
Work Related Expenses – Are They Tax Deductible – A Practical Guide for Junior Accountants

**Darius Hii, Director, CTA
Chat Legal Pty Ltd**



Chat Legal Pty Ltd
ABN 64 621 391 553
letschat@chatlegal.com.au
GPO Box 989, Brisbane, QLD 4001
Level 16, 97 Creek Street, Brisbane, QLD 4000
<https://chatlegal.com.au>

Individual liability limited by a scheme approved under Professional Standards Legislation



Work Related Expenses – Are They Tax Deductible – A Practical Guide for Junior Accountants

1 Overview

- 1.1 Determining eligible tax-deductible expenses for an employee is not always clear cut.
- 1.2 With an ever-changing landscape in how individuals are employed (such as increased work from home arrangements and the 'gig economy' with delivery drivers), tax practitioners need to be wary of the effect such arrangements have to the claiming of tax deductions.
- 1.3 Ultimately, whether a claim is deductible for an employee will require an analysis of the foundations, although the Australian Taxation Office offers much guidance for industry-specific deductions.
- 1.4 This paper looks to provide tips and traps to be aware of when claiming work related expenses for employees, such as:
 - (a) A general overview to deductibility – what's deductible and what's depreciable?
 - (b) Available methods to use when private use apportionment is required.
 - (c) Work from home tax deductible expenses.
 - (d) Motor vehicle claims.
 - (e) The need to substantiate evidence.
 - (f) A review of TR 2020/1 relating to employee deductions.
- 1.5 Practical examples will be provided in the complementing presentation.



2 What's deductible and what's depreciable?

2.1 At it's simplest, section 8-1 *Income Tax Assessment Act 1997* (Cth) (**ITAA 1997**) allows a general deduction for a loss or outgoing provided that **either** *positive limb* is met:

"(a) it is incurred in gaining or producing your assessable income; or

(b) it is necessarily incurred in carrying on a business for the purpose of gaining or producing your assessable income."

2.2 Not all losses or outgoings that meet an above positive limb will be deductible however, as section 8-1(2) ITAA 1997 provides *negative limbs* where the loss or outgoing will not be deductible:

"(a) it is a loss or outgoing of capital, or of a capital nature;

(b) it is a loss or outgoing of a private or domestic nature; or

(c) it is incurred in relation to gaining or producing your exempt income or your non-assessable non-exempt income; or

(d) a provision of [ITAA 1997] prevents you from deducting it.

Positive limbs

2.3 The first positive limb is relevant in determining whether a work related expense is deductible for an employee. Specifically, expenses incurred in order for a taxpayer to produce employment income will meet the test.

2.4 Common work related expenses that an employee may incur includes:

(a) acquisition of daily tools and equipment;

(b) professional journals;

(c) membership fees;

(d) travel expenses.

2.5 As the second positive limb relates to expenses incurred in carrying on a business (i.e. trading stock), such section will not usually be of relevance to an employee.

2.6 In incurring an expense in the course of an employee producing assessable income, it is crucial that the expense is 'incurred' by the employee.

2.7 Taxation Ruling 97/7 outlines the meaning 'incurred' (as there is no definition of the term in the legislation), and the Australian Taxation Office Employees Guide for Work Expenses (**Work Expenses Guide**) confirms that expenses incurred but reimbursed, or expenses incurred by others who gift the item to the employee will not meet the meaning of 'incurred'.

2.8 Only expenses incurred in gaining or producing employment income will be deductible. Where expenses are not required to be incurred as part of an employee's employment, such expenses will not be deductible.

2.9 Further, expenses incurred by an employee at the direction of an employer will not automatically be deductible¹

¹ Taxation Ruling 1997/12



2.10 Instead, the expense must be something that “*might ordinarily be expected to occur in the carrying out the duties of the employment*”²

Loss or outgoing of capital, or of a capital nature

2.11 Losses or outgoings that are capital in nature (i.e. for certain assets, otherwise known as **depreciating assets**) are not usually fully deductible immediately, with any deductions being spread out over a number of years over the effective life of the depreciating asset.³

2.12 In this regard, we note that the temporary full expensing of depreciating asset rules introduced by *Treasury Laws Amendment (A Tax Plan for the COVID-19 Economic Recovery) Act 2020* and the *Treasury Laws Amendment (2020 Measures No.6) Act 2020* are only available for certain business entities (and therefore, not applicable for employees).

2.13 The question, therefore, is what constitutes a loss or outgoing to be a capital expense as opposed to an income expense.

2.14 The case of *FCT v Sharpcan Pty Ltd* [2019] HCA 36 confirms the long-held belief on whether an expense is incurred on revenue account or capital account:⁴

“Authority is clear that the test of whether an outgoing is incurred on revenue account or capital account primarily depends on what the outgoing is calculated to effect from a practical and business point of view. Identification of the advantage sought to be obtained ordinarily involves consideration of the manner in which it is to be used and whether the means of acquisition is a once-and-for-all outgoing for the acquisition of something of enduring advantage or a periodical outlay to cover the use and enjoyment of something for periods commensurate with those payments. Once identified, the advantage is to be characterised by reference to the distinction between the acquisition of the means of production and the use of them; between establishing or extending a business organisation and carrying on the business; between the implements employed in work and the regular performance of the work in which they are employed; and between an enterprise itself and the sustained effort of those engaged in it. Thus, an indicator that an outgoing is incurred on capital account is that what it secures is necessary for the structure of the business.

2.15 Taxation Ruling 2020/1 (**TR 2020/1**) considers ‘capital or capital in nature’ to refer to *items that are not regular or recurrent but rather, are on-off expenditures that can be expected to have an enduring or lasting benefit.*⁵

2.16 More broadly, whether a loss or outgoing is considered a revenue or capital expense will depend on a variety of factors such as:

- (a) whether the expense has a long lasting benefit (which is more reflecting of it being capital in nature);
- (b) whether the amount incurred is a ‘one-off’ rather than a recurring obligation;
- (c) whether the expense is paid in a lump sum to obtain the benefit.

2.17 Examples of employee work related expenses that may be capital in nature may include:

- (a) laptop or mobile devices;
- (b) office equipment;

² IT 2198

³ See *Division 40 ITAA 1997*

⁴ *FCT v Sharpcan Pty Ltd* [2019] HCA 36 at [18]

⁵ Taxation Ruling 2020/1 at paragraph 43



- (c) furniture;
- (d) motor vehicles.

2.18 While such expenses may fall within the negative limb, specific provisions of the legislation may allow such capital expenses to be tax deductible as opposed to depreciable.

Other negative limbs

2.19 In addition to expenses of a capital nature being non-deductible, the following negative limbs seek to make any related expenses non-deductible:

- (a) expenses of a private or domestic nature will not be deductible (i.e. losses or outgoings incurred as part of an employee's private life such as expenses on food and conventional clothing) – where an expense is incurred and is partially used in the gaining or producing of assessable income (i.e. phone claims), then apportionment and substantiation rules apply to allow a partial deduction;
- (b) expenses incurred in producing exempt or non-assessable non-exempt income, such as any expenses incurred to produce income under Division 11 ITAA 1997; and
- (c) losses or outgoings incurred specifically denied as being a deduction, such as:
 - (i) penalties under Australian law;⁶
 - (ii) bribes to foreign or Australian public officials;⁷
 - (iii) unsubstantiated work expenses.⁸

2.20 Later sections of this paper will consider the appropriate methods to apportion private and use of expenditure as was as substantiation requirements.

General work related deductible employee expenses

2.21 Appreciating the later sections relating to work related expenses regarding work from home tax deductions and motor vehicle claims, below is a summary of common work related expenses.

- (a) **Insuring and repairing tools or trade and equipment**– Expenses in insuring and repairing tools of trade may be deductible. For example, repairing power tools (for building workers/carpenters) or repairing combs, curlers and razers (for hairdressers), where the employee must supply their own tools. Examples of work related equipment includes calculators, computers, phones, pagers and personal protective equipment. Whether the tool or equipment is deductible will ultimately depend on whether such tool/equipment is required in the field of the employee and in the course of their employment.
- (b) **Acquisition of tools of trade and equipment** – While the acquisition of tools are generally seen as capital in nature, provided the value of tools being depreciated is less than \$1,000 through a low-value pool, an immediate deduction may be available.
- (c) **Technical and trade books, journals** – Where such books/journals are required in the duties of employment, such expenses will be deductible. Examples of deductibility may include a journalist incurring such expense in researching an

⁶ Section 26-5 ITAA 1997

⁷ Section 32-5 ITAA 1997

⁸ Section 900-10 ITAA 1997



article,⁹ real estate industry employees using the property section of papers¹⁰ and a subscription paid by an accountant for professional educational content.¹¹

- (d) **Travel expenses** – While expenses incurred in normal travel between home and work (e.g. public transport fares and parking) are not usually deductible (as they are incurred in the normal cost of living in one are whilst working in another), travel expenses (such as car parking expenses) incurred travelling between two unrelated places of employment or work sites may be deductible.¹² Further, where circumstances arise that the employee's predominant base of work is at their home, deductions may be available where they are required to travel to other work locations. In such a circumstance, it would be recommended that any employment contract confirms that such an employee's usual place of work is listed as their home.

Taxation Ruling 2021/1 provides examples of when such travel expenses will be deductible and also includes additional circumstances:

- (i) where an employee is required to carry bulky tools or equipment to work (and the employer does not provide a secure storage location);
 - (ii) where an employee is on call or stand by.
- (e) **Self-education** – Taxation Ruling 98/9 states the general principles governing the deductibility of self-education expenses. In summary:
- (i) Expense will be deductible if it relates to the cost of improving knowledge or skills without being incurred as a capital expense.
 - (ii) Expenses incurred in keeping an employee up to date in their field or allowing such employee to discharge their duties may be deductible.
 - (iii) Expenses incurred to either assist an employee obtain new employment or pivot into a different field unrelated to their current employment is likely not to be deductible. For example, consider *FCT v Roberts* 92 ATC 4787 where a deduction to obtain an overseas MBA course by a mining engineer was denied in the course of the mining engineer accepting an offer of employment as a mine manager with another company.

It is noted that the 2021 Federal Budget considered the removal of the \$250 non-deductible threshold.

Travel expenses incurred by an employee to travel either from home to the place of education and to home; or from work to place of education to work, may be deductible. In line with travel expenses, certain aspects of travelling from home to place of education to work will not be deductible (much as travel from home to work is not usually deductible).

- (f) **Tax-related expenses** – Employees are able to claim a deduction of expenses incurred for managing their income tax affairs provided it is not of capital nature, nor the payment of such tax itself.¹³

⁹ Taxation Ruling 98/14

¹⁰ Taxation Ruling 98/6

¹¹ Australian Taxation Office ID 2002/484

¹² Section 25-100 ITAA 1997

¹³ Section 25-5 ITAA 1997



2.22 While the above general expenses may allow to most employees, less common work related expense claims for certain professionals can include:

- (a) **Gifts, advertising** – Certain professions where expenses are incurred to gift/advertise are entitled to a deduction on such expense. For example, real estate industry employees¹⁴ are entitled to claim a deduction on the cost of advertising, purchasing gifts, greeting cards and property presentation costs.
- (b) **Work-related clothing** – Certain work-related clothing may be deductible where:
 - (i) it is required to be worn under work-place policies;
 - (ii) is unique and distinctive to the employer with a logo of the employer permanently attached to the uniform; and
 - (iii) not be available to the public.

Other general deductions are available where such clothing is protective or are a requirement for the employment. Examples may include a chef's outfit or barrister's wig. Conventional clothing (and not specific to an occupation) will not generally be deductible unless in special circumstance (e.g. sunglasses, sunhats and sunscreen purchased by employees who are required to work outside)¹⁵.

- (c) **Laundry and dry-cleaning expenses** – A deduction is available for the cost of cleaning clothing used for income-producing purposes and where the expense is incurred by the performance of income-producing duties.¹⁶
- (d) **Fitness expenses** – Employees who are required to have a high degree of fitness to carry out their work may be entitled to a deduction on expenses related to the retention of their fitness. These may include police academy training instructors and performing artists.¹⁷ Often the employee is required to have a very high level of fitness.

2.23 While the above provides general principles regarding work related expenses that may be deductible or not, the Australian Taxation Office (**ATO**) website contains occupation and industry specific guides regarding work-related deductions (discussed further below).

¹⁴ Taxation Ruling 98/6

¹⁵ *Morris v FCT* 2002 ATC 4404

¹⁶ Taxation Ruling 97/12

¹⁷ Taxation Ruling 93/114 and Taxation Ruling 95/20 respectively



3 Apportioning for private use

- 3.1 Losses or outgoings incurred that are private or domestic in nature are generally not deductible.
- 3.2 However, where such expense incurred was partially used for producing assessable income, and is partially for private use, the claim can be apportioned.
- 3.3 What percentage is considered appropriate for an apportionment will ultimately depend on the facts and the determination of the proportion of the claim related to deductible purposes.
- 3.4 Where usage regarding the claim can be identified and itemised between deductible and non-deductible use, apportionment can be determined based on a reasonable analysis of the line items such as:
- (a) number of work calls made as a percentage of total calls made from a phone;
 - (b) amount of time spent on work calls as a percentage of your total calls from a phone;
 - (c) amount of data downloaded for work purposes as a percentage of total downloads for a smart device.

As may be appreciated, phone, data and internet expenses¹⁸ could be calculated using the above methodology (subject to the availability to analyse such data).

- 3.5 The most appropriate method (total calls or time of use) will ultimately depend on the facts, but such method must be reasonable and logical. Consider whether time spent on a computer for work over total time spent on a computer would be reasonable for determining internet expense claim where the internet may be used by other devices owned by other persons.
- 3.6 Alternatively, where such claims cannot be broken down into identifiable components, a reasonable basis should be used in determining deductible use.
- 3.7 Keeping a diary may be of assistance, and generally, provided it is kept for a continuous four-week period, such use can be extrapolated for the remainder of the year (subject to adjustments for periods of time when the usage may be significantly different).
- 3.8 In this regard, once an expense is determined to be deductible, it is not for the Commissioner to determine such apportionment simply due to the amount of the claim being greater than what would normally have been incurred by a prudent business person.¹⁹ Care, however, must be taken not to inflate payments under a scheme to create artificial deductions.²⁰

¹⁸ Please note the substantiation rules provided further below

¹⁹ Ronpibon Tin (1949) 78 CLR 47

²⁰ IHargraves & Stoten [2010] QCA 328



4 Work from home tax deductible expenses

- 4.1 Whilst in the spotlight due to an increase of work from home arrangements arising from COVID-19, work from home arrangements were increasing in the years prior and deductions for employees who work from home have always potentially been available.
- 4.2 As a general rule, expenses relating to an employee's home are of a private or domestic nature, and would therefore not meet deductible by way of falling within one of the negative limbs mentioned above.
- 4.3 An exception exists where for an employee where the home is used in connection with the employee's income earning activities but does not constitute a place of business.²¹²²
- 4.4 Whether a home office is suitable for such deductions will ultimately depend to the extent:²³
- (a) the area is clearly identifiable as a place of business;
 - (b) the area is not readily suitable or adaptable for use for private or domestic purposes in association with the home generally;
 - (c) the area is used exclusively or almost exclusively for carrying on a business; or
 - (d) the area is used regularly for visits of clients or customers.
- 4.5 Broadly, home office expense deductions can be categorised into:²⁴
- (a) **running expenses:** being expenses relating to the use of facilities within the home such as electricity, heating, lighting, cleaning costs, depreciation, leasing charges and the cost to repair items; and
 - (b) **occupancy expenses:** being expenses relating to the ownership or use of a home which have not affected by a taxpayer's income activities such as rent, mortgage interest, rates, land taxes and house insurance premiums.
- 4.6 Other running expenses are accepted to include interest expenses, phone expenses and electronic consumables that an employee may be required to utilise in the course of conducting their employment from home.²⁵
- 4.7 Where a home office is used as a matter of convenience, such that the area is easily used for private purposes, employee will only be entitled to claim deductions relating to running expenses.
- 4.8 Occupancy expenses are available where the home office exhibits traits of a place of business.
- 4.9 Special rulings relating to the claiming of deductions for additional running expenses incurred whilst working from home due to COVID-19 will also be considered further below as such deductions may be claimed until 30 June 2022.²⁶

²¹ Taxation Ruling 93/30 at paragraph 3

²² It is also noted that deductions may be available where part of the home is used for income producing activities and has the character of a "place of business" – Taxation Ruling 93/30 at paragraph 2 – but would not ordinarily be available for employees as they are not considered as running a business

²³ Taxation Ruling 93/30 at paragraph 5

²⁴ Taxation Ruling 93/30 at paragraph 6

²⁵ Practical Compliance Guideline 2020/3 at paragraph 26

²⁶ Practical Compliance Guideline 2020/3



Claiming running expenses

- 4.10 If an employee is able to establish a link that a home is used in connection with the employee's income earning activities (noting that the field in which the employee works would need to be one which may require the employee to work from home), they may be entitled to claim the following running expenses:
- (a) **Heating, lighting and electricity deduction:**
 - (i) An amount may be claimed equal to the difference between what was actually paid and what would have been paid had the employee not worked from home.²⁷
 - (ii) Whilst TR 93/30 (at paragraph 24) provides for a formula in working out the expense, it is accepted that a fair estimate may be accepted based on a reasonable percentage of the household annual bill.²⁸
 - (iii) The employee must use such room without others present, else such claim be considered carrying private/domestic character.²⁹
 - (b) **Depreciation, insurance and repairs deductions:**
 - (i) These may be accepted where such expense relates to assets relevant to a home office (which can include a professional library and other equipment).³⁰
 - (ii) Where such items are used for private or domestic purposes, then the claim should be apportioned.³¹
 - (iii) Repairs to a home office may also be allowed which relates to non-capital expenses.³²
 - (c) **Cleaning costs and pest control deductions:**
 - (i) These may be calculated based on the total floor area of the home office to the entire home.
 - (ii) Where the home office is not used solely for income earning purposes, an apportionment must be made on a time basis.
 - (d) **Telephone and internet deductions:**
 - (i) While the installation of a landline at home will not be deduction (due to its capital nature),³³ rental costs incurred may be deductible apportioned by work related calls using the following formula: *Business calls (incoming and outgoing) / Total calls (incoming and outgoing)*³⁴
 - (ii) Alternatively, work-related equipment such as telephones and tablets may be deductible upfront or depreciated (depending on the circumstances such as value).

²⁷ Taxation Ruling 93/30 at paragraph 23

²⁸ Taxation Ruling 93/30 at paragraph 25

²⁹ Taxation Ruling 93/30 at paragraph 21

³⁰ Taxation Ruling 93/30 at paragraph 26

³¹ Taxation Ruling 93/30 at paragraph 27

³² Section 25-10 ITAA 1997

³³ Case N84 81 ATC 451 and Taxation Ruling 98/14

³⁴ Law Administration Practice Statement PS LA 2001/6 at paragraph 4



- (iii) Home internet usage may also be deductible on the same basis as rental costs for phone calls.

- 4.11 Law Administration Practice Statement PS LA 2001/6 (**PSLA 2001/6**) acknowledges the difficulty in calculating an apportionment of private use and work use with some of the above items and offers the ability for employees to retain a diary outlining hours of work in the home office for a four-week record in order to establish a pattern of use of the items for an entire financial year. New diaries must be kept for each financial year.³⁵
- 4.12 Once known, the ATO will accept that an employee has incurred 52 cents per hour for home office running expenses.
- 4.13 Where employees wish to claim deductions based on an actual cost – they may continue to do so, but must ensure such amounts are apportioned appropriately.³⁶
- 4.14 Records of the diary must be retained for a period of five years under the substantiation rules (further discussed below).³⁷

Occupancy expenses

- 4.15 It is usually rare for employees to be able to access occupancy expenses as deductions due to the fact most home offices would not usually have the character of being a place of business.³⁸
- 4.16 Despite this, certain employees may be entitled to access such expenses should their circumstances align. For example, occupancy expenses were considered available to:
- (a) A bank's IT employee required to perform duties during after-hours and weekends who works from home using equipment supplied by the employer.³⁹
 - (b) An employee architect who is also allowed to conduct a small private practice from home.⁴⁰
 - (c) A country sales manager for an oil company whose employer did not provide him with a place to work.⁴¹
- 4.17 In such circumstances, employees were either required to work from home as part of their contract (whether due to the employer not providing a place to work, or as required to work outside standard office hours). Such circumstances do not apply to every employee, and hence the need to carefully consider the employment relationship in determining whether the home office was made out of necessity or convenience.⁴²
- 4.18 High Court decisions⁴³ have denied barristers claiming occupancy expenses for home studies that were used almost exclusively for professional purposes on the basis:
- (a) There was no physical separation of the studies from their homes as they were adjacent to the taxpayers' living rooms.
 - (b) The barristers also maintained chambers at different locations from their homes.

³⁵ Law Administration Practice Statement PS LA 2001/6 at paragraph 10

³⁶ Law Administration Practice Statement PS LA 2001/6 at paragraph 13

³⁷ Section 900-25 ITAA 1997

³⁸ As required under Taxation Ruling 93/30

³⁹ *McAteer v Commissioner of Taxation* [2020] AATA 1795

⁴⁰ *Case F53 74 ATC 294*

⁴¹ *Case T48 86 ATC 389*

⁴² IT 2673

⁴³ *Handley v FCT* [1981] HCA 16 and *FCT v Forsyth* [1981] HCA 15



- (c) It was noted that the home studies remained an integral part of the barristers' home and were not a place of business, therefore being domestic in character.
- 4.19 Similarly occupancy expenses were denied as a deduction for an employee pilot on the basis his employer did not expect employee pilots to perform duties at home.⁴⁴
- 4.20 Where it is determined that occupancy expenses may be deductible, such expenses will need to be apportioned as follows:
- $$\frac{\text{Floor area related to the income earning activity}}{\text{Total floor area}} * \text{Relevant expenditure}$$
- 4.21 Where occupancy expenses are claimed, care should be noted as to the partial loss of the capital gains tax main residence exemption.
- Working from home during COVID-19**
- 4.22 To ease the burden of employees forced to work from home between 1 March 2020 and 30 June 2022, the ATO issued Practical Compliance Guideline 2020/3 (**PCG 2020/3**) assisting taxpayers with a simplified method in calculating running expenses in relation to their income-producing activities.
- 4.23 PCG 2020/3 applies to those employees who were required to work from home to fulfil their employment duties and incurred additional running expenses as a result of working from home.
- 4.24 To meet these simplified rules, the employee must:
- (a) Have work that was substantive and directly related to the employee's income-producing activity. The checking of emails or taking calls would not suffice.⁴⁵
 - (b) Have incurred additional running expenses as a result of working from home, such as an increased usage in electricity due to additional electronic devices being plugged in or the need to have purchased additional office supplies to use while working at home.⁴⁶
- 4.25 Where the above rules are met, employees may either elect to use the method for calculating running expenses under PS LA 2001/6 (as outlined above), or a shortcut rate of 80 cents per hour worked at home.
- 4.26 If electing to claim the shortcut rate, further deductions cannot be claimed for the purchase or expenses relating to:⁴⁷
- (a) electricity (lighting, cooling/heating and electronic items used for work, for example a computer) and gas (heating) expenses
 - (b) the decline in value and repair of capital items such as home office furniture and furnishings
 - (c) cleaning expenses
 - (d) phone expenses including the decline in value of a phone handset
 - (e) internet expenses

⁴⁴ *Gregory Yeates v Commissioner of Taxation* [2014] AATA 10

⁴⁵ Practical Compliance Guideline 2020/3 at paragraph 12

⁴⁶ Practical Compliance Guideline 2020/3 at 17

⁴⁷ Practical Compliance Guideline 2020/3 at 27



- (f) computer consumables
 - (g) stationery, and
 - (h) the decline in value of a computer, laptop or similar device.
- 4.27 A record must be kept documenting the hours which an employee worked at home and can include timesheets, rosters, a diary or other similar documents.⁴⁸

⁴⁸ Practical Compliance Guideline 2020/3 at 28



5 Motor vehicle claims

- 5.1 Deductions may be available for expenses related to motor vehicles such as:
- (a) petrol;
 - (b) oil repairs;
 - (c) servicing;
 - (d) new tires;
 - (e) lease charges;
 - (f) interest on a car loan; and
 - (g) car washes and polishes.
- 5.2 Such deductions may fall within the meaning of 'car expense' under section 28-13 ITAA 1997⁴⁹ in addition with the decline in value of a car, and may be deductible under section 28-12 ITAA 1997.
- 5.3 In seeking to claim such expenses, special substantiation rules apply under sections 28-1 to 28-185 ITAA 1997, where the employee owns or hires/leases the car. Where an employee does not own the car, they are only able to claim deductions for petrol and other actual use costs.
- 5.4 Two methods are available in claiming motor vehicle expense deductions – the logbook method and the cents per kilometre method. Either method may be chosen by the employee.⁵⁰
- 5.5 Substantiation rules must be met in order for such expenses to be deductible, and unlike other deductions, there is no substantiation-free threshold for motor vehicle expenses.

Cents per kilometre method

- 5.6 The cents per kilometre method calculates an employee's motor vehicle deduction based on the following formula:⁵¹

$$\begin{aligned} & \text{Number of business kilometres travelled by the car in the income year} \\ & \quad * \text{ rates of cents kilometre determined under subsection 128} \\ & \quad - 25(4) \text{ for the car for the income year} \end{aligned}$$

- 5.7 The current rate of cents kilometre is 72 cents as of the 2020/2021 and 2021/2022 financial years.
- 5.8 Business kilometres are considered kilometres the car travelled in the course of producing the employee's assessable income or travel between workplaces.
- 5.9 The maximum business kilometres available for deduction is 5,000. Where the car travelled more than 5,000 business kilometres, the deduction only allows a maximum claim on the first 5,000 kilometres.⁵²

⁴⁹ Meaning any losses or outgoings to do with a car, or to do with operating a car (such as fuel, oil, servicing and interest)

⁵⁰ Section 28-15 ITAA 1997

⁵¹ Section 28-25 ITAA 1997

⁵² Section 28-25(2) ITAA 1997



5.10 Importantly, car expenses are not required to be substantiated using the cents per kilometre method.⁵³

Logbook method

5.11 The logbook method multiplies the amount of each car expense by a percentage equal to the car's business use.

5.12 Business use relates to kilometers the car travelled in the course of an employee producing assessable income or travel between workplaces.⁵⁴

5.13 It requires a logbook to be kept at least 12 continuous weeks in the first year, and then every 5 years thereafter.

5.14 The logbook must include:⁵⁵

- (a) the date the trip began and ended;
- (b) odometer readings at the start and end of the trip;
- (c) kilometres travelled on the journey; and
- (d) the purpose of the trip.

5.15 Further, such logbook should include:⁵⁶

- (a) when the logbook period begins and ends;
- (b) the car's odometer readings at the start and the end of the period;
- (c) the total number of kilometres that the car travelled during the period;
- (d) the number of kilometres that the car travelled, in the course of producing assessable income, on journeys recorded in the logbook; and
- (e) a percentage of kilometres used for producing assessable income over total kilometres.

5.16 Steps are also required to ensure the following details are retained with the records:⁵⁷

- (a) the car's make, model and registration number (if any);
- (b) if the car has an internal combustion engine—its engine capacity expressed in cubic centimetres.

5.17 Such entry should be made contemporaneously⁵⁸ as incomplete records may be deemed unreliable and rejected. Records must also be in English.

5.18 Once completed, a reasonable estimate can be determined and a new logbook will not be required:⁵⁹

- (a) for the next four income years in a row;
- (b) unless:

⁵³ Section 28-35 ITAA 1997

⁵⁴ Section 128-90(4) ITAA 1997

⁵⁵ Section 28-125 ITAA 1997

⁵⁶ Section 28-125(3) ITAA 1997

⁵⁷ Section 28-140 ITAA 1997

⁵⁸ Section 28-125 ITAA 1997

⁵⁹ Section 128-115 ITAA 1997



- (i) the Commissioner sends a notice;
- (ii) the employee acquires an additional car which they wish to use the logbook method for; or
- (iii) circumstances of use significantly change.

5.19 In addition to retaining a logbook and other records detailing odometer records, written evidence must be obtained and retained as to the car expense under the substantiation rules (as will be outlined further below).⁶⁰

Methods only required for 'car'

5.20 The above methods to calculate the available motor vehicle expenses relate to a specific definition for car.

5.21 Section 995-1 ITAA 1997 defines a 'car' to mean a motor vehicle (except a motor cycle or similar vehicle) designed to carry a load of less than 1 tonne **and** fewer than 9 passengers.

5.22 Where an employee wishes to claim work-related expenses in relation to a vehicle designed to carry a load of more than 1 tonne (e.g. a ute) or 9 or more passengers, they are not required to make a claim under the above methods, but can rather claim a deduction under general principles.

5.23 That is, they must incur a loss or outgoing in gaining or producing their assessable income; and then take steps to apportion between the private use as a non-deductible percentage of the claim.

5.24 While no logbook is formally required to assist with substantiating, retaining one may assist with calculating the necessary percentage related to producing assessable income.

⁶⁰ Division 900 ITAA 1997



6 The need to substantiate evidence

- 6.1 Key in claiming deductions is the ability to substantiate on such claims.
- 6.2 Division 900 ITAA 1997 contains detailed provisions expanding on the substantiation requirements for such claims.
- 6.3 Specifically, in relation to substantiating work expenses, subdivision 900-B ITAA 1997 notes the following.
- (a) Deductions as a work expense must be substantiated with written evidence.⁶¹
 - (b) Travel records are required when claiming expenses for travel where an employee is away from their ordinary residence for 6 or more nights in a row.⁶²
 - (c) Evidence is not required to be lodged with an employee's income tax return, but they must be retained for 5 years⁶³ in case the Commissioner requests for it to be produced.⁶⁴ Where the Commissioner requests for records to be produced, 28 days or more notice must be given.
 - (d) A work expense can be categorized into the following:⁶⁵
 - (i) **Work expense** is a loss or outgoing incurred in producing the employee's salary or wages.
 - (ii) **Travel allowance expenses** are considered as work expenses which are covered by a travel allowance and relates to accommodation, food, drink or incidental losses/outgoings relating to travel undertaken in the course of fulfilling duties as an employee where the travel is away from the employee's ordinary residence.
 - (iii) **Meal allowance expenses** are considered as work expenses and relates to meal allowances which an employer pays an employee.
 - (iv) **Motor vehicle expenses** are not considered as work expenses and have their own substantiation rules (as provided for above).
- There may be other losses or outgoings considered as a work expense and such of the following rules may apply to them.
- (e) Where all of the work expenses excluding travel allowance expenses and meal allowance expenses intended to be deducted is \$300 or less, no written evidence or records are required to be kept.⁶⁶
 - (f) Laundry expenses of up to \$150 can be claimed without obtaining written evidence (regardless if the total work expenses is more than \$300).⁶⁷
 - (g) Written evidence may not be required for certain:

⁶¹ Section 900-15 ITAA 1997

⁶² Section 900-20 ITAA 1997

⁶³ The 5 years starts the later of the due day for lodging or the date the return is lodged. It is noted that this period may be extended if the employee is in a dispute with the Commissioner.

⁶⁴ Section 900-25 ITAA 1997

⁶⁵ Section 900-30 ITAA 1997

⁶⁶ Section 900-35 ITAA 1997

⁶⁷ Section 900-40 ITAA 1997



- (i) travel allowance expenses up to an amount considered reasonable by the Commissioner for accommodation, food/drink and other losses or outgoings incidental to travel;⁶⁸ and
- (ii) overtime meal allowances.⁶⁹

Taxation Determination 2020/5 provides guidance on what the reasonable travel and overtime meal allowance expense amounts are for the 2020/2021 financial year. Thought should be had to review the appropriate ATO guidance at the relevant time for future financial years.

- (h) Less relevant substantiation exceptions are available for:
 - (i) a work expense related to award transport payments;⁷⁰ and
 - (ii) crew members on international flights not being required to keep travel records.⁷¹
- (i) Where an expense is small (\$10 or less) and the total of all such expenses do not exceed \$200, a record of the expense will suffice rather than obtaining a document from a supplier.⁷²
- (j) It should be noted that the ATO has accepted that where an employee is not claiming more than \$50 in phone, data and interest expenses (in total), an apportionment is not required and rather set deductions can be made on a per call/text message basis.⁷³ Deductions of greater than \$50 require records to be kept and a calculation of the work-related component.

6.4 Similar retention of evidence requirements are present for car expenses.⁷⁴

Written evidence required

6.5 Section 900-E ITAA 1997 confirms what constitutes sufficient written evidence.

6.6 Although no time limit is required to obtain written evidence of the expense, written evidence is required to be entitled to a deduction. Where written evidence is not available at the time of lodgment of an employee's tax return, provided there is good reason to expect the written evidence within a reasonable time, the relevant expense may be deducted without having the evidence at the relevant time.⁷⁵

6.7 Any written evidence must contain the following from the supplier of the expense:⁷⁶

- (a) the name or business name of the supplier; and
- (b) the amount of the expense, expressed in the currency in which it was incurred; and
- (c) the nature of the goods or services; and
- (d) the day the expense was incurred; and

⁶⁸ Sections 900-50 and 900-55 ITAA 1997

⁶⁹ Section 900-60 ITAA 1997

⁷⁰ Section 900-45 ITAA 1997

⁷¹ Section 900-65 ITAA 1997

⁷² Section 900-125 ITAA 1996

⁷³ \$0.25 for work calls made on a landline; \$0.75 for work calls made from a mobile; and \$0.1 for text messages sent from a mobile

⁷⁴ Section 900-75 ITAA 1997

⁷⁵ Section 900-110 ITAA 1997

⁷⁶ Section 900-115 ITAA 1997



(e) the day it is made out,

with only two potential exceptions being:

(f) if the document does not show the day the expense was incurred, a bank statement or other reasonable, independent evidence that shows when it was paid may be relied on in its place;

(g) if the document the supplier provides does not specify the nature of the goods or services, the employee may write the missing details themselves prior to lodgment.

6.8 Crucially, such a document must be in English unless the expense incurred outside of Australia.⁷⁷

6.9 Similar requirements must be provided where evidencing a depreciating asset expense.

6.10 Work expenses shown on a payment summary provided by an employer may satisfy the evidentiary requirements.⁷⁸

Travel record

6.11 Where expenses are being claimed associated to travel, a travel record is required.

6.12 In such circumstances, the following must be recorded in a diary or similar document:⁷⁹

(a) nature of the activity;

(b) the day and approximate time when it began;

(c) how long it lasted;

(d) where you engaged in it.

6.13 Crucial is evidencing the income-producing activity to determine the relevant claims which were incurred for income-producing purposes. Failing to provide such record will result in such activity in being unable to be taken into account.⁸⁰

A failure to substantiate

6.14 It is at the Commissioner's discretion to review any failure to substantiate.⁸¹ Taxation Ruling 97/24 and Law Administration Public Statement 2005/7 and 2001/25 provides the Commissioner's view of such exercise of discretion.

6.15 Where documents have been lost or destroyed, then a complete copy will suffice. Failing such a copy, if the Commissioner is satisfied that reasonable precautions were taken, then a substitute document may be remade.⁸²

⁷⁷ Section 900-115(4) ITAA 1997

⁷⁸ Section 900-135 ITAA 1997

⁷⁹ Section 900-150 ITAA 1997

⁸⁰ Section 900-155 ITAA 1997

⁸¹ Section 900-195 ITAA 1997

⁸² Section 900-205 ITAA 1997



7 A review of TR 2020/1 relating to employee deductions

- 7.1 The above sections is an overview of the various aspects of law surrounding the deductibility of work related expenses (referencing various tax legislative provisions, ATO guidance and cases).
- 7.2 Much of what was outlined above has been compiled in Taxation Ruling 2020/1 (**TR 2020/1**).
- 7.3 Rather than restate TR 2020/1, this paper seeks to highlight key paragraphs of use in assisting employees in determining their deductible work related expenses.
- 7.4 Paragraph 5 of TR 2020/1 acknowledges the various practical guidance's on common work expense types that may be found on ato.gov.au, as well as the *Employees guide for work expenses*. These can be found (as of the date of this paper) as follows:
- (a) Occupation specific guides: <https://www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Occupation-and-industry-specific-guides/>
 - (b) Employees guide for work expenses: <https://www.ato.gov.au/law/view/pdf/sos/employeeguideworkexpenses20180701.pdf>
- 7.5 Appendix 1 of TR 2020/1 also provides a list of materials relating to the various work expense categories. Paragraph 6 of TR 2020/1 notes that such links are intended to be continually updated.
- 7.6 Paragraph 7 of TR 2020/1 acknowledges that only one of the two stated *positive limbs* in section 8-1 ITAA 1997 will apply to employees (as the other relates to business activities) before flagging the *negative limbs* that may cause such an expense not to be deductible.
- 7.7 This is ultimately where the question on whether a claim is deductible is asked at its core should novel expense claims be sought.
- 7.8 TR 2020/1 stresses the importance of understanding the facts and circumstances surrounding the incurring of the expense. Whether such expense has a close connection to the earning of employment income will invariably be different for different employees.
- 7.9 Considering the employment duties required under contract as well as links of employment to expenses can assist in determining the connection.⁸³ Despite the need to consider any employment requirement, expenses that are private or domestic in nature would not be deductible by way of a requirement from an employer.
- 7.10 Difficulty will arise where claims sought resembles expenses that would have been incurred as part of everyday personal life (i.e. food/drink and public transport).
- 7.11 Paragraphs 20 and 21 of TR 2020/1 provides the example of the claiming of a hat, sunscreen and sunglasses as a work expense and distinguishes between:
- (a) Michael, an arborist who is employed by a local council to maintain trees and gardens in a large city park; and
 - (b) office employees who are not expected to have sun exposure risk in the nature of their work.
- 7.12 Further, paragraph 24 of TR 2020/1 considers the distinction between expenses (such as childcare) incurred to enable an employee to attend work to those which are incurred as

⁸³ Consider paragraphs 17, 18 and 26 of Taxation Ruling 2020/1



part of the employee producing assessable income. Similar expenditure (to childcare) deemed too remote includes:

- (a) relocation expenses to work in a different city or state; and
- (b) education expenses to obtain qualifications for new employment.

7.13 TR 2020/1 notes the importance in distinguishing between expenses incurred that are capital or capita in nature (in which case, such expense may be depreciated) as well those that may be private or domestic in nature (in which case the claim must be apportioned appropriately).

7.14 Clothing, personal grooming items and food and drink will usually be considered private in nature.⁸⁴ Do note, however, the prior examples where certain professions or clothing may be deductible where they are intrinsically linked to the employment.

⁸⁴ Paragraph 48 of Taxation Ruling 2020/1



8 Practical examples

- 8.1 Little benefit will be had providing examples in this paper as the various ATO guidance's mentioned in this paper, particularly TR 2020/1, will provide more common examples.
- 8.2 Further, the availability of industry-specific guidance offers the path of least resistance in claiming appropriate deductions.
- 8.3 The Work Expenses Guidelines (a link provided above) also provides a breakdown of common myths and is an ancillary source of information.
- 8.4 Our accompanying presentation will consider particular examples and cases in more details.
- 8.5 Please consider viewing our complementing PowerPoint.



9 Disclaimer

- 9.1 This paper covers legal and technical issues in a general way. It is not designed to express opinions on specific cases. It is intended for information purposes only and should not be regarded as legal advice. Further advice should be obtained before taking action on any issue dealt with in this paper.

10 Contact details

| | |
|-------------|---------------------------------------|
| Author | Darius Hii, Director |
| Firm | Chat Legal Pty Ltd ABN 64 621 391 553 |
| Direct line | 0403 923 374 |
| Email | darius@chatlegal.com.au |