TR 95/10 - Income tax: employee shop assistants - allowances, reimbursements and work-related deductions

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Taxation Ruling

Income tax: employee shop assistants - allowances, reimbursements and work-related deductions

other Rulings on this topic

IT 85; IT 112; IT 299; IT 327; IT 2062; IT 2084; IT 2197; 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 94/3; TR 94/22; TR 94/23; TR 96/16; TD 92/142; TD 92/154; 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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*This Ruling, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Ruling is a public ruling and how it is binding on the Commissioner.*

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

What this Ruling is about

Class of person/arrangement

1. This Ruling applies to employee shop assistants. For the purposes of this Ruling a shop assistant is a person working in retail outlets such as department stores, supermarkets, clothing and other fashion stores, shoe stores, 'corner' stores, hardware stores and chemists.

2. The Ruling does not cover commission and travelling sales staff and those working in premises primarily providing takeaway and restaurant meals.

3. This Ruling deals with:

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

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

4. 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).

5. 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 51AE, 51AGA, 51AH, 51AL, 53, 54, 55, 57AF, 61 or 82A of the Act.

6. The tax treatment of allowances and reimbursements received is examined at paragraphs 12 to 26 in the **Ruling** section.

7. The common work-related expenses incurred by employee shop assistants and the extent that they are allowable deductions are discussed, in alphabetical order, at paragraph 29 in the **Ruling** section. The substantiation provisions are not discussed in depth in this Ruling.

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

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

Date of effect

10. 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).

11. 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

12. The receipt of an allowance does not automatically entitle an employee shop assistant to a deduction. The term 'allowance' does not include a reimbursement (see paragraphs 23 to 26).

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

(a) fully assessable to the employee with a possible deduction allowable, depending upon individual circumstances (paragraph 15);

(b) fully assessable to the employee with no deduction allowable even though an allowance is received (paragraphs 16 to 19);

(c) fully assessable to the employee with a deduction allowable for expenses incurred subject to special substantiation rules (paragraphs 20-22);

(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 employee shop assistants).

14. Allowances commonly received by employee shop assistants and their tax treatments are listed below. Not all allowances are paid in all States and Territories.

Allowances - possible deduction

15. ***Laundry allowance:*** This allowance is paid to employee shop assistants for the cost of cleaning compulsory uniforms and protective clothing. This allowance must be included in assessable income. For the deductibility of expenses against this allowance see ***Laundry and maintenance of clothing, uniforms and footwear***, paragraphs 78 and 79.

Allowances - no deduction allowable

16. The following allowances commonly received by employee shop assistants are paid for carrying out work that may be considered unpleasant, special or dangerous, in recognition of holding special skills, or to compensate for industry peculiarities. The allowances are fully assessable and no deduction is allowable.

17. ***Cold work disability allowance:*** This allowance is paid to employee shop assistants required to work principally in refrigerated storages. This allowance must be included in assessable income. A deduction is not allowable against this allowance.

18. ***First aid allowance:*** This allowance is paid to holders of first aid certificates who are appointed by their employers to carry out first aid duties. This allowance must be included in assessable income. A deduction is not allowable against this allowance. A deduction is allowable if it is necessary for an employee shop assistant, as a designated first aid person, to undertake first aid training to assist in emergency work situations. If the cost of the course is met by the employer, or is reimbursed to the shop assistant, no deduction is allowable.

19. ***Language allowance:*** This allowance is paid if an employee shop assistant is required to speak a language other than English for the purpose of making sales. This allowance must be included in assessable income. A deduction is not allowable against this allowance.

Allowances - deduction allowable

20. ***Overtime meal allowance:*** This allowance must be included in assessable income. A deduction is allowable for the cost of meals bought while working overtime if an award overtime meal allowance is received provided the expenditure is not private in nature (paragraphs 154 to 157). Special substantiation rules apply. Allowances paid because ordinary working hours fall during Saturday, Sunday or late night weekday trading are not overtime meal allowances and associated meal expenses are not allowable deductions.

21. ***Vehicle/locomotion allowance:*** This allowance is paid if an employee shop assistant uses their own vehicle for work purposes. This allowance must be included in assessable income. A deduction is allowable for work-related motor vehicle expenses (see ***Motor vehicle and other transport expenses***, paragraphs 126 to 152).

Reasonable allowances

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

(a) overtime meal expenses;

(b) domestic travel expenses; and

(c) overseas travel expenses.

Allowances received in relation to these expenses are fully assessable. If an allowance is received and the amount of the claim for expenses **incurred** is no more than the reasonable amount, substantiation is not required. If the deduction claimed is more than the reasonable amount, the whole claim must be substantiated, not just the excess over the reasonable amount.

Reimbursements

23. If an employee shop assistant receives a payment from his or her employer for **actual** expenses incurred, the payment is a reimbursement and the employer may be subject to Fringe Benefits

Tax. Generally, if an employee shop assistant 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).

24. However, if motor vehicle expenses are reimbursed by an employer on a cents per kilometre basis, the amount is included as assessable income of the employee shop assistant under paragraph 26(eaa) of the Act. A deduction may be allowable in relation to motor vehicle expenses incurred (see ***Motor Vehicle and other transport expenses***, paragraph 126 to 152).

25. 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 employee shop assistant for depreciation (see Taxation Determination TD 93/145 and ***Depreciation of equipment***, paragraphs 91 to 98).

26. If a payment is received from an employer for an **estimated** expense, the amount received by the employee shop assistant is considered to be an allowance (not a reimbursement) and is fully assessable to the employee shop assistant (see **Allowances**, paragraphs 12 to 22).

Deductions

27. A deduction is only allowable if an expense:

(a) is actually incurred (paragraph 31);

(b) meets the deductibility tests (paragraphs 32 to 38); and

(c) satisfies the substantiation rules (paragraphs 39 and 40).

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

29. The common work-related expenses incurred by employee shop assistants and the extent that they are allowable deductions are discussed below, in alphabetical order.

Answering machines, beepers, mobile phones, pagers and other telecommunications equipment: A deduction is allowable for the work-related portion of the rental cost or for depreciation on the purchase price of these items. A deduction is not allowable if these items are supplied by the employer (see also ***Depreciation of equipment***, paragraphs 91 to 98).

Bank fees: A deduction is allowable, as a work-related expense, for Financial Institutions Duty that relates to the direct depositing of salary and wages into the employee shop assistant's bank account(s).

A deduction is not allowable for any other bank fees as a work-related expense (Taxation Ruling IT 2084).

Calculators and electronic organisers: A deduction is allowable for the work-related portion of depreciation on the purchase price of these items (paragraphs 41 to 43). See also ***Depreciation of equipment*** (paragraphs 91 to 98).

Child care expenses: A deduction is not allowable for child care expenses (paragraphs 44 to 46).

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

(a) protective;

(b) occupation specific;

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

(d) non-compulsory and entered on the Register of Approved Occupational Clothing or approved in writing by the ATO before 1 July 1995. These transitional arrangements cease to have effect from 1 July 1995. A deduction will not be allowable for expenditure incurred after 30 June 1995 in relation to clothing approved under the transitional arrangements; or

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

Expenditure on clothing, uniforms and footwear must satisfy the deductibility tests in subsection 51(1) and must not be private or domestic in nature (paragraphs 47 to 79).

A deduction is not allowable for the cost of conventional clothing that is a specific colour or style (preferred dress) (paragraphs 64 to 72).

A deduction is not allowable for the cost of conventional clothing even if the employer requires the employee shop assistant to wear it (paragraphs 64 to 72).

Expenditure on conventional shoes (e.g., running or aerobic shoes, sports shoes, dress shoes and casual shoes) is not an allowable deduction under subsection 51(1) of the Act. A deduction is allowable for the cost of special non-slip footwear (paragraphs 50 and 51).

Expenditure on shoes, socks and stockings may give rise to a deduction where they form an integral part of a compulsory and distinctive uniform, the components of which are set out by the employer in its expressed uniform policy or guidelines. The

employer's uniform policy or guidelines should stipulate the characteristics of the shoes, socks and stockings that qualify them as being a distinctive part of the compulsory uniform, e.g., colour, style, type, etc. The wearing of the uniform must also be strictly and consistently enforced with breaches of the uniform policy giving rise to disciplinary action. These latter factors reflect the fact that image is of critical importance to the particular employer (paragraph 58A; also see Taxation Ruling TR 96/16).

Computers and software: A deduction is allowable for depreciation on the cost of computers and related software, if purchased together, that are used for work-related purposes. If the related 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 70 to 82).

Conferences, seminars and training courses: A deduction is allowable for the cost of attending conferences, seminars and training courses to maintain or increase the knowledge, ability or skills required by an employee shop assistant in their current work activities (paragraphs 83 to 90).

Depreciation of equipment: A deduction is allowable for depreciation to the extent of the work-related use of the equipment. Any item of equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less, or if its effective life is less than three years (paragraphs 91 to 98).

Driver's licence: A deduction is not allowable for the cost of acquiring or renewing a driver's licence. A deduction is allowable only for the cost of a premium, if any, that is paid in addition to the cost of a standard licence required for work purposes (paragraphs 99 to 103).

Fares: A deduction is allowable for the cost of using public transport for work-related travel (paragraph 104). See ***Motor vehicle and other transport expenses*** (paragraphs 126 to 152).

Fines: A deduction is not allowable for fines imposed under a law of the Commonwealth, a State, a Territory, a foreign country, or by a court (paragraph 105).

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

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

glasses is an allowable deduction (paragraph 106). See ***Protective equipment*** (paragraphs 49 to 53).

Grooming: A deduction is not allowable for the cost of grooming, including cosmetics, hair and skin care (paragraphs 107 to 112).

Home office expenses: See paragraphs 113 to 119.

Place of business: A deduction is allowable for a proportion of the running and occupancy expenses if an area of the home has the character of a 'place of business' (paragraphs 114 to 116).

Private study: A deduction is allowable for the running expenses of a private study used for work performed at home (paragraphs 117 to 119).

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

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 78 and 79).

Meals: A deduction is not allowable for the cost of meals eaten during a normal working day (paragraphs 120 to 125). A deduction may be allowable if an award overtime meal allowance has been paid (see paragraphs 154 to 157).

Motor vehicle and other transport expenses: Transport expenses include public transport fares, and the costs associated with using motor vehicles, motor cycles, bicycles, etc., for work-related travel. They do not include accommodation, meals and incidental expenses (see ***Travel expenses*** at paragraphs 187 to 191). The treatment of motor vehicle and other transport expenses incurred by an employee shop assistant when travelling is considered below.

Travel between home and work: A deduction is not allowable for the cost of travel between home and the normal work place as it is generally considered to be a private expense. This principle is not altered by the performance of incidental tasks en route and the principle is not changed if the travel is outside normal working hours or includes a second or subsequent trip (paragraphs 127 to 132).

Travel between home and the normal work place - 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. A deduction is not allowable if the equipment is transported to and from work by the employee shop assistant as a matter of convenience.

A deduction is not allowable if a secure area for the storage of equipment is provided at the work place. (see paragraphs 133 and 135).

Travel between two separate work places if there are two separate employers involved: A deduction is allowable for the cost of travelling directly between two places of employment (paragraphs 136 and 137).

Travel from the normal work place to an alternative work place while still on duty and back to the normal work place or directly home: A deduction is allowable for the cost of travel from the normal work place to other work places. A deduction is also allowable for the cost of travel from the alternative work place back to the normal work place or directly home. This travel is undertaken in the course of gaining assessable income and is allowable as a deduction (paragraphs 138 to 140).

Travel from home to an alternative work place for work-related purposes and then to the normal work place or directly home: A deduction is allowable for the cost of travel from home to an alternative work place and then on to the normal work place or directly home (paragraphs 141 and 142).

Travel between two places of employment or between a place of employment and a place of business: A deduction is allowable for the cost of travelling directly between two places of employment or a place of employment and a place of business, provided that the travel is undertaken for the purpose of carrying out income-earning activities (paragraphs 143 to 149).

Travel in connection with self education: See ***Self education expenses*** (paragraphs 162 and 163).

Depreciation cost limit for motor vehicles: Section 57AF of the Act imposes a limit on the depreciable cost base of motor vehicles (paragraph 151).

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) (paragraph 152).

Newspapers: A deduction is not allowable for the cost of newspapers (see paragraph 153).

Overtime meal expenses: A deduction is allowable for the cost of meals bought while working overtime if an award overtime meal allowance is received. Special substantiation rules apply (paragraphs 154 to 157).

Parking fees and tolls: A deduction is allowable for parking fees (but not fines), bridge and road tolls paid by an employee shop assistant while travelling in the course of employment, e.g., between shops (paragraphs 158, 159 and 185).

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 employee shop assistant's current income-earning activities. Self education costs can include fees, travel, books and equipment (paragraphs 160 to 164).

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 165 to 173).

Technical or professional publications: A deduction is allowable for the cost of buying or subscribing to journals, periodicals and magazines that have a content specifically related to employee shop assistants and are not general in nature (paragraphs 174 to 177).

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

Cost of calls: A deduction is allowable for the cost of work-related calls (paragraphs 178 and 179).

Installation and connection costs: A deduction is not allowable for the cost of installing or connecting a telephone, etc. (paragraphs 180 and 181).

Rental costs: A deduction is allowable for a proportion of telephone/equipment rental costs if the employee shop assistant can demonstrate that he or she is 'on call', or required to telephone their employer on a regular basis (paragraphs 182 and 183).

Silent telephone numbers: A deduction is not allowable for the cost of obtaining a silent telephone number (paragraph 184).

Tools and equipment: A deduction is allowable for depreciation of the cost of tools and equipment. Items bought after 1 July 1991 can be depreciated at a rate of 100% if the cost of a particular item is $300 or less, or its effective life is less than three years (paragraphs 91 to 98). 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 186).

Travel expenses: A deduction is allowable for the cost of travel expenses (fares, accommodation, meals and incidentals) incurred by

an employee shop assistant when travelling in the course of employment, e.g., to a conference interstate (paragraphs 187 and 191). Special substantiation rules apply (paragraphs 188 to 191).

Union or professional association fees: A deduction is allowable for annual fees paid to unions and professional associations, although a deduction is not allowable for joining fees. A deduction is not generally allowable for levies (paragraphs 192 and 193). A deduction is not allowable for contributions to staff social clubs or associations.

Explanations

Deductibility of work-related expenses

30. 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

31. The expense must actually be incurred by the employee shop assistant to be considered for deductibility. A deduction is not allowable for expenses not incurred by an employee shop assistant, e.g., if items are provided free of charge. Under section 51AH of the Act, a deduction is not generally allowable if expenses are reimbursed (see paragraphs 23 to 26 for exceptions to this rule).

Expense meets deductibility tests

32. 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.'

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

(a) it must have the **essential character** of an outgoing incurred in gaining assessable income or, in other words,

of an income-producing expense (*Lunney v. FC of T; Hayley v. FC of T* (1958) 100 CLR 478; 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); and

(c) it is necessary to determine the **connection** between the particular outgoing and the operations or activities by which the taxpayer most directly gains or produces his or her assessable income (*Charles Moore & Co (WA) Pty Ltd v. FC of T* (1956) 95 CLR 344; 11 ATD 147; 6 ATR 379; *FC of T v. Cooper* (1991) 29 FCR 177; 91 ATC 4396; (1991) 21 ATR 1616 (*Cooper's* case); *Roads and Traffic Authority of NSW v. FC of T* (1993) 43 FCR 233; 93 ATC 4508; (1993) 26 ATR 76; *FC of T v. Hatchett* (1971) 125 CLR 494; 71 ATC 4184; (1971) 2 ATR 557 (*Hatchett's* case)).

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

(a) private or domestic in nature (e.g., 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., expenses related to income from membership of the Army Reserve).

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

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

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

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

38. In *Cooper's* case a professional footballer was denied the cost of purchasing food and drink. His coach had instructed him to consume additional food so he would not lose weight during the football season. The character of the expense was private.

In *Cooper's* case, Hill J said (FCR at 200; ATC at 4414; ATR at 1636):

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

Expense satisfies the substantiation rules

39. The income tax law requires substantiation of certain work-related expenses. If the total of these expenses is $300 or less, the employee shop assistant can claim the amount without getting written evidence (except for certain car, travel allowance and meal allowance expenses), although a record must be kept of how the claim was calculated.

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

Common work-related expense claims

Calculators and electronic organisers

41. A deduction is allowable for the work-related portion of depreciation of the cost of calculators and electronic organisers used for work-related activities. If the cost of the item is less than $300, or the effective life of an item is less than three years, an outright deduction is allowable. If the cost of the item is more than $300 or the effective life of the item is more than three years, the item should be depreciated (see also ***Depreciation of equipment***, paragraphs 91 to 98).

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

43. A deduction is allowable for an employee shop assistant who is supplied with a calculator or work organiser but chooses to purchase his or her own.

Child care

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

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

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

Clothing, uniforms and footwear

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

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

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

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

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

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

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

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

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

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

(iii) the expenditure is not of a private nature

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

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

Protective clothing

49. Employee shop assistants may be provided with protective clothing by their employer (e.g., a dustcoat for the protection of their conventional clothing). Employee shop assistants may also buy additional items of protective clothing and the cost of this clothing is an allowable deduction under subsection 51(1) of the Act.

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

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

52. A deduction is not allowable for the cost of items that provide protection from the natural environment (e.g., sunglasses, sunhats, sunscreen, wet weather gear and thermal underwear). The cost of these items is considered to be a private expense. This view is supported in *Case Q11* 83 ATC 41; (1983) 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).

53. In *Case Q11* the taxpayer was a self-employed lawn mowing contractor. Amongst other things, he claimed the cost of transistor batteries and sun screen 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 30 to 38 applied.

Occupation Specific Clothing

54. 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.

55. It is not considered that employee shop assistants would wear occupation specific clothing.

Compulsory uniform or wardrobe

56. 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.

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

58. In *Case R55* 84 ATC 411; 27 CTBR (NS) *Case 109*, it was concluded (ATC at 416; CTBR at 874) 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'.

58A. Expenditure on shoes, socks and stockings is essentially of a private nature and, even when these items are worn at the request of the employer, their cost will only be deductible in limited circumstances. To qualify for deduction, the items must firstly form an integral part of a distinctive and compulsory uniform the components of which are set out by the employer in its expressed uniform policy or guidelines (see paragraphs 56 and 57). In addition, the employer's uniform policy or guidelines should stipulate the characteristics of the shoes, socks and stockings that qualify them as being a distinctive part of the compulsory uniform, e.g., colour, style, type, etc. The wearing of the uniform must also be strictly and consistently enforced, with breaches of the uniform policy giving rise to disciplinary action. It is only in strict compulsory uniform regimes

that expenditure on shoes, socks and stockings is likely to be regarded as work-related rather than private in nature (see Taxation Ruling TR 96/16).

59. 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).

60. 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

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

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

63. **Example:** Gary is a shop assistant who works in a sport store where staff may wear a tracksuit monogrammed with the store logo. It is not compulsory for Gary to wear the clothing but he is encouraged to do so. A deduction for the cost of buying and maintaining the tracksuit is allowable if the design is entered on the Register of Approved Occupational Clothing or if the design of the

clothing is approved in writing by the ATO under the transitional arrangements. It is the employer who seeks registration of the clothing.

Conventional clothing

64. The views of the ATO on the treatment of costs of buying and maintaining conventional clothing are set out in Taxation Ruling TR 94/22. That Ruling sets out our views on the implications of the decision of the Full Federal Court of Australia in *Edwards* case. Ms Edwards was the personal secretary to the wife of a former Queensland Governor. She was able to establish that her additional clothing expenses were allowable in her particular circumstances. In most cases, expenses for conventional clothing will not meet the deductibility tests of subsection 51(1) of the Act as they are of a private nature (see also paragraphs 32 to 38).

65. 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.

66. 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.

67. Senior Member Barbour distinguished this case from the *Edwards* case on the basis of the emphasis placed by the Tribunal and Court on Ms Edwards' additional changes of clothes throughout a work day - a fact not present in this one - and found the essential character of the expense to be private, saying (ATC at 427; ATR at 1083):

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

Senior Member Barbour went on to say (ATC at 428; ATR at 1084):

> 'For it was essential that the applicant wear something to her income-producing activities...the applicant's clothing needed to be suitable for the purpose of wearing to that presentation, but this does not change its character to a business expense, and I would find that the nature of the expense is essentially private.'

68. 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.'

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

70. In certain men's and women's clothing stores the employer requires that staff wear clothing from their range. The fact that the shop assistant is required or encouraged to buy this clothing does not convert the expense into an allowable deduction. It is our view that expenditure in these circumstances is not incurred in gaining and producing assessable income and is of a private nature.

71. If conventional clothing is damaged in an accident at work it does not convert the cost of clothing into an allowable deduction.

72. **Example:** Janet spills ink on her floral dress while working in the gift shop. A deduction is not allowable for the cost of buying, cleaning, repairing or replacing the dress.

Stockings

73. The cost of stockings will only be deductible in limited circumstances. These circumstances are described in paragraph 58A (also see Taxation Ruling TR 96/16).

74. [Deleted]

75. In *Case N97* 81 ATC 521; 25 CTBR(NS) *Case 50* (which involved a registered nurse), Dr Gerber (Member) stated that:

> 'Stockings, by their very nature, are part of conventional attire - whether worn under protest or otherwise...' (ATC at 524; CTBR at 369).

76. In *Case H32* 76 ATC 280; 20 CTBR(NS) *Case 85*, the expense for stockings damaged at work was not allowed. In that case it was stated:

> 'True, it is damage that 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...' (ATC at 282; CTBR at 909).

77. In *Cooper's* case, Hill J said:

> '...the fact that the employee is required, as a term of his employment, to incur particular expenditure does not convert expenditure that is not incurred in the course of the income-producing operations into a deductible outgoing' (ATC at 4414; ATR at 1636).

Laundry and maintenance

78. 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 47. This applies whether the clothing is purchased by the employee shop assistant or supplied by the employer.

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

Computers and software

80. A deduction is allowable under subsection 54(1) of the Act for depreciation of computers and related software that is used for work-related purposes. If the software is bought separately from the computer a deduction is allowable in full in the year of purchase. The deduction must be apportioned between work-related and private use (paragraphs 91 to 98 of this Ruling provide further information on ***Depreciation of equipment***).

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

82. A deduction is allowable for interest paid on money borrowed to finance the purchase of a computer. The deduction must be

apportioned to the extent that the computer equipment is used for private purposes.

Conferences, seminars and training courses

83. A deduction is allowable for the cost of attending conferences, seminars and training courses to maintain or increase the knowledge, ability or skills required by an employee shop assistant. There must be a relevant connection between the conference, seminar or training course and the current income-earning activities of the employee shop assistant.

84. In *FC of T v. Finn* (1961) 106 CLR 60; 12 ATD 348, an architect voluntarily studied architectural development overseas. The High Court held (CLR at 70; ATD at 352) that:

> '...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...'

85. A deduction is allowable for travel expenses (fares, accommodation and meal expenses), registration and conference material costs incurred in attending work-related conferences or seminars (paragraphs 187 to 191).

86. If part of the cost of a conference, seminar or training course represents the cost of food and drink that is provided, the cost is only an allowable deduction according to the terms of section 51AE of the Act.

87. Taxation Determination TD 93/195 explains the extent to which a seminar registration fee is an allowable deduction, according to section 51AE of the Act, in circumstances where part of the fee represents the cost of food and drink provided at the seminar.

88. **Example:** Juanita is a shop assistant who attends a sales training seminar delivered by a visiting presenter at a venue located away from Juanita's workplace. The seminar registration fee of $150 paid by her includes an amount for morning and afternoon tea and a light lunch. The registration fee is an allowable deduction.

89. 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 (e.g., a holiday) then only the costs directly attributable to the conference, seminar or training course are an allowable deduction. The cost of

accommodation, meals and travel directly relating to the private activity is not allowable under subsection 51(1) of the Act.

90. Information on ***Self education expenses*** can be found in Taxation Ruling TR 92/8 and at paragraphs 160 to 173 of this Ruling.

Depreciation of equipment

91. A deduction is not allowable under subsection 51(1) of the Act for the cost of equipment, as it is considered to be a capital expense.

92. A deduction is allowable under subsection 54(1) of the Act for depreciation of equipment owned and used by an employee shop assistant for income-producing purposes. In addition, a deduction is also allowable for depreciation on items of equipment that are not actually used during the year for income-producing purposes, but are installed ready for use for that purpose and held in reserve.

93. There are two methods to calculate depreciation. These are the prime cost method and the diminishing value method. Depreciation using the prime cost method is calculated as a percentage of the cost of the equipment. Depreciation using the diminishing value method is calculated initially as a percentage of the equipment's cost and thereafter as a percentage of the written down value.

94. Any item of equipment bought on or after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less, or if its effective life is less than three years (section 55 of the Act). This means an immediate deduction is available for the cost of the item in the year in which it is purchased. However, the item may be depreciated at a rate less than 100% if the taxpayer so elects (subsection 55(8) of the Act). The current depreciation rates are set out in Taxation Ruling IT 2685.

95. **Example:** Pedro is a shop assistant who works in a hardware store. As many of the items for sale are charged at a certain price per metre, Pedro needs a calculator to calculate prices for customers on the length they have selected. Pedro purchases a calculator for $50. As the item cost $300 or less, he is entitled to depreciate the calculator at 100%, and can claim $50 in the year of purchase. This assumes that the calculator is only used for work purposes.

96. If equipment is used partly in the course of employment and partly for other purposes, then the depreciation should be apportioned based on an estimate of the percentage of income-producing use (section 61 of the Act).

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

98. 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

99. 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.

100. 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.

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

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

103. **Example:** Andrew works in a landscaping supplies store and requires an endorsement to drive the store truck to make deliveries to customers. The cost of the standard licence is not an allowable deduction. It is only the additional premium paid that is an allowable deduction. However, a deduction is not allowable for the cost of the lessons taken in obtaining the licence as these costs are a capital expense.

Fares

104. A deduction is allowable for the cost of using public transport for work-related travel (see ***Motor vehicle and other transport expenses***, paragraphs 126 to 152).

Fines

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

Glasses and contact lenses

106. A deduction is not allowable for the cost of buying prescription glasses or contact lenses as the expense relates to a personal medical condition and is private in nature. A deduction is allowable for the cost of safety glasses used for work-related purposes.

Grooming

107. 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 in paragraph 38).

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

109. A deduction is not allowable for hairdressing expenses incurred by employee shop assistants as they are considered to be expenses of a private nature.

110. 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.

111. In *Case L61* 79 ATC 488; 23 CTBR (NS) *Case 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.

112. **Example:** Cleo works in a chemist shop selling cosmetics and other products. In order to demonstrate the products, Cleo's employer requires her to wear the brand of make-up sold in the shop. A deduction is not allowable for the cost of the make-up as it is a private expense, even though her employer specifies the brand to be worn and

irrespective of whether Cleo normally wears make-up outside work hours.

Home office expenses

113. A comprehensive explanation of the treatment of home office expenses is contained in Taxation Ruling TR 93/30. 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-producing 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*** relate to the use of facilities in the home and may be affected as a result of income-producing 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 employee shop assistants who maintain an office or study at home, if they carry out income-producing activities at home as a matter of convenience. This is clearly established by the High Court in *Handley v. FC of T* (1981) 148 CLR 182; 81 ATC 4165; 11 ATR 644 and *FC of T v. Forsyth* (1981) 148 CLR 203; 81 ATC 4157; 11 ATR 657.

Place of business

114. 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 both the 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'. It is not considered that an employee shop assistant, in their capacity as an employee, would use part of their home as a 'place of business'. However, an employee shop assistant may also conduct a business from home.

115. **Example:** Lam is an employee shop assistant who also gives piano lessons in a room at his home that he uses exclusively for this purpose. The room is 10% of the home, based on floor area. He receives tuition fees for these music lessons. Lam is entitled to a deduction for a portion of the running expenses and 10% of the occupancy expenses provided the room is characterised as a 'place of business'. However, if the room is also used for private or domestic purposes only a proportion of the running expenses is an allowable deduction.

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

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

117. Employee shop assistants may maintain an office or study at home. For example, a shop assistant may prepare rosters at home.

118. A deduction is not allowable for running expenses if the employee shop assistant 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 (see *Faichney's* case). A deduction for running expenses is allowable if the employee shop assistant uses the room for work-related purposes at a time when others are not present. Paragraphs 24 and 25 of Taxation Ruling TR 93/30 set out a formula for calculating additional running expenses.

119. A deduction is allowable for the additional running expenses associated with the use of a separate room used for income-earning activities. This reflects the fact that running costs of that part of the home result from the employee shop assistant carrying out work at home. The extra expenditure must relate to facilities provided exclusively for the employee shop assistant's benefit while he or she works. To calculate additional running expense resulting from using the home study/office for work-related purposes, see paragraphs 19 to 25 of Taxation Ruling TR 93/30.

Meals

120. A deduction is not allowable for the cost of meals consumed by employee shop assistants 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 32 to 38 of this Ruling.

121. The Full Federal Court considered the deductibility of food costs in *Cooper's* case. In that case, a professional footballer had been instructed to consume large quantities of food during the off-season to ensure his weight was maintained. By majority, the Full Federal Court found that the cost of additional food to add to the weight of the taxpayer was not allowable. Hill J said (FCR at 199-200; ATC at 4414; ATR at 1636):

> 'The income-producing activities to be considered in the present case are training for and playing football. It is for these activities that a professional footballer is paid. The income-producing activities do not include the taking of food, albeit that unless food is eaten, the player would be unable to play. Expenditure on food, even as here "additional food" does not form part of expenditure related to the income-producing activities of playing football or training.'

Hill J went on to say at (FCR at 201; ATC at 4415; ATR at 1638):

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

122. 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.

123. 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 32 to 38, and are considered to be private in nature.

124. 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.

125. A deduction is allowable for the cost of meals bought while working overtime if an award overtime meal allowance has been paid (paragraphs 154 to 157).

Motor vehicle and other transport expenses

126. Transport expenses include public transport fares, and the costs associated with using motor vehicles, motor cycles, bicycles, etc. They do not include accommodation, meals and incidental expenses (see ***Travel expenses***, paragraphs 187 to 191). The treatment of motor vehicle and other transport expenses incurred by an employee shop assistant when travelling is considered below.

Travel between home and work

127. A deduction is not allowable for the cost of travel by an employee shop assistant 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 (paragraph 34 of Taxation Ruling MT 2027).

128. 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 (CLR at 498-499; ATD at 412-413) that:

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

129. 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.

130. **Example:** Suzie works in a hardware store and is required to attend a staff meeting at 7.30 pm. She returns home after her normal shift. After dinner, she drives back to her place of employment to attend the meeting. She is not entitled to a deduction for her travelling

costs in attending the meeting. This is because they relate to travel to and from her regular place of work. The fact that the travel is outside normal working hours or involves a second or subsequent trip does not change this position.

131. **Example:** Ken manages a supermarket and is called out in relation to a burglar alarm at the store. He travels between his home and the store in response to this emergency. The cost of travel to and from the store is not allowable.

132. **Example:** Billy is a shop assistant who works regularly at one store outlet on Mondays, Tuesdays and Wednesdays, and another outlet on Thursdays and Fridays. As both outlets are considered to be his normal place of employment, the cost of travel from home to each outlet is not allowable as it is expenditure of a private nature.

Travel to and from normal work place - transporting bulky equipment

133. A deduction is allowable if the transport costs can be attributed to the transportation of bulky equipment rather than to private travel between home and work (see *FC of T v. Vogt* 75 ATC 4073; (1975) 5 ATR 274). If the equipment is transported to and from work by the shop assistant as a matter of convenience, it is considered that the transport costs are private and no deduction is allowable.

134. A deduction is not allowable if a secure area for the storage of equipment is provided at the work place:

135. **Example:** For a particular event, Alison drives from home to the shop with bulky display stands. A deduction is allowable for her travelling costs.

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

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

137. **Example:** Bruce, a shop assistant, travels from the store where he is employed to a local hotel two nights per week, where he works behind the bar. A deduction is allowable for the cost of his travel between the store and the hotel.

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

138. A deduction is allowable for the cost of travel from an employee shop assistant's normal work place to other work places. The cost of travel from the alternative 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 shop assistant's duties. It is incurred in the course of gaining assessable income and is allowable as a deduction.

139. **Example:** Athena works in a boutique and is required to transport goods from her normal place of employment to another store. She then travels back to her normal place of employment. The cost of each journey is an allowable deduction to Athena.

140. **Example:** George works in an electronics shop and travels from his normal store to a regional administrative centre for a meeting. After the meeting, he then travels directly home. The cost incurred in travelling from the normal store to the administrative centre and then directly home is allowable.

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

141. A deduction is allowable for the cost of travel from home to an alternative work place. The cost of travel from the alternative work place to the normal place of employment or directly home is also an allowable deduction (see paragraphs 32 to 35 of MT 2027).

142. **Example:** Sara works in a small supermarket and normally travels from home to the supermarket and directly home each day. Sara's employer asks Sara to travel from home to the store's warehouse to help with once a year stocktaking and then to come to the supermarket for the rest of the day. A deduction is allowable for the expense incurred in travelling from home to the warehouse and then to the store. A deduction is not allowable for the cost of travelling from the normal place of employment (the store) to home.

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

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

144. **Example:** Adam is a shop assistant who regularly works at his employer's outlets at two separate shopping centres. A deduction is allowable for the cost of travel from one shopping centre to the other as the cost is incurred in travelling between two places of employment (see Taxation Ruling IT 2199).

145. If the employee shop assistant lives at one of the places of employment or business a deduction may not be allowable as the

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

146. A deduction is not allowable for the cost of travel between a person's home at which a part-time income-producing activity is carried on, and a place of full-time employment, unless there is some aspect of the travel that is directly related to the part-time activity .

147. In *Case N44* 81 ATC 216; 24 CTBR (NS) *Case 114*, a qualified accountant, employed by a firm of accountants, conducted a limited private practice from his home. He set up a separate room in his home as an office. The taxpayer claimed a deduction for car expenses incurred in travelling between his residence/office and his place of employment. The fact that the taxpayer's home was, incidentally, used in the production of income was insufficient to make the travel between his home and his place of employment an outgoing incurred in the production of assessable income. The travel retained its essential character of travel between home and work and therefore, it was not an allowable deduction.

148. **Example:** Mark is a sales assistant working in a department store and also giving private clarinet lessons to children in the evening at his home. A deduction is not allowable for the cost of travelling from the store to his home as it is a private expense rather than an expense incurred in gaining assessable income.

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

Automobile Association/Club membership fees

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

Depreciation cost limit for motor vehicles

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

Calculation of motor vehicle balancing adjustment

2. 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).

Newspapers

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

Overtime meal expenses

2. A deduction is allowable for the cost of meals bought while working overtime if an award overtime meal allowance is received and the expenditure meets the deductibility tests in paragraphs 32 to 38.

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

4. The general rule is that no deduction is allowed for work-related expenses unless written evidence, such as a receipt, is obtained. However, special substantiation rules apply to overtime meal expenses if an employee shop assistant receives an overtime meal allowance paid under an industrial award. A deduction is allowable without substantiation for expenses incurred, provided the claim does not exceed the amount considered reasonable by the Commissioner of Taxation. Reasonable amounts are published annually by the Commissioner in a Taxation Ruling.

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

Parking fees

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

(a) between two separate places of work;

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

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

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

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

7. A deduction is not allowable for parking fees incurred when employee shop assistants are travelling between their home and their normal place of employment (see *Case C47* 71 ATC 219; 17 CTBR (NS) *Case 44*). The cost of that travel is a private expense and the parking fees therefore have that same private character. A deduction is allowable for parking fees or tolls if the travel is not private, e.g., travel between home and work - transporting bulky equipment (paragraphs 133 to 135).

Self education expenses

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

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

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

(c) A deduction is not allowable if the education is designed to enable a taxpayer to get employment, to obtain new employment or to open up a new income-producing 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.

9. **Example:** Jackie is an employee shop assistant who would like to go into business for herself. She is doing a part-time course in Business Administration. A deduction is not allowable to Jackie for the cost of this course as the course is not related to her current income-producing activities.

10. 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

11. **Example:** Frank is a trainee shop assistant who travels a long distance to a technical college to undertake a work related course for two consecutive days each fortnight. This course is related to his current income-earning activities. He is allowed a deduction for the cost of travel to and from his place of education, overnight accommodation, meals and incidentals less $250 - see paragraph 165.

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

(a) a Higher Education Contribution Scheme (HECS) payment (subsection 51(6) of the Act); and

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

Limit on deductibility

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

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

carrying on of a profession, business or trade, or in the course of any employment.

15. **Example:** Liz works at a cosmetics counter in a department store. She decides to begin studies to advance her career prospects, and to improve her knowledge of cosmetics and skin care, by completing a Diploma in Cosmetology course at a TAFE college. She pays $950 to undertake the course.

16. A deduction is allowable for the expenses associated with her study because obtaining the Diploma of Cosmetology is likely to lead to an increase in her income in that field in the future.

17. The expenses also fall within the definition of 'expenses of self-education' under section 82A of the Act.

18. A deduction is not allowable for the first $250 of the expenditure under section 82A of the Act. She is only entitled to a deduction of the remaining $700 as self education expenses.

19. **Example:** Kostas is a computer sales assistant and attends a trade fair organised by a number of the major computer companies at a venue away from his normal place of work. The trade fair is designed to keep him abreast of developments in the field of computers and accessories.

20. The cost of attending the trade fair is $500 and this includes the entrance fees, travel to and from the trade fair, as well as accommodation and meals while at the trade fair location.

21. A deduction is allowable for the expenses associated with the trade fair. They are not 'expenses of self-education' as the course is not at a place of education as defined in section 82A of the Act. The amount of $500 is deductible in full.

Technical or professional publications

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

23. In *Case P124* 82 ATC 629; 26 CTBR (NS) *Case 55*, an air traffic controller was not allowed a deduction for the purchase of aviation magazines. Dr G W Beck (Member) said (ATC at 633-634; CTBR at 422):

> 'There might be some tenuous connection between the cost of aviation magazines and the maintenance of knowledge necessary for holding a flying licence...but it seems to me that the possible connection is altogether too remote.'

24. 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.

25. **Example:** Anne works in a computer shop selling the latest computer equipment to customers. She subscribes to a computer magazine specialising in personal computer hardware to help her keep up to date with the latest technology. A deduction is allowable for the cost of the subscription.

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

Cost of calls

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

27. Work-related calls may be identified from an itemised telephone account. If such an account is not provided, a reasonable estimate of call costs, based on diary entries of calls made over a period of one month, together with relevant telephone accounts, will be acceptable for substantiation purposes.

Installation or connection costs

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

29. 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 brought into existence an advantage for the enduring benefit of his newly established medical practice...It follows that it is "like" an expenditure of a capital nature.'

Rental costs

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

contact their employer on a regular basis may be entitled to a deduction for some portion of the cost of telephone rental.

31. A proportionate deduction is allowable if the telephone is not used 100% for work-related purposes. 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

32. 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

33. A deduction is allowable for bridge and road tolls paid by an employee shop assistant when travelling in the course of employment, e.g., between work places (paragraphs 138 to 142).

Tools and equipment

34. A deduction is allowable for depreciation of the cost of tools and equipment used for work-related purposes. An individual tool or piece of equipment bought after 1 July 1991 can be depreciated at a rate of 100% if its cost is $300 or less, or its effective life is less than three years (see ***Depreciation of equipment***, paragraphs 91 to 98). A deduction is allowable for the cost of repairs to tools and equipment.

Travel Expenses

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

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

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

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

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

Union fees

1. A deduction is allowable for the cost of annual union or professional association fees. Taxation Rulings IT 299, IT 327, IT 2062 and IT 2416 provide further information on the treatment of union and professional association fees. A deduction is not allowable for a fee paid to join a union or professional association as it is a capital expense.

2. A deduction is not allowable for payments to staff social clubs.

Alternative views

Telephone installation or connection costs

3. The view was expressed that deductions for telephone installation or connection costs should be allowable based on the Commissioner's stated policy in Taxation Ruling IT 2197. The view of the Commissioner is that IT 2197 only applies when the telephone installation costs or connection fees have a revenue nature. Where these expenses are incurred by an employee, they are not on revenue account but are of a capital or private nature.

Protective clothing and equipment

4. The view was expressed that allowable deductions for 'Protective clothing' and 'Protective equipment' should include sunglasses, sunhats, sunscreens, wet weather gear, etc., that provide protection against the natural environment. This view is not supported by the Commissioner as the expense is a personal or living expense, similar to the cost of travel between home and work, conventional clothing and daily meals. A deduction is allowable for the cost of protective clothing and equipment where the conditions of the work (rather than the natural environment) make it necessary for an employee shop assistant to provide protection to his or her person or clothing.

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