Tax
& Super
Australia

Tax Summary

The guide to Australian tax

2021-22

102nd Edition

About Tax & Super Australia

We're here to serve our members.

At Tax & Super Australia, we remain committed to the same goal we've had since our organisation was established in 1919: to educate and empower members so they can grow, succeed and thrive.

This commitment drives everything we do. It shapes the way we design our communications, publications and events. And it's behind the government advocacy and media commentary we develop to represent our members' views on what matters most to them.

For decades, tax and superannuation professionals throughout Australia have trusted us to provide the guidance, support and resources they need to stay on top of their game. Key to meeting this commitment has been making sure that everything we produce is easy to understand, convenient to access and focussed on practical, real-world implications.

The *Tax Summary* also reflects this philosophy. Every edition contains the latest and most up-to-date information — with this edition, current as at 30 June 2021, incorporating the 2020-21 changes as well as those known to apply for the 2021-22 income year. The *Tax Summary* will give you the understanding you need as quickly as possible, so that you can put it back on the shelf until next time.

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Preface to the 102nd edition

Pippa McKee

Chief Executive Officer

Tax & Super Australia

Tax & Super Australia has always been about helping hard-working professionals to stay informed, up-to-speed and equipped with the right resources. Perhaps never before in our 102-year-old history was this more needed by our members – and the profession at large – than in 2020, as the COVID-19 pandemic triggered countless business closures, stimulus measures and other changes that put tax agents in the crucial role of helping businesses and individuals through deep uncertainty.

Our dedicated team worked overtime to ensure the *2020-21 Tax Summary* captured all the latest changes. Alongside the *Tax Summary* we released *The COVID-19 Book*, a once-off publication to further help our members to develop a clear understanding of the changed landscape.

Regardless of what's ahead, you can rest assured the *Tax Summary* will contain the information you need to be your clients' trusted advisor. If you're a Tax & Super Australia member or have purchased the digital version, remember that the *Tax Summary* will continue to be updated in its digital form throughout the year, meaning you can refer to it with the confidence that it's still current.

I'll take this opportunity to mention that our members will soon be able to access the *Tax Summary* on their mobile device too, via a Tax & Super Australia app that will be released in the near future – making this resource more convenient than ever.

Comprehensive, comprehensible, convenient: these are qualities we strive to build into every edition of the *Tax Summary*, with the 2021-22 edition being no exception. Once again, I hope your copy of this latest edition is well-worn by July next year, as it will mean it was the close-at-hand useful resource it is designed to be. If you purchased this book as a non-member, I encourage you to join our growing community, meaning you'll receive next year's edition as one of your many member benefits.

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Glossary

These are abbreviations used commonly in this text. In most cases, they will be referred to in full at the start of the relevant section.

All references are to the *Income Tax Assessment Act 1997* (ITAA97) unless otherwise stated.

AAT	Administrative Appeals Tribunal
ABN	Australian Business Number
ABN Act	*A New Tax System (Australian Business Number) Act 1999*
ABP	Account Based Pension
ABR	Australian Business Register
ACA	Allocated Cost Amount
ACNC	Australian Charities and Not-for-Profit Commission
ACR	Auditor/Actuary Contravention Report
ADF	Approved Deposit Fund
ANTS	A New Tax System
APRA	Australian Prudential Regulatory Authority
ASIC	Australian Securities Investments Commission
ASX	Australian Securities Exchange
ATI	Adjusted Taxable Income
ATO	Australian Taxation Office
AWOTE	Average Weekly Ordinary Time Earnings
BAS	Business Activity Statement
BDBN	Binding Death Benefit Nomination
BRE	Base Rate Entity
BREPI	Base Rate Entity Passive Income
C of T	Commissioner of Taxation
CC	Concessional Contribution
CCB	Child Care Benefit
CCR	Child Care Rebate
CCTR	Child Care Tax Rebate
CDEF	Community Development Employment Project
CFC	Controlled Foreign Corporation
CFI	Conduit Foreign Income
CGT	Capital Gains Tax
CM&C	Central Management and Control
CPC	Code of Professional Conduct
CPE	Continuing professional education
CPI	Consumer Price Index
COT	Continuity of Ownership Test
CRC	Cooperative Research Centre
CSF	Complying Superannuation Fund
CSHC	Commonwealth Senior Health Card
DA	Deferred Annuity
DASP	Departing Australia Superannuation Payment
DFISA	Defence Force Income Support Allowance
DGR	Deductible Gift Recipient
DIS	Decision Impact Statement
DPE	Deferred Purchase Agreement
DRP	Dividend Reimbursement Plan
DTA	Double Tax Agreement
DTP	Directed Termination Payment
DVA	Department of Veterans Affairs
EC	Excessive Component
ECCC	Excess Concessional Contributions Charge
ECT	Excess Contributions Tax
EGCS	Energy Grants Credit Scheme
ENCO	Effectively Non-contingent Obligation
ERF	Eligible Rollover Fund
ESAS	Employee Share Acquisition Scheme
ESS	Employee Share Scheme
ESVCLP	Early Stage Venture Capital Limited Partnership
ETP	Employment Termination Payment
ETR	Education Tax Refund
ETRV	Eligible Temporary Resident Visa
FAA	*A New Tax System (Family Assistance) Act 1999*
FBT	Fringe Benefits Tax
FBTAA	*Fringe Benefits Tax Assessment Act 1986*
FBTAR	*Fringe Benefits Tax Assessment Regulations 2018*
FCA	Federal Court of Australia
FCT	Federal Commissioner of Taxation
FFC	Full Federal Court
FHSA	First Home Saver Account
FIF	Foreign Investment Fund
FITO	Foreign Income Tax Offset
FLP	Foreign Life Policy
FMD	Farm Management Deposit
FTB	Family Tax Benefit
FTC	Fuel Tax Credits
FTDT	Family Trust Distribution Tax
FTE	Family Trust Election
GCP	Greenhouse Challenge Plus
GCS	Government Co-contribution Scheme
GDP	Gross Domestic Product
GIC	General Interest Charge
GP	Growth Pension
GST	Goods and Services Tax
GST Act	*A New Tax System (Goods and Services Tax) Act 1999*
GST Regs	*A New Tax System (Goods and Services Tax) Regulations 2019*
GSTB	Goods and Services Tax Bulletin
GSTD	Goods and Services Tax Determination
GSTR	Goods and Services Tax Ruling
GVM	Gross Vehicle Mass
GVS	General Value Shift
GVSR	General Value Shifting Regime
HCA	High Court of Australia
HELP	Higher Education Loan Program
HPC	Health Promotion Charity
IAS	Instalment Activity Statement
IC	Post-June 1994 Invalidity Component
ID	Interpretative Decision
IISA	Industry Innovation and Science Australia
ITA Act	*International Tax Agreements Act 1953*
ITAA36	*Income Tax Assessment Act 1936*
ITAA97	*Income Tax Assessment Act 1997*

13: Personal deductions

13.000 Overview

For tax purposes, deductions are separated into two categories: general deductions and specific deductions.

All legislative references in this Chapter relate to the ITAA97 unless otherwise specified.

13.010 General deductions

Section 8-1 of the ITAA97 is the main legislative provision allowing a taxpayer to deduct losses or outgoings from assessable income – a deduction under this provision is termed a "general deduction".

There is a difference between a loss and an outgoing. There is little case law on the precise meaning of these terms; however the two can be contrasted as follows:

- An "outgoing" is something that a taxpayer pays out or disburses ie a movement of resources away from a taxpayer. That is, an outgoing is usually a voluntary payment (although the payment may be necessary because of a contractual obligation). Examples would be salary and wages, rent etc. Expenditure actually made is an outgoing incurred.
- A "loss" is something that can be an involuntary reduction in the resources of a taxpayer, for example, a robbery, a loss on disposal of an asset or destruction of trading stock (a realisation of assets for less than cost). It may also arise voluntarily such as a loss arising from the discount of a commercial bill. This should be distinguished from a tax loss where deductions have exceeded assessable income in an income year.

13.011 Positive and negative limbs

Subsection 8-1(1) sets out two categories of losses and outgoings (known as positive limbs) that may constitute deductions from assessable income but then provides that even if a loss or outgoing satisfies one of these tests, it will not be deductible from assessable income to the extent that the loss or outgoing falls into any of the four categories (known as negative limbs) contained in subsection 8-1(2).

The two positive limbs of s8-1 allow a deduction for losses and outgoings to the extent that (ie apportionment is acceptable) they are:

- incurred in gaining or producing your assessable income, or
- necessarily incurred in carrying on a business for the purposes of gaining or producing your assessable income.

However, the four negative limbs deny a deduction under s8-1 to the extent that:

- the loss or outgoing is capital or of a capital nature, or
- the loss or outgoing is of a private nature or domestic nature, or
- the loss or outgoing is incurred in relation to the gaining or producing of exempt or non-assessable, non-exempt income, or
- the loss or outgoing is such that a specific provision of the Act (ie ITAA97 or ITAA36) prevents the deduction.

13.012 Positive limbs

In simple terms, to obtain a deduction for a loss or outgoing, the following requirements in respect of the positive limbs have to be satisfied:

- the loss or outgoing must be "incurred", and
- it must be incurred "in gaining or producing assessable income or necessarily incurred "in carrying on a business" for the purpose of gaining or producing assessable income.

These specific elements under s8-1 ITAA97 are explained below.

Meaning of "incurred"

Before a loss or outgoing can be deductible under s8-1 in a particular income year, it must have been "incurred" for tax purposes. Where amounts have not yet been paid, this can often be a difficult matter to determine. By way of example, it is relevant in the context of business income tax returns since amounts accrued in the accounts may not yet have been incurred for tax purposes.

There is no statutory definition of the term "incurred". There is a large amount of case law (and ATO guidance) relating to whether, and when, an amount is incurred. Amounts already paid have been incurred but a significant amount of case law exists on when unpaid expenditure has still been incurred for tax purposes (and also on the timing of the deduction in cases where the expenditure relates to more than one period).

Taxation Ruling TR 1997/7 *Income Tax: section 8-1 – meaning of 'incurred' – timing of deductions* provides a useful summary of the judicial position with respect to the meaning of incurred. The ruling outlines some general rules, settled on case law, in defining whether and when a loss or outgoing has been incurred:

(a) a taxpayer need not actually have paid any money to have incurred an outgoing provided the taxpayer is definitively committed in the year of income. Accordingly, a loss or outgoing may be incurred within s8-1 even though it remains unpaid, provided the taxpayer is "completely subjected" to the loss or outgoing. That is, subject to the principles set out below, it is not sufficient if the liability is merely contingent or no more than pending, threatened or expected, no matter how certain it is in the year of income that the loss or outgoing will be incurred in the future. It must be a presently existing liability to pay a pecuniary sum

(b) a taxpayer may have a presently existing liability, even though the liability may be defeasible by others

(c) a taxpayer may have a presently existing liability, even though the amount of the liability cannot be precisely ascertained, provided it is capable of reasonable estimation (based on probabilities)

(d) whether there is a presently existing liability is a legal question in each case, having regard to the circumstances under which the liability is claimed to arise

(e) in the case of a payment made in the absence of a presently existing liability(where the money ceases to be the taxpayer's funds) the expense is incurred when the money is paid.

First and second positive limbs: Nexus with income

Once it has been established that a loss or outgoing has been incurred for tax purposes, to be deductible under section 8-1 it must also satisfy either of the positive limbs being:

- incurred in gaining or producing your assessable income, or
- necessarily incurred in carrying on a business for the purposes of gaining or producing your assessable income.

a. Relationship between the first and second limbs

The words of the second limb appear to cover a case where a business has not yet produced or has failed to produce assessable income. The deductibility of non-business expenditure is considered under the first limb only. The deductibility of business expenditure may be considered under either limb.

b. Second positive limb

To satisfy the second positive limb of s8-1, a loss or outgoing must be necessarily incurred in the course of carrying on a business for the purpose of gaining or producing assessable income. The two important issues under this limb are:

- whether the loss or outgoing was necessarily incurred, and
- in carrying on a business for the purpose of producing assessable income.

The purpose of the outgoing is to be determined objectively, by considering the relationship between the reason for the expenditure and the taxpayer's business. If the necessary connection to the production of assessable income exists, it is irrelevant that the amount spent is extravagant or that it could have been done in a less expensive manner.

The operation of the word "necessarily" serves as a qualification on the degree of connection between the expenditure and the carrying on of the business. The term "necessarily incurred" does not have its ordinary meaning of unavoidable or compulsory. Rather, it encompasses losses or outgoings that are:

- obligatory or compulsory
- inevitably resulting from the nature of the business, or
- incurred voluntarily on the grounds of commercial necessity.

Again, in determining whether a loss or outgoing is incurred in carrying on a business for the purpose of producing assessable income, it is the past, present and future assessable income which is concerned. This generally requires a continuous income producing activity.

However, this is only reflecting the required nexus and it is not meant to be a purely temporal test. That is, it merely reflects that, generally speaking, when there is a total cessation of income earning activities, it is unlikely that a loss or outgoing relating to the ceased operations would be incidental or relevant to the production of assessable income.

Note that a mere temporal break in activities would not generally jeopardise deductibility. It may be difficult for taxpayers to show that any cessation of business is only temporary. However, a business does not cease (especially if it is carried on by a company) when the actual income producing activity ceases. It continues until, among other things, debts periodically falling due have been collected.

Note also that a deduction is not allowed for losses or outgoings incurred in relation to "vacant land" for expenditure incurred from 1 July 2019 (see 18.200.)

Apportionment

Section 8-1 provides for the deductibility of losses or outgoings to the extent to which they are incurred in gaining or producing assessable income or carrying on a business for that purpose. As such, the words "to the extent" permit apportionment of the deduction claimed where there is expenditure that does not wholly have the essential character of business expenditure.

The courts have used two bases of apportionment being:

1. **Apportionment by reference to legal rights:** The courts look to the legal arrangement and if the form of the arrangement is acceptable, the whole amount of the deduction is granted without apportionment – it is not for the Commissioner to tell a taxpayer how much should be spent – *Cecil Bros Pty Ltd v FCT* [1964] 111 CLR 430.

   EXAMPLE

   Marie has been looking for premises to start a hat manufacturing business. She has finally found what she wants close to the city. The landlord (an arm's length person) has demanded an amount of rent that is in excess of other rentals in the area.

   Marie is happy to pay the high rental as the property is ideally situated. She is, however, concerned about the deductibility of the excessive payment.

   The rent will be deductible in full on the basis of the principle referred to in the Cecil Bros case. It is not for the Commissioner to tell a taxpayer how much should be spent.

2. **Apportionment by looking at the taxpayer's purpose:** In certain limited circumstances the courts may look to the substance of the transaction rather than the form of the transaction and as such to the purpose for which the expenditure was made. On the basis of this approach the courts have limited the deduction to the amount relating to the income producing purpose ie the amount of the deduction is limited to the amount of assessable income in a particular year of income – *Ure v FCT* [1981] 81 ATC 4100 and *Fletcher & Ors v FCT* [1991] 173 CLR 1.

   EXAMPLE

   John has been to see a financial adviser about investing some money for five years (with no access to the money). The adviser came up with two options as follows:

	Return ($)				
Investment	*Yr 1*	*Yr 2*	*Yr 3*	*Yr 4*	*Yr 5*
#1	*20*	*20*	*20*	*20*	*20*
#2	*(30)*	*(20)*	*(10)*	*(5)*	*165*

   The net income from both investments was the same ($100). John chose to invest in Investment #2 as he has a "tax problem" now, but expects to retire in 3 years time. It is now year 2 and the Commissioner is seeking to deny John the deductions arising in years 1 and 2 on the grounds of Fletcher's case.

This expenditure should be deductible to John. John's case is different from Fletcher's case as he does not appear to have the ability to withdraw from the investment prior to it becoming tax positive. Note that (depending upon the facts) the ability for him to claim deductions for expenditure in the years shown may also be affected by:

- *The prepayment rules and/or (14.170), and*
- *The non-commercial loss rules (see 14.450 and 14.460).*

Apportionment can be based on any criteria which may be appropriate in the circumstances. For example, in *Adelaide Racing Club Inc v FCT* [1964] 114 CLR 517, the HCA did not dispute the apportionment of interest expense on the basis of the ratio for which assessable income bore to total assessable and exempt income.

Other bases of apportionment that could be reasonable are:

- hours worked
- total sales to worldwide sales
- amount of income earned
- ratio of income producing assets to total assets, and
- purposes for which expenditure was incurred.

13.015 Negative limbs

Even if an amount of expenditure is incurred and satisfies either of the positive limbs discussed above, it may still be precluded from deduction under any one of the four negative limbs in s8-1. Each of these negative limbs is considered below in more detail.

First limb: Losses or outgoings of capital or of a capital nature

Losses or outgoings of capital or of a capital nature are not deductible under s8-1. The distinction between outgoings of revenue versus capital nature has been examined in a number of cases as discussed above.

Broadly, the courts have formulated four judicial tests to distinguish revenue from capital outgoings:

- The once and for all test –an expenditure that is made once and for all is prima facie of a capital nature, whereas an expenditure that is recurring is generally of a revenue nature (eg *Vallambrosa Rubber Co Ltd v Farmer (Surveyor of Taxes)* [1910] SC 519).
- The enduring benefit test – when an expenditure is spent with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, it will generally be treated as capital and not as revenue (eg *British Insulated & Helsby Cables Ltd v Atherton* [1926] AC 205 and and *FCT v Sharpcan Pty Ltd* [2019] HCA 36).).
- Fixed or circulating capital test – an expenditure relating to fixed capital will generally be treated as capital expenditure, whereas an expenditure relating to circulating capital will generally be considered to be of a revenue character (eg *Reynolds and Gibson v Crompton* [1950] TC 288).
- The business entity test – under this test, there are three factors which are relevant to determining whether an expenditure is capital in nature (eg *Sun Newspapers Ltd v FCT* [1938] 61 CLR 337):
  - the character of the advantage sought and its lasting qualities
  - the manner in which it was used, relied upon or enjoyed, and
  - the means adopted to obtain it.

The following table provides the meaning behind these factors and an example:

Factor	Meaning	Examples
1. The character of the advantage sought	This means, for example, is the taxpayer acquiring a fixed asset (eg office equipment) or an asset which will be consumed?	Lubricants for manufacturing machinery.
2. The manner to which it is to be used or enjoyed	If an asset is to be used as part of the process by which profits are derived it is revenue. If an asset is to be used as an element in the creation and maintenance or extension of the profit earning entity or organisation, the expenditure will be capital.	Example of assets used as part of the process by which profits are derived is price tags in stores. Example of asset to be used as an element in the creation and maintenance or extension of the profit earning entity is the purchase of display shelves in the store.
3. The means adopted to obtain it.	Whether the outlay is a periodic one covering the use of the asset each period or whether the outlay is calculated as a single provision for the future use or enjoyment of the asset.	An example of a periodic outlay is lease payments on motor vehicles. An example of an outlay calculated as a single final provision for the future use or enjoyment of an asset is the purchase of a motor vehicle.

For example, expenditure incurred by a hotel business to acquire "gaming machine entitlements" (which allowed it to operate 18 gaming machines for a 10 year period) was held to be of a capital nature in terms of the "enduring benefit test" (*FCT v Sharpcan Pty Ltd* [2019] HCA 36).

Second limb: Private or domestic outgoings

Section 8-1 denies a deduction for losses or outgoings to the extent to which they are of a private or domestic nature. This is basically a question of fact. It would be in rare cases that a private or domestic loss or outgoing would satisfy one of the positive limbs under s8-1 (see 13.010). For example, child minding expenditure incurred so that a taxpayer could undertake work is taken to be expenditure of a private and domestic nature (*Lodge v FC of T*).

Third limb: Incurred in relation to the gaining or producing of exempt or NANE income

Deductions for expenditure incurred are not generally allowable under s8-1 to the extent that the amount is incurred in gaining or producing exempt or non-assessable non-exempt (NANE) income (11.010).

Apportionment will be required on a fair and reasonable basis where an amount of expenditure relates to both assessable income and income which is excluded from assessable income.

Note that TD 2005/35 confirms that no apportionment is required where some part of an outgoing relates to GST payable on a taxable supply (which is therefore NANE income).

Once the non-assessable non-exempt GST component of the outgoing is excluded as an element of the calculation (under section 27-20), there is no basis to apportion the deduction.

It is worth noting that this limb is thought to be superfluous because a loss or outgoing incurred in gaining or producing exempt or NANE income cannot satisfy the requirement of incurred in gaining or producing assessable income.

Fourth limb: A provision of the Act prevents deduction

A deduction that is otherwise available under s8-1 will not be available where a specific section of the Act limits or denies the deduction.

As discussed above, the words "to the extent" are also used in the context of the negative limbs, and as such, this permits apportionment of a deduction claimed where there is a dual purpose, one falling outside the negative limbs and one not.

Division 26 contains the most common amounts that either cannot be deducted or are limited. These include but are not limited to:

Deduction denied	Section*
Losses and outgoings incurred by taxpayer in relation to illegal activities	s26-54
Penalties and fines	s26-5
Unpaid leave payments not deductible until leave payments paid to the person to whom they relate	s26-10
Interest or royalty where withholding tax has been incorrectly, or not been withheld (under s128B and TAA 1953 provisions)	s26-25
Dividends and non-share distributions	s26-26
Accompanying relative's travel expenses	s26-30
Accompanying relative's travel expenses	ss26-45 & 26-50
Taxation of boat hire arrangements	s26-47
Bribes to public officials	ss26-52 & 26-53
Superannuation contributions or termination payments surcharges	ss26-60
Expenditure incurred in the gaining of a capital gain in the year in which the capital gain is included in the taxpayer's assessable income	s51AAA ITAA36
No deduction for employees where reimbursed expenses are fringe benefits or they contribute to private elements of a fringe benefit	ss51AH & 51AJ ITAA36
Reduction of deduction where taxpayer receives non-cash business benefits that are not used exclusively for the purpose of producing assessable income	s51AK ITAA36
Payments to related entities	s26-35
Limit on various deductions listed where generate an overall loss	s26-55
Excessive salary paid by private company to shareholder or associate is not deductible and treated as an unfranked dividend in the hands of the recipient.	s109 ITAA36

*ITAAA97 unless otherwise stated.

Tax Ruling TR 2020/1

The ATO have issued Tax Ruling TR 2020/1 *Income tax: employees: deductions for work expenses under section 8-1 of the ITAA97* which is intended to provide the foundation of general deductibility principles for employee work expenses. Based on this foundation, practical guidance on common work expense types, including occupation-specific expenses, is to be provided on the ATO's website and in other guidance products.

The ruling reinforces the principles set out in this chapter.

13.020 Specific deductions

As discussed, s8-1 allows general deductions for losses and outgoings incurred as part of income-producing activities, provided that they are intended to produce assessable income, and provided that they are not capital, private or specifically denied.

Where a deduction is not available under s8-1, s8-5 may allow a deduction for certain specific deductions – ie those provided for by the provisions of ITAA36 or ITAA97, other than s8-1.

These specific provisions may have been introduced where:

- items of expenditure may not satisfy a positive limb
- items of expenditure may fail a negative limb (for example, borrowing expenses, capital allowances), or
- provisions may be needed to clarify deductibility, impose additional conditions or impose special methods of calculation (eg interest deductions for NANE income or foreign exchange gains and losses).

Division 12 sets out a checklist of amounts that can be deducted and Division 25 contains a number of provisions concerning amounts which can be specifically deducted against assessable income to arrive at taxable income.

Examples of specific deductions include:

- Tax-related expenses (such as tax return preparation) (13.900)
- Bad debt expenses (14.160)
- Repairs and maintenance expenses (14.150)
- Payment to associations
- Superannuation expenses (13.400)
- Borrowing expenses – amounts are deductible over the lower of five years or the life of the loan (14.135)
- Lease document expenses
- Loss from profit-making undertaking or plan – if profits would have been assessable under s15-15
- Loss by theft of employees and agents allowable where money included in assessable income
- Misappropriation where a balancing adjustment event occurs
- Debt deductions incurred to derive foreign NANE income under ss23AJ, 23AI and 23AK ITAA36
- Gifts – deductions for gifts are available where the requirements in the tables in Division 30 are met (13.800)
- Capital expenditure to terminate lease etc – a deduction which can be spread over five years but excludes finance leases and non-arms length arrangements

13.050 Checklist of employment-related deductions

This checklist contains a general list of general and specific employment-related deductions and should be used as a guide only. The results may vary depending on individual circumstances. The individual must also hold the relevant written evidence where required (see *Written evidence* at 13.120).

Also, how much of the expense is allowed as a tax deduction will depend on the extent the expenses are incurred in earning the person's assessable income (see 13.000).

Tax deductible?	
Admission fees: For lawyers and other professionals. Disallowed as capital cost.	**No**
Airport lounge membership: Deductions to the extent used for work-related purposes.	**Yes**
Annual practising certificate: Applies to professional persons and other contractors who must pay an annual fee to practice in their chosen field.	**Yes**
Bank charges: Deductions are allowed if account earns interest. Not private transaction fees.	**Yes**
Bribes to government officials and foreign government officials: Also exclude from the cost base and reduced cost base of CGT assets and cost of depreciating assets.	**No**
Briefcase: If used for work and/or business purposes the cost is fully deductible if $300 or less. If more than $300, it must be depreciated.	**Yes**
Calculators and electronic organisers: If used for work and/or business purposes the cost is fully deductible if $300 or less. If more than $300, it must be depreciated.	**Yes**
Car: See *Travel* and 13.220.	
Child care fees	**No**
Cleaning: Of protective clothing and uniforms – see *Laundry* at 13.150.	**Yes**
Clothing, uniforms and footwear • **Compulsory uniform:** Uniform must be unique and particular to an organisation (eg corporate uniform). • **Non-compulsory uniform:** If on a register kept by the Department of Industry, Science and Tourism. • **Occupational specific:** The clothing identifies a particular trade, vocation or profession (eg chefs and nurses). • **Protective:** Must be used to protect the person or their conventional clothing. May include sunscreen.	**Yes**
Club membership fees	**No**
Coaching classes: Allowed to performing artists to maintain existing skills or obtain related skills.	**Yes**
Computers and software (see 13.155): Software is deductible if it costs less than $300, otherwise deductible over 2.5 years. Except in-house developed software which is over five years (four years before 1 July 2015)	**Yes**
Conferences, seminars and training courses: Allowed if designed to maintain or increase employee's knowledge, skills or ability.	**Yes**
Conventional clothing	**No**
Depreciation: Tools, equipment, and plant used for work purposes for each item costing more than $300. Items costing $300 or less are deductible outright in the year of acquisition.	**Yes**
Donations: See *Gifts* at 13.800.	

Tax deductible?	
Driver's licence: Cost of acquiring and renewing.	**No**
Dry cleaning: Allowed if the cost of the clothing is also deductible. See also *Laundry* at 13.150.	**Yes**
Election expenses of candidates: No limit for Federal, State and Territory. Limit of $1,000 for local government.	**Yes**
Employment agreements: Existing employer (see TR 2000/5). Not available for new business/employer.	**Yes**
Entertainment expenses (13.500)	**No**
Fines: Imposed by court, or under law of Commonwealth, State, Territory or foreign country (s26-5).	**No**
First Aid course: Provided it is directly related to employment or business activities.	**Yes**
Gaming licence: Hospitality and gaming industry.	**Yes**
Gifts of $2 or more (see from 13.800): If made to approved "deductible gift recipient" body or fund. See ato.gov.au for a full list. Gifts to clients are deductible if employees can demonstrate a direct connection with earning assessable income.	**Yes**
Glasses and contact lenses (prescribed): Deductible if "protective clothing".	**No**
Glasses and goggles: Protective only.	**Yes**
Grooming	**No**
HELP/HECS repayments	**No**
Home office expenses (*see from 13.600)	**Yes***
Income continuance insurance: Allowed only if the proceeds are assessable.	**Yes**
Insurance – sickness or accident: When benefits would be assessable income.	**Yes**
Interest: Allowed if money borrowed for work-related purposes or to finance income earning assets. Interest paid on underpayment of tax (eg general interest charge) is deductible (see 4.660). Fines and administrative penalties are not deductible. Interest on capital protected loans deductible except for non-deductible capital protection component (see 14.600).	**Yes**
Internet and computer equipment (see 13.155): Expenses allowed to the extent incurred in deriving individual's work-related income, carrying on a business or earning investment income (eg share investing).	**Yes**
Laundry and maintenance: Allowed if the cost of clothing is allowable (see Work related clothing). Reasonable claims of laundry expenses up to $150 do not need to be substantiated (see *Laundry* at 13.150).	**Yes**
Legal expenses: Renewal of existing employment contract.	**Yes**
Meals • Eaten during normal working day. • Meals acquired when travelling overnight for work-related purpose. • Meals when travelling (not overnight). • Overtime meals: If allowance received under award.	 **No** **Yes** **No** **Yes**
Medical examination: Only if from the referral of a work-related business licence.	**Yes**
Motor vehicle expenses: See *Travel expenses* from 13.160 and 13.220.	

Tax deductible?	
Newspapers: Claims may be allowed in limited cases if the publication is directly related to income-producing activities.	**No**
Overtime meal expenses: Only if award overtime meal allowance received (see 13.140).	**Yes**
Parking fees and tolls: Includes bridge and road tolls (but not fines) paid while travelling for work-related purposes.	**Yes**
Photographs (performing arts – with income producing purpose) • Cost of maintaining portfolio. • Cost of preparing portfolio.	 **Yes** **No**
Practising certificate: Applies to professional employees.	**Yes**
Prepaid expenditure for tax shelter arrangements: They must be spread over the period in which the services are provided (see 14.170).	**Yes**
Prepaid expenses: Non-business individuals and SBE taxpayers claim is fully deductible if services are to be performed in period not exceeding 12 months. All other taxpayers must apportion claim over the period of service (see 14.170).	**Yes**
Professional association and membership fees: Maximum of $42 if no longer gaining assessable income from that profession. Up front joining fees are generally capital in nature so would not be deductible under s8-1. Annual deductions may also be available in the same year under s8-1 where the criteria are satisfied – s25-55.	**Yes**
Professional library (books, CDs, videos etc) Established library (depreciation allowed) • New books: Full claim if cost $300 or less (includes a set if total cost is $300 or less). • New books: Depreciation if cost over $300 (includes a set if total cost is more than $300).	**Yes** **Yes** **Yes**
Protective equipment: Includes harnesses, goggles, safety glasses, breathing masks, helmets, boots. Claims for sunscreens, sunglasses and wet weather gear allowed if used to provide protection from natural environment (see 13.147).	**Yes**
Removal and relocation costs If paid by the employer, may be exempt from FBT, but deductible.	**No**
Repairs (income producing property/or work-related equipment).	**Yes**
Self-education costs: Claims for fees, books, travel (see below) and equipment etc allowed if there is a direct connection between the course and the person's income earning activities. No claim for the first $250 if course is undertaken at school or other educational institution and the course confers a qualification. However, that first $250 can be offset against private expenses, eg travel, child minding fees, etc. (see 13.700).	**Yes**
Seminars Including conference and training courses if sufficiently connected to work activities.	**Yes**
Social functions	**No**
Stationery (diaries, log books etc.)	**Yes**
Subscriptions • Publications If a direct connection between publication and income earned by taxpayer. • Sports club**s.**	 **Yes** **No**
Sun protection Claims for sunglasses, hats and sunscreen allowed for taxpayers who work outside.	**Yes**

Tax deductible?	
Superannuation contributions: From 1 July 2017 the requirement that you derive less than 10% of your income from employment sources has been abolished and regardless of your employment arrangement you may be able to claim a tax deduction. Those aged 65 to 74 will still need to meet the work test in order to be eligible to make a contribution and claim a tax deduction. The Government has announced that, from 1 July 2020, it will allow voluntary superannuation contributions to be made by individuals aged 65 and 66 without having to meet the work test. No deduction is available for interest on borrowed monies used to finance deductible personal superannuation contributions.	**Yes**
Supreme Court library fees Applies to barristers and solicitors if paid on annual basis.	**Yes**
Tax agent fees (deduction can be claimed in the income year the expense is incurred). • Travel and accommodation expenses if for travel to a tax agent or other recognised tax adviser for tax advice, have returns prepared, be present at audit or object against an assessment. • Cost of other incidentals if incurred in having tax return prepared, lodging an objection or appeal or defending an audit.	**Yes**
Technical and professional publications	**Yes**
Telephones and other telecommunications equipment (see 13.155) (including mobiles, pagers and beepers.) Cost of telephone calls (related to work purposes).	**Yes**
• Installation or connection.	**No**
• Rental charges (if "on call" or required to use on regular basis).	**Yes**
• Silent telephone number.	**No**
Tools (work related only) If cost is $300 or less.	
• If cost more than $300, the amount would be depreciable, and the amount deductible equals to the decline in value).	**Yes**
Trauma insurance If benefits capital in nature.	**No**
Travel expenses Including public transport, motor vehicles and motor cycles, fares, accommodation, meals and incidentals (see also 13.160).	
• Travel between home and work.	**No**
• Where employee has no usual place of employment (eg travelling salesperson).	**Yes**
• If "on call".	**No**
• If actually working before leaving home (eg doctor giving instructions over phone from home. Note that this applies in limited circumstances only).	**Yes**
• Must transport bulky equipment (eg builder with bulky tools) and have no secure lockup provided at work site	**Yes**
• Travel from home (which is a place of business) to usual place of employment.	**No**
• Travel from home to alternate work place (for work-related purposes) and return to normal work place (or directly home).	**Yes**
• Travel between normal work place and alternate place of employment (or place of business) and return (or directly home).	**Yes**
• Travel between two work places.	**Yes**
• **Travel in course of employment:** See Substantiation rules at 13.210.	**Yes**
• **Travel accompanied by relative** (may be allowed if relative is also performing work-related duties).	**No**
Union and professional association fees	**Yes**
Vaccinations	**No**
Watch: Unless job specific such as a nurse's job watch.	**No**

13.100 Substantiation

ITAA97 Div 900

ITAA97 Div 900 Claims for work-related expenses, car expenses, and travelling expenses incurred by an individual must be substantiated if the claims are to be allowed. As well as the requirement to incur deductible expenditure, the "substantiation" rules impose a strict evidentiary requirement that must be satisfied if claims are to be allowed.

Under the primary test in s8-1, the taxpayer must be able to show that they incurred the relevant expenses and that those expenses were incurred in earning their assessable income, or were incurred in carrying on a business.

Once the primary test has been satisfied (ie the expense has been incurred and is allowable) the "substantiation rules" impose a mandatory level of record keeping. If those records are not kept, the claim may be disallowed unless the relief rules apply (see below).

13.105 Records

QC 31973

Substantiation records must be retained for five years from the later of the due date for lodging the relevant return or when it is lodged. As a general rule, employees are not required to substantiate:

- employment related expenses where the total claim is less than $300 (see 13.145)
- laundry expenses, up to a maximum of $150 (see 13.150). **NOTE:** This amount forms part of the $300 limit
- sunscreen, sunglasses and hats if their job requires them to work in the sun (see 13.147)
- reasonable travel claims where a travel allowance has been received (see from 13.160)
- overtime meal claims up to $32.50 for 2021-22: TD 2021/6 ($31.95 for the 2020-21 year: TD 2020/5) for allowances paid under an Industrial Award (see 13.140), and
- some car expenses (see from 13.225).

Even though the strict substantiation rules do not need to be satisfied for the above expenses (see 13.120), employees must be able to show that those expenses were incurred and how they calculated their claims.

Self-employed persons, partners and individual trustees must have written evidence to prove all of their claims.

The five year period can be further extended automatically if any of the following are unresolved when the five years ends:

- an objection
- a review or appeal arising from an objection, or
- a request for amendment.

The extended period lasts until the dispute is resolved. The ATO can require you to produce your records. The Commissioner must give you 28 days notice to comply, but you may be allowed additional time.

If you receive such a notice you must produce in English:

- the required written records (or documents), and
- a summary containing this information:
  - a cross-reference to the written evidence
  - a summary of the particulars of the written evidence, and
  - the amount of the expense in Australian currency (if the expense is in a foreign currency).

The claims will be disallowed if you fail to produce these records.

13.110 Relief from substantiation

The ATO has a discretion to allow a deduction for expenditure even if there is no written evidence to substantiate the expense if the ATO is satisfied you incurred the expense and that you are entitled to a deduction for that amount.

In *Hussain and FCT* [2018] AATA 1111, the Commissioner asked for substantiating evidence for travel and other work related expenses, however the taxpayer did not have access to the documents due to a marriage breakdown. He also could not find documents after this breakdown due to having moved residences. Without documentation, the AAT upheld the Commissioner's decision to deny the deductions and expressed concern that some of the claimed expenses may not have been incurred.

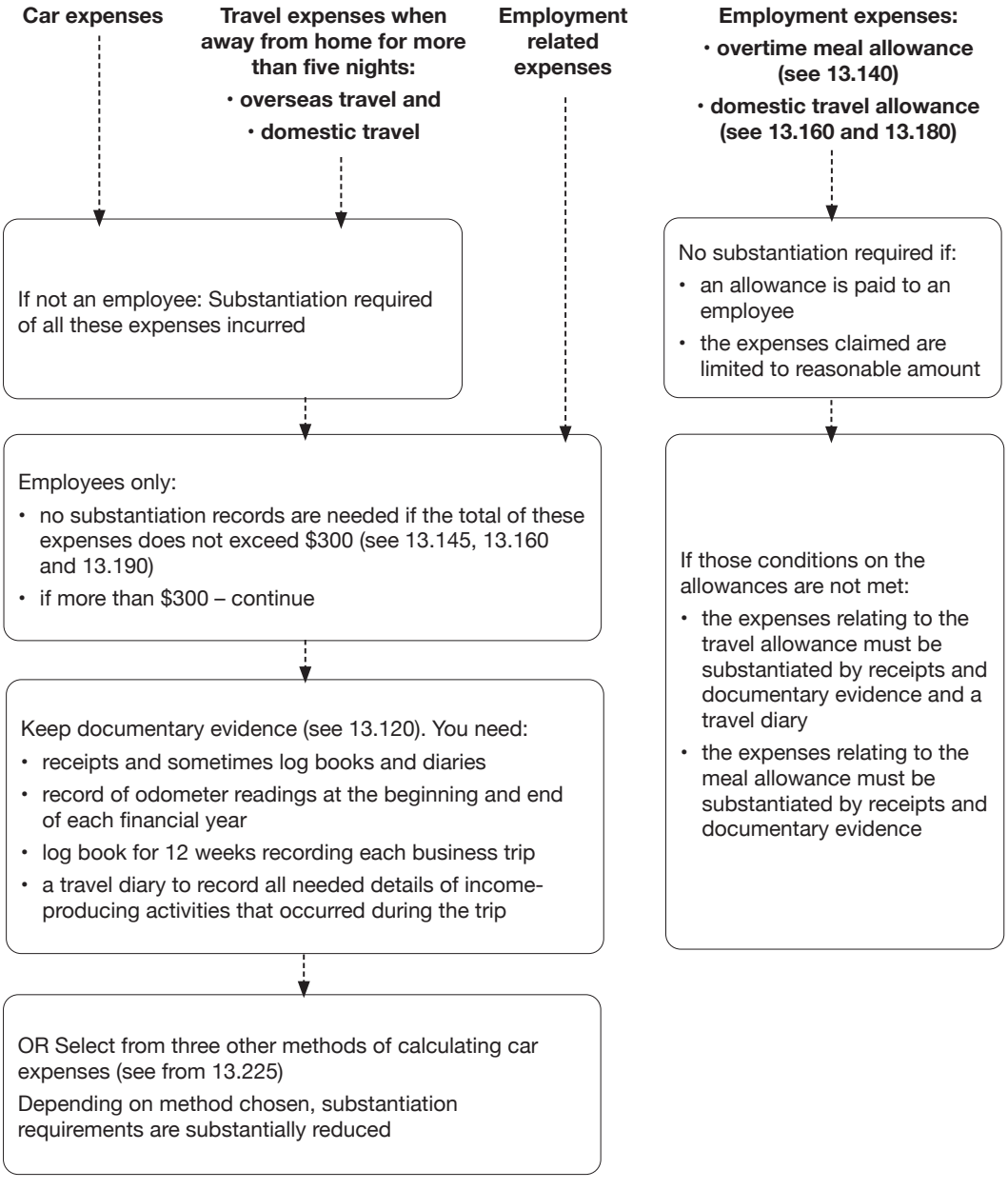
In respect of work related expenses, business travel expenses and car expenses calculated under the log book method, Subdivision 900-H says relief will be granted where expenses have not been substantiated if:

- there is sufficient evidence to satisfy the ATO that a deductible expense was incurred
- there was a reasonable expectation substantiation was not needed, or
- documents were lost or destroyed after reasonable precautions had been taken and reasonable efforts are made to get a substitute document (unless not reasonably possible).

This only applies to individuals and partnerships where at least one partner is an individual.

The ATO has further modified the strict substantiation rules to account for technology changes and the way taxpayers pay for and record financial information (see 13.120).

13.115 Substantiation flowchart



13.120 Written evidence

Deductions must be claimed in the income year the expense is incurred, and generally you must have the written evidence when you lodge your tax return. There are some situations where the evidence can be obtained in a later year – see below. In other cases, you are denied a deduction in the year the expense was incurred until you have obtained the necessary written evidence. In that case you must self-amend your original assessment.

The exception to this rule is where you have good reasons to expect to get written evidence within a reasonable time of lodging your income tax return.

Written evidence must be obtained from the supplier of the goods or services and it must be in English. However, if the expense was incurred in a country other than Australia, it can be in that country's language.

The document must contain:

- the name (or business name) of the supplier
- the amount of the expense (expressed in the currency in which it was incurred)
- the nature of the goods or services
- the date it was incurred, and
- the date the document was made out.

If the nature of the goods is missing from the document, you may write in the missing details yourself before you lodge your tax return.

You must keep written evidence for five years from the date you lodge your tax return. If there is a dispute with the ATO in relation to work expenses at the end of this five year period, the relevant records must be kept until the dispute is resolved. If the date the expense was incurred is missing, you can use a bank statement or other independent evidence to show when it was paid.

This exception makes it easier for taxpayers where information is missing from the written document. Check all receipts and ensure that information is shown. If it is not, get the supplier to write it on the receipt, otherwise the expense may not be claimable until a later income year.

The ATO has published a Practice Statement (PS LA 2005/7) which recognises the changes in technology and the way receipts etc are issued since the substantiation rules were introduced.

The following types of evidence are treated as satisfying the substantiation rules:

- bank statements
- credit card statements
- internet-generated bank or credit card statements
- BPAY reference numbers, combined with bank statements
- BPAY reference numbers, combined with tax invoices
- internet generated receipts
- email receipts
- paper copies of receipts
- electronic receipts, and
- electronic copies of receipts.

The following examples have been extracted from the Practice Statement and demonstrate how the new rules will work in practice.

EXAMPLE: Use of a bank or credit card statement only

Daniel, who is employed by a large firm of solicitors, receives a bill for his annual professional subscription fees, which he pays using his credit card. His credit card statement bears the date of the transaction, the name of the professional association and the amount paid. Before he lodges his income tax return, Daniel makes a note on his credit card statement to the effect that the transaction related to his professional subscription fees.

The ATO will accept the credit card statement as sufficient evidence to substantiate Daniel's claim for a deduction for the fees.

EXAMPLE: Use of electronic verification of purchase

Minh, a computer programmer, purchased some USB flash drives for work over the internet. When he ordered the USB flash drives, he received an automatic response via email that quoted an order reference number, the nature of the goods, and the amount due to be paid. He paid by sending a money order to the supplier and kept the stub of the money order, which included the supplier name and the amount paid.

Minh stored the email in an electronic folder labelled "Tax", which he also backed up on disc. The ATO will accept the combination of the automatic email response and money order stub as sufficient evidence to substantiate Minh's expense.

EXAMPLE: Evidence under various methods of payment

Louise is an apprentice plumber employed by a small plumbing business. As part of her employment she needs to provide her own tools. She purchased $250 worth of tools from her local hardware store. As she is a regular customer, the hardware store issues her with a tax invoice requesting payment within 30 days, which she pays at the end of the month by way of an electronic transfer from her bank account. The ATO will accept the combination of the tax invoice and bank statement showing the electronic transfer as sufficient evidence to substantiate the claim for the purchases from the local hardware store.

EXAMPLE: Receipts received in electronic format

Amanda, a computer programmer, retains her internet-generated receipt for work expenses, including supplier details and purchase amount, on her computer. If necessary, the receipt could be printed and may be able to be verified as being a genuine receipt by the ATO through communications with the issuer of the receipt. The ATO will accept the electronic receipt as sufficient evidence to substantiate Amanda's expense as it meets the requirements of the substantiation legislation.

Bank statements provide valuable written evidence when used in combination with other substantiation documents. However taxation ruling TR 2020/1 at paragraph 54, supported by edited private binding ruling 5010048194618, makes it clear that a bank statement alone would not be acceptable for substantiation purposes because a bank statement does not have all of the elements required by the legislation for written evidence.

Small expenses

ITAA97 s900-125

If there are small expenses involved you have a choice to obtain the required written evidence or record the same information in a document (eg diary). This option is only available for:

- separate expenses of $10 or less and if the total of all those expenses in the income year is $200 or less. The information must be in English and must be recorded as soon as possible after incurring the expense.
- if taxpayers have been unable to obtain written evidence (ie for example, for toll or parking fees where a receipt cannot be obtained).

If the expense is a capital allowance (see Chapter 15), this information should be available as soon as possible after the last day of the income year.

The way s900-125 reads, taxpayers must have receipts for all their small expenses if the total of ALL expenses that are minor (ie $10 or less) is $200 or more. If the total of all small expenses exceeds $200, no deduction is allowed for expenses that had been recorded by the taxpayer unless they also have a "receipt".

If the small expense is for a capital allowance claim, the record must show:

- the nature of the property
- the amount of the capital allowance
- who made the record, and
- the day the record was made.

Decline in value (depreciation or capital allowance)

ITAA97 s900-120

Special rules apply when claiming a capital allowance for an asset based on its decline in value. You must obtain a document from the supplier showing:

- the name (or business name) of the supplier
- the cost of the property
- the nature of the property
- the day you acquired it, and
- the day the document was made out.

If the nature of the property is missing you can write in those details before you lodge your return when you first claim a deduction for capital allowances on that property.

Exceptions

If amounts are shown on a payment summary, you can use that as written evidence of the expense. There is no need for expenses of the same nature to be separately itemised (s900-135). The ATO will also accept as evidence a self-prepared record of an expense if it is unreasonable to expect you to have obtained written evidence (where for example it is not customary for the vendor to issue receipts eg car parking) (s900-130).

You must record in a diary the same details as required for small expenses. Those expenses can be higher than $10 per expense and they do not count towards the $10 and $200 limits (see *Small expenses* above). For details as to when the ATO is able to give relief from substantiation, see TR 97/24.

13.140 Overtime meal allowances

The ATO accepts an overtime meal expense claim of up to $32.50 for the 2021-22 year (TD 2021/6) to be reasonable.

Expenses incurred for food or drink can be claimed without written evidence if:

- an overtime meal allowance has been paid
- the allowance is to enable the employee to buy food or drink in connection with overtime
- it is paid or payable under a Commonwealth, State or Territory law, or under an Award, order, Determination or industrial agreement in force under such a law, and
- the total of the claim is considered reasonable by the ATO.

It is important to note that a claim can only be made if the allowance is included in assessable income.

Allowances must be included in assessable income unless:

- a genuine overtime meal allowance or genuine travel allowance
- the allowance is no more than the "reasonable amount", and
- the allowance has been fully expended on deductible expenses.

If an "overtime meal allowance" is incorporated into salary under a workplace agreement, the "allowance" forms part of salary whether or not overtime is worked. No allowance is paid in this circumstance and no deduction is allowable.

NOTE: According to the *ATO PAYG Bulletin No.1,* if an overtime meal allowance paid to an employee is no higher than the reasonable amount the employer is not required to show the allowance on the employee's payment summary.

To be eligible for a claim, overtime meal allowances must be paid under a law, an award or agreement. A deduction is allowable provided the expense claimed was actually incurred to buy food or drink in connection with overtime worked. It does not include allowances negotiated privately between an employer and employee or amounts forming part of an employee's normal salary and wages.

13.145 Minor work expenses ($300 threshold)

A work expense is any expense incurred by an employee in earning or producing their assessable income from employment-related activities. No written evidence is required if the total of all work expenses is $300 or less.

While written evidence is not required, taxpayers must have actually spent the money and be able to show how the claim was calculated.

Taxpayers must have written evidence to prove their claims if the total claims exceed $300. The records must prove the total amount, not just the amount over $300.

This includes claims for:

- laundry expenses
- depreciation of property owned and used (or installed ready for use)
- election expenses for candidates for Federal, State or Territory Parliaments, or local government
- taxi fares or similar expenses, and
- car expenses in respect of overseas travel.

For claims to be allowed, the employee must obtain written evidence (see 13.120).

The $300 threshold does not include:

- car expenses in Australia
- award transport expenses
- travel allowance expenses, and
- reasonable overtime meal allowance expenses.

EXAMPLE

An employee incurred $285 for work expenses and also travelled 4,000kms for employment purposes. The employee elected to claim using the cents per km basis (see 13.230). In this case, the employee can claim those work related expenses without requiring written evidence because the amount is under $300 however if the claim for the motor vehicle means that the total of deductible expenses for the employee is over $300 the $285 would then need to be substantiated with written evidence.

***Myth:** Everyone can automatically claim $150 for clothing and laundry, 5,000 km under the cents per kilometre method for car expenses, or $300 for work-related expenses, even if they didn't spend the money.*

***Fact:** There is no such thing as an 'automatic' or 'standard deduction'. Substantiation exceptions provide relief from the need to keep receipts in certain circumstances. While you don't need receipts for claims under $300 for work-related expenses, $150 for laundry expenses (note: this is for laundry expenses only and does not include clothing expenses) or if you are claiming 5,000 km or less for car expenses under the cents per kilometre method, you still must have spent the money, it must be related to earning your income, and you must be able to explain how you calculated your claim.*

Source: Employees guide for work expenses (ATO)

13.147 Outdoor workers

TR 2003/16

Expenses for sunscreen, sunglasses and hats etc are deductible for outdoor workers.

The ATO accepts, following the decision of the Federal Court in *Morris Ors v FC of T* [2002] ATC 4404, that deductions may be allowable for the cost of sunscreens, sunglasses and sunhats. A deduction is allowable when these items are used because the worker is obliged to work in an environment where they are exposed to the harmful effects of the sun. This would generally require that exposure would be for sustained periods, not for example for a short walk between different employers premises.

Examples of occupations where people work in the sun for sustained periods (for part or all day) include:

- building and construction

- delivery and courier services
- farming, agriculture and horticulture
- fishing
- forestry and logging
- landscaping and gardening services
- open air mineral, oil and gas extraction and exploration
- outdoor sports, and
- other outdoor services.

13.150 Laundry expenses

TR 98/5; QC 31907

Employees can claim up to $150 for laundry expenses (ie washing, drying and ironing work-related uniforms and protective clothing) without written evidence. Where the total amount of work expenses incurred in the income year is $300 or less, there is no need for written evidence to be kept for laundry or other work-related expenses even if the laundry expenses are more than $150. However, where the total amount of work-related expenses is more than $300, then to claim laundry expenses that total more than $150, a taxpayer must keep written evidence of all their laundry expenses (not just the amount above $150).

The ATO will accept as reasonable expenses for washing, ironing and drying work-related clothing etc:

- $1 per wash (if washed separately), and
- 50c per wash (if washed with other clothes).

Note the ATO's views on "common myths about work expense deductions" at 13.145

13.155 Phone, computer and internet expenses

Employees may be able to claim some of their home telephone, mobile phone, computer and internet expenses. As a general rule the claim is limited to the amount that relates directly to their employment.

If an employer provides an employee with a phone for work use and is billed for the usage (phone calls, text messages, data) then the individual is not able to claim a deduction. Similarly, if the individual pays for their usage and is subsequently reimbursed by their employer, they are not able to claim a deduction.

For home, mobile and internet usage, the ATO provides the following general guidance with respect to apportionment of telephone and internet costs between work and private use (PS LA 2001/6):

Phone, computer and internet expenses (QC 46119)	
Incidental use	If the work use is incidental and the individual is not claiming a deduction of more than $50 in total,they may make a claim based on the following, without having to analyse their bills: • $0.25 for work calls made from their landline • $0.75 for work calls made from their mobile, and • $0.10 for text messages sent from their mobile.
Usage is itemised on the bills	If the individual has a phone plan where they receive an itemised bill, they need to determine their percentage of work use over a four-week representative period which can then be applied to the full year. The individual needs to work out the percentage using a reasonable basis. This could include: • the number of work calls made as a percentage of total calls • the amount of time spent on work calls as a percentage of their total calls • the amount of data downloaded for work purposes as a percentage of their total downloads.

Phone, computer and internet expenses (QC 46119)	
Bundled phone and internet plans	Phone and internet services are often bundled. When individuals are claiming deductions for work-related use of one or more services, they need to apportion their costs based on their work use for each service. If other members in the individual's household also use the services, the individual needs to take into account the usage of those members in their calculation.  ***If the individual has a bundled plan, they need to identify their work use for each service over a four-week representative period during the income year. This will allow the individual to determine their pattern of work use which can then be applied to the full year.*** A reasonable basis to work out work related use could include: *Internet:* • the amount of data downloaded for work as a percentage of the total data downloaded by all members of the individual's household • any additional costs incurred as a result of your work-related use – for example, if work-related use results in you exceeding a monthly cap. *Phone:* • the number of work calls made as a percentage of total calls • the amount of time spent on work calls as a percentage of total calls • any additional costs incurred as a result of the work-related calls – for example, if work-related use results in the exceeding a monthly cap.

EXAMPLE: Phone calls on itemised bill

Lisa has an $80 per month mobile phone plan, which includes $500 worth of calls and 1.5GB of data. She receives a bill which itemises all of her phone calls and provides her with her monthly data use.

Over a four-week representative period Lisa identifies that 20% of her calls are work-related. She worked for 11 months during the income year, having had 1 month of leave. Lisa can claim a deduction of $176 in her tax return (20% x $80 x 11 months).

EXAMPLE: Non-itemised account

Peter has a prepaid mobile phone plan which costs him $50 per month. Peter does not receive a monthly bill so he keeps a record of his calls for a four-week representative period. During this 4-week period Peter makes 25 work calls and 75 private calls. Peter worked for 11 months during the income year, having had one month of leave.

Peter calculates his work use as 25% (25 work calls /100 total calls). He claims a deduction of $138 in his tax return (25% x $50 x 11 months).

EXAMPLE: Apportioning bundled services

Jenny has a $100 per month home phone and internet bundle. The bill identifies that the monthly cost of Jenny's phone service in her bundle is $40, and her internet service is $60. Jenny brings in her mobile phone plan of $90 per month and receives a $10 per month discount. Her total costs for all services are $180 per month.

Jenny worked for 11 months during the income year, having had 1 month of leave.

Based on her itemised accounts, Jenny determines that the work related use of her mobile phone is 20%. Jenny also uses her home internet for work purposes and based on her use she determines that 10% of her use is for work. Jenny does not use her home phone for work calls.

As the components are part of a bundle Jenny can calculate her work related use as follows:

Step 1: Work out the value of each bundled component

- ***Mobile phone:*** *$90 per month minus the $10 per month discount = $80 per month*
- ***Internet:*** *$60 per month as identified on her bill*

- ***Home phone:*** *Jenny does not need to determine the home phone costs as she does not use this service for work purposes.*

Step 2: Apportion your work related use

- ***Home internet use:*** *10% work related use x $60 per month = $6 work related use per month x 11 months*

  Jenny can claim $66
- ***Mobile phone use:*** *20% work related use x $80 = $16 per month x 11 months*

  Jenny can claim $176

In her tax return Jenny claims a deduction of $242 for the financial year ($66 home internet use + $176 mobile phone use).

Jenny cannot claim work related use of her home phone as she did not use it for work.

EXAMPLE: Apportioning bundled services

Ben has a $90 per month home phone and internet bundle, and unlimited internet use as part of his plan. There is no clear breakdown for the cost of each service. By keeping a record of the calls Ben makes over a 4 week representative period, he determines that 25% of his calls are for work purposes. Ben also keeps a record for four weeks of the data downloaded and determines that 30% of the total amount used was for work.

Ben worked for 11 months during the income year, having had one month of leave.

As there is no clear breakdown of the cost of each service, it is reasonable for Ben to allocate 50% of the total cost to each service.

Step 1: Work out the value of each bundled component

- ***Internet:*** *$45 per month ($90/2 services)*
- ***Home phone:*** *$45 per month ($90/2 services)*

Step 2: Apportion your work related use

- ***Home phone:*** *25% work related use x $45 per month x 11 months = $124*
- ***Internet:*** *30% work related use x $45 per month x 11 months = $149*

In his tax return Ben claims a deduction of $273 ($124 + $149) for the year.

Note that the cost of installing a home phone or maintaining a silent number is not deductible.

Claims for depreciation of a smart phone, tablet, computer and other computer equipment (eg printers, modems, scanners) should be based on a reasonable estimate of their business or work-related usage. The ATO will accept an estimate based on a diary record of both private usage and work-related usage that is maintained. Internet expenses can be similarly based. Receipts or other documentary expenses must be maintained to support claims.

The Commissioner has rewritten PS LA 2001/6, "Verification approaches for home office running expenses and electronic device expenses", which provides detailed examples including home internet expense claims based on a time basis.

13.160 Travel expenses

ITAA97 Subdiv 900-F

As a general rule, travel expenses incidental and relevant to gaining or producing assessable income are deductible under the ordinary provisions of s8-1 (see 13.000) to the extent that the expenses are not of a private, domestic or capital nature. TR 2021/1 sets out the Commissioner's views of when a deduction for employee transport expenses is allowed across a range of common scenarios. The following rules apply when claims for business travel expenses incurred (inside or outside Australia) are made by self-employed persons, partners and employees.

In some cases, the individual could receive a travel allowance from their employer to cover for their cost of travel.

13.165 Business travel: Domestic and overseas

All taxpayers must obtain documentary evidence of their business travel expenses if they are away from their ordinary residence for one night or greater (see *Written evidence* at 13.120).

There are exceptions for employees who receive an allowance from their employer and who claim no more than the amount set out at 13.180, 13.185, 13.190, 13.200 and 13.205. Such allowance should be distinguished from a living-away-from-home allowance (25.700). Also see draft ruling TR 2021/D1 and draft PCG 2021/D1 which outline the relevant factors to consider between an employee living away from home and an employee who is travelling.

Whether for overseas or domestic travel, if the travel is for six nights or more, additional records must be kept. You must record in a diary (or similar document):

- the nature of the activity
- the day and approximate time it began
- how long it lasted, and
- where you engaged in it.

Diary entries must be made before the activity ends or as soon as possible afterwards.

Receipts are also required for accommodation expenses. You do not need to record non-business activities.

Travel expenses do not include motor vehicle expenses, which must be claimed separately (see *Car expenses* from 13.220), but taxi fares (or similar expenses) and motor vehicle expenses are treated as travel expenses if they relate to overseas travel. If your travel expenses include claims for fuel and oil, you have a choice of either getting written evidence or keeping odometer records for the period you owned or leased the car (see 13.242).

13.168 Employee domestic travel

A travel diary or similar document must be maintained for travel within Australia or overseas if the employee is travelling away from their "ordinary residence" for six nights or more. No written evidence and no travel records are required for travel within Australia if the employee receives a travel allowance and claims no more than the amount considered reasonable by the ATO. If no travel allowance is received by an employee from their employer, or the employee claims more than the amount considered reasonable by the ATO (see 13.180), all travel expenses must be substantiated.

Written records (see 13.120) must be obtained for all accommodation, food and drink and incidental expenses incurred for travel away from an employee's ordinary residence, in the course of their duties.

The Commissioner's Tax Determination released annually (currently TD 2021/6) provides the full list of reasonable allowances for meals and incidental expenses for travel within Australia during each relevant income year (see 13.180 and 13,185) and overseas (see 13.190, 13.200 and 13.205).

It is the expenditure which must not exceed what the ATO considers reasonable (see 13.190). This means that employers can pay higher allowances to their employees and the substantiation exemption will still apply, provided the employee's claim is limited to the "reasonable amount" and the amount paid as an allowance is bona fide and paid to cover specific travel in performing duties as an employee.

The mere receipt of a travel allowance does not mean a deduction will be automatically allowed.

If using the "reasonable allowance" basis of claiming, a taxpayer may still be required to show the basis for the claim and that the expense was actually incurred for work-related purposes.

13.170 Travel between home and work

TR 2021/1

The cost of travel between home and work may only be deductible where:

- home is the "place of employment" and travel is between two places of employment
- the taxpayer's employment effectively starts before leaving home (eg consultant who services clients from home by telephone; a surgeon at a hospital giving treatment advice to staff before leaving home for the hospital)
- bulky employment-related equipment must be transported between home and work and no secure storage area is provided at the workplace
- taxpayer's employment is of an itinerant nature (eg different location each day), or
- a break in the journey is needed for employment duties (other than insignificant tasks such as mail collection).

In *John Holland Group Pty Ltd v Commissioner of Taxation* [2015] FCAFC 82 the Full Federal Court held that flights paid by an employer from Perth to Geraldton (WA) for a rail upgrade project would have been deductible under s8-1 ITAA97 had the cost been incurred by the employees directly. The travel was not considered to be home to work travel based on the decision in *Lunney v FCT* [1958] HCA5 because the travel was required as part of each employee's employment to a remote location.

13.172 Employee overseas travel

Employees travelling overseas who receive a travel allowance must still obtain written evidence of their accommodation expenses. They must also keep a travel record (or similar document) if they are away from their ordinary residence for six nights or more.

This "travel record" records activities undertaken while travelling, not expenses incurred while travelling. This is to prove activities were in relation to producing assessable income.

Crew members on international flights who receive travel allowances are excepted from this rule if:

- they travel principally outside Australia, and
- the total expenses claimed do not exceed the ATO reasonable limits (see 13.190).

13.175 Allowances not declared

If an allowance is not required to be returned as assessable income in accordance with the exceptions set out in TR 2004/6, and is not returned, a deduction for the expense cannot be claimed in the tax return.

13.180 Travel claims within Australia 2021-22

TR 2021/6

The substantiation requirements do not apply to "travel expenses" incurred by an employee who receives an allowance for travel costs within Australia and the costs incurred for accommodation, food, drink and incidental expenses do not exceed the following reasonable amounts as determined by the ATO. If the cost incurred is less than the reasonable amount, then the employee can only claim the amount incurred. This can apply to company directors and office holders.

These amounts, set out in TD 2021/6 are only applicable for employees who comply with the rules from 13.160 to 13.175 and 13.185. Claims in excess of the limit must be substantiated (see TR 2004/6 for details).

NOTE: Details of amounts applicable to the 2020-21 year can be found at 13.185.

Read ALL commentary in 13.185 and TR 2004/6 to ensure you understand the requirements.

2021-22 Employee's annual salary – $129,250 and below						
Location	**Accomm ($)**	**B'fast ($)**	**Lunch ($)**	**Dinner ($)**	**Incidentals ($)**	**TOTAL ($)**
Adelaide	157	29.20	32.85	56.00	20.60	295.65
Brisbane	175	29.20	32.85	56.00	20.60	313.65
Canberra	168	29.20	32.85	56.00	20.60	306.65
Darwin	220	29.20	32.85	56.00	20.60	358.65
Hobart	147	29.20	32.85	56.00	20.60	285.65
Melbourne	173	29.20	32.85	56.00	20.60	311.65
Perth	180	29.20	32.85	56.00	20.60	318.65
Sydney	198	29.20	32.85	56.00	20.60	336.65
Hi cost country centre	see Table 4	29.20	32.85	56.00	20.60	variable
Tier 2 country centres[1]	134	26.15	29.85	51.50	20.60	262.10
Other country centres	118	26.15	29.85	51.50	20.60	246.10
2021-22 Employee's annual salary – $129,251 to $230,050						
Location	**Accomm ($)**	**B'fast ($)**	**Lunch ($)**	**Dinner ($)**	**Incidentals ($)**	**TOTAL ($)**
Adelaide	208	31.80	45.00	63.00	29.45	377.25
Brisbane	257	31.80	45.00	63.00	29.45	426.25
Canberra	246	31.80	45.00	63.00	29.45	415.25
Darwin	293	31.80	45.00	63.00	29.45	462.25
Hobart	196	31.80	45.00	63.00	29.45	365.25
Melbourne	228	31.80	45.00	63.00	29.45	397.25
Perth	245	31.80	45.00	63.00	29.45	414.25
Sydney	264	31.80	45.00	63.00	29.45	433.25
High cost country	see Table 4	31.80	45.00	63.00	29.45	variable
Tier 2 country centres[1]	154	29.20	29.85	58.20	29.45	300.70
Other country centres	142	29.20	29.85	58.20	29.45	288.70
2021-22 Employee's annual salary – $230,051 and above						
Location	**Accomm ($)**	**B'fast ($)**	**Lunch ($)**	**Dinner ($)**	**Incidentals ($)**	**TOTAL ($)**
Adelaide	209	37.50	53.10	74.30	29.45	403.35
Brisbane	257	37.50	53.10	74.30	29.45	451.35
Canberra	246	37.50	53.10	74.30	29.45	440.35
Darwin	293	37.50	53.10	74.30	29.45	487.35
Hobart	196	37.50	53.10	74.30	29.45	390.35
Melbourne	265	37.50	53.10	74.30	29.45	459.35
Perth	265	37.50	53.10	74.30	29.45	459.35
Sydney	265	37.50	53.10	74.30	29.45	459.35
All country centres	$195[2]	37.50	53.10	74.30	29.45	variable

1: See *Tier 2 country centres* table.
2: Or the relevant amount in *High cost country centres* if higher.

High cost country centres – accommodation expenses					
Albany (WA)	179	Devonport (TAS)	158	Nhulunbuy (NT)	230
Alice Springs (NT)	150	Emerald (QLD)	156	Norfolk Island (NSW)	190
Armidale (NSW)	147	Esperance (WA)	162	Northam (WA)	145
Ballarat (VIC)	154	Exmouth (WA)	190	Nowra (NSW)	146
Bathurst (NSW)	141	Geraldton (WA)	165	Orange (NSW)	156
Bega (NSW)	145	Gladstone (QLD)	155	Port Hedland (WA)	175
Benalla (VIC)	142	Gold Coast (QLD)	209	Port Lincoln (SA)	170
Bendigo (VIC)	140	Gosford (NSW)	145	Port Macquarie (NSW)	170
Bordertown (SA)	149	Halls Creek (WA)	170	Port Pirie (SA)	150
Bourke (NSW)	165	Hervey Bay (QLD)	157	Queanbeyan (NSW)	139
Bright (VIC)	167	Horn Island (QLD)	200	Queenstown (TAS)	136
Broken Hill (NSW)	152	Horsham (VIC)	154	Roma (QLD)	142
Broome (WA)	220	Jabiru (NT)	216	Shepparton (VIC)	150
Bunbury (WA)	155	Kalgoorlie (WA)	172	Swan Hill (VIC)	136
Burnie (TAS)	164	Karratha (WA)	215	Tennant Creek (NT)	146
Cairns (QLD)	163	Katherine (NT)	158	Toowoomba (QLD)	144
Carnarvon (WA)	156	Kununurra (WA)	204	Thursday Island (QLD)	200
Castlemaine (VIC)	146	Launceston (TAS)	141	Townsville (QLD)	143
Chinchilla (QLD)	143	Lismore (NSW)	144	Wagga Wagga (NSW)	152
Christmas Island (WA)	198	Mackay (QLD)	161	Wangaratta (VIC)	144
Cobar (NSW)	144	Maitland (NSW)	155	Weipa (QLD)	138
Cocos (Keeling) Is (WA)	331	Mount Gambier (SA)	140	Whyalla (SA)	145
Coffs Harbour (NSW)	148	Mount Isa (QLD)	168	Wilpena-Pound (SA)	193
Colac (VIC)	138	Mudgee (NSW)	159	Wollongong (NSW)	155
Dalby (QLD)	177	Muswellbrook (NSW)	157	Wonthaggi (VIC)	152
Dampier (WA)	175	Newcastle (NSW)	185	Yulara (NT)	440
Derby (WA)	170	Newman (WA)	170		

Tier 2 country centres		
Albury (NSW)	Goulburn (NSW)	Narrabri (NSW)
Ararat (VIC)	Grafton (NSW)	Port Augusta (SA)
Ayr (QLD)	Griffith (NSW)	Portland (VIC)
Bairnsdale (VIC)	Gunnedah (NSW)	Renmark (SA)
Bundaberg (QLD)	Hamilton (VIC)	Rockhampton (QLD)
Ceduna (SA)	Innisfail (QLD)	Sale (VIC)
Charters Towers (QLD)	Inverell (NSW)	Seymour (VIC)
Cooma (NSW)	Kadina (SA)	Tamworth (NSW)
Cowra (NSW)	Kingaroy (QLD)	Taree (NSW)
Dubbo (NSW)	Maryborough (QLD)	Tumut (NSW)
Echuca (VIC)	Mildura (VIC)	Warrnambool (VIC)
Geelong (VIC)	Naracoorte (SA)	Wodonga (VIC)

13.185 Travel claims within Australia 2020-21

The substantiation requirements do not apply to "travel expenses" incurred by an employee who receives an allowance for travel costs within Australia and the costs incurred for accommodation, food, drink and incidental expenses do not exceed the following reasonable amounts as determined by the ATO. If the cost incurred is less than the reasonable amount, then the employee can only claim the amount incurred. This can apply to company directors and office holders.

These amounts, set out in TD 2020/5 are only applicable for employees who comply with the rules from 13.160 to 13.175 and 13.185. Claims in excess of the limit must be substantiated (see TR 2004/6 for details).

NOTE: Details of amounts applicable to the 2019-20 year can be found at 13.185.

Read ALL commentary in 13.185 and TR 2004/6 to ensure you understand the requirements.

2020-21 Salary levels $126,970 and below						
Location	**Accomm ($)**	**B'fast ($)**	**Lunch ($)**	**Dinner ($)**	**Incidentals ($)**	**TOTAL ($)**
Adelaide	157	28.70	32.30	55.05	20.40	293.45
Brisbane	175	28.70	32.30	55.05	20.40	311.45
Canberra	168	28.70	32.30	55.05	20.40	304.45
Darwin	220	28.70	32.30	55.05	20.40	356.45
Hobart	147	28.70	32.30	55.05	20.40	283.45
Melbourne	173	28.70	32.30	55.05	20.40	309.45
Perth	180	28.70	32.30	55.05	20.40	316.45
Sydney	188	28.70	32.30	55.05	20.40	324.45
Hi cost country centre	see Table 4	28.70	32.30	55.05	20.40	variable
Tier 2 country centres[1]	134	25.75	29.35	50.65	20.40	260.15
Other country centres	114	25.75	29.35	50.65	20.40	240.15
2020-21 Salary range $126,971 to $225,980						
Location	**Accomm ($)**	**B'fast ($)**	**Lunch ($)**	**Dinner ($)**	**Incidentals ($)**	**TOTAL ($)**
Adelaide	208	31.25	44.25	61.95	29.20	374.65
Brisbane	257	31.25	44.25	61.95	29.20	423.65
Canberra	246	31.25	44.25	61.95	29.20	412.65
Darwin	293	31.25	44.25	61.95	29.20	459.65
Hobart	196	31.25	44.25	61.95	29.20	362.65
Melbourne	228	31.25	44.25	61.95	29.20	394.65
Perth	245	31.25	44.25	61.95	29.20	411.65
Sydney	251	31.25	44.25	61.95	29.20	417.65
High cost country	see Table 4	31.25	44.25	61.95	29.20	variable
Tier 2 country centres[1]	152	28.70	29.35	57.20	29.20	296.45
Other country centres	136	28.70	29.35	57.20	29.20	280.45
2020-21 Salary $225,981 and above						
Location	**Accomm ($)**	**B'fast ($)**	**Lunch ($)**	**Dinner ($)**	**Incidentals ($)**	**TOTAL ($)**
Adelaide	209	36.80	52.20	73.10	29.20	400.30
Brisbane	257	36.80	52.20	73.10	29.20	448.30
Canberra	246	36.80	52.20	73.10	29.20	437.30
Darwin	293	36.80	52.20	73.10	29.20	484.30
Hobart	196	36.80	52.20	73.10	29.20	387.30
Melbourne	265	36.80	52.20	73.10	29.20	456.30
Perth	265	36.80	52.20	73.10	29.20	456.30
Sydney	265	36.80	52.20	73.10	29.20	456.30
All country centres	$195[2]	36.80	52.20	73.10	29.20	variable

1: See *Tier 2 country centres* table. 2: Or the relevant amount in *High cost country centres* if higher.

High cost country centres – accommodation expenses					
Albany (WA)	179	Emerald (QLD)	156	Norfolk Island (NSW)	190
Alice Springs (NT)	150	Esperance (WA)	160	Northam (WA)	143
Ballarat (VIC)	151	Exmouth (WA)	190	Orange (NSW)	155
Bathurst (NSW)	135	Geraldton (WA)	165	Port Hedland (WA)	175
Bega (NSW)	145	Gladstone (QLD)	155	Port Lincoln (SA)	170
Benalla (VIC)	140	Gold Coast (QLD)	209	Port Macquarie (NSW)	161
Bendigo (VIC)	138	Gosford (NSW)	140	Port Pirie (SA)	150
Bordertown (SA)	149	Halls Creek (WA)	170	Queanbeyan (NSW)	139
Bourke (NSW)	165	Hervey Bay (QLD)	157	Queenstown (TAS)	136
Bright (VIC)	165	Horn Island (QLD)	200	Roma (QLD)	139
Broken Hill (NSW)	144	Horsham (VIC)	152	Shepparton (VIC)	148
Broome (WA)	220	Jabiru (NT)	216	Swan Hill (VIC)	136
Bunbury (WA)	155	Kalgoorlie (WA)	172	Tennant Creek (NT)	146
Burnie (TAS)	164	Karratha (WA)	215	Toowoomba (QLD)	144
Cairns (QLD)	153	Katherine (NT)	158	Thursday Island (QLD)	200
Carnarvon (WA)	156	Kununurra (WA)	204	Townsville (QLD)	143
Castlemaine (VIC)	146	Launceston (TAS)	141	Wagga Wagga (NSW)	144
Chinchilla (QLD)	143	Mackay (QLD)	161	Wangaratta (VIC)	142
Christmas Island (WA)	190	Maitland (NSW)	152	Weipa (QLD)	138
Cocos (Keeling) Is (WA)	319	Mount Gambier (SA)	140	Whyalla (SA)	145
Coffs Harbour (NSW)	140	Mount Isa (QLD)	160	Wilpena-Pound (SA)	193
Colac (VIC)	138	Mudgee (NSW)	150	Wollongong (NSW)	155
Dalby (QLD)	164	Muswellbrook (NSW)	148	Wonthaggi (VIC)	150
Dampier (WA)	175	Newcastle (NSW)	174	Yulara (NT)	420
Derby (WA)	170	Newman (WA)	170		
Devonport (TAS)	158	Nhulunbuy (NT)	222		

Tier 2 country centres		
Albury (NSW)	Echuca (VIC)	Naracoorte (SA)
Ararat (VIC)	Geelong (VIC)	Nowra (NSW)
Armidale (NSW)	Goulburn (NSW)	Port Augusta (SA)
Ayr (QLD)	Grafton (NSW)	Portland (VIC)
Bairnsdale (VIC)	Griffith (NSW)	Renmark (SA)
Bundaberg (QLD)	Gunnedah (NSW)	Rockhampton (QLD)
Ceduna (SA)	Hamilton (VIC)	Sale (VIC)
Charters Towers (QLD)	Innisfail (QLD)	Seymour (VIC)
Cobar (NSW)	Kadina (SA)	Tamworth (NSW)
Cooma (NSW)	Kingaroy (QLD)	Tumut (NSW)
Cowra (NSW)	Lismore (NSW)	Warrnambool (VIC)
Dubbo (NSW)	Mildura (VIC)	Wodonga (VIC)

Travel allowance

Generally, an allowance is treated as being in respect of travel if the period away does not exceed 21 days. For longer periods, consideration needs to be given to draft TR 2021/D1 and draft PCG 2021/D1 as the allowance may be in respect of travel, or the payment may be a living away from home allowance (see 25.700). To be clear, a period exceeding 21 day is merely an indicator that the payment may be a living away from home allowance, it is not a hard and fast rule. All other factors need to be considered.

Substantiation

TR 2004/6

Claims up to certain limits are allowed without receipts or other written documentary evidence, but only if an allowance was received from the employer. All expenses must be actually incurred by the employees before a claim can be made and apportioned between business and private expenses where appropriate.

If no allowance was received, or a claim more than the reasonable amount is made, all expenses must be substantiated (see 13.120).

Part day travel allowances not involving sleeping away from home are included in assessable income. Any work related claim is subject to substantiation.

Verification of reasonable claims

In appropriate cases where the substantiation exception is relied on, the ATO may still require an employee to show that they are entitled to the substantiation exception, the reasonable rate used, and entitlement to a deduction. That could mean showing that work-related travel was undertaken, a bona fide travel allowance was paid, the claim is below the reasonable amount for the destination, and that commercial accommodation was used. The nature and degree of evidence required will depend on the circumstances, eg the circumstances under which the employer pays allowances, the occupation of the employee and the total amount of allowances received and claimed during the year by the employee.

Tax return treatment

Neither the allowance nor the expenses have to be included in the employee's tax return if the allowance does not exceed the reasonable amounts and has been fully expended on deductible expenses. If an amount less than the allowance has been expended, then the employee's income tax return must include the allowance and the expenses claimed. If a deduction is claimed, then the allowance must be included in the tax return.

13.187 Claims by long distance truck drivers

TR 95/18; TD 2021/6

Employee long distance truck drivers who receive travel allowances and are required to sleep away from home can claim food and drink expenses to set amounts without substantiating those claims. Where no travel allowance is paid, all expenses must be substantiated.

Employee drivers

Long distance truck drivers who are required to sleep away from home for a minimum of one night or more can claim the cost of accommodation, food and drink, and other incidental expenses while they are travelling as part of their duties.

The employee driver can only claim the actual amount incurred. However the driver would need to obtain and retain receipts or other documentary evidence, or maintain a diary if:

- they receive no allowance from their employer, or
- the claim exceeds the amount considered reasonable by the ATO (below).

All employees are required to keep a diary if they are away from their usual place of residence for six nights or more.

Employees who receive a daily travel allowance can claim up to the food and drink component only of the reasonable daily travel amounts listed below, without substantiating them. This does not include incidental expenses. If a higher claim is made, the total claim must be substantiated, not just the excess.

Employee truck drivers: acceptable daily rates					
Year	Reference	Breakfast	Lunch	Dinner	Total
2021-22	TD 2021/6	$26.15	$29.85	$51.50	$107.50 per day
2020-21	TD 2020/5	$25.75	$29.35	$50.65	$105.75 per day

The treatment of employee truck drivers' allowances, reimbursements and work related deductions are discussed in full in taxation ruling TR 95/18. See also TR 2004/6.

No daily travel allowance

If no daily travel allowance is provided, all of the expenses must be substantiated by the appropriate written evidence for accommodation, meals and other work-related travel expenses. Travel records must be kept for work-related travel of six or more consecutive nights. If it is not possible to obtain receipts, expenses must be recorded in a diary.

Owner-drivers

Owner-drivers are treated the same as employee truck drivers who do not receive an allowance.

The ATO takes the view that in most cases a receipt can be obtained for the cost of a meal (eg at a roadhouse). It is considered that it is reasonable for a truck driver to get receipts for meals from roadhouses, diners or fast food chains.

For food and drink purchases from vending machines or roadside caravans, the expenses are considered "otherwise too hard to substantiate" and expenditure must be supported by a diary or similar record containing details.

All owner drivers are required to keep a diary (see 13.160) if they are away from their usual place of residence for six or more nights in a row.

13.190 Overseas travel allowances

Claims for travel expenses by non-employees on business trips overseas must be fully substantiated for claims to be deductible. You must keep receipts or other documentary evidence as well as a diary. Special rules apply to employees only, provided a reasonable travel allowance was paid.

For those employees who receive a reasonable travel allowance, there is no need to substantiate costs for food, drink and incidental expenses. If a deduction is claimed for more than the reasonable amount, the whole claim must be substantiated. For ATO substantiation and tax return treatment see 13.180. Written evidence is required for all accommodation expenses and a diary must still be maintained if away for six nights or more.

Reasonable claims for meals and incidentals when travelling overseas (see 13.200) are available only for employees who receive an allowance (see also 13.160).

Special locations

If an employee travels to a location for which the reasonable overseas travel allowance does not include a meals component, a reasonable amount is added to the incidental component.

Special rules apply to places not covered in TD 2021/6 and TD 2019/11 for employees receiving travel allowances.

From 2017-18, if an employee travels to a country that is not shown in Table 1 at 13.200 the ATO will accept the reasonable allowance amounts in Cost Group 1 (see Table 2 at 13.200 for entire listing).

The relevant amounts per day are as follows.

Overseas Travel: acceptable daily rates				
Year	Salary range	Meals	Incidentals	Total
2021-22	$129,250 and below	$60	$25	$85
	$129,251 to $230,050	$75	$25	$100
	$230,051 and above	$95	$30	$125
2020-21	$126,970 and below	$60	$25	$85
	$126,971 to $225,980	$75	$25	$100
	$225,981 and above	$95	$30	$125

Converting allowance to Australia dollars ($AUD)

The reasonable allowance amounts must be converted into $AUD. To find whether the allowance would be considered reasonable, convert into $AUD using the foreign exchange rate at the time of travel:

Value of allowance in $AUD = Overseas allowance ÷ Prevailing exchange rate

NOTE: Claims for meals will not need to be substantiated (see 13.120) provided the reasonable allowance amounts are not exceeded, and provided a diary and receipts for accommodation expenses have been maintained. An allowance must be received by the employee.

No travel allowance paid

If there was no allowance (or it was not bona fide) and the employee was away for six or more consecutive nights, both written evidence and a travel diary is required. In similar circumstances, if the employee is away for five or less nights, a travel diary (QC 56005) is not required but written evidence of spending must be obtained (see 13.120).

Travel by spouse or relative

ITAA97 s26-30

While a taxpayer may seek to make a claim based on the reasonable allowance rules, s26-30 operates to deny a claim for travel expenses attributable to a relative accompanying an employee who is travelling in the course of performing their duties as an employee, or a person who is travelling in the course of carrying on a business for the purpose of producing assessable income.

However, this rule will not apply if:

- the relative accompanying the taxpayer making the claim performed substantial employment duties for that employer or taxpayer as an employee of that employer or taxpayer, and
- it is reasonable to conclude that the relative would still have accompanied the taxpayer even if a personal relationship did not exist.

In addition, a deduction is still allowed if the expenditure was in respect of providing a fringe benefit.

Employers can claim deductions for the cost of a spouse or relative if they accompany the taxpayer, but that cost is then taxed as a fringe benefit (see 25.215).

13.200 Travel claims: Overseas 2021-22

These "reasonable allowances" are available for employees only. Non-employees must substantiate all claims. The countries named in Table 2 represent the most frequented locations. The list is contained in TD 2020/5.

These limits are available only to employees who comply with the rules at 13.190. Table 2 sets out the reasonable allowance in Australian dollars and Table 1 sets out the cost group for each destination. If a country is not listed in Table 2, use the amount for cost group 1 in Table 1. The amounts are determined solely for the purpose of the exception of obtaining written evidence (see TR 2004/6 para 33).

NOTE: Details of cost groups and reasonable allowance amounts for the 2020-21 year can be found at 13.205.

Table 1: Reasonable allowances by cost groups 2021-22 ($AUD)

Cost group	Salary $129,250 and below			Salary $129,251 to $230,050			Salary $230,051 and above		
	Meals	Incidentals	Total	Meals	Incidentals	Total	Meals	Incidentals	Total
1	$60	$25	$85	$75	$25	$100	$95	$30	$125
2	$95	$30	$125	$110	$35	$145	$140	$40	$180
3	$130	$35	$165	$150	$40	$190	$185	$45	$230
4	$170	$35	$205	$190	$45	$235	$235	$50	$285
5	$200	$40	$240	$240	$50	$290	$295	$60	$355
6	$240	$45	$285	$295	$50	$345	$340	$60	$400

Table 2: Cost groups 2021-22

Albania	2	Ecuador	4	Laos	3	Rwanda	3
Algeria	3	Egypt	3	Latvia	4	Saint Lucia	5
Angola	4	El Salvador	3	Lebanon	4	Saint Vincent	4
Antigua and Barbuda	6	Eritrea	4	Lithuania	3	Samoa	4
Argentina	2	Estonia	4	Luxembourg	5	Saudi Arabia	4
Armenia	3	Ethiopia	2	Macau	5	Senegal	4
Austria	5	Fiji	3	Malawi	2	Serbia	3
Azerbaijan	3	Finland	6	Malaysia	3	Sierra Leone	2
Bahamas	6	France	5	Mali	3	Singapore	6
Bahrain	5	French Polynesia	6	Malta	4	Slovakia	4
Bangladesh	4	Gabon	6	Mauritius	4	Slovenia	3
Barbados	6	Gambia	2	Mexico	3	Solomon Islands	4
Belarus	2	Georgia	2	Monaco	6	South Africa	2
Belgium	5	Germany	5	Morocco	4	Spain	5
Bermuda	6	Ghana	4	Mozambique	3	Sri Lanka	3
Bolivia	3	Gibraltar	4	Myanmar	3	Sudan	2
Bosnia	2	Greece	4	Namibia	2	Surinam	3
Brazil	3	Guatemala	4	Nepal	3	Sweden	5
Brunei	3	Guyana	3	Netherlands	5	Switzerland	6

Table 2: Cost groups 2021-22							
Bulgaria	3	Hong Kong	5	New Caledonia	5	Taiwan	5
Burkina Faso	3	Hungary	3	New Zealand	4	Tanzania	3
Cambodia	1	Iceland	6	Nicaragua	3	Thailand	4
Cameroon	4	India	3	Nigeria	4	Tonga	3
Canada	4	Indonesia	3	North Macedonia	2	Trinidad & Tobago	6
Chile	3	Iran	1	Norway	6	Tunisia	2
China	5	Iraq	5	Oman	6	Turkey	3
Colombia	3	Ireland	5	Pakistan	2	Uganda	3
Congo Dem Republic	4	Israel	6	Panama	4	Ukraine	3
Cook Islands	4	Italy	5	Papua NG	4	United Arab Emirates	6
Costa Rica	3	Jamaica	4	Paraguay	2	United Kingdom	5
Cote D'Ivoire	4	Japan	5	Peru	4	USA	5
Croatia	3	Jordan	6	Philippines	3	Uruguay	3
Cuba	3	Kazakhstan	2	Poland	3	Vanuatu	4
Cyprus	4	Kenya	4	Portugal	4	Vietnam	3
Czech Republic	3	Korea	6	Puerto Rico	5	Zambia	2
Denmark	6	Kosovo	2	Qatar	6		
Dominican Republic	4	Kuwait	5	Romania	3		
East Timor	4	Kyrgyzstan	2	Russia	4		

13.205 Travel claims: Overseas 2020-21

These "reasonable allowances" are available for employees only. Non-employees must substantiate all claims. The countries named in Table 2 represent the most frequented locations. The list is contained in TD 2020/5.

These limits are available only to employees who comply with the rules at 13.190. Table 2 sets out the reasonable allowance in Australian dollars and Table 1 sets out the cost group for each destination. If a country is not listed in Table 2, use the amount for cost group 1 in Table 1. The amounts are determined solely for the purpose of the exception of obtaining written evidence (see TR 2004/6 para 33).

Table 1: Reasonable allowances by cost groups 2020-21 ($AUD)									
Cost group	Salary $126,970 and below			Salary $126,971 to $225,980			Salary $225,981 and above		
	Meals	Incidentals	Total	Meals	Incidentals	Total	Meals	Incidentals	Total
1	$60	$25	$85	$75	$25	$100	$95	$30	$125
2	$95	$30	$125	$110	$35	$145	$140	$40	$180
3	$130	$35	$165	$150	$40	$190	$185	$45	$230
4	$170	$35	$205	$190	$45	$235	$235	$50	$285
5	$200	$40	$240	$240	$50	$290	$295	$60	$355
6	$240	$45	$285	$295	$50	$345	$340	$60	$400

Table 2: Cost groups 2020-21							
Albania	2	Ecuador	4	Laos	3	Rwanda	3
Algeria	3	Egypt	3	Latvia	4	Saint Lucia	5
Angola	4	El Salvador	3	Lebanon	5	Saint Vincent	4
Antigua & Barbuda	6	Eritrea	4	Lithuania	3	Samoa	4
Argentina	2	Estonia	4	Luxembourg	5	Saudi Arabia	4
Armenia	3	Ethiopia	3	Macau	5	Senegal	4
Austria	5	Fiji	3	Malawi	3	Serbia	3
Azerbaijan	3	Finland	6	Malaysia	3	Sierra Leone	3
Bahamas	6	France	5	Mali	3	Singapore	6
Bahrain	5	French Polynesia	6	Malta	4	Slovakia	4
Bangladesh	4	Gabon	6	Mauritius	4	Slovenia	3
Barbados	6	Gambia	2	Mexico	3	Solomon Islands	4
Belarus	2	Georgia	2	Monaco	6	South Africa	2
Belgium	5	Germany	5	Morocco	4	Spain	5
Bermuda	6	Ghana	4	Mozambique	3	Sri Lanka	3
Bolivia	3	Gibraltar	4	Myanmar	3	Sudan	2
Bosnia	2	Greece	4	Namibia	2	Surinam	3
Brazil	3	Guatemala	4	Nepal	3	Sweden	5
Brunei	3	Guyana	4	Netherlands	5	Switzerland	6
Bulgaria	3	Hong Kong	5	New Caledonia	5	Taiwan	5
Burkina Faso	3	Hungary	3	New Zealand	4	Tanzania	3
Cambodia	1	Iceland	6	Nicaragua	3	Thailand	4
Cameroon	4	India	3	Nigeria	4	Tonga	3
Canada	4	Indonesia	3	North Macedonia	2	Trinidad & Tobago	6
Chile	3	Iran	1	Norway	6	Tunisia	2
China	5	Iraq	5	Oman	6	Turkey	3
Colombia	3	Ireland	5	Pakistan	2	Uganda	3
Congo Dem Rep	4	Israel	6	Panama	4	Ukraine	3
Cook Islands	4	Italy	5	Papua NG	4	United Arab Emirates	6
Costa Rica	4	Jamaica	4	Paraguay	2	United Kingdom	5
Cote D'Ivoire	5	Japan	5	Peru	4	USA	5
Croatia	3	Jordan	6	Philippines	3	Uruguay	3
Cuba	3	Kazakhstan	2	Poland	3	Vanuatu	4
Cyprus	4	Kenya	4	Portugal	4	Vietnam	3
Czech Republic	3	Korea	6	Puerto Rico	5	Zambia	2
Denmark	6	Kosovo	2	Qatar	6		
Dominican Republic	4	Kuwait	5	Romania	3		
East Timor	4	Kyrgyzstan	2	Russia	4		

13.210 Summary of substantiation requirements

The following table contained in TR 2004/6 provides a summary of the substantiation requirement for claims for those work-related travel allowance expenses covered by the allowance where the taxpayer is required to sleep away from home when travelling for work purposes:

	Domestic travel		Overseas travel	
Travel allowance received and:	**Written evidence**	**Travel diary**	**Written evidence**	**Travel diary**
The amount claimed does not exceed the reasonable allowance amount:				
• travel less than six nights in a row	No	No	No*	No
• travel six or more nights in a row	No	No	No*	Yes**
The amount claimed exceeds the reasonable allowance amount:				
• travel less than six nights in a row	Yes – for the whole claim	No	Yes	No
• travel six or more nights in a row	Yes – for the whole claim	Yes	Yes	Yes**

* Regardless of the length of the trip, written evidence is required for overseas accommodation expenses – but not for food, drink and incidentals.

** Members of international air crews do not need to keep a travel diary (travel record) if they limit their claim to the amount of the allowance received.

13.220 Car expenses

ITAA97 Div 28

Under tax law, a car expense is a loss or outgoing to do with a car, including costs to operate a car (such as fuel, repair, registration and insurance) and depreciation of a car (s28-13). However, expenses paid in respect of travel outside Australia and taxi fares or similar expenses are not car expenses (s26-13(3)). Individual taxpayers are allowed under the law to calculate their deductions for car expenses using prescribed methods in order to simplify their compliance.

From the 2015-16 income year, the number of available methods for calculating deductible car expenses for individuals was reduced from four to two by removing the "12% of original value method" and the "one-third of actual expenses method" (see 13.225). Further, a single rate applies under the cents per kilometre method regardless of the car's engine capacity.

Car parking expenses and certain road toll or electronic tollway tag expenses are not classified as car expenses under s28-13. However, these expenses can still be deductible as general deductions under general work-related expenses substantiation rules (see 13.290 and 13.295).

13.225 Car expense substantiation

ITAA97 Subdiv 28-B

The rules for substantiating car claims apply to all individuals (ie employees and non-employees) and partnerships where there is at least one partner who is a natural person. These taxpayers have to substantiate their car claims if they own, lease, or hire under hire purchase, a car that is used for business or income producing purposes. The rules do not apply to claims made by companies or a trustee of a trust.

Asset acquisition financed by hire purchase transactions and limited recourse debt may result in the clawback of capital allowances where the claim is excessive (see 15.800).

From the 2015-16 income year, individuals must choose one of the following two methods unless an exception applies:

- cents per kilometre method, or
- log book method.

For income years prior to 1 July 2015, individuals had the choice of two additional methods:

- 12% of original value method (ITAA97 Subdivision 28-D)
- 1/3rd of actual expenses method (ITAA97 Subdivision 28-E).

These methods were removed as result of changes to the tax law because only a small number of individual taxpayers had made car expense claims under these methods. For detailed discussion of the 12% of original value method and 1/3rd of actual expenses method – refer to the *Tax Summary 2015 & 2016*.

Unlike work-related expenses, the $300 substantiation threshold does not apply to claims made for car expenses.

The rules apply to the following vehicles (including four-wheel drive vehicles):

- motor cars, station wagons, panel vans, utility trucks or similar vehicles, and
- any other road vehicle designed to carry a load of less than one tonne or fewer than nine passengers.

For each car used in deriving assessable income, individuals can choose, in each income year, only one of the two methods to claim their car expenses. Each method has different record keeping requirements and can result in higher or lower claims. The method chosen in an income year can be changed, provided the taxpayer would have been entitled to claim deductions using an alternative method.

Choose the method that gives the highest claim provided you are able to discharge any record keeping requirements attached to that method. If you're registered for GST see 23.226 for calculation of GST credits for each method.

EXAMPLE

Ray used the log book method and claimed car expenses of $1,000. Following an audit, the ATO reduced the claim to $500. Under the cents per kilometre method the taxpayer would have been entitled to claim $700. In that case Ray can change the method chosen and would be allowed to claim $700.

Note that the two available methods cannot be used for:

- a motor cycle or similar vehicle
- a taxi (on hire)
- a motor vehicle hired on an intermittent basis (eg hourly, daily, weekly or short-term) (note that a motor vehicle on hire will be subject to these substantiation rules if it is hired under successive agreements that results (or is likely to result) in substantial continuity of that hiring arrangement), or
- panel vans and utility trucks designed to carry a load of one tonne or more.

See *Exemptions from substantiation* at 13.265.

When using the "log book" method you must keep odometer readings for the start and end of the period you leased or owned the car in the income year.

Business kilometres

ITAA97 s28-25(3)

Business kilometres are those kilometres travelled by the car in the course of producing your assessable income or travelling between workplaces. The number of business kilometres is calculated by making a reasonable estimate. However, when using the "log book method" (see 13.240) the estimate must take into account:

- log books, odometer or other records
- variations in pattern of the use of the car, and
- any changes in the number of cars used to produce your assessable income.

Summary of the two methods		
	Cents per km	**Log book**
Eligibility rules	None but limited to a claim of 5,000kms	Car must have been owned or leased
Expense base	Business kms	
Calculate deduction	Multiply by cents per km	Multiply by % business use
Have to substantiate expenses?	NO	YES

13.230 Cents per km method

ITAA97 Subdiv 28-C; QC 31951

Under this method, there is no need to substantiate any of the car expenses. An individual taxpayer can claim car expenses based on the number of business kms the car travelled during the income year. The claim is limited to a maximum of 5,000 business kms per car, regardless of the number of cars involved. The business travel should be based on a reasonable estimate. No documentation is required to be maintained if this method is used. However the person must still satisfy the ATO that the travel was undertaken for income producing purposes and that the expense was calculated on a reasonable basis.

The claim is calculated by multiplying:

Business kms travelled in the income year (limited to 5,000 kms)
x Rate based on car's engine capacity

This method is available even if the car has travelled more than 5,000 business kms – however the business kms in excess of 5,000 are ignored and the claim is limited to 5,000 kilometres.

For income years prior to 2015-16 the cents per kilometre rate was based on the engine size of the car being used by the individual in deriving their assessable income. By way of example, the cents per kilometre rates for the 2014-15 income year were follows:

For income years prior to 2014-15

Rates for 2014-15		
Engine capacity		Rate per km
Non-rotary	Rotary	
Up to 1,600cc	Up to 800cc	65c
1,601 to 2,600cc	801 to 1,300cc	76c
Over 2,600cc	Over 1,300cc	77c

For income years 2015-16 and later

For the 2015-16 and later income years the law has changed such that there is only a single cents per kilometre rate. This rate applies irrespective of engine size. The calculation is therefore:

Business kms travelled in the income year (limited to 5,000 kms) x cents per kilometre rate

The applicable cents per kilometre rates are:

	2021-22 (F2020L00676)	2020-21 (MVE 2020/D1)	2019-20 (MVE 2018/1)	2018-19 (MVE 2018/1)	2017-18 (MVE 2016/1)	2016-17 (MVE 2016/1)
Rate per km	72c	72c	68c	68c	66c	66c

EXAMPLE

Craig estimates travel of 8,000 kms during the 2021-22 income year in the course of earning assessable income. A single rate applies for this income year. If Craig chooses to use the cents per kilometre method, and travels in excess of 5,000 business kilometres, then the claim is limited to 5,000 kilometres. Therefore, the claim for the income year is 5,000 kms x 72 cents = $3,600.

EXAMPLE

May uses two cars for business purposes. The first travelled 8,000 business kms and the second travelled 3,500 kms. Using the cents per km method the claim is $6,120 (i.e., 5,000 kms at 72 cents + 3,500 kms at 72 cents).

If claims have been made using the cents per km method, special rules apply to calculate the profit or loss on disposal when the car is subsequently disposed of, lost or destroyed (see 13.280).

Car used by more than one person

PS LA 1999/2

Where two or more taxpayers own or lease a car and each uses that car separately for income producing purposes, each person is entitled to claim a deduction using the cents per km method.

EXAMPLE

Evan uses the car during the day for business purposes. His partner uses the same car at night, also for producing assessable income. Both can claim a deduction using the cents per km method, up to 5,000 kms each.

If two or more persons own or lease a car and the car is used jointly, (one drives and the other is a passenger) for income producing purposes, each can claim a deduction based on the cents per kilometre method, but the total deduction cannot exceed the set rate multiplied by 5,000.

13.240 Log book method

ITAA97 Subdiv 28-F

If the number of business kilometres travelled by a vehicle in the year exceeds 5,000 the taxpayer may choose to use the log book method. The log book method can be used whether or not the vehicle travels 5,000 business kilometres, but the car must be either owned or leased by the taxpayer.

Taxpayers must substantiate all of their car expenses under this method including:

- registration and insurance
- repairs and maintenance
- fuel and oil (see 13.242)
- depreciation (if owned or on hire purchase) (see from 15.010 for details of the depreciation rules), and
- lease charges – luxury car rules may apply (see 15.085).

A deduction is allowed based on the business percentage of the total kms travelled by the car during the income year:

Business kms ÷ Total kms x Total car expenses

EXAMPLE

Broderick purchased a car on 1 December 2017 for $40,000 (GST inclusive) and travelled 15,000 kms (of which 12,000 kms were for business travel) for the balance of the income year. Total car expenses (including depreciation) for the income year were $9,800.

Assuming Broderick has maintained all of the necessary substantiation records, a claim could be made in 2017-18 for 80% of $9,800 = $7,840.

Keeping a log book

ITAA97 Subdiv 28-G; ITAA97 Subdivision 900-C

A log book must be kept for the first income year when a claim is made and it must be maintained for a continuous 12 week period. The taxpayer can choose which 12 consecutive weeks to maintain the log book, but for a claim to be made under this method, the log book period must be commenced in the income year (or an earlier year: see below).

If the car is held by the taxpayer for less than 12 weeks during the income year, the log book period must cover that entire period. If claims are to be made using the log book method for two or more cars in the same income year, the log books for those cars must cover the same 12 week period.

Once a log book has been maintained for the required 12 week period, the next log book is only required to be completed in five years time unless:

- a notification is sent before the income year from the ATO
- a second car is acquired during an income year and you plan to claim using the log book method, or
- you vary the business percentage of your claim.

Even though a log book has been kept for 12 weeks, in a non log book year, a reasonable estimate must still be made of the business kms travelled by the car, taking into account any variation in use of the car and changes in the number of cars used to earn income. Car expense claims in that non log book year must be based on that estimate.

The log book should be in English and it must be retained for five years after the last income year that the log book is used to claim car expenses for the car (Subdiv 28-I). The five years start on the later of the due date for lodging the return and the lodgment date. The retention period can be extended by a further five years if there is a dispute with the ATO involving the business percentage claimed.

EXAMPLE

A log book was completed in 2013-14 and the taxpayer last claimed car expenses using that log book in 2017-18. Their 2017-18 tax return was due for lodgment on 31 October 2018. The taxpayer lodged the return on 1 October 2018. The log book must be retained until 31 October 2023.

The log book must record all business journeys made in the car during the selected 12 week period including:

- when the log book period starts and ends
- the car's odometer readings at the start and end of the period
- the total kilometres travelled
- the total business kilometres travelled, and
- the business percentage.

For each journey the following must be recorded:

- the day the journey began and ended
- the car's odometer reading at the start and end of the journey
- the total kilometres travelled on the journey
- why the journey was made, and
- the total number of business kilometres travelled.

NOTE: If a taxpayer made two or more journeys in a row on the same day, the taxpayer can record them as a single journey

Entries in the log book do not need to be signed.

There is no need to keep a log book for a replacement car if it is nominated as a replacement car, but the existing car (if retained) will be treated as a new car. This means the replacement car can continue to be claimed for using the old log book (provided the log book method is not also used for the old car). A new log book must be kept for both cars for a new concurrent 12 weeks if claims for both the old car and the replacement car are to be made using the log book method. The replacement nomination must be made before lodging your income tax return (or such later time allowed by the ATO) and must be retained until the end of the log book period.

The nomination must record for both cars:

- odometer readings at the start and end of the period
- make, model and registration, and
- engine capacity.

Log book pro forma					
Vehicle registration no					
Period covered by log book: From				to	
Odometer readings for period: Start				end	
Odometer readings per journey		Date of travel		Kilometres travelled	Reason for journey
Start	End	Start	End		
Total kilometres for period					
Total business kilometres				%	

13.242 Claims for fuel and oil

Documentary evidence is not required to claim fuel and oil expenses, but the claim must be based on a reasonable estimate of those expenses and the business kilometres travelled.

The ATO stated in TD 97/19 that claims will be accepted if based on:

- the business kilometres travelled
- the average fuel cost, and
- the average fuel consumption.

Under that Determination, odometer readings must be maintained if no other records are available.

The monthly average cost of fuel within the capital cities can be obtained from the Australian Automotive Association website. Those travelling in the country must obtain another form of independent verification (eg average price from area distributor). The average fuel consumption can be based on the figures contained in the Green Vehicle Guide- see http://www.greenvehicleguide.gov.au.

The average fuel consumption figures in the guide are generally lower than under real conditions, leading taxpayers to inadvertently under-claim for the cost of fuel.

13.250 Switching methods

The same method of claiming motor vehicle expenses does not have to be used every year. Even though the log book method has been used in one year, the taxpayer can choose the alternative cents per kilometre method in a later year and for each motor vehicle (and vice versa).

Note that if the taxpayer switches back to the log book method, a new log book does not have to be used until the 5th year of the original log has expired.

13.260 Log book method: Worked example

The log book method can be used whether business kilometres exceed 5,000 or not, but only if the car is either leased or owned by the taxpayer and is used to produce assessable income.

EXAMPLE

A commercial traveller traded-in his car for $14,500 on 31 October 2018, buying another the same day on hire-purchase (the old contract was then paid out). A car allowance of $16,580 was received (ie based on 48 weeks at $55 per week plus 68c per km including home-to-work non-tax deductible travel).

The car allowance received must be included as assessable income. The profit on trade-in of the vehicle of $1,118 must also be included as an assessable balancing adjustment (assessable income).

For the year, total travel was 23,273 kms but the business kms were only 12,800 kms: continuing the earlier years' claims on an income-producing ratio of 55%, as established from a log book. The taxpayer's estimate of actual usage during the year confirmed the business percentage of 55%.

NOTE: A 25% diminishing value rate applies if a car is purchased under a contract entered into after 10 May 2006.

Depreciation on the traded-in car to the date of sale

Written down value at the beginning of the year	*$13,600*	
25% (diminishing-balance) depreciation (4 months out of 12 months)	*1,133*	***$1,133***
Written-down value on disposal (adjusted below)	*$12,467*	
Depreciation on replacement vehicle		
GST exclusive cash price (Note: depreciation cost limit can apply)	*$35,400*	
25% (diminishing-balance) depreciation (8 months out of 12 months)	*5,900*	***$5,900***
Written-down value	*$29,500*	

Carry-forward claims and running expenses for both cars

Registration and third party insurance (old car)	*$320*	
Comprehensive insurance after refund (old car)	*630*	
Registration and third party insurance (new car)	*370*	
Comprehensive insurance (new car)	*810*	

Interest and finance contract charges (new car)

Interest and finance charges for 8 months	*2,800*	
Interest and charges on H.P. contract (old car)	*$1,730*	
less credit allowed when paid out	*(460)*	*1,270*
Petrol and oil (both cars)	*2,910*	
Service, repairs and oil changes	*600*	
Motoring organisation service subscription	*120*	
Interest on private loan towards car deposit (ie $3,000 @ 15% for 8 months)	*300*	
Deductible costs	*$10,130*	***$10,130***
Total of depreciation and apportionable expenses		***$17,163***

Depreciation adjustment on traded-in car	***W/D value***
Original cost was	*$26,000*
Calculated depreciation over the years	*($13,533)*
Written down value	*$12,467*
Sale price	***$14,500***
Profit on sale	***$2,033***
Amount to be added back as assessable income (ie 55% of $2,033)	***$1,118***

Business claim

Income-producing use: 12,800kms divided by 23,273kms = 55%

The claim: 55% of $17,163	*$ 9,440*
plus parking fees and tolls (clearly attributable to business use of car)	*$2,225*
CLAIM IN 2018-19 TAX RETURN	***$ 11,665***

13.265 Exemptions from substantiation

There are circumstances where certain cars are exempt from the need to substantiate car expense claims. In these situations, the taxpayer can choose to use one of the two methods or calculate the deduction under the normal rules applicable under s8-1.

If the latter is chosen, the claim will be allowed based on the extent that expenses were incurred in carrying on a business or necessarily incurred in earning the person's assessable income.

If an individual is covered by one of the following exceptions to the car expenses rules they can calculate their deductions under normal principles, for example s8-1 (General deductions) or Division 40 (Depreciation) or use one of the two methods (if no other method is available).

Type of car	Details of exempt circumstances	When circumstances must be satisfied
Any type	You provide the car for the exclusive use of your employees (except partners in a partnership) or their relatives and any of them were entitled to use it for private purposes.	Whenever the car is used in the income year.
Any type	You let the car on hire or lease in the course of carrying on a business of hiring or leasing cars.	Whenever the car is used in the income year.
Any type	During the period you owned or leased a car for use in producing your income: you used it principally for that purpose and it was unregistered.	Whenever the car is used in the income year.
Any type	The car was part of the trading stock of a business you carried on, and you used it in the course of that business.	Whenever the car is used in the income year.
Panel van and utility truck*, taxi, any road vehicle designed to carry less than one tonne but not a vehicle designed principally to carry passengers	You use the car only: a. for travel in the course of producing your assessable income, and/or b. for travel that is incidental to a), and/or c. for travel between your residence and where you use the car for the purpose in a), and/or d. by giving it to someone else for travel by them between their residence and where the car is used for the purpose in a), and/or e. for private travel by you or someone else that was minor, infrequent and irregular.	Whenever the car is used in the income year.
Any type	The car is unregistered and you use it principally in producing your assessable income.	Whenever the car is used in the income year.
Any type	a. The car is trading stock of your business of selling cars, and b. you didn't use the car.	a. At some time in the income year b. at any time in the year
Any type	The expense is to do with repairs or other work on the car and you incurred it in your business of doing repairs or other work on cars	Any time

*Applies only to vehicles not usually subject to the substantiation rules (see from 13.225).

13.280 Disposal of car

When a car is disposed of, lost or destroyed, the taxpayer may need to calculate the balancing charge (ie profit or loss on disposal) for the car under Subdivision 40 of the ITAA97. The balancing adjustment rules vary depending on the method which has been previously adopted by the individual in claiming their work-related/business car expenses.

As noted, from the 2015-16 income year, individuals can only use the cents per kilometre method or the log book method in claiming eligible car expenses, with the 12% of cost method and one-third of actual expenses method being removed. The special rules for calculating the balance adjustment have been amended to reflect this. However, the former rules still have application where the taxpayer had previously used the 12% of cost method and one-third of actual expenses method.

As such, to calculate the balance adjustment charge, the approach allowed (depending on the methods previously adopted) are as follows.

Only one-third of actual expenses method or log book method previously applied

If deductions have been claimed using only the one-third of actual expenses method and/or the log book method, depreciation allowed as a deduction is known and a balancing charge is calculated (see 15.070).

Only cents per km method or 12% of cost method previously applied

If expenses for a car have only ever been claimed under the cents per km and/or 12% of cost methods, there is no balancing charge because no deduction has been claimed for depreciation.

Combination of methods

If expenses have been claimed using a mix between (i) the cent per km/12% method, and (ii) the log book/ one -third of actual expenses method, s40-370 applies and depreciation claimed under cent per km and/ or 12% is deemed to be:

Method used	Deemed depreciation
Cents per kilometre	20%
12% of car cost	33.3%

NOTE: The deemed business percentages are used because the deduction calculated using these two methods is only an arbitrary basis of deduction.

EXAMPLE

Michael purchased a car on 1 August 2014 for $30,000 and sells it on 30 April 2018.
Depreciation rates for cars acquired from 10 May 2006 is 25% for the diminishing value method.
In this case, using diminishing value method, depreciation at 25% is:

2014-15 (11 months)..... $6,875
2015-16 (full year)..... $5,781
2016-17 (full year)..... $4,336
2017-18 (10 months)..... $2,710

Deemed business use

Car claims were based on 12% of car cost method and the cents per km method.

Cost of car $30,000
2014-15 (33.3% of $6,875)..... $2,289
2015-16 (33.3% of $5,781)..... $1,925
2016-17 (20% of $4,336)..... $867
2017-18 (20% of $2,710)..... $542 ..... $5,623
*Actual depreciated value..... **$19,702***

See *Balancing adjustment events* from 15.070 for a complete example.

13.290 Car parking expenses

Car parking fees incurred in the course of producing assessable income are generally deductible but special rules apply if the car is used by an employee to commute between home and work or the car is provided to the employee by the employer.

Non-employees

Self-employed persons, partnerships or trusts are entitled to claim deductions for expenses incurred for car parking fees, provided those fees are incurred in the course of producing their assessable income or as part of the ongoing operations of their business.

Employees

Employees who use their own cars for work-related purposes are generally entitled to claim deductions for the cost of travel and car parking, provided those costs are incurred as part of employment related activities.

A deduction for car parking is denied, however, for the cost of car parking if the car:

- is parked at or near the employee's principal place of employment for more than four hours between 7am and 7pm, and
- was used to travel between either home and work, or work and home.

Other car parking expenses incurred during the day are allowed if the car is being used for work related purposes.

A deduction is not denied, however, if the employee is the driver of, or a passenger of the car and:

- they are entitled (under State or Territory law) to use a disabled person's car parking space, and
- a valid disabled person's car parking permit is displayed on the car.

NOTE: These rules do not apply if the vehicle is not a "car" as defined in s176 (FBTAA86). See 25.305 and 25.325.

Employer-provided car

If the employer provides the employee with a car, any expenses incurred by the employee in maintaining the car (eg fuel, oil) cannot be claimed as deductions. Those expenses can be used to reduce the amount of any Fringe Benefits Tax (FBT) payable on the car (see 25.350 and 25.400).

Where the employee incurs car parking expenses that are not paid or reimbursed by the employer, a claim is allowed provided he/she satisfies the rules above.

If an employer provides an employee with a car park, FBT may be payable by the employer – see from 25.950.

13.295 Road toll and electronic tag expenses

If an employee incurs a road toll expense when using either their own car or their employer's car while travelling when deriving assessable income, a deduction is allowable. However, if the purpose of the travel is private (eg home to work), or the employer either pays the expense or reimburses the employee, the employee is not entitled to a deduction. (FBT may apply: see 25.640.)

13.300 Work-related clothing

TR 2003/16; TR 95/9

Expenditure on work-related clothing (and the cleaning and maintenance thereof) is tax deductible provided the clothing is used specifically in connection with the earning of the person's assessable income. There are five categories which may apply, but certain conditions must be satisfied.

A claim is allowable for the cost of buying, renting or replacing clothing, uniforms and footwear if the clothing is:

- protective in nature
- occupation specific (and is not conventional clothing)
- conventional but there are special circumstances and the taxpayer can show there is a direct connection with their employment activity
- a compulsory uniform, or
- a non-compulsory uniform or wardrobe that has been entered on the Textile, Clothing and Footwear (TCF) Corporatewear Register.

The cost of maintaining and cleaning clothing can also be claimed, but only if the cost of the clothing is allowed as a tax deduction.

Any expenditure incurred forms part of the employee's work expenses and claims are allowed only if the taxpayer satisfies the substantiation rules (see from 13.100).

FBT consequences

If clothing is provided by an employer to an employee, or the employee is reimbursed for expenses he/she incurs, the employer is not subject to FBT if:

- the clothes are approved and listed on the register (see 13.350)
- the employee would have been entitled to claim a deduction had he/she incurred the expenses (the "otherwise deductible rule" reduces the FBT liability to nil. FBT will apply, however, if the employee would not have been entitled to a deduction), or
- the clothing is an item of protective clothing required for the employment of the employee.

Taxation ruling TR 97/12 details the consequences for employers providing clothing to employees. See also 13.360.

Moreover, subsidies paid to employees towards the cost of the uniform are exempt income in the employee's hands but are expense payment fringe benefits to the employer (see 25.600). FBT may be reduced by the "otherwise deductible" rule if the employee would have been entitled to a tax deduction had they incurred the expense (see 25.1111).

13.310 Protective clothing

TR 2003/16; QC 31907

Claims for expenditure on protective clothing are allowed where the item satisfies these criteria (TR 2003/16):

- the taxpayer is exposed to the risk of illness or injury as part of their income earning activities
- the risk is a real risk to anyone working where the taxpayer is required to work (ie the risk is not remote or negligible)
- the protective item provides protection from that risk and would normally be expected to be used in the given circumstances, and
- the item is used by the taxpayer in the course of undertaking his/her income earning activities.

However, claims would be allowed for protective clothing that reduces the risk of:

- death, injury or disease (including aggravation, acceleration or recurrence of any injury or disease whether or not work-related) to the wearer or other person (eg clothing for food preparers to prevent food contamination), or
- loss, damage or destruction of other clothing, artificial limbs, surgical or similar aids worn by the wearer.

Claims for protective footwear (eg steel-capped boots, rubber boots and special non-slip shoes) are allowed, but not for conventional footwear (eg running, sport or casual shoes and jeans etc that lack protective qualities). Claims are generally not allowed for the cost of items to protect from the natural environment, eg wet weather gear or umbrellas for an office worker and thermal underwear or heavy weight suit. However, see 13.147 and 13.330 regarding sunscreen, sunhats and sunglasses. However, protective items which are clearly identifiable as principally protective items, such as heavy duty occupational wet weather gear, are deductible (TR 2003/16). For example the ATO considers that an umbrella and raincoat used by a parking inspector in a wet and cold climate would be considered deductible protective clothing (TR 2003/16). This ruling also sets out criteria for deductibility of clothing normally associated with private or domestic use.

Other examples of deductible clothing include:

- fire-resistant and sun-protection clothing
- safety-coloured vests
- non-slip nurse's shoes
- rubber boots for concreters
- steel-capped boots, hard hats, gloves, overalls, and heavy-duty shirts and trousers, and
- overalls, smocks and aprons you wear to avoid damage or soiling to the taxpayer's ordinary clothes during their income-earning activities.

Claims are allowed if the nature of the work rather than the environment creates the necessary conditions (eg using chemicals).

13.320 Occupation-specific clothing

TR 95/9 para 43

Claims are allowed if the clothing distinctly identifies that the employee belongs to a particular trade, profession, calling or occupation. This would include a female nurse's traditional uniform, religious cleric's ceremonial robes and chef's checked pants. It does not include conventional clothing even if commonly worn by employees in that industry (eg white shirt and black trousers worn by waiters).

13.330 Conventional clothing

TR 95/9 para 51-57

Generally claims are not allowed for conventional clothing as they are not considered to relate specifically to a person's income earning activities, but rather complying with social customs or fashion.

Expenditure on such items as business suits and any other conventional clothing (eg non-specific uniforms worn by employees in restaurants) is not deductible as they are not "peculiar" to the person's particular employer or occupation, and are freely available for use by the general public.

Non-deductible items include casual footwear, sports shoes and heavy duty clothing eg drill trousers and shorts (*Case T103*, 86 ATC 1182) even if worn to prevent injury at work. That rule applies even if they are not worn outside work.

Claims for conventional clothing may be made, but only in exceptional cases (eg if the taxpayer's occupation requires exceptional expense in relation to clothing or there is excessive wear and tear). The onus rests on the taxpayer to demonstrate that expenses are exceptional (ie above and beyond the norm for that occupation or circumstance). It is rarely decided in the taxpayer's favour.

Outdoor workers may claim for a sun hat (see 13.147) and possibly protective clothing required in a harsh climate (see 13.310).

For the ATO view on conventional clothing see taxation ruling TR 94/22. For further information about the deductibility of expenditure on clothing, uniforms and footwear see taxation ruling TR 97/12.

13.340 Compulsory uniforms

Mansfield v FCT [1995] FCA 1008; TR 95/19 para. 54-58; TR 96/16; TR 97/12; TD 1999/62; QC 31907

Claims for uniforms and corporate wardrobes are deductible if certain conditions are satisfied. These rules affect claims made by both employers (and their associates, see 25.155) and employees who purchase and maintain uniforms and corporate wardrobes.

The requirement or compulsion to wear the uniform or wardrobe must be a strictly enforced policy of the employer. It need not be in writing, but it must be consistently enforced and all employees of the same class must be compelled to wear the uniform in its entirety.

An "employee" is defined as an employee for PAYG withholding purposes (see 5.301). Class of employee relates to the level or category of work carried out by such a discrete body of employees. There may be different corporate collections based on various employee categories within a firm and each may have a different collection (eg service staff may have a compulsory uniform, but executives may not).

The uniform must distinctively identify the employer organisation (or a group consisting of the employer and any of the employer's associates). It must be a collection of inter-related items of clothing and accessories positively identifying that employer (or group). It must be unique, distinctive and peculiar to the organisation and must identify the wearer as being directly or indirectly associated with that employer. The uniform must be worn in its entirety and cannot be mixed with private clothing. If only part of the clothing worn by an employee qualifies as a compulsory uniform, only the cost of that part and its cleaning is deductible.

EXAMPLE

Deductions for corporate uniform costs would only be allowed for bank managers if all the bank's managers were required to wear that uniform. Deductions would be denied if some managers chose not to wear the uniform. This indicates the bank doesn't have an express policy, or that it isn't being enforced.

EXAMPLE

A bus driver is required to wear a brown shirt with the company logo at all times when at work. There is no other requirement for clothing or footwear. In this case, claims for acquiring and cleaning the shirt only would be deductible.

The cost of acquiring and maintaining a compulsory uniform is deductible if the clothing is:

- not conventional clothing, and clearly adapted to, or directly related to, the occupational character of the employee
- unique, distinctive and peculiar to the organisation with a timeless quality unaffected by short-term changes in fashion, and:
  - it identifies and enhances the firm's public image and allows easy identification of employees
  - the whole garment (not just individual pieces) would be worn only while on official duty
  - the range of styles, fabrics and colours used is limited (they should identify and be unique but can be adaptable to account for variances in climate and geographical region)
  - corporate identifiers are not compulsory, but if used they should be in a distinctive and contrasting colour to distinguish and contrast the uniforms from conventional clothing, and
  - accessories (eg shoes, handbags, trenchcoats) are allowed only if they bear distinguishable features such as a corporate identifier or logo.

Special circumstances

The rules recognise there are cases when even a compulsory uniform cannot be worn.

Specifically, deductions are not denied when:

- temporary or relief staff (not required to have a uniform) are engaged for a short time, or
- special circumstances exist (such as when a bank teller as a witness in a court case wears a suit instead of the corporate uniform).

13.350 Non-compulsory uniforms

ITAA97 Div 34; TR 95/9 para 49-50; QC 31907; Approved Occupational Clothing Guidelines 2017

Claims can still be allowed if the employer has registered the design of the uniform in the Textile, Clothing and Footwear (TCF) Corporatewear Register before the employee purchases the uniform. Applications for registration must be made on the approved form available at https://www.business.gov.au/Grants-and-Programs/Textile-Clothing-and-Footwear-Corporatewear-Register. Applications must be approved or rejected within 90 days of receipt and applicants informed in writing. These decisions are reviewable by the AAT.

Single items

The registration of single items of clothing is precluded, unless these are full body garments, eg a dress. A single item such as a shirt would not be eligible. Expenditure on such single items of clothing is not tax deductible.

Nature of employer's business

The nature of the employer's business or activities will be considered when determining the suitability of the designs that make up the approved occupational clothing. For example, items of clothing that may be suitable for a business operating in an office environment may not be suitable for activities carried on at a plant nursery or a boat building factory. "Design" of a uniform includes features such as colouring, construction, durability, ornamentation, pattern and shape.

If an organisation operates over a wide climatic area it may be necessary for the design of the occupational clothing to take into account the climate for which it is intended. An employer who has operations in both southern Tasmania and far north Queensland may wish to submit four designs (one summer and one winter design for each region). A design may be used to distinguish between various staffing groups within an organisation (eg office staff could be different from field staff). In that case the factors making up the Guidelines should be considered in the context of the collection which applies to each staffing group and be separately registered.

Corporate, product or service identifiers

Corporate product or service identifiers are features which readily identify a particular organisation, product or service and includes well known, specific or registered trade marks logos, initials, insignia, emblems, arms and patterns. These features can be "stand alone" (eg insignia on a blazer) or a common feature (such as a pattern in fabric which incorporates the employer's logo). An identifier does not include outlines or boxes which are not part of the logo.

Corporate, product, or service identifiers are a compulsory requirement for any design which is to be registered. There are two types of identifiers:

- stand alone – a corporate, product or service identifier which is a discreet symbol, logo, initial, form of words etc. and which is distinct from the item of clothing to which it is affixed, and
- pattern – a corporate, product or service identifier which is used in the form of a distinctive pattern over the entire item of clothing and which forms an integral part of that clothing.

An identifier must appear at least once on the external surface of each item of occupational clothing, including accessories. The clothing must be designed to ensure that when two or more items are worn together at least one "stand alone" identifier or an approved identifier pattern are plainly visible to the casual observer. After addition of the identifiers the clothing must not be available for rental or purchase by the general public.

Stand alone identifiers

The identifier must be in a contrasting colour or shade to that used for the item to which it is attached. The identifier, employer, product or service depicted must be big enough to be plainly visible to a casual observer from two metres. The minimum size for stand alone identifiers are:

- for clothing items the stand alone identifier should cover 80% of a four square centimetre area (eg 2 cm x 2 cm, or 1 cm x 4 cm), and
- for accessories, the stand alone identifier should cover a one square centimetre area.

A stand alone identifier must be permanently affixed. This could be sewn down on all sides, ironed on, embroidered into, or printed on to an item of clothing. Detachable badges, pins, buttons and flag tags sewn into seams are not acceptable and will bar clothing from being registered.

Pattern identifiers

Pattern identifiers can be used as an alternative to a stand alone identifier provided that:

- identifiers used in the pattern are of a contrasting colour to the main background colour, and are of a minimum size of 1 cm x 1 cm and there are a minimum of three such identifiers in an area of material measuring 15 cm x 15 cm, and
- the employer, product or service depicted is easily identifiable from a distance of two metres.

It is not sufficient that a pattern is used exclusively by an employer if the employer, product or service cannot be distinguished by that pattern. The pattern must be used by the employer in a manner similar to advertising so that the public readily recognises it (eg the red bullseye used by a retailer).

Colour used in uniform design

The total number of colours or shades used in the design (including highlight colours but not colours used in identifiers) is limited to eight, including black and white. There must be a common theme of colours, patterns and prints applying between male and female designs and the designs for each class of employee. In general that criterion applies in respect of an employer, with the only exceptions being if it is a requirement for safety reasons for employees in different classes to be easily identifiable, or the employer maintains separate public identities for parts of the organisation. The employer may elect for this criterion to apply separately to each part of the organisation.The number of colour/pattern/print combinations available for use is limited by the number of employees in the class that the clothing has been designed for.

The following sets out how many combinations are allowed for an employer with a particular number of employees in the class that the clothing has been designed for.

Non-compulsory uniforms: Allowable number of colour, pattern and print combinations				
Total number of male and female employees in the class:	**1 to 100**	**101 to 3000**	**3001 to 10,000**	**Over 10,000**
MALES				
Full body garments: Overalls	2	3	4	6
Outer, upper body garments: Jackets, knitwear, etc.	2	3	4	5
Inner, upper body garments: Shirts, T-shirts, etc.	3	5	7	8
Lower body garments: Pants, trousers, shorts, etc.	2	3	4	5
FEMALES				
Full body garments: Dresses, overall etc.	2	3	4	6
Outer, upper body garments: Jackets, knitwear, etc.	2	3	4	5
Inner, upper body garments: Shirts, T-shirts, blouses etc.	3	5	6	8
Lower body garments: Pants, skirts, shorts etc.	2	4	6	7

Range of styles allowed

There is no limit to the range of styles that can be used for any item of clothing, provided each item has an approved identifier, but there is a limit on the number of colour, pattern and print combinations allowed for each class of employee (see table above).

Durability of style

The overall look or concept of a design must be able to last between three to five years and cannot be changed merely to follow the latest fashion. This requirement will not prevent gradual changes to any design that does not disturb the overall look of the design, or prevent totally changing the design(s) if the organisation wishes to change its "corporate" identity or consumer/public perceptions about itself or its employees.

Changes to the design

Each change or variation of a design must be approved. Once a design is changed, the employer is expected to request removal of the old design within 12 months. Tax claims for expenses incurred by employees in acquiring, replacing or maintaining superseded designs are denied from the date the registration is removed from the register.

Accessories

Accessories may be approved as part of the design if they:

- are made of the same distinctively patterned fabrics as other items in the design, or
- have a stand-alone identifier.

Permissible accessories include belts, ties, handkerchiefs, long walk socks, handbags, trench coats, scarves and hats but never shoes, short socks, stockings or underwear.

13.360 FBT liability

Some employers provide work-related uniforms to employees even though it is not compulsory to wear them. If the designs have not been registered, the initial cost, maintenance and cost of replacements is claimable by those employers and subject to FBT on the value of benefits provided (see from 25.000).

13.400 Superannuation deductions

The key characteristics of the taxation laws as they relate to superannuation contributions are:

- all employers are able to claim a full deduction for all contributions made on behalf of eligible employees ("concessional contributions"), although contributions in excess of the designated annual cap will result in additional tax being incurred by way of excess contributions tax, and
- the ability to make deductible contributions has been extended in that no age limit applies in respect of superannuation guarantee contributions whilst for mandated contributions the age limit is now 75.

The taxation rules relating to the deductibility of employer and personal superannuation contributions are summarised in Chapter 19. Also covered in that chapter are eligible spouse contributions and the government co-contribution.

For further details on concessional contributions see 19.020.

For further details on spouse contributions see 19.016, and for government co-contributions see 19.076.

NOTE: Contributions in excess of the relevant cap will be subject to excess contributions tax (see 19.050).

13.500 Entertainment expenses

ITAA97 Div 32; QC 33725

Except in limited circumstances, deductions are not allowable for entertainment expenses (Division 32).

"Entertainment" is defined in s32-10 as:

(a) entertainment by way of food, drink or recreation, or

(b) accommodation or travel to do with providing entertainment by way of food, drink or recreation.

"Recreation" includes amusement, sport or similar leisure time pursuits (eg a box at the tennis or races).

Entertainment may be deemed to have been provided even if business discussions or transactions occur. Further, promotional or advertising activities may constitute entertainment depending on the nature of the activity.

Expenses incurred to either obtain or maintain membership of a recreational club (ie a company which mainly provides facilities for members for drinking, dining, recreation or entertainment) for the use or benefit of its members is not deductible (s26-45). Examples include league clubs, tennis clubs, etc. A deduction is allowed if providing a fringe benefit.

Membership of an airport lounge is considered by the ATO not to be an entertainment expense and is deductible if the expense is incurred on work-related activities (TD 2016/15 & PBR 1013085855115). Payment by an employer is deductible and is an exempt benefit for FBT purposes.

Depreciation, maintenance or repair of equipment or plant which is used to provide non-deductible entertainment is not deductible.

The cost of providing a complete holiday package as part of a base incentive payment is also considered to be non-deductible (the taxable value of the base incentive would be reduced by a corresponding amount) (see IT 2631).

Entertainment expenses are deductible if provided to employees (or their associates) and those expenses are taxed as fringe benefits (see 25.1000).

For these rules to apply the food and drink must be provided as part of entertainment. Normal sustenance is not entertainment (see 25.1000 for a list of entertainment and non-entertainment).

Food and drink provided as part of a seminar of at least four hours, excluding meal breaks, or at some staff training sessions, are claimable.

Entertainment expense as deductions

Claims for expenses which would fall within the definition of entertainment are allowed in the following limited categories. Each of these is discussed more fully under their respective topic headings:

- taxpayers in the business of providing entertainment, (eg hotels, resorts, motels)
- overtime meals paid under an Industrial Award
- meals while travelling on business (applies for both employees and persons in business, but a deduction does not apply for other persons they entertain while travelling)
- meals provided in an in-house dining facility on a "working day" (for employees and non-employees)
- conferences, meetings, seminars where the entertainment component is merely ancillary
- training sessions (if they aren't conducted on the employer's premises)
- advertising and product launches (but only if open to the public or under a contract)
- entertainment allowances an employer pays (they are assessable to the employee)
- entertainment provided for the sick, disabled, poor or otherwise disadvantaged
- recreational facilities within employer's premises
- giving a firm's own products to the public

these are also deductible, provided FBT applies to the benefits:

- meal entertainment fringe benefits (see full list at 25.1005), and
- external entertainment provided for employees, or their associates (eg club and association fees, payment or reimbursement of leisure facility subscription).

13.510 "Business of entertainment"

Tax deductions are allowed for entertainment expenses if the expenses are incurred in the ordinary course of carrying on that business and:

- the business is directly involved in the entertainment industry (eg restaurants, amusement parks and theatres), or
- the business is indirectly involved because their operations include the provision of entertainment for an inclusive charge (eg motels providing in-house videos; airlines providing in-flight meals).

13.515 Overtime meals

Claims are allowed for the costs of providing an employee with an overtime meal allowance.

Food and drink provided to employees:

- while working overtime, and
- provided and consumed on the employer's business premises

is both deductible to the employer and FBT exempt.

The ATO does not consider a meal to be entertainment merely because alcohol is served (TR 97/17).

If you can show that the provision of alcohol formed only an incidental part of a meal and was not part of a social occasion or an entertainment event, it is probable that the claim would not be denied. For example, if a glass of wine was provided with a light meal (finger food) during a training session, the cost should still be deductible.

Overtime meal allowances not paid by an employer under an Industrial Instrument must be included in the employee's assessable income.

If the allowance is not paid under an Industrial Award, the employee must substantiate all claims, and the employer must deduct PAYG withholding. When an allowance exceeds the limit set by the ATO (see 13.140). PAYG must be deducted from the amount exceeding the limit.

If the allowance is paid under an Industrial Instrument, the employee does not need to substantiate the claim, provided the deduction for the meal is below the overtime meal allowance limit approved by the ATO (see 13.140). If the claim is a higher amount than the allowance it must be included in the employee's assessable income and the full claim must be substantiated.

An Industrial Instrument is a law of the Commonwealth or an award, order, determination or industrial agreement made under Australian law.

13.520 Travelling on business

TR 97/17

Claims for sustenance (ie food and drink) are allowed for employees, self-employed persons and partners in a partnership for meals and accommodation expenses, provided they are incurred while travelling in the course of business (eg a salesperson's meals taken in a restaurant while travelling overnight on business).

If an employee dines with a client, the employee's cost is deductible to the employer but may be liable for FBT (see 25.1015). The cost of the client's meal is not deductible.

Expenses incurred by employees receiving travelling allowances do not need to be substantiated if the employee is claiming no more than the amount considered by the ATO to be reasonable (see details from 13.180 and 13.200). Claims made by those not receiving an allowance must be fully substantiated (see 13.160 and 13.190).

Meal expenses are not deductible unless the taxpayer sleeps away from home (TR 95/18).

Entertainment costs incurred by a self-employed person, director or trustee are not deductible if incurred while entertaining another person; eg, dining with prospective clients, or taking them to an event such as a show or the football. Travelling expenses for the purpose of providing the entertainment are also not deductible. However, one exception is when the expense is incurred while travelling away overnight from home (not for the purpose of entertaining) and a meal is supplied to a client. While the meal for the client is not deductible, the meal for the self-employed person (etc) is deductible as a travelling expense.

EXAMPLE

Phillip owns an accounting practice and travels interstate (overnight) to consult with clients planning a major restructure of their business. Phillip invites the principals of that business to a restaurant for an evening meal and afterwards he takes them to the ballet. Phillip pays all costs of the entertainment. While Phillip could claim a deduction for the cost of his own meal, all other expenses would not be deductible.

The ATO has released two products covering what can sometimes be the confusing distinction between travelling allowances paid to employees and living allowances which can sometimes be LAFHA under the FBT rules.

TR 2021/D1 covers income tax and FBT regarding employees and accommodation, food and drink expenses, travel and LAFH allowances. The draft ruling comes with many worked examples that work through possible scenarios that include relocation, time away, personal circumstances and general principles that may apply.

PCG 2021/D1 aids in the determination of whether allowances or benefits provided to an employee relate to travelling on work or living at a location. The PCG sets out the practical administration approach to assist taxpayers in complying with relevant tax laws.

13.525 Meals provided by employer

The rules differ depending on whether or not the person consuming the meal is an employee.

Employees

Food and drink provided to employees (and company directors) of an employer or related company are tax-deductible (and are exempt from FBT) if provided in an in-house dining and recreational facility on working days on the employer's (or on a related company's) business premises as long as the premises are:

- not open to the public at any time, and
- operate wholly and principally to give food and drink to employees on working days.

Tax deductions apply to meals provided in that situation to all employees (or company directors) of that taxpayer (or of a related company).

For a full list of expenses classed as meal entertainment, see 25.1005.

Non-employees

Section 32-70 ITAA97 provides that meals provided in an in-house dining facility to clients, contractors and suppliers of the firm are deductible, but if the firm claims a deduction, it must add $30 to its assessable income for each meal provided to a non-employee. Alternatively, the taxpayer can choose to treat those expenses as non-tax deductible. That choice can be separately made for each dining facility and for each income year.

13.530 Conferences and seminars

The cost of food and drink provided as part of an eligible seminar is tax-deductible (TD 93/195) if that seminar runs for a minimum continuous period of four hours (excluding meal breaks). The total cost for employees attending conferences and seminars is tax-deductible, but the non-training component (eg golf day or other entertainment) may be subject to FBT. That applies to conferences and meetings (including those involving the presentation of awards), speeches, question and answer sessions and training and education courses, but not those whose sole or dominant purpose is to:

- give or receive information about the business
- discuss matters relating to the business
- promote or advertise the business or its goods, or
- provide entertainment.

Training seminars not conducted on employer's premises

The cost of food and drink provided as part of a seminar organised by (or on behalf of) the employer is also deductible if it is to:

- provide training relevant to the employer's business, and/or
- discuss policy issues relevant to the internal management of the employer's business, and
- runs for at least four hours (excluding meal breaks).

Costs incurred for entertainment at business discussions (includes meetings involving agents, employees, partners, shareholders, financiers and advisers) undertaken in the normal course of business to discuss or exchange information (eg AGM, sales strategy meeting or briefing of managers) must be apportioned between the employee (or their associates) and the client costs. The employee's (and associate's) costs are an allowable deduction, but are liable for FBT, unless a minor benefit (see 25.1010). The cost of the client's meal remains non-deductible.

13.540 Advertising and product launches

Entertainment costs are tax-deductible if provided in the following circumstances.

Promotional give-aways

The expenditure must be incurred as part of a public promotion of the taxpayer's business or the goods or services provided by them. The entertainment must be provided under the terms and conditions of a contract for the supply of goods or services with that firm. For example, a holiday given to the purchaser of a new car would be deductible. See *Public access makes claims allowable* below.

Public exhibition of goods/services

Costs incurred by a firm to promote or exhibit to the public its own goods or services is tax-deductible (eg free drinks provided at a winery for wine tasting, or a cinema giving free passes). However in other cases, unless made freely available to the public, there is no deduction allowed for drinks, food and other entertainment provided as part of a firm's promotion (eg meals provided to guests at a film premier or drinks provided by a design house at the opening of its new season's fashions).

Public access makes claims allowable. Claims can be made for entertainment to promote the goods and services (whether of the taxpayer or of others) provided the level of entertainment for the public is the same as that provided to customers, suppliers, clients, employees (or associates, journalists, or any other class of "special" person). That is, a deduction will not apply if persons have a greater opportunity to get the benefits of the entertainment than ordinary members of the public.

13.550 In-house recreation facilities

The cost of providing recreational facilities (ie for amusement, sport or similar leisure time activities) on the employer's premises for use by employees may be tax deductible. That includes tennis courts, swimming pools, gymnasium, and games rooms. Facilities must be wholly and principally for use by the employees on working days and be located on the employer's premises.

13.560 Entertainment allowances

The payment of entertainment allowances to employees is deductible to the employer, but is assessable income of the employee. The expenditure of the allowance for the purpose of entertainment would not give rise to a tax deduction for the employee.

Employees are assessed on allowances received but the availability of a deduction against the allowance will depend upon individual circumstances; examples of deductible expenditure include:

- meals while working overtime when in receipt of an overtime meal allowance (see 13.515)
- certain meals while travelling on business provided they are away from home overnight. Special rules apply if in receipt of a travelling allowance (see 13.520), or
- when attending eligible seminars (see 13.530).

Any entertainment expenses paid directly (or reimbursed) by the employer are tax-deductible to the employer unless the employer is a tax-exempt body (see 25.850). FBT is payable on those expenses.

Hostess allowances

No deduction is allowed to the employer for entertainment allowances paid to an eligible relative of the employee. This includes the employee's spouse (or de facto) as well as any other relative of the taxpayer. However, such allowances would typically be assessable in the hands of the recipient.

13.570 Morning and afternoon tea

Providing morning and afternoon teas and light lunches to employees (or their "associates") and visitors on the taxpayer's premises or worksite is tax-deductible to the employer. In TR 97/17 the ATO ruled that this is not "entertainment". If the firm has no employees (eg a partnership) claims for light refreshments are not allowed unless also provided to visitors to that firm.

13.580 Entertainment for the disadvantaged

A tax deduction is allowed for entertainment provided gratuitously to members of the public who are sick, poor, disabled or otherwise disadvantaged.

13.600 Home office expenses

TR 93/30; PS LA 2001/6; QC 31977; QC 23654; QC 52191; QC 59276

Claims for expenditure relating to a home office can be made if a taxpayer is able to demonstrate that part of the home is used for income producing purposes and has the character of a place of business, or alternatively is used in connection with income earning activities, but is not a place of business.

The general rule is that expenses associated with a person's home are of a private nature, and therefore no tax deduction is allowed.

An individual taxpayer may claim a deduction for home office expenses where additional running costs are incurred because of income producing activities, based on:

- actual expenses, or
- diary records for a representative four week period that establish a pattern of use for the entire year. A new diary must be kept for each financial year and each of these diaries must be kept for five years after lodgment of the return for that year or the due date for lodgment, whichever is later. Where there is no regular pattern of use to establish a representative pattern, records must be kept of the duration and purpose of each use of a home office during the year (PS LA 2001/6).

13.610 What claims are allowed?

Broadly, the expenses fall into the following categories:

- "running expenses" (eg heating, lighting) relating to income earning activities (typically used by employees)
- telephone expenses (see 13.155)
- depreciation on equipment (see 15.030 and 15.035), and
- occupancy expenses (eg rent, interest, house insurance and rates) where the home is a place of business.

Running expenses – not in business

A deduction may be claimed for office running expenses comprising electricity, gas and depreciation on office furniture (eg desks, tables, chairs, cabinets and shelves and professional library (see TR 93/30)) in the amount of:

- the actual expenses incurred, or
- 52 cents per hour from 1 July 2018 (PS LA 2001/16 para.5).

No deduction is available where:

- no additional cost is incurred (eg if the taxpayer works in a room where others are watching television), or
- the income producing use of the home office is incidental, rather than substantial (eg a deduction would not be allowed for a fax machine permanently left on to receive business documents).

Claiming "running expenses" does not affect the "main residence exemption" (see from 12.300).

Professional libraries may be depreciated.

Shortcut method

PCG 2020/3; QC 62090

Given the sheer volume of people working from home during the COVID-19 crisis the ATO accepted a temporary simplified method (or shortcut method) of calculating additional running expenses from 1 March 2020 to 30 June 2021.

Under the shortcut method taxpayers can claim a deduction of 80 cents for each hour worked from home due to COVID-19, provided the taxpayer:

- is working from home to fulfil employment duties and not just carrying out minimal tasks such as occasionally checking emails or taking calls, and
- incurring additional deductible running expenses as a result of working from home.

The taxpayer does not have to have a separate or dedicated area of their home set aside for working, such as a private study, but having a dedicated space makes it easier to show additional running expenses have been incurred.

The shortcut method rate covers all deductible running expenses, including:

- electricity for lighting, cooling or heating and running electronic items used for work, and gas heating expenses
- the decline in value and repair of capital items, such as home office furniture and furnishings
- cleaning expenses
- phone costs, including the decline in value of the handset
- internet costs
- computer consumables, such as printer ink
- stationery, and
- the decline in value of a computer, laptop or similar device.

The taxpayer does not need to have incurred all of these expenses, but they must have incurred additional expenses in some of those categories as a result of working from home due to COVID-19.

Where the shortcut method is used, the taxpayer cannot claim a further deduction for any of the expenses listed above.

Records must keep of the number of hours worked from home as a result of COVID-19. Examples are timesheets, diary notes or rosters.

Where taxpayers use the shortcut method to claim a deduction the note "COVID-hourly rate" must be included in the taxpayer's 2019-20 and 2020-21 tax return as applicable.

Where the taxpayer was working from home to some extent prior to COVID-19 and claiming home office expenses under the standard methods described above, the taxpayer can transition to the short-cut method for the period 1 March 2020 to 30 June 2021. Once the short-cut method ceases the taxpayer can then revert to their previous method of determining home office expenses.

Telephone and internet expenses

If the work or business telephone calls can be identified from an itemised telephone account (see also 13.155), then the deductions can be claimed for the work or business related portion of the telephone account. If an itemised telephone account is not available, a representative four week period will be accepted as establishing a pattern of use for the entire year to make a reasonable estimate of the portion of call expenses for work or business.

Alternatively taxpayer's can calculate their device usage expenses by claiming up to $50 in total for all device usage charges (being phone calls, text messages and internet use for all devices) with limited documentation. This approach is appropriate where device usage is incidental (PS LA 2001/6 para.6).

Telephone rental expenses may be partly deductible for taxpayers who are either "on call" or required to contact their employer or clients on a regular basis. The deductible portion can be calculated (TR 98/14):

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

Occupancy and running expenses – place of business

Claims for both running and occupancy expenses are allowed only if an area of the home is set aside exclusively for business activities. The actual deduction is dependent on the taxpayer's circumstances. In most cases, the claim can be made as an apportionment of total expenses incurred on a floor area basis, and time basis (if the area was used as a place of business for only part of the income year). Taxpayers may use any other method to calculate occupancy expense claims provided that method can be justified.

Being able to claim these occupancy expenses may affect a person's "main residence exemption" for capital gains tax purposes (see from 12.300).

Depreciation of equipment

Depreciation of home office equipment (including office furniture, carpets, computer, printer, photocopier, scanners, modem etc) used only partly for work or business purposes, is apportioned. The claim can be

based on a diary record of the income-related and non-income related use covering a representative four week period (see 13.155).

The diary needs to show:

- the nature of each use of the equipment
- whether that use was for an income-producing or non-income-producing purpose, and
- the period of time for which it was used.

EXAMPLE

Kate is an employee accountant working for a city-based firm. She has arranged to do some of her work at night so she can spend more time with her family. Kate spends an average of ten hours a week working in her home office.

Option 1: Actual expenses

Kate has the following home office running expenses (including energy expenses which have been calculated using electricity authority hourly costs per appliance). The apportionment has been based on four weeks' diary entries as follows:

Item	*Calculation*	*Deduction*
Depreciation (desk)	*Value $450 over 10 years*	*$45.00*
Electricity for:		
• *light*	*0.7c per hour x 10 hours per week x 48 weeks*	*$3.36*
• *computer*	*1c per hour x 10 hours per week x 48 weeks*	*$4.80*
• *heating/cooling*	*9c per hour x 10 hours per week x 48 weeks*	*$43.20*
Total deduction		*$96.36*

Option 2: Estimated running expenses

Item	*Calculation*	*Deduction*
Running expenses	*45c per hour 10 hours per week x 48 weeks (note: 52c per hour applies from 1 July 2018)*	*$216.00*

Option 2 provides a simpler calculation with a higher deductible amount if future use and electricity costs remain the same.

Alienation rules

The alienation of personal services income rules (see 16.000) deny a deduction for rent, mortgage interest, rates and land tax for the taxpayer's (or his or her associate's) residence that relate to gaining or producing the taxpayer's personal services income (s85-15).

A deduction can be claimed to the extent that the expense relates to income from the taxpayer conducting a personal services business (s85-30).

13.615 When is home a "place of business"?

Whether the home is a place of business, is a question of fact (TR 93/30). The broad test to be applied is whether a particular part of the dwelling:

- is clearly identifiable as a place of business
- is not readily suitable or convertible for private use as part of the home
- is used exclusively for carrying on a business, or
- is used regularly for client or customer visits.

The Courts and Tribunals have accepted part of a person's residence as being a place of business if there is no alternative place for carrying out that person's income-producing activities, but only if:

- the taxpayer needs a place of business from which to carry out their income producing activities
- there is no alternative to the taxpayer working from home, and
- that area of the home is used exclusively for business purposes.

13.700 Self-education expenses

Self-education includes courses undertaken at an educational institution (whether leading to a formal qualification or not), attendance at work-related seminars or conferences, self-paced learning and study tours (overseas or within Australia). However certain self-education expenses under s8-1 may be subject to the limitation rule under ITAA36 s82A (note the proposed removal of this section as discussed at 13.720). TR 98/9 (and partially withdrawn TR 92/8) detail the ATO's views on the deductibility of self-education expenses.

Self-education expenses are tax deductible provided that a nexus can be demonstrated between the education being undertaken and how that person derives their assessable income.

In general terms, it is necessary to satisfy any of the following tests to be entitled to a tax deduction:

- the expense has a relevant connection to the taxpayer's current income earning activities (ie the course must be relevant or incidental to how the taxpayer derives his/her current assessable income)
- the self-education program being undertaken enables the taxpayer to maintain or improve the skills or knowledge necessary to carry out his/her income earning activities, or
- the self-education leads to, or is likely to lead to, an increase in the taxpayer's income from his/her current income earning activities in the future.

To be deductible, the self-education activity must be undertaken concurrently with the relevant employment.

Deductions for self-education expenses are not allowed if the course of study is designed to:

- obtain employment in a new field of endeavour (eg a teacher studying law to become a lawyer)
- obtain employment or obtain a qualification to enable the taxpayer to enter a restricted field of endeavour (eg obtaining a degree to be able to practice as a surveyor), or
- open up new income earning opportunities in the future (whether in business or in the taxpayer's current employment) because they are incurred at a point too soon to be regarded as being incurred in gaining or producing the assessable income of the individual.

It is possible for courses undertaken to have both deductible and non-deductible elements (eg a plumber who runs his own business who undertakes a business management course where completion of the course will enable the plumber to also practice as a qualified business administrator). In that situation, the deductibility of the expenses will be determined by the intention of the taxpayer when the course was undertaken. There may also be the potential for apportionment in some circumstances.

If the taxpayer can show that the course is incidental and relevant to existing income earning activities, the cost is deductible. Alternatively, if the course was undertaken with the specific intention of changing the taxpayer's income earning activity, expenses would not be allowed.

13.705 Expenses which are tax-deductible

Subject to the general tests of s8-1 ITAA97, these expenses are allowable:

- course or tuition fees (including student union fees) (however excluding those imposed under HECS or HELP – see s26-20 and 13-710 below)
- textbooks, professional or trade journals, technical instruments and clerical expenses such as word-processing or photocopying
- depreciation on professional libraries, desks, computers and filing cabinets, etc.
- fares, accommodation and meals (if away from home overnight) incurred on study tours, work-related seminars or conferences away from the taxpayer's home
- stationery or postage
- home office running costs
- internet usage (excluding connection fees)
- interest on money borrowed to pay the above expenses or purchase plant or equipment on which depreciation is allowable, and
- travel costs (including motor vehicle and fares etc – see below).

13.710 Expenses which are not tax-deductible

- Contributions made under the *Higher Education Support Act 2003* and *Student Assistance Act 1973*, such as HELP (previously HECS) payments (unless paid or reimbursed by the employer: HELP payments are generally not tax deductible, however if they are paid or reimbursed by an employer they are tax deductible to the employer but FBT is payable – see from 25.000)
- Education expenses against income received under various Commonwealth educational assistance schemes, such as the Youth Allowance (see below)
- Meals purchased while on normal travel between home and an educational institution
- Travel expenses between home and an educational institution at which the taxpayer works (see 13.715 below)

13.712 Education expenses against Youth Allowance payments

In *FC of T v Anstis* [2010] HCA 40, the High Court considered the deductibility of costs incurred by a student in connection with university study to achieve a teaching degree. The deductions were allowed against income received by the student as a recipient of the Federal Government's Youth Allowance payments. The High Court was of the view that Youth Allowance payments were ordinary income in the hands of recipients.

In response to the decision, the law was amended to prevent self-education deductions from being claimed against all government assistance payments from 1 July 2011 by inserting s26-20 ITAA97. This section disallows a deduction for education expenses where the relevant assessable income derived includes Youth Allowance, Austudy and Abstudy payments from the 2011-12 income year onward.

13.715 Travel expenses

Deductions are generally allowed for travel between:

- the taxpayer's home and an educational institution (including a library for research), and
- the taxpayer's place of employment and an educational institution (ie school).

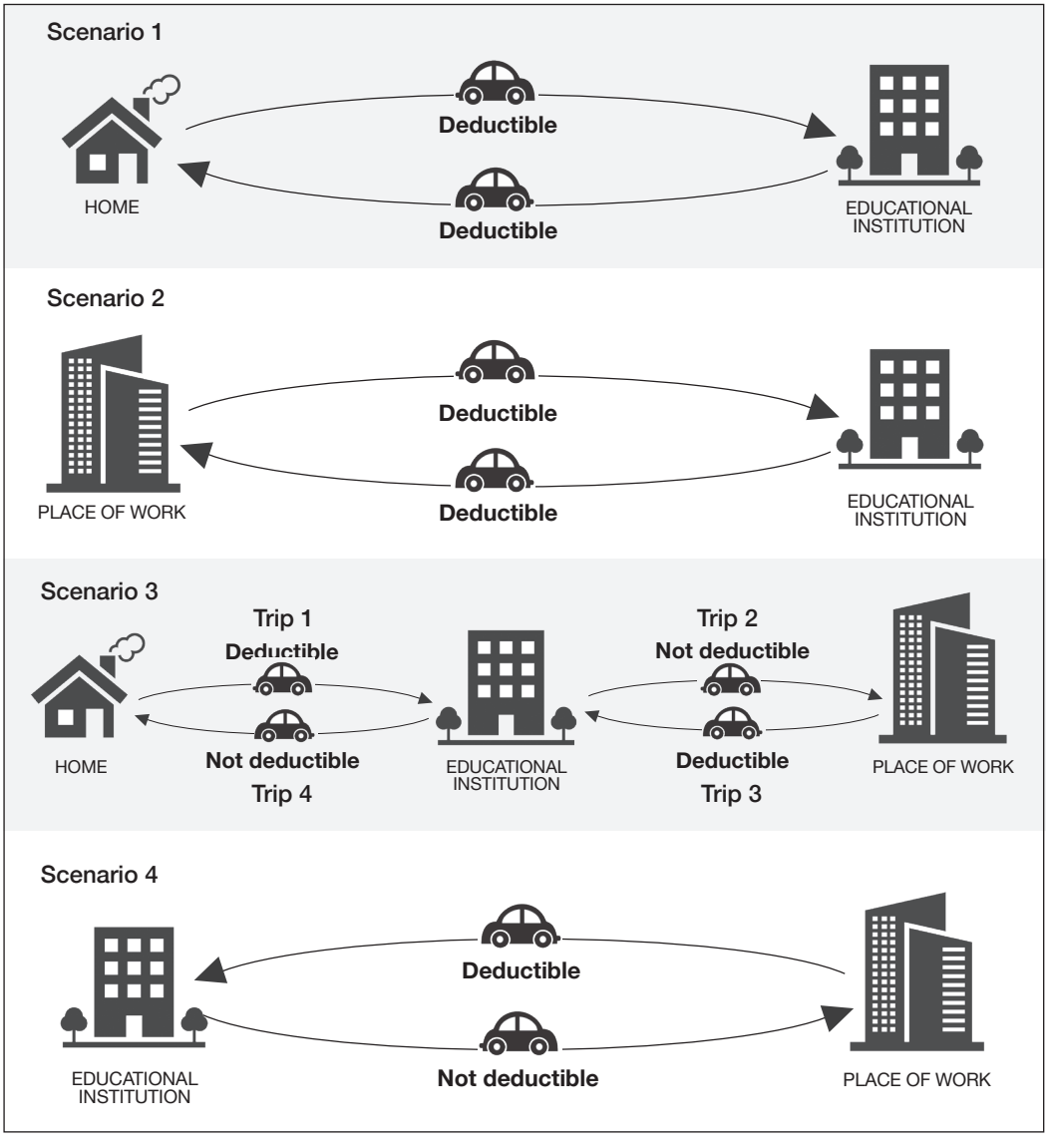
Note that travel expenses (and/or fares) between the taxpayer's home and an educational institution are not allowable if the taxpayer carries out income-earning activities at the institution; that becomes travel between work and home.

The below diagram illustrates the deductibility of travel expenses in relation to trips between home, educational institutions and work. It is assumed that the taxpayer in this case is not carrying out income earning activities at the educational institution and the self-education has the necessary nexus with the taxpayer's current earning activities.

- Scenario 1: The trip from home to the educational institution (and the return trip) would be deductible.
- Scenario 2: The trip from work to the educational institution (and the return trip) would be deductible.
- Scenario 3: The initial trip from home to the educational institution (trip 1) would be deductible but the second leg from the educational institution to work (trip 2) would not be deductible. If the taxpayer had to return to the educational institution (for self education purposes) (trip 3) from work that would be deductible. However, the subsequent return trip home for self-education purposes (trip 4) would not be deductible.
- Scenario 4: The trip between an educational institution and work would be deductible.

(See paragraphs from partially withdrawn TR 92/8 also reproduced in TR 98/9.)

Travel expenses: Deductible as self-education expense?



13.720 Work-related education programs

As a general rule, costs of certain education programs (such as seminars, professional development courses, and tertiary studies while in employment) are deductible provided the requisite nexus to the earning of assessable income can be established. However, the costs of certain tertiary studies undertaken before the commencement of any employment are generally not deductible.

Where the training course involves travel and an overnight stay, either interstate or overseas and the general conditions relating to nexus are satisfied, food, drink and accommodation may be deductible (*FCT v Highfield* 82 ATC 4463, *Finn* [1961] 106 CLR 60, TR 98/9). However, a distinction must be drawn between where an individual is travelling "on work" and a situation where they have established a new home when travelling in conjunction with self-education. In looking at if an individual has established a new home when travelling in connection with self-education, TR 98/9 considers factors such as the duration of travel, the frequency of movement, the nature of the accommodation, whether the taxpayer's

family accompanies them, whether a home is maintained in a previous location and the frequency and duration of trips to home.

$250 limitation under s82A ITAA36

According to s82A ITAA36, only the excess over the limit of $250 can be deductible if the amount of self-education expenses allowable under s8-1 is necessarily incurred by the taxpayer for or in connection with a course of education provided by a school, college, university or other place of education. Consequently, it is necessary to classify whether claims are deductible and if they are also self-education expenses (as defined in s82A ITAA36). Note that there is no requirement to substantiate that $250 (see TD 93/97). However, TD 93/97 notes the "onus of proof" remains with the taxpayer to show how the amount was expended.

There is no requirement to apply the first $250 rule for any courses such as work-related seminars, conferences, in-house training programs, continuing professional education programs or any other course that is not undertaken at a place of education.

This rule also does not apply to professional programs undertaken by professional organisations.

Note in the 2021-22 Federal Budget it was proposed that s82A be removed. This proposed amendment would have effect from 1 July 2021.

Where a course of education assists with your current employment but also provides an entry point into another profession or income earning activity, always record your intention.

The table below illustrates the ATO views on a number of different expenses.

Summary of education expenses		
Type of expenditure	**Included for s82A?**	**Allowed under s8-1 ?**
Course or tuition fees (including union fees, but excluding HELP fees)	YES	YES where the conditions relating to nexus and timing are satisfied
Books, journals and other stationery	YES	YES if applicable to a course of study in year of purchase
Meals (to and from a place of education)	NO	NO
Accommodation and meals (if taxpayer required to sleep away from home overnight)	YES	YES
Depreciation of equipment	NO	NO. Allowed under Division 40 ITAA97
Transport expenses (includes car expenses and public transport)	YES	YES/NO see above See 13.715
Interest on borrowed funds (ie for self-education expenses)	YES	YES
Childcare costs	YES	NO
Repairs of equipment	NO	NO. Allowed under s25-10 ITAA97
Motor vehicle expenses (using cents per km method)	YES	NO. Allowed under Division 28 ITAA97 rules

EXAMPLE

Warren studied part-time at a university and the course was directly related to his current income earning activity. The relevant self-education expenses are summarised in the table below:

Self-education costs	*Amount*	*Included for s82A ITAA36?*	*Allowed under s8-1?*
Stationery	*$100*	*YES*	*YES*
Textbooks	*$420*	*YES*	*YES*
Course fees	*$2,000*	*YES*	*YES*
Bus fares	*$150*	*YES*	*YES*
Repair to home printer	*$70*	*NO*	*NO (allowed under s25-10)*
Childcare costs	*$1,520*	*YES*	*NO*

As a result, the total allowable deduction is $2,740 (ie $100 (stationery) + $420 (textbooks) + $2,000 (course fees) + $150 (bus fares) + $70 (repair to home printer)).

Warren does not have to reduce his allowable deduction by $250 as the total of his repair costs ($70) and child care costs ($1,520) is more than $250. Angus can claim $2,740 – his Category A and C amounts.

However, if Warren had no child care costs then his claim would be worked out as follows:

***Step 1:** $250 less repair cost ($70) = $180*

***Step 2:** $2,670 (total allowable deduction less repair cost) less $180 (step 1 amount) = $2,490*

***Step 3:** $2,490 (step 2 amount) plus $70 (repair costs) = $2,560*

Warren could claim $2,560 as his self-eduction expenses deduction.

Proposed changes to s82A in the 2021-22 Federal Budget

In the 2021-22 Budget it was proposed that s82A be removed. If enacted, this change would have effect from 1 July 2021.

Treasury Discussion Paper

In December 2020, Treasury released a discussion paper around the announcement in the 2020-21 Federal Budget to allow individuals to claim deductions for education and training expenses they incur where the expenditure is not related to their current employment.

The discussion paper canvasses a number of issues, including:

- Whether tax deductions for individuals are appropriate, given the very significant government support for education and training that already exists.
- Whether deductions should be targeted to registered providers that are subject to appropriate regulation.
- Whether "lifestyle and personal development courses" should be excluded.
- Whether support should be targeted at areas of expected jobs growth (picking winners).
- Should deductions be limited to tuition fees?
- How should tax deductions interact with government funding and subsidies (if at all)?
- Should the existing $250 exclusion be removed?
- How to minimise opportunities for abuse?

Treasury says the discussion paper seeks stakeholder views on whether tax arrangements should play a greater role in encouraging Australians to retrain and reskill to support their future employment and career and, if so, how this would best be achieved.

The potential changes outlined in this paper have not received Federal Government approval and are not yet law. As a consequence, the paper is merely a guide as to how any potential changes might operate.

The consultation period for the discussion paper closed on 22 January 2021.

13.800 Donations and gifts

ITAA97 Div 30

NOTE: This topic is covered comprehensively in Chapter 26 (Not-for-profits).

Taxpayers are entitled to claim deductions for gifts and donations made during the income year to Deductible Gift Recipients (DGRs), but there are special rules that apply. Donations of property can also be made for philanthropic purposes.

Deductions for gifts or donations are not allowed unless the recipient:

- is endorsed by the ATO as a DGR (see 13.890), or
- is specifically named in ITAA97 or the regulations as an eligible recipient.

Approved recipients must have an ABN (see 5.100) and maintain a gift fund.

Receipts issued for donations made to the DGR (see 13.890) must state:

- the name of the fund, authority or institution receiving the gift
- the ABN of the DGR, and
- that the receipt is for a gift.

For the ATO view on what constitutes a gift see TR 2005/13.

13.810 Business

As a general rule, businesses are entitled to claim for gifts or donations made during the course of carrying on business. For a claim to be allowed however, the gift must be directly related to the activities of the business and be undertaken with the intention of promoting their business activities. That would include gifts and donations of cash, property and even of trading stock. Those deductions are allowed under s8-1.

If the claim for a deduction cannot be made under s8-1, a deduction may be allowable under Division 30.

Tax-free distributions of income can be made to tax-exempt beneficiaries by trustees of discretionary and certain other trusts. Trust loss rules may have an impact; see 13.950.

13.820 Individuals

Unless a gift is made in the course of carrying on a business (see 13.810), claims for gifts and donations of $2 or more are only deductible if they are made to approved donees under Division 30.

A comprehensive list of approved donees is published by the ATO and can be accessed:

- at www.business.gov.au; or for the Register of Cultural Organisations: www.arts.gov.au, or
- by phoning the ATO on 13 24 78.

Deductions are only allowed where the gift is made voluntarily. They are not allowed where there is a contractual obligation or the person receives some material reward for making the donation. For example, no deduction would be allowed if a donation is made to a charity and the donor receives a free ticket as a result of the donation, to attend a gala function being held for that charity.

There is no limit on the amount for claims made to approved donees under Division 30, however losses resulting from those donations cannot be carried forward or claimed in later income years. The excess of those losses are effectively lost.

Taxpayers may spread their claim over five years (see 13.880 for property donations over $5,000, and 13.888 for general rules).

The ATO has also approved administrative arrangements by which employees donate to DGRs via payroll deductions (ie workplace giving). For details of these requirements, see ATO Practice Statement PS LA 2002/15 and Chapter 26.

13.822 Fundraising events

ITAA97 s30-15

A deduction for a donation of cash or property is allowable if:

- the value of the contribution is more than $150, and
- the minor benefit received by the contributor in return does not exceed the lesser of 20% of the value of the contribution and $150.

EXAMPLES

Annabelle pays $500 for a ticket, which has a market value of $75, to attend a ballet hosted by a DGR. As the market value of the ticket is less than $150 and less than 20% of her contribution, Annabelle can deduct $425 (ie $500 less $75).

Victor successfully bids $2,000 for a bottle of wine at a fund raising auction conducted by a DGR. The wine has a market value of no more than $125. Because the market value of the wine is under $150 and is less than 20% of the "contribution", Victor can deduct $1,875 (ie $2,000 less $125).

Shares donated for fundraising events

A deduction is allowable for the contribution of shares by an individual in return for a right which permits the donor or some other individual to attend or participate in a particular fundraising event. The event must be in Australia.

The shares must have been acquired at least 12 months before the donation is made, be in a listed public company and have a market value on the day of donation of more than $150 but no more than $5,000.

The GST-inclusive market value of the particular fundraising event cannot exceed 20% of the value of the shares and $150, whichever is the less. The market value of the donation is reduced by the GST inclusive market value of the right to attend the event.

See also 13.830 for donation of listed shares.

13.828 Loss carried forward

ITAA97 Subdiv 30-DB

Claims for gifts and donations are deductible in the income year they are made, and any losses resulting from those claims allowed under Division 30 cannot be carried forward or claimed in later income years. However, deductions may be spread over five years (see 13.888).

13.830 Donation of property

ITAA97 s30-15

Deductions are allowed for assets purchased in the 12 months before making the gift. If an asset is gifted more than 12 months after purchase, it must be valued by the ATO at greater than $5,000.

"Purchase" does not cover acquisition by gift, bequest or other non-purchase method.

The tax deduction, determined at the time the gift is made is limited to the lesser of:

- the value (ie market value) of the gift, and
- its cost.

If the gift is the taxpayer's trading stock, its value is the amount (based on cost, market or replacement value) included in the taxpayer's assessable income. See 13.845.

Deductions for joint owners

ITAA97 s30-225

Joint owners of donated property can claim a tax deduction based on their share of the value of the property (ie the interest they own).

Donation of listed shares

ITAA97 s30-15

A deduction is allowable where a taxpayer gifts shares to a DGR. The donor can claim a deduction for the market value of the shares on the day that the shares were gifted, provided that:

- the shares were acquired at least 12 months before the gift was made
- the shares have a market value of $2 or more but $5,000 or less
- the shares are listed public company shares, and
- are listed for quotation on the official list of an Australian stock exchange.

The shares may have been purchased by the taxpayer, or inherited, won as a prize, or received as a gift or bonus. The deduction applies only to shares and does not include derivatives or securities that are not shares, or shares that have been suspended from trading (other than a mere trading halt). If the donation of shares is in different companies and gifted at the same time, then they are treated as separate donations.

EXAMPLES

Mark donates publicly listed shares, which he had held for 18 months, worth $4,000 in ZA Ltd and $4,500 in XB Ltd on the same day to a DGR. Although the total value exceeds $5,000, each is deductible as they are treated as separate gifts.

Mark is still subject to any capital gain that may be made on the disposal of the shares and is entitled to a capital loss if applicable.

Kitty purchased $3,000 of shares in Shiny Gold Ltd, a public company listed on the Melbourne Stock Exchange. After 18 months they have a market value of $2,000 and she donates them to a DGR. While Kitty will be entitled to claim a deduction for the gift of $2,000, she will be have a capital loss of $1,000 because the reduced cost base is $2,000.

See also 13.822 for shares donated for fund raising events.

13.835 Cultural gifts program

ITAA97 s30-100

Gifts of money or property over $2 are deductible when made to:

- Australiana fund
- Artbank
- National Trust, and
- Public libraries, museums and art galleries.

However, this excludes testamentary gifts, land or buildings. The property must be accepted by the DGR (or the Commonwealth, if Artbank) for inclusion in the collection. Gifts made under this program would usually be works of art, manuscripts, books, furniture, historical items etc. The donor can make a written election to spread the deduction over the current year and up to four following years (see 13.888).

EXAMPLE

Mr Brown donates a unique historical painting to the National Gallery. He elects to deduct over four years with 40% in the year of donation and 20% in each of the following three years.

Three valuation methods apply, depending on how the asset was acquired and whether any restrictions or conditions are imposed by the donor. When claiming for any of these donations, consideration has to be given as to the appropriate method of valuation. Particular valuation methods apply to particular circumstances and there may be GST consequences (see 13.885).

Method 1 applies if the taxpayer would have been required to return the proceeds (or profit) as assessable income if the property had been sold. Unlike Method 2, there are no restrictions on when or how the property was acquired. The value of the property is the market value of the property at the time the gift is made, but the taxpayer must get two written valuations (from approved valuers) stating the value of the property at the time of gifting or the day the valuation was made. The ATO can reduce the "value" of the gift to an amount considered reasonable at the time the gift was made, particularly if the gift is conditional (see Method 3).

If the market value applies to the day of valuation, the valuation must have been made at a date within 90 days before or after the gifting of the property. The ATO can extend this period in appropriate cases.

Method 2 applies if the taxpayer would have been required to return the proceeds (or profit) as assessable income if the property had been sold, and it had been acquired by the taxpayer:

- within 12 months of the gifting under the terms of a Will, intestacy or varied Court Order, and
- with the purpose of making such donation.

The value of the property is the lesser of:

- the cost of the property, and
- its value (ie market value).

Method 3 applies if the gift contains conditions that the recipient does not:

- receive immediate custody or control of the property
- have the uncontrolled right to retain custody or control of the property in perpetuity, or
- get an immediate, indefeasible and unencumbered legal and equitable title to the property.

The value of the property is the same as Method 1. See 13.885 for the GST effect.

13.840 Profit making purchases

Special rules apply where the asset that has been donated was originally acquired by the taxpayer for resale to make a profit. If an asset was acquired before 20 September 1985 with the intention of resale to make a profit, the profit is taxed regardless of when the disposal occurs. This applies when assets are gifted or transferred in a non-arm's length transaction (eg to a relative or other related person).

The recipient is treated as having acquired the asset for the same:

- purpose (profit-motive) as the donor, and
- cost at which the donor acquired it

and is assessed on any profit on disposal of the asset.

13.845 Gifts of trading stock

ITAA97 s30-15

Gifts of trading stock valued at $2 or more to a DGR are deductible to the donor. The gift is treated as being a disposal outside of the normal course of business with the value being the market value of the trading stock at the time of the donation. The donor is also required to bring into account as assessable income that same value.If the ATO has given a valuation for the gift under s30-212, that valuation may be substituted for the market value provided that the valuation was made no more than ninety days before or after the date of the disposal.

13.850 Capital gains tax implications

For assets that were not originally acquired with a profit making motive, under the current rules, donations of such property have CGT implications unless the asset qualifies under the Cultural Bequests program or would have been deductible under s30-15 if it had not been a testamentary gift.

Assets acquired before 20 September 1985

Assets acquired before 20 September 1985 and transferred or gifted to a non-arm's length party are deemed to be disposed of at market value. The new owner acquires the asset at its market value at the transfer date.

Assets acquired after 19 September 1985

CGT can be payable by the original owner if the asset was acquired after 19 September 1985.

For each transfer or gift (for no or inadequate consideration), the original owner is deemed to have disposed of the asset for consideration equal to its market value. For the recipient, the asset's cost base is deemed to be its market value. The person making the gift has a capital gain if consideration (market value) exceeds the cost base of the asset gifted.

13.860 School and College building funds

Gifts to school or college building funds can be tax deductible if the proposed buildings are for a purpose connected with the curriculum.

The fund must be dispersed exclusively for:

- acquisition, construction, maintenance and capital improvements, or
- installation and maintenance of fixtures of a building used or to be used as a school or college (see TR 2013/2 for details of eligibility).

13.870 Cultural bequests program

The cultural bequests program under Subdivision 30-D was repealed in March 2012. Testamentary gifts are no longer deductible under s30-15(2).

13.875 Prescribed private funds

Certain private funds may be prescribed in the Regulations. Unlike most other categories of funds referred to in Division 30, they do not have to seek donations or receive donations from the public or be controlled by persons considered to have a responsibility to the public. These funds are intended to receive donations and then to disburse the capital and /or income of the fund to other deductible gift recipients.

The ATO guidelines for prescribed private funds can be found at www.ato.gov.au.

To be eligible for approval, private charitable funds must meet all of the criteria required to qualify as a public fund, as well as the new approved recipient criteria (see 13.800) but without the need to seek contributions from the public. These rules allow businesses, families and individuals greater freedom to set up their own trusts for philanthropic purposes.

Although these funds need not seek and receive donations from the public and do not need public control, they have to comply with all other requirements of a public fund. The guidelines for prescribed private funds and the approved trust deed are available at www.ato.gov.au under *Non-profit organisations*.

13.880 Property over $5,000

Deductions are allowable for donations of property regardless of when the property was acquired, provided the market value of the property is more than $5,000. The valuation is made by the ATO (a fee may be charged). Market value is reduced by 1/11th if the donor is entitled to a GST input tax credit (see 13.885).

For donations of property costing less than $5,000, property would have to be donated within 12 months of purchase to be deductible. If property is valued at over $5,000, but is gifted within 12 months of purchase, the amount deductible is the lesser of the amount paid or its market value. Where the ATO values a gift of property made to any DGR to be more than $5,000, the donor can spread the deduction over five years (see also 13.888).

Deductions are allowed when the gift is made to public funds, etc. included in Subdivision 30-B. Also, deductibility is extended to "prescribed private funds" (ie prescribed by Regulation).

13.883 Conservation covenants

ITAA97 Div 31

A deduction is available for taxpayers who enter into a conservation covenant with government agencies (eg State departments of parks and wildlife). A conservation covenant over land is one that restricts or prohibits certain activities on land that could degrade the environmental value of the land. It must be permanent and registered (if registration is possible) on the title to the land, and is approved in writing by the Minister for Environment and Heritage. The covenant must be over land owned by the taxpayer.

The following conditions must be met:

- the covenant is perpetual
- the taxpayer must not receive any money, property or other material benefit for entering into the covenant
- the covenant is entered into with a fund, authority or institution that meets the requirements of Division 31 (broadly those that have deductibility under Division 30 and are in Australia)
- the market value of the land must decrease as a result of the covenant, and
- one or both of these conditions must apply:
  - the change in the market value of the land as a result of entering into the covenant is more than $5,000
  - the taxpayer must have entered into a contract to acquire the land not more than twelve months before the covenant was entered into, and
  - the amount that can be deducted is the difference between the market value of the land just before the covenant was entered into and its decreased market value just after entering into the covenant (to the extent attributable to entering into the covenant). See also 12.026 and 13.888.

13.885 GST and capital gains tax implications

If a donor of a property gift is neither registered nor required to be registered for GST purposes, no adjustment to the value is required. As a general rule, if the donor is either registered or required to be registered for GST purposes, and the gift is either one of property less than 12 months old or was trading stock of the donor, the market value is reduced by the GST input credits. The same applies if the value related to property less than 12 months old purchased by the donor, or is a donation of shares made for a fundraising event (see 13.822).

EXAMPLE

A large accounting firm buys some computers for $22,000 but finding them unsuitable, gifts them shortly afterwards to a public university (a DGR). Because the firm would have been entitled to an input tax credit of $2,000, the value of the gift is $20,000.

A CGT exemption applies to disregard a capital gain or loss for gifts of property made under the Cultural Gifts Program (such as the Australiana Fund, public libraries, museums and art galleries, and Artbank), or for testamentary gifts. The exemption will not apply if the donor re-acquires the property for less than its market value. Testamentary gifts of property at any value are CGT exempt (s118-60(1A)). See 13.870.

13.888 Spreading deduction over five years

ITAA97 Subdiv 30-DB

Taxpayers who make a cash gift to a fund or a gift of property valued at more than $5,000 are able to make a written election to spread the deduction over the current income year and up to four of the following income years. The conditions applying and the effect of the election are the same as for gifts of property (see 13.880) valued at over $5,000 (but not environmental, heritage and certain cultural property gifts), and conservation covenants. Gifts to certain cultural organisations and amounts related to entering into a conservation covenant can also be spread under this provision.

The election must be made before the lodgment of the donor's income tax return for the income year in which the gift was made. In the election the donor will have to specify the percentage (if any) that is to be deducted in each income year. The election may be varied at any time, but only as to the percentage that will be deducted in income years for which returns have not been lodged.

EXAMPLE

In December 2015 Susie gives the National Gallery a painting valued at $150,000. She elects to spread the deduction over 5 years as follows: 30% in 2016-17, 35% in 2017-18, 0% in 2018-19, 25% in 2019-20 and 10% in 2020-21. Susie must make the election, and send a copy to the Arts Secretary, before lodging her return for 2015-16. The amounts deductible should be: $45,000 in 2016-17, $52,500 in 2017-18, nothing in 2018-19, $37,500 in 2019-20 and $15,000 in 2020-21.

Gifts to certain cultural organisations and amounts related to entering into a conservation covenant can also be spread under this provision.

13.890 Deductible gift recipients

ITAA97 Subdiv 30-B; ITAA97 Subdiv 30-BA

Division 30 sets out which entities are Deductible Gift Recipients (DGRs); that is, entities authorised to receive gifts which are income tax deductible. Some DGRs are specifically named in the Act (eg Australian Conservation Foundation). Others fall into a specific category (eg public library). This also incudes deductible donations to all entities providing volunteer based emergency services, including Volunteer Fire Brigades (VFBs). The measure also extends deductible gift recipient (DGR) status to all state and territory (state) government bodies that coordinate VFBs and State Emergency Service units.

Some endorsement requirements

There are two types of endorsement as a DGR. There are those which fall within a DGR category (eg a public benevolent institution) and those where a fund, authority or institution that is operated by an organisation falls within a DGR category (eg a fund for the relief of persons in necessitous circumstances operated by a church).

To be endorsed as a DGR an entity must apply to the ATO for endorsement and:

- have an Australian Business Number (ABN)
- be a fund, authority or institution of a type which falls within a general DGR category specified in Division 30 (that is, it is not specified by name in the legislation)
- maintain records relevant to their status as a DGR, and
- be situated in Australia unless it is an ancillary fund.

In relation to the 'in Australia' requirement see TR 2019/6 which provides that the term carries its ordinary meaning and that a DGR will be 'in Australia' where Australia can be described as its real location, taking into account its legal form and substance. It also states that whether a fund, authority or institution is located in Australia is a question of fact, to be determined based on the circumstances in each case. A DGR would satisfy this requirement where it: is established or legally recognised in Australia, and makes operational or strategic decisions mainly in Australia.

An entity that is itself endorsed as a DGR will not have to maintain a gift fund (although it may choose to do so). However, an entity that is not eligible for endorsement but is endorsed to operate a deductible fund, authority or institution, will be required to maintain a gift fund. These entities are able to consolidate multiple gift funds. A gift fund can only be used for the principal purposes of the entity and cannot receive any other gifts. Application forms for endorsement can be obtained on www.ato.gov.au (NAT 2948 & QC 24063).

Changes

QC 54421

In August 2018 Treasury released a consultation paper, "Deductible Gift Recipient (DGR) Reforms", regarding proposed changes to the deductible gift recipient rules. The proposed changes were:

- the requirement for non-government DGRs to register as a charity or be operated by a registered charity from 1 July 2019
- the transition arrangements available to assist affected DGRs to register a charity with the ACNC
- the Commissioner's discretionary power to exempt DGRs from the requirement to register as a charity in limited circumstances, and
- the abolition of certain public fund requirements.

Consultation closed on 21 September 2018.

On 12 October 2020, Treasury released exposure draft legislation around the "requirement for non-government DGRs to register as charities" element for public consultation. Consultation closed on 4 December 2020.

On 17 March 2021, the *Treasury Laws Amendment (2021 Measures No. 2) Bill 2021* was introduced to parliament. The Bill amends the *Income Tax Assessment Act 1997* to require a fund, authority or institution to, as a precondition for DGR endorsement, be:

- a registered charity, or
- an Australian government agency, or
- operated by a registered charity or an Australian government agency.

The Bill is currently before Parliament.

13.900 Tax-related deductions

A deduction for expenditure incurred (whether or not the taxpayer is carrying on a business) for the management or administration of income tax affairs is a specific deduction allowed under s25-5 ITAA97.

The claim is allowable for expenses related to:

- Income tax
- PAYG instalments (or company tax)
- Goods and services tax
- Capital gains tax
- Fringe benefits tax
- Medicare levy
- a GIC charge imposed under s170AA (ITAA36)
- Franking deficit tax, and
- PAYG withholding tax.

Other levies

The Superannuation Guarantee Charge (SGC) is not "income tax"; and therefore costs concerning disputes as to liability, etc might only be deductible under s8-1.

13.905 Allowable expenses

Expenditure is tax-deductible under s25-5 if incurred by the taxpayer in:

- finding the extent of the taxpayer's income tax liability
- managing or administering the income tax affairs of the taxpayer
- complying with the legal obligations imposed on a taxpayer in respect of his/her income tax affairs
- disputing an assessment, determination or ruling issued by the Commissioner, or
- attending to matters during, and arising from, an audit of the taxpayer's tax affairs.

Section 25-5 allows specific deduction for:

- fees paid by a taxpayer to a recognised tax adviser for professional advice in relation to the income tax affairs of the taxpayer
- costs associated with disputing assessments or any decision made by the Commissioner
- lodgement fees paid to the Administrative Appeals Tribunal (AAT), or the Courts (any refunds will be assessable in the financial year during which they are received)
- costs incurred in attending to a ATO audit
- costs associated with tax planning
- costs of attempting to get an extension of time to pay an outstanding tax debt, including the cost of having a financial statement prepared to demonstrate the taxpayer's inability to pay the full tax liability by the due date
- costs of giving information about some other taxpayer where that is demanded by the ATO, or
- the cost (for example) of deducting and remitting PAYG withholding tax on contract work or even for work done privately for the taxpayer.

This includes the cost of travel, and where appropriate, also accommodation. Any claim under s25-5 can include expenses which, in any other situation, might be private expenses.

Membership fees and cost of the Tax Summary books paid to Tax and Super Australia and similar organisations should be deductible under s25-5.

Contributions to a fighting fund are tax deductible as tax related expenditure if the fund has been set up to fund litigation, negotiate a settlement, or otherwise manage tax disputes arising from investments or schemes (TD 2002/1). The contributor must be a participant in the scheme, and has claimed, or will claim, a deduction which has or will be allowed.

13.910 Claims not allowable

Claims are not allowable for:

- capital expenditure (may form part of an asset's "cost base", see 13.930), and
- expenditure which would be precluded as an "entertainment expense" (such as payment for a meal with a professional tax adviser) whatever the reason for a meal and discussion.

"Recognised tax adviser"

The definition is:

- a registered tax agent, BAS agent or tax (financial) adviser – as defined under the *Tax Agents Services Act 2009*, or
- legal practitioner – being a person who is enrolled as a barrister, a solicitor or a barrister and solicitor of a federal court, or a court of a State or Territory.

Other allowable amounts

Even capital expenditure can qualify for a deduction as tax-related provided the item is used for approved purposes. The claim allowed is limited to the applicable amount of depreciation for the income year, eg a computer used to meet a taxpayer's tax obligations. However, when the item is used by a private person partly to assist in the administration of the taxpayer's tax affairs, depreciation would be allowed only to the extent to which the property is used by a taxpayer in ascertaining or meeting the taxpayer's "income tax" (as it is defined) obligations. Double deductions are not allowed if the equipment is already being used and claimed for business or income earning purposes. The actual tax claim is the non-private part of overall depreciation and other costs.

Offences against law

Deductions will not be allowed for costs associated with an offence against any law of the Commonwealth, State, Territory or foreign country.

13.915 Refunds of tax-related expenses

Claims for tax-related expenditure will not be an allowable deduction to the extent it is ultimately not borne by the taxpayer. This applies to any amount that was (or is) tax-deductible, but is:

- reimbursed to the taxpayer
- paid by another taxpayer after the taxpayer has technically incurred the expenditure, or
- recouped (even indirectly) by the taxpayer.

If expenditure is incurred by a taxpayer who is in business, it may be claimed in that year even though paid later (whether or not it is reimbursed later). If an amount of "tax-related" expenditure is reimbursed or recouped, the amount is assessable income of the year in which recompense occurs.

EXAMPLE

Filing fees paid to the AAT on the lodgment of a reference. See "Objections and Appeals" at 4.200 and 4.300. If there is any reduction in the tax liability arising from the objection, the AAT filing fees are refunded in full and are assessable in the year refunds are received.

13.920 Taxpayer dies during year

Expenditure on any "tax-related matters" is treated as incurred during the taxpayer's lifetime. A deduction is allowed in the final return to the date of death for expenditure incurred by a trustee which would have been allowable to the taxpayer had it been incurred and paid by the deceased.

13.925 Partnerships and trusts

Section 25-5 expenditure incurred by a partnership or by a trust is an allowable deduction in calculating net income. TD 94/91 says only the trustee can claim a s25-5 ITAA97 deduction for expenses for management or administration of the income tax affairs of the trust, and a deduction is allowed for this expenditure in the tax return of the trust.

13.930 CGT cost base

The following expenses can generally be included in the "cost base" of an asset (but see 12.092 and 12.120), also forming part of the "reduced cost base":

- fees paid to a "recognised professional tax adviser" for professional advice concerning the impact of the income tax law on the acquisition or disposal of an asset
- fees paid for professional advice on the impact of taxes other than income tax (eg stamp duty, etc) on the acquisition or disposal of an asset.

Expenses incurred on tax-related matters are not treated as capital merely because the income tax affairs to which the expenditure relates are of a capital nature.

To calculate a gain or loss, costs incidental to the acquisition or disposal of an asset may be eligible to be included in:

- the asset's "cost base"
- the "reduced cost base", or
- the "indexed cost base".

Incidental acquisition and disposal costs for the relevant cost base of the asset are:

- fees, commission or remuneration for the professional services of a surveyor, valuer, auctioneer, accountant, broker, agent, consultant or legal adviser: but not any paid to a "recognised professional tax adviser" for a wider range of services allowable under s25-5
- costs of transfer (including stamp duty or similar duty)
- purchase: advertising or marketing costs to find a seller
- sale: advertising or marketing costs to find a buyer
- costs of making any valuation or apportionment of acquisition costs
- search fees
- cost of a conveyancing kit, or
- borrowing expenses (such as loan application fees and mortgage discharge fees).

Some costs are deductible under s25-5 ITAA97, while others are to be included in the "cost base" of the asset (and indexed, if applicable) when calculating any capital gain. It is preferable to take an immediate deduction and not include these amounts in the cost base of the asset.

NOTE: Any expenditure incurred before **1 July 1989** for tax advice does not form part of the cost base.

13.950 Carry forward tax losses

A tax loss occurs when a taxpayer's deductions for an income year exceed their income (called a "loss year"). A tax loss may be able to be carried forward and deducted in subsequent income years (subject to restrictions – see 14.450 for non-commercial loss rules).

A loss is incurred if allowable deductions (but not unused losses from earlier years) exceed the taxpayer's assessable income and net exempt income for that income year.

"Net exempt income" is the amount by which total exempt income from all sources exceeds the total of:

- revenue (ie not capital) expenses incurred in deriving that income, and
- any (foreign) taxes payable on that exempt income.

Tax offsets in year loss incurred

Tax offsets claimed on a tax return normally will reduce the tax payable. Unused non-refundable tax offsets in the current year are lost (such as foreign income tax offset). Unused tax offsets for franking credits are refundable to individuals.

13.955 Deducting tax losses

As a general rule, loss year tax losses are deducted in the order they were incurred from:

- firstly, net exempt income (if any), and
- secondly, the part of total assessable income that exceeds total deductions for the current year other than tax losses.

Special rules apply to:

- companies wishing to claim for past year losses
- trusts wishing to claim for past year losses
- capital losses
- forgiveness of debts
- non-commercial business activities
- foreign losses
- transfer of losses within wholly owned company groups, and
- claims for bad debts.

However, a taxpayer cannot elect the year in which to apply a prior year tax loss and they are carried forward until fully absorbed. The losses are able to be claimed by the taxpayer who incurred the losses, even though they may no longer be in business. Unrecouped losses cannot be transferred to another taxpayer; for example the vendor when selling their business cannot transfer unrecouped losses to the purchaser. The accumulated tax losses to the date of death of a deceased taxpayer cannot be carried forward and deducted by the trustee of a deceased estate (ID 2003/557).

A taxpayer who becomes a bankrupt cannot deduct a tax loss incurred before becoming bankrupt or being released.

Foreign losses can be claimed against any domestic income (see 22.420).

13.960 Claim only if no loss generated

Section 26-55 ITAA97 prevents the following deductions from generating a tax loss that can be deducted in a later year:

- Division 30 ITAA97: gifts or contributions made to approved or listed DGRs
- s25-50 ITAA97: payment of pensions, gratuities or retiring allowances
- Division 31 ITAA97: deductions for conservation covenants
- s78B ITAA36: promoters recoupment tax
- Division 3 of Pt III ITAA36: development allowance so far as it applies to a leasing company
- Subdivision 290-C: deductions for personal superannuation contributions, and
- Division 3 of Part XII ITAA36: development and drought investment allowances of a leasing company.

If a deduction can be claimed under a more general provision such as s8-1, then it can add to a carry-forward loss (provided that s8-10 does not apply to prevent a double deduction). It would also seem that if carry forward losses already exist, then any specified deductions (eg s290-150 ITAA97) have to be taken into account first. An example given is as follows.

EXAMPLE

A taxpayer has an assessable income of $10,000 with s290-150 ITAA97 deductions of $1,500 and carry forward losses of $20,000. The s290-150 deduction is taken into account as follows:

Assessable income		*$10,000*
less s290-150 deduction	*$1,500*	
Prior year losses	*$8,500*	*$10,000*
Taxable income		***Nil***

If the taxpayer had other expenditure deductible under s8-1 ITAA97, the effect would be as follows:

Assessable income		*$10,000*
less other allowable deductions	*$9,500*	
s290-150 claim limited to	*$500*	*$10,000*
Taxable income		***Nil***

The carry forward loss would remain at $20,000.

Expenses incurred on gifts and donations, and deductible personal superannuation contributions cannot be used to increase or create a tax loss. Hence, in this example the claim for those expenses has been limited to the amount that does not create a tax loss.

13.970 Bankruptcy

A deduction is allowed for what is spent or owing, but not for any debt which does not have to be paid (eg forgiveness of debt).

A tax loss incurred before becoming bankrupt cannot be deducted if the bankruptcy is annulled later and:

- the taxpayer comes to an "arrangement" with creditors, and
- the taxpayer may be released from some or all of the debts.

A taxpayer may be able to claim a deduction in the year of income from voluntary payments that they make towards debts from which they have been released (see TD 93/10).