


CR 2001/77 - Income tax: daily allowance paid to employees of stabilised pavements Australian Pty Ltd

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Class Ruling

Income tax: daily allowance paid to employees of stabilised pavements Australian Pty Ltd

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax laws dealt with in this Ruling are section 8-1 and Subdivision 900-B of the *Income Tax Assessment Act 1997* ('ITAA 1997').

Class of persons

3. The class of persons to whom this Ruling applies are employees of Stabilised Pavements Australia Pty Ltd (Stabilised Pavements) who are paid a daily rate of allowance to compensate for the cost of accommodation, meals and incidentals while working away from the company's main depot in Somersby, NSW.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs

9 to 10 is carried out in accordance with the details of the arrangement provided in this Ruling.

6. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:

- (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled, and
- (b) this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 1 July 2000.

Arrangement

9. Stabilised Pavements employs machine operators, supervisors and labourers to build roads for customers. These employees are often required to work away from the main office in Somersby NSW, for periods generally not exceeding 21 days. Amounts received where an employee is away from home for a continuous period that exceeds 21 days are not part of the arrangement covered by this Ruling.

10. The employees are paid an allowance at a daily rate. This allowance is intended to compensate for the extra cost of accommodation, meals and incidentals while the employees are working away from their homes. The allowance paid is more than a nominal amount but less than the amount the Commissioner of Taxation considers reasonable for the 2000-2001 and 2001-2002 years of income.

Ruling

11. The daily allowance paid by Stabilised Pavements is correctly classified as a travel allowance rather than a living-away-from-home allowance.

12. The employees are exempt from substantiation for expenses covered by a domestic travel allowance where they have actually spent the amount claimed and the amount of the claim does not exceed the amount the Commissioner considers reasonable. The employees are not required to provide written evidence but must be able to show the basis for determining their claim if required.

13. The employees are required to provide written evidence to substantiate the whole of their claim if the claim exceeds the amount the Commissioner considers reasonable.

Explanations

Travel allowances and living-away-from-home allowances

14. The classification of the daily allowance determines its tax treatment. If the allowance is found to be a living-away-from-home allowance then the allowance is not assessable to the employee. It is subject to fringe benefits tax. If the allowance is found to be a travel allowance then it is assessable to the employee and a deduction for expenses incurred while the employee is travelling may be deductible under section 8-1 of the ITAA 1997.

15. Taxation Ruling MT 2030 describes the distinction between a travelling allowance and a living-away-from-home allowance at paragraphs 35 to 43. Broadly, it states that a travel allowance is paid where the employee does not change job locations but simply travels to carry out the requirements of the job. In contrast, a living-away-from-home allowance is paid where there is a change of job location and an actual change of residence to a place at or near that location.

16. Travelling allowances are often paid for comparatively short periods of time. As a general practical rule, where the period away does not exceed 21 days the allowance will be treated as a travelling allowance rather than a living-away-from-home allowance. Also, an employee travelling in the course of employment ordinarily would not be accompanied by his or her spouse or other family members.

17. The work undertaken by the employees of Stabilised Pavements can be described as travelling rather than living-away-from-home. They are required to work in different locations, including Sydney, Wollongong and small towns in NSW.

On some occasions they return to the same place after each weekend but a particular job is generally not in excess of 21 days and they are never away from home for more than 21 days at a time. These facts indicate that the employees are travelling to carry out the requirements of the job (that is, building a road in a certain location) rather than setting up a temporary residence so as to be able to carry out employment duties at a new workplace.

Deductibility of travel expenses and substantiation requirements

18. Receipt of a travel allowance does not necessarily imply that a corresponding deduction for travel expenses is allowable. The basic tests for deductibility of work-related expenses are in section 8-1 of the ITAA 1997 and must be satisfied. This states that you can deduct any loss or outgoing to the extent that is incurred in gaining or producing your assessable income. However, you cannot deduct a loss or outgoing if it is of a capital or private or domestic nature.

19. Under Subdivision 900-B of the ITAA 1997, a deduction is not allowable for a work expense unless the expense qualifies as a deduction under a provision of the ITAA 1936 or the ITAA 1997 and written evidence of the expense has been obtained and retained by the employee taxpayer.

20. However, there are exceptions where written evidence is not required to substantiate the expense. Section 900-50 of the ITAA 1997 provides relief from the substantiation provisions for travel allowance expenses claimed that are within the amount considered reasonable by the Commissioner. Reasonable allowance amounts are set out each year. For the 2000-2001 income year they are contained in Taxation Ruling TR 2000/13. For the 2001-2002 income year they are contained in Taxation Ruling TR 2001/4.

21. Paragraphs 65 to 73 of TR 2000/13 and paragraphs 68 to 75 of TR2001/4 specify the conditions that must be satisfied for travel allowance expenses within the reasonable allowance amount to be considered for exception from substantiation. These are:

- the allowance must be paid to cover expenses incurred for travel away from the employee's ordinary residence (that is, the employee must sleep away from their home);
- the travel allowance must be paid to cover the cost of accommodation or food or drink or expenses incidental to travel;
- the travel allowance must be paid for specific journeys undertaken or to be undertaken for work-related travel

(for example, a fixed annual travel allowance amount would not satisfy this condition);

- the allowance must be a bona fide travel allowance, that is, an amount that could reasonably be expected to cover accommodation, or meals or expenses incidental to the travel.

22. The travel allowance paid by Stabilised Pavements satisfies all of these requirements. It is a daily allowance paid for specific journeys to cover the cost of accommodation, meals and incidentals. The employees sleep away from home on these journeys.

23. There is a question about whether the amount paid is a bona fide amount. In 2000-2001 the employees were paid between \$50 and \$70 a day which is below the reasonable amounts listed in TR 2000/13 and TR 2001/4.

24. TR 2000/13 states at paragraph 73 (TR 2001/4 at paragraph 75) that “what is a *bona fide* amount to cover accommodation or meals or expenses incidental to the travel depends on the facts of each case, including the arrangements for payment of the allowance”.

25. The amount paid by Stabilised Pavements is intended to cover the cost of accommodation, meals and incidentals. The company considers the amount adequate for the additional costs of employees. The amount is more than a token amount. The allowance is therefore a *bona fide* travel allowance.

Options for Stabilised Pavements’ employees when claiming travel expenses

26. The daily allowance paid by Stabilised Pavements satisfies all requirements to be considered for exemption from the substantiation provisions. The exemption from substantiation obviates the need to obtain separate receipts for accommodation and meals.

27. The employees of Stabilised Pavements have two alternatives when claiming their travel expenses. Firstly, they may declare the amount shown as assessable income at the appropriate question on their tax return (Question 2 for the 2001 income year). They may then claim a deduction without obtaining written evidence or keeping a travel diary up to the Commissioner’s reasonable amount provided that they have incurred deductible expenses at least equal to the reasonable amount. This means that although they are not required to provide written evidence for each claim the employees may still be required to show the basis for determining the amount of their claim and that the expense was actually incurred for work-related purposes. They cannot automatically claim the full reasonable amount. TR 2000/13 states at paragraph 63 (TR 2001/4 at paragraph 65):

‘If necessary, it is acceptable for a reasonable estimate to be the basis for claims having regard to the taxpayer’s occupation and the types of expenses that would be expected to be incurred. This is a significantly lesser requirement than the need to keep written evidence’.

28. The second alternative is that employees may declare the amount received in their tax return and claim a deduction higher than the reasonable amount, equal to the amount of the expense actually incurred. In this case they are choosing not to use the exception from substantiation and written evidence supporting the claim must be kept for the whole amount of the claim. Written evidence for these purposes is described in section 900-115 of the ITAA 1997 as a document from the supplier of the goods or services including various specifics such as the business name of the supplier, the date and the amount of the expense.

29. It is possible that in future years the employer may choose not to show the allowance on the employees’ payment summaries. This can occur if the employer is reasonably satisfied that the employee will incur deductible expenses at least equal to the amount of the allowance paid, and that the expenses will be incurred for the purpose for which the allowance was paid. In these circumstances the employee has a third option in that, provided the employee has incurred deductible expenses at least equal to the amount of the allowance received, the employee does not need to claim a deduction for the expenses. If a deduction is not claimed, the allowance does not need to be shown as assessable income in the employee’s tax return. If a deduction is claimed (either up to the reasonable amount in which case no written evidence is required or above the reasonable amount in which case written evidence is required to substantiate the whole amount) then the allowance must be shown as assessable income even if it is not shown on the employee’s payment summary.

Examples

Example 1

30. Bob is employed as a supervisor by Stabilised Pavements. During 2000-2001 year of income he worked on building roads in a number of different places in NSW. He received a travel allowance of \$70 a day for a total of 45 days (\$3150). During no period was he away from home for more than 21 days. On each occasion he stayed in a single room in a motel and ate his meals at local restaurants and hotels. He incurred expenses at least equal to the daily reasonable amount set by the Commissioner.. He did not keep written evidence of his expenses but is able to demonstrate a reasonable basis for his claim

using a combination of diary notes, some receipts for accommodation and a price list detailing prices for some of the hotels he stayed at.

31. Bob is able to claim a deduction equal to the reasonable amount set by the Commissioner without providing written evidence. He must declare the amount of allowance he received at the appropriate question in his tax return (this is Question 2 for 2000-2001).

Example 2

32. Greg worked as a machine operator for Stabilised Pavements during 2000-2001. He received a travel allowance of \$50 a day for a total period of 20 days. He usually stayed at local caravan parks and often cooked his own meals while away. He still spent at least \$50 a day which is well below the reasonable amount set by the Commissioner.

33. Greg cannot automatically claim the full reasonable amount as he will not be able to demonstrate that he had actually incurred expenses up to this amount. The facts indicate that he usually stays in cheap accommodation and does not spend much on meals. Greg should use a reasonable estimation to work out how much he should claim, based on how many nights he was away and a reasonable estimate of how much he usually spends on these trips on average (using, for example, some diary notes showing where he stayed and a price list of accommodation charges). He does not need to provide written evidence (receipts) for each amount incurred.

Detailed contents list

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Commissioner of Taxation

5 December 2001

Previous draft:

Not previously issued in draft form

- travel allowance
- living-away-from-home allowance
- substantiation

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20;
TR 97/16; TR 2000/13; TR 2001/4;
MT 2030

Legislative references:

- ITAA 1997 8-1
- ITAA 1997 Subdiv 900-B
- ITAA 1997 900-115

Subject references

- work related expense

ATO References

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