: A deduction is not allowable for wages paid to family members or others for work undertaken on behalf of a real estate employee, e.g. a family member helping with the clerical work, or installing signs, etc. (paragraphs 202 to 204).

Explanations

Deductibility of work-related expenses

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

- (a) is actually incurred;
- (b) meets the deductibility tests; and
- (c) satisfies the substantiation rules.

Expense actually incurred

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

Expense meets deductibility tests

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

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

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

- (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).

27. 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 computer); or
- (c) incurred in earning tax exempt income (e.g. income of Army Reserve personnel).

28. Private or domestic expenditure includes 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...'

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

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

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31. The fact that an expense is incurred by an employee at the direction of his or her employer does not mean that a deduction is automatically allowable.
32. In *Cooper's* case, 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.'
33. 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

34. 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).
35. A deduction is not allowable if the substantiation requirements are not met.

Common work-related expense claims

Advertising

Newspapers, letter box drops, signage, bunting

36. Real estate employees may spend money on advertising through newspapers and for printed matter for letter box drops when they are seeking new clients.
37. Real estate employees may also incur costs for signage, bunting, etc. when advertising a client property or conducting an open inspection or display day.
38. A deduction is allowable for an expense incurred by real estate employees for advertising if the expense can be directly related to income producing activities (see Taxation Ruling IT 2198), and it is not reimbursed by the employer.
39. **Example:** Bill's expenditure on advertising for September 1994 was \$800. Bill's employer reimbursed him \$500 of the \$800 he had spent. The advertising expense incurred by Bill was for newspaper advertisements advertising the sale of clients' properties. A deduction is allowable for the \$300 not reimbursed by his employer. The reimbursement is not assessable.

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

40. A deduction is allowable for depreciation of the work-related portion if these items are used by employees for work-related purposes. For information on depreciation (see ***Depreciation of equipment***, paragraphs 86 to 96) and on telephones (see ***Telephone expenses***, paragraphs 185 to 192).

Calculators and electronic organisers

41. A deduction for depreciation is allowable and must be apportioned between work-related and private use (see ***Depreciation of equipment***, paragraphs 86 to 96).

42. A deduction is allowable for the cost of buying batteries and repairing and maintaining calculators and electronic organisers.

Certificate of registration

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

44. A deduction is not allowable for the cost of a certificate of registration. These costs are incurred too soon to be regarded as incurred in the course of gaining assessable income.

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

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

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Child care

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

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

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

Clothing, uniforms and footwear

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

- (a) the clothing is **protective** in nature;
- (b) the clothing is **occupation specific** and not conventional in nature;
- (c) the clothing is a **compulsory uniform** and satisfies the requirements of Taxation Ruling IT 2641;
- (d) the clothing is a **non-compulsory uniform** or wardrobe that has been either:
 - (i) entered on the Register of Approved Occupational Clothing of the TCFDA; or
 - (ii) approved in writing by the ATO under the transitional arrangements contained in section 51AL of the Act (all the 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 (*Edwards* case)).

Protective clothing

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

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

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

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

55. A deduction is not allowable for the cost of items that provide protection from the natural environment (e.g. sunglasses, sunhats, sunscreen, 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.

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

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

Although this taxpayer was self-employed, the same deductibility tests as set out in paragraphs 25 to 35 applied.

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

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Occupation specific clothing

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

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

Compulsory uniform or wardrobe

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

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

62. In *Case R55* 84 ATC 411; 27 CTBR (NS) *Case 109*, the Tribunal 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).

63. In *Case U95* 87 ATC 575, a shop assistant employed by a retail merchant was required to dress according to the standard detailed in the staff handbook. The prescribed dress standards were as follows:

'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).

64. 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

65. A deduction is not allowable for the purchase and maintenance costs of a non-compulsory uniform or wardrobe **unless** the conditions outlined in section 51AL of the Act are met. This section 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.

66. **Example:** Lena is a property manager with a large real estate company. She also works in the reception area for a number of hours each day. Reception staff wear a suit in the company's colours and monogrammed with the company logo. It is not compulsory for a staff member to wear the clothing but the employer encourages staff members to do so. A deduction for the cost of buying and maintaining the suit is allowable if the design is in the Register of Approved Occupational Clothing kept by the TCFDA or if the ATO has approved the design of the clothing under IT 2641. It is the employer who makes application to the TCFDA for registration of clothing.

Conventional clothing

67. The views of the Tax Office 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 27 and 28).

68. 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.

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69. 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.

70. Senior Member Barbour distinguished this case from the *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.'

71. 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.'

Laundry and maintenance

72. A deduction is allowable for the cost of cleaning and maintaining clothing that falls into one or more of the categories of deductible clothing listed in paragraph 50. This applies whether the clothing is purchased by the employee or supplied by the employer.

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

Club membership fees

74. A deduction is not allowable for club membership fees and club sponsorships as the expense is private.

75. Subsection 51AB(4) of the Act specifically denies a deduction for the cost of club membership or the right to enjoy the facilities of a club.

Computers and software

76. A deduction is allowable for depreciation of computers and software used for work-related purposes. If the software is purchased separately from the computer a deduction is allowable in full in the year of purchase. The deduction must be apportioned between work-related and private use. Paragraphs 86 to 96 provide further information on depreciation of equipment.

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

78. A deduction is allowable for interest on money borrowed to finance the purchase of a computer. The deduction must be apportioned to the extent to which the computer is used for private purposes.

Conferences, seminars and training courses

79. A deduction is allowable for the cost of attending conferences, seminars and training courses to maintain or increase the knowledge, ability or skills required by a real estate employee. There must be a relevant nexus with the work-related activities of the real estate employee.

80. In *FC of T v. Finn* (1961) 106 CLR 60; 12 ATD 348, an architect voluntarily studied architectural development overseas. The High Court held:

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'...a taxpayer who gains income by the exercise of his skill in some profession or calling and who incurs expenses in maintaining or increasing his learning, knowledge, experience and ability in that profession or calling necessarily incurs those expenses in carrying on his profession or calling...' (CLR at 70; ATD at 352).

81. A deduction is allowable for travel expenses (fares, accommodation and meal expenses), registration and conference materials' costs incurred in attending work-related conferences or seminars.

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

83. If part of the cost of a conference, seminar or training course represents the cost of food and drink that is provided, the cost is an allowable deduction according to the terms of section 51AE of the Act. Taxation Determination TD 93/195 explains the extent to which a seminar registration fee is an allowable deduction, according to section 51AE, if part of the fee represents the cost of food and drink provided at the seminar.

84. If the dominant purpose in incurring the cost is the attendance at the conference, seminar or training course then the existence of any private activity would be merely incidental and the cost would be fully deductible. If the attendance at the conference, seminar or training course is only incidental to a private activity (i.e. a holiday) then only the costs directly attributable to the conference, seminar or training course are an allowable deduction. The cost of accommodation, meals and travel directly relating to the private activity is not allowable under subsection 51(1) of the Act.

85. Information on *Self education expenses* can be found in Taxation Ruling TR 92/8 and in paragraphs 174 to 180 of this Ruling.

Depreciation of equipment

86. A deduction is not allowable under subsection 51(1) of the Act for the cost of equipment, as it is capital expenditure.

87. However, a deduction is allowable under subsection 54(1) for depreciation on equipment owned and used by a real estate employee for work-related purposes. In addition, a depreciation deduction is

allowable on items of 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.

88. 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.

89. Any 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 the item in the year that it is purchased. However, the item may be depreciated at a rate less than 100% if the taxpayer so elects (subsection 55(8) of the Act). Taxation Ruling IT 2685 lists the current depreciation rates.

90. **Example:** Hilary purchases a briefcase for \$250 that she uses only for work purposes to carry work-related forms, stationery, brochures, etc. The amount of \$250 is an allowable deduction.

91. If equipment is used partly in the course of employment 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).

92. **Example:** Jessica uses a computer to record client details and to run the software provided by a multi-listing service. Jessica's children also use the computer for school work and therefore the computer is used partly for work and partly for private purposes. The depreciation expense should be appropriately apportioned between the private and work-related uses.

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

94. **Example:** A bookshelf is purchased on 1 July 1991 for \$400. It is not used for work-related purposes until 1 July 1993. It is depreciated at a rate of 13.5% using the diminishing value method.

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

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96. An arbitrary figure is not acceptable when determining the value of equipment for depreciation purposes (*Case R62* 84 ATC 454; 27 CTBR (NS) *Case 113*). In determining the value of an item to be depreciated, its opening value is the original cost to the taxpayer less the amount of any depreciation that would have been allowed if the unit had been used, since purchase, to produce assessable income (see Taxation Determination TD 92/142).

Driver's licence

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

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

99. 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.

Fares

100. A deduction is allowable for the cost of using public transport for work-related travel (see ***Motor vehicle and other transport expenses***, paragraphs 132 to 157).

Fines

101. 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).

Functions

102. A deduction is not allowable for the cost of attending social functions.

103. Real estate employees often attend lunches or dinners where food and drink are provided.

104. A deduction for costs incurred in attending these functions, including accommodation or travel, is denied under section 51AE of the Act.

105. A deduction is not allowable for the cost of providing entertainment by way of food, drink or recreation (whether to the taxpayer or another person). This is irrespective of whether the attendance at these functions is in connection with the duties of any office or employment (subsections 51AE(3) and (4)).

106. In *Case Y11* 91 ATC 184; *AAT Case 6641* (1991) 22 ATR 3063, a senior officer in the Australian Defence Force involved in negotiations to buy defence equipment was denied a deduction for expenditure incurred in attending a range of lunches, cocktail parties, dinners and other forms of social contact relevant to the performance of his duties. Direct business was done on many of those occasions. It was held that subsection 51AE(4) of the Act operated to deny the claim. It did not matter that the expenditure was directly relevant to business transactions.

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

Gifts and Greeting cards

108. Real estate employees sometimes buy gifts for a client (e.g. at the conclusion of a sale). They also send greeting cards to clients to build or maintain goodwill.

109. A deduction is not allowable for the cost of gifts or greeting cards because it is a private expense. There is insufficient connection between these costs and income earning activities. These costs relate to personal choice.

Grooming

110. A deduction is not allowable for the cost of items bought for personal use such as cosmetics, shaving equipment, deodorant, hair products, clips and bobby pins, as they are private in nature. The character of these expenses is not altered by any requirement of the employer that these items be purchased (see *Cooper's* case discussed at paragraph 32).

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111. In *Case U216* 87 ATC 1214, a food and drink waitress was required by her employer to wear makeup while at work. The Tribunal found that the makeup was neither relevant nor incidental to the earning of her assessable income and the deduction was not allowed.

112. A deduction is not allowable for hairdressing expenses incurred by employees as they are considered to be an expense of a private nature.

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

114. In *Case L61* 79 ATC 488; 23 CTBR (NS) 73, an army officer was denied a deduction for his haircuts. It was held that although it was a condition of employment to be well groomed, the expense was private in nature.

Home office expenses

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

116. Key points include:

- (a) Costs associated with the home are normally of a private or domestic character (*Thomas v. FC of T* 72 ATC 4094; 3 ATR 165 and *FC of T v. Faichney* (1972) 129 CLR 38; 72 ATC 4245; 3 ATR 435 (*Faichney's case*)).
- (b) There are two exceptions. A deduction is allowable if:
 - (i) part of the home is used for income producing activities and has the character of a 'place of business'; or
 - (ii) part of the home is used in connection with the taxpayer's income-earning activities and does not constitute a 'place of business'.
- (c) There are two types of expenses associated with the home:
 - (i) ***Occupancy expenses*** relate to ownership or use of a home and are not affected by the taxpayer's income-producing activities. These include rent, mortgage interest, repairs to home, municipal and water rates and house insurance premiums.

- (ii) ***Running expenses*** relating to the use of facilities in the home and may be affected as a result of work related activities. These include heating/cooling and lighting expenses, cleaning costs, depreciation, leasing charges and the cost of repairs to furniture and furnishings in the home office.

A deduction is not allowable for the cost of occupancy expenses for real estate employees who maintain an office or study at home, if they carry out work-related activities at home as a matter of convenience. This is clearly established by the High Court decisions in *Handley v. FC of T* 81 ATC 4165; 11 ATR 644 and *Forsyth v. FC of T* 81 ATC 4157; 11 ATR 657.

Place of business

117. Whether an area of a home has the character of a 'place of business' is a question of fact. If a home has the character of a 'place of business', a deduction is allowable for a portion of running and occupancy expenses. Paragraphs 5, 7, 11, 12 and 13 of Taxation Ruling TR 93/30 provide information on whether or not an area set aside has the character of a 'place of business'. Whether or not an area of a home was a 'place of business' was also looked at in a recent case. In *Case 49/94* 94 ATC 429; *AAT Case 9749* (1994) 29 ATR, a sales representative claimed deductions for home office expenses. The Tribunal found that there was no evidence that the space used was dedicated to the business and separated from the rest of the home. It is not considered that a real estate employee, in their capacity as an employee, would use part of their home as a 'place of business'. However, a real estate employee may also conduct business from home.

118. If the area set aside has the character of a 'place of business', then a capital gain may accrue or capital loss may be incurred on the disposal of the dwelling by the taxpayer. The amount of the capital gain or capital loss will depend on the extent to which, and the period for which, the home was used for the purpose of gaining or producing assessable income (see Taxation Ruling IT 2673).

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

119. Real estate employees may maintain an office or study at home as a matter of convenience (i.e. so he or she can carry out work at home normally done at the place of employment). For example, a sales person may prepare advertisements for the sale of a client's property, or a property manager may complete a rental inspection report.

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120. A deduction is not allowable for running expenses if the real estate employee merely shares a room with his or her family (e.g. the lounge room) and at the same time does some work-related activity. Running expenses retain their private or domestic character (*Faichney's* case). If a real estate employee uses the room for work-related purposes at a time when others are not present, a deduction for running expenses is allowable.

121. A deduction is allowable for running expenses associated with the use of a separate room/study used for work-related activities.

122. This reflects the fact that additional running costs result from the taxpayer carrying out work at home. The extra expenditure must relate to facilities provided exclusively for the taxpayer's benefit while he or she works.

123. Paragraphs 24 and 25 of Taxation Ruling TR 93/30 set out a formula for calculating additional running expenses.

124. Deductibility of other expenses related to home offices such as depreciation are set out in paragraphs 86 to 96 of this Ruling.

Laundry

See ***Laundry and maintenance*** (paragraphs 72 and 73).

Letters of appointment registration fee

125. In New South Wales, under the Real Estate Industry (State) Award, copies of letters of appointment must be lodged with the Real Estate Employers Federation of NSW and with the Real Estate Association of NSW. The letters are lodged prior to commencement of work by the real estate employee. On lodgment, both the real estate employer and the employee pay a registration fee.

126. A deduction is not allowable for fees paid for registration of letters of appointment. The cost is incurred too soon to be regarded as a cost incurred in the course of gaining assessable income.

Meals

127. A deduction is not allowable for the cost of meals consumed by a real estate employee in the normal course of a working day. It is our view that the cost of meals will not have sufficient connection with the income producing activity and, in any case, the cost is a private expense and fails to meet the tests of deductibility described in paragraphs 23 to 35.

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

Hill J went on to say (ATC at 4415; ATR at 1638):

'Food and drink are ordinarily private matters, and the essential character of expenditure on food and drink will ordinarily be private rather than having the character of a working or business expense. However, the occasion of the outgoing may operate to give to expenditure on food and drink the essential character of a working expense in cases such as those illustrated of work-related entertainment or expenditure incurred while away from home.'

129. 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.

130. A deduction is generally not allowable for the cost of food or meals consumed while on duty. These costs fail to meet the tests of deductibility described in paragraphs 23 to 35, and are considered to be private in nature.

131. 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.

Motor vehicle and other transport expenses

132. Transport expenses include public transport fares, and the costs associated with using motor vehicles, motor cycles, bicycles, etc. They do not include meals, accommodation and incidental expenses (see ***Travel expenses*** at paragraphs 196 to 200).

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

Travel between home and work

134. A deduction is not allowable for the cost of travel by a real estate employee from home to his or her normal work place as it is generally considered to be a private expense. This principle is not altered by the performance of incidental tasks en route (see paragraph 34 of Taxation Ruling MT 2027).

135. The High Court considered travel expenses incurred between home and work in *Lunney's* case. A joint judgment by 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).

136. 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 to and from normal work place but transporting bulky equipment

137. 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.

138. **Example:** Warren, a salesperson, stores direction signs in his home garage to use for conducting property inspections that are open to the public. He places the signs at crossroads and street corners near the properties he displays. Warren drives from home to his city office carrying 3 direction signs to be used at an 'open home' later that day. As Warren is transporting bulky equipment, he can claim the cost of the travel from his home to the office.

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

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

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

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

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

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

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

143. 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).

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

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

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

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

147. If an employee lives at one of the places of employment or business a deduction may not be allowable as the travel is between home and work. It is necessary to establish whether the 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 employee's home is used in association with employment or business conducted elsewhere will not be sufficient to establish entitlement to a deduction for travel between two places of work (see Taxation Ruling IT 2199).

148. 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*).

149. 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.

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

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

Automobile club membership fees

152. A deduction is not allowable for automobile club membership fees as they are considered to be a private expense.

Car wash expenses

153. A deduction is allowable for the cost of cleaning a vehicle used for work.

Depreciation cost limit for motor vehicles

154. Section 57AF of the Act imposes a limit on the depreciable cost base of motor cars (including station wagons and four-wheel drive vehicles) if the acquisition cost is greater than a specified amount. The depreciable cost base limit applies to both new and second hand vehicles (see Taxation Ruling TR 93/24).

Calculation of motor vehicle balancing adjustment

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

Motor vehicle provided by employer

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

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

(see section 51AF of the Act).

157. Costs associated with the operation of the car such as parking fees and tolls are not precluded by the operation of section 51AF of the Act (see *Case Y43* 91 ATC 412; *AAT Case 7273* (1991) 22 ATR 3402). Parking fees and tolls are also discussed in paragraphs 125 and 166.

Newspapers

158. A deduction is generally not allowed for the cost of daily newspapers as it is ordinarily a private expense. A taxpayer may be

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able to use some part of the information in the course of his or her duties. In most circumstances the benefit gained is remote and the proportion of expenditure on newspapers that relates directly to the income earning activities is incidental to the private expenditure.

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

160. Support for this position is also found in the following cases: *Case K68* 78 ATC 667; 22 CTBR (NS) *Case 86*; *Case N67* 81 ATC 349; 25 CTBR (NS) *Case 18*; *Case P114* 82 ATC 586; 26 CTBR (NS) *Case 47* and *Case P124* 82 ATC 629; 26 CTBR (NS) *Case 55*.

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

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

163. A deduction is allowable for a portion of the cost of the Wednesday, Saturday and Sunday papers. A deduction is not allowable for the cost of the newspapers for the other days of the week. The expenditure on newspapers on those days is considered to be too remote from the work-related activities and is wholly private.

Parking fees and tolls

164. A deduction is allowable for parking fees (but not fines) and tolls if the expense is 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 a real estate employee for certain car parking expenses where the conditions outlined in section 51AGA of the Act are met.

165. A deduction is not allowable for parking fees and tolls incurred when real estate employees are travelling between their home and their normal place of employment. The cost of that travel is a private expense and the parking fees retain that character (see exception in paragraphs 137 to 139).

Police clearance certificates

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

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

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

Property presentation costs

169. A deduction is allowable for costs incurred by real estate employees in presenting a property for sale, e.g. replacing cracked window panes, lawn mowing, repairs to door locks, etc.

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

171. To ensure the sale is not held up Jenny pays for the repair herself. If neither the vendor client nor the employer reimburses Jenny, she can claim the cost of the repair as a deduction.

172. **Example:** Tim omitted to include a 'white ant' clause in the sale contract for his client's property. The purchasing client stated they would only put in an offer on the understanding that a white ant clearance certificate was obtained. Tim contracted with a local pest company to carry out the inspection. He paid for the cost of the inspection and did not receive any reimbursement. A deduction is allowable for the expense.

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Referral expenses

173. A deduction is allowable for payments for the referral of successful business.

Self education expenses

174. 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 an employee's income-earning activities are based on skill/knowledge and the education enables him or her to maintain or improve that skill/knowledge.
- (b) A deduction is allowable if the education is likely to lead to an increase in the employee's income from his or her current income-earning activities.
- (c) A deduction is not allowable if the education is designed to enable a taxpayer 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.

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

176. 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

177. 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) of the Act);
- (b) meals purchased by a taxpayer while attending a course at an educational institution other than as part of travel expenses.

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Limit on deductibility

178. 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.

179. '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.

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

Stationery

181. A deduction is allowable for the cost of purchasing street directories, log books, diaries, business cards, pens, etc., used for work-related purposes.

Technical or professional publications

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

183. 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).

184. This can be contrasted with *Case R70* 84 ATC 493; 27 CTBR (NS) *Case 124*, where an accountant employed with the Public Service was allowed a deduction for the cost of publications produced by a business and law publisher. The 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

Cost of calls

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

186. 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.

Telephone, mobile phone, pager, beeper and other telecommunications equipment installation or connection costs

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

188. 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

189. The situations where telephone rental will be an allowable deduction, especially for real estate employees, are identified in Taxation Ruling IT 85. It states that taxpayers, who are either 'on call'

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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.

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

191. 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:

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

Silent telephone number

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

Tolls

193. A deduction is allowable for bridge and road tolls paid by a real estate employee when travelling in the course of employment. (See also ***Parking fees***, paragraphs 164 and 165).

Tools and equipment

194. A deduction is allowable for depreciation of the cost of tools and equipment e.g. tape measures, cameras, tools for placing signs, etc. An individual tool or piece of equipment bought after 1 July 1991 is able to be depreciated at a rate of 100% if its cost is \$300 or less or its effective life is less than three years. (See ***Depreciation of equipment***, paragraphs 86 to 96). A deduction is allowable for the cost of repairs to tools and equipment.

Travel Expenses

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

196. A deduction is allowable for the cost of travel expenses incurred by a real estate employee when travelling in the course of employment, e.g. travel interstate to attend a seminar interstate or work at another work place.

197. If a real estate employee receives a travel allowance that the Commissioner considers reasonable, a deduction is allowable for travel expenditure incurred. No substantiation is required if the deduction claimed is equal to or less than the reasonable travel allowance.

198. If the real estate employee 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.

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

Accompanying relatives' travel expenses

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

Union fees and professional association fees

201. A deduction is allowable for the cost of union or professional association fees. A deduction is not allowable for contributions to staff social clubs or associations. Taxation Ruling IT 327 provides further information on the deductibility of union and professional association fees.

Wages

202. A deduction is not allowable for wages paid to family members and other persons. These expenses are considered to be of a private nature. This view is supported in *Case M55* 80 ATC 366; 24 CTBR (NS) *Case 30*; *Case Q80* 83 ATC 409; 27 CTBR (NS) *Case 8* and *Case N87* 81 ATC 466; 25 CTBR (NS) *Case 39*.

203. Dr G W Beck (Member) said (ATC at 368; CTBR(NS) at 242):

'It seems to me a taxpayer who derives his income as an employee has very great difficulty in obtaining a sec. 51 deduction for payments of the kind involved here, be those payments to wives or to unrelated persons. If an employee pays another party to render some of the service for which the employee is paid this expenditure is not a cost of deriving the income... all expenditure of this kind is private and hence specifically excluded by sec. 51. I really cannot envisage any

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circumstances in which payments would not classify as private expenditure, but there might be some.'

204. **Example:** Emily, a real estate employee, employs her husband Emmanuel to place 'for sale' signs on the properties she has listed and to deliver advertising literature to households in her district on the first day of each month. Emily pays Emmanuel a reasonable hourly rate. A deduction is not allowable for the cost of Emmanuel's wages.

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Your comments

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

31 March 1995

to:

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Attention: Mrs Elizabeth Davis.

Commissioner of Taxation

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