TR 2021/1EC - Compendium

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Australian Government
Australian Taxation Office

Public advice and guidance compendium – TR 2021/1

Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Taxation Ruling TR 2019/D7 *Income tax: when are deductions allowed for employees' transport expenses?* It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

Issue number	Issue raised	ATO response
General principles and incurred in gaining or producing assessable income		
1	Paragraphs 8 and 9 of the draft Ruling correctly state what the ATO refers to as the 'general principles' arising from the decision in *John Holland Group Pty Ltd v Commissioner of Taxation* [2015] FCAFC 82 (*John Holland*) for the deductibility of transport expenses. However, paragraphs 11 and 12 take the proposition in paragraphs 8 and 9 and distils it into five factors. It is submitted that there is a need to elevate the role of the general principles at paragraph 8 and 9 in the determination of whether particular transport expenses are incurred in the course of gaining or producing assessable income. This would mitigate the instance of applying any of the five factors in substitution for the principles identified by the Full Court in the *John Holland* decision. The concern is that under the guidance of the draft Ruling, one or more of the factors in paragraph 11 of that Ruling may be applied in a manner that rigidly confines the determination of what will constitute part of, or incident of, employment of an individual. Case law references should be included in footnotes, where applicable, to support the factors listed in paragraph 11.	The leading authorities regarding transport expenses are the High Court decisions in *Lunney v Commissioner of Taxation* [1958] HCA 5 (*Lunney*) and *Commissioner of Taxation v Payne* [2001] HCA 3 (*Payne*). The High Court decision in *Commissioner of Taxation v Day* [2008] HCA 53 (*Day*) agreed with the interpretation of section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) applied in *Payne*. The *John Holland* decision is a Full Federal Court decision which applied the principles from *Lunney*, *Payne,* and *Day* to a unique set of circumstances. The *John Holland* decision and the decision in *The Roads and Traffic Authority of New South Wales v Commissioner of Taxation* [1993] FCA 445 are footnoted at paragraph 12 of the final Ruling to express the other ways in which transport expenses may be referred to as expenses incurred in gaining or producing assessable income. As was noted in the decisions in *Day* and *Commissioner of Taxation v Cooper R.J*. [1991] FCA 190 (*Cooper*) essential to the enquiry of whether a loss or outgoing is incurred in gaining or producing assessable income is what is productive of assessable income. This is what is stated in paragraphs 9 and 15 of the final Ruling.

		It is agreed that the question of whether a transport expense is deductible must be answered by reference to the statutory test in section 8-1 of the ITAA 1997. This is made clear at paragraph 20 of the final Ruling which states '[t]he deductibility of employee transport expenses ultimately requires a judgment in any case about whether the expense is incurred in the course of gaining or producing assessable income.' For clarification, paragraphs 16 and 17 of the final Ruling have been added and when read together with paragraphs 18 and 19, they suggest a holistic (and not rigid) assessment of the relationship between the employment and the expense. More information about each of the factors in paragraphs 16 and 17 has been included and the authority for the factors have been footnoted where relevant.
2	In order to keep compliance within reasonable limits for employers, there is a need to re-think what we should use as key indicators of deductible transport expenses. A starting point could be that a transport expense that an employer reimburses is prime facie 'otherwise deductible' and has no taxable value for fringe benefits tax (FBT) purposes. The fact that the employer was prepared to pay for the transport would be a prime indicator of its strength of connection to the employer's business needs, and that the employer has asked for the travel to be undertaken (consistent with paragraph 11 of the draft Ruling). However, to reduce the risk of manipulation, this premise should not apply where the individual is a director or principal of the employer, or such a person's associate.	While it is acknowledged that there is a general commercial practice for employers to reimburse or pay allowances for what they consider to be work-related transport expenses, this is a separate matter to whether the expenses are deductible. The decisions in *NT87/6308 and Commissioner of Taxation* [1988] AATA 212, *NT85/128-129 and Commissioner of Taxation [*1987] AATA 495, *NT87/3317 and Commissioner of Taxation* [1988] AATA 209, *ST86/31-32 and Ors and Commissioner of Taxation* [1987] AATA 699, *NT85/3326-3327 and Commissioner of Taxation* [1986] AATA 352 and *Case R22* 84 ATC 491 all found that the payment of an allowance for a particular expense had no bearing on whether a deduction is allowable.
3	There should be some discussion about how to determine 'work time' as it is the key. 'Being paid to travel' is a significant finding in the decision in *John Holland* at [34–36], [44–45], [48], [57] and [62], even though it may be difficult to apply this concept/principle to salaried persons. *Cooper* is also useful: 'not paid to eat steak'. *John Holland* should be cited in a footnote.	Further guidance has been provided in paragraphs 16 and 17 of the final Ruling.
4	The draft Ruling is overly reliant on *John Holland* in identifying guiding principles relevant to determining deductibility of travel expenses generally. The *John Holland* case deals with a very particular set of facts relevant to a narrow class of employees working on fly-in fly-out arrangements. We would suggest that more	Refer to our response to Issue 1 of this Compendium. We agree that *John Holland* deals with a very particular class of facts to a narrow class of employees. However, *John Holland* does provide some guidance on when an employee may have commenced their

	consideration be given to the broader body of case law dealing with general principles of deductibility for employment related expenses.	duties which is why it has been referred to. Changes have been made to this discussion and paragraphs 16 and 17 of the final Ruling have been added for clarity.
Travel occurs on work time		
5	There is no requirement under income tax or FBT legislation that specifies that an employee must be 'paid to travel' in order for the expenses to be deductible. As it stands, the legislation only requires that employees be required to travel as part of their employment which is a broader concept than that expressed in the draft Ruling.	We agree that there is no requirement under section 8-1 of the ITAA 1997 for an employee to be 'paid to travel' in order for transport expenses to be deductible. This is not a requirement for transport expenses being 'otherwise deductible' under the FBT legislation either. For expenses to be deductible under section 8-1 of the ITAA 1997, they must be incurred in gaining or producing an employee's assessable income and not be capital, private or domestic in nature. Where the travel occurs on work time, that is, after the commencement of the employee's duties and while they are engaged in their income-producing activity, it may assist to consider whether remuneration for the performance of the employee's duties has commenced, that is, whether the employee was paid for the time spent travelling. However, as stated above, it is agreed that is not the test of deductibility.
6	The final Ruling should include further examples that illustrate the ATO's expectation of how an employee (or their employer) should evidence that travel was on 'work time' in the context of where an employee has flexible work hours that the employer does not directly monitor.	The comment is noted, but we do not consider that it is practical to expand on this issue further in the final Ruling with additional examples given the length of the Ruling.
7	The draft Ruling does not adequately take into account annual-salaried employees who are not paid by the hour. Also, non-salaried employees might travel, for instance, on a Sunday to get to a conference or meeting that starts on a Monday and they won't necessarily be paid for this time. This might not be paid travel time, but would, in our view, be deductible travel.	Travelling on work time does not mean an employee has to demonstrate that they were paid for the time they spent travelling. It is only an indication that the travel did occur on work time. If the travel is undertaken while the employee is engaged in their income-producing activity, then the transport expenses will be deductible. Refer to paragraphs 16 and 17 of the final Ruling.
8	Example 3 of the draft Ruling is an example of where too much emphasis is placed on not being specifically paid for travel time (particularly given Raj is likely to be on a salary and not being paid overtime anyway) and insufficient weight is given to the travel being part of his employment and being required by the employer. The	Whether an expense is incurred as a consequence of an employer's requirements does not determine the question of deductibility. This question is always to be answered by reference to the statutory test which involves an objective determination of the connection between the expense and the employee's income-earning activities. An

	direction of Raj's employer requiring Raj to travel to a second location is clearly the 'occasion for the expense' to use the words in paragraph 33 of the draft Ruling. Paragraph 61 should also include reference about being on paid work time.	expense that is private in nature or only a prerequisite to the earning of income does not become deductible only because of an employer's requirements. Although an employer's requirements do not determine deductibility, they are not irrelevant and will generally assist in ascertaining the proper scope of an employee's income-earning activities to determine whether the expense has been incurred in the course of earning assessable income. Furthermore, the fact that an employee incurs an expense on a voluntary basis (that is, not at the direction of their employer) does not necessarily preclude a deduction under section 8-1 of the ITAA 1997. Example 3 of the Ruling concerns whether a work location is a regular place of work. The factors considered in *John Holland*, such as whether the employees were paid for the travel time and under the direction and control while they were travelling, were relevant in that case in determining whether Perth airport was a place of work. Example 3 has been amended in the final Ruling for clarity. Refer to the response to Issue 10 of this Compendium.
Regular place of work		
9	The draft Ruling introduces another new concept not previously addressed in case law, being the concept of a 'regular place of work'. While most of the commentary on this aspect is acceptable, in our view, the interpretation adopted in Example 3 of the draft Ruling is not justifiable and is inconsistent with some of the later examples.	'Regular place of work' has been used in some of our previous rulings, for example, Taxation Ruling TR 95/34 *Income tax: employees' carrying out itinerant work – deduction allowances and reimbursements of transport expenses* and TR 95/15 *Income tax: nursing industry employees – allowances, reimbursements and work-related deductions*. As such, it is not a new concept. The concept has been variously expressed in rulings including TR 95/34, and IT 2543 *Income tax: transport allowances: deductibility of expenses incurred in travelling between home and work* as a 'normal work place', a 'usual place of employment' or simply as 'work'. 'Regular place of employment' is referred to by Dixon CJ in *Lunney* which is why the term regular was used as opposed to normal or usual. For clarity, footnote 33 has been added to the final Ruling. Paragraph 27 and Example 2 at paragraph 31 of the final Ruling, the example at paragraph 33 of TR 95/34 and *NT85/128-129 and Commissioner of Taxation [*1987] AATA 495 (*Case NT85/128-129*) make it clear that you can have more than one regular place of work

		and travel to each of those regular places of work is not deductible. In Case *NT85/128-129*, Roach SM states at [12]: > It was argued for this Applicant that he too should be characterised as an itinerant worker even though for periods of several months in succession he had as a matter of routine but one place of employment for four days of the week and a second place of employment on a fifth day; and that at intervals of several months, there would be a change in the principal place of duty. Without more I am not satisfied that the Applicant should be categorised as an itinerant worker or that the Act authorises the deductions claimed, whether incurred as "additional expenditure" or otherwise. It is a question of fact as to whether a place of work becomes a regular place of work. Having regard to the factors discussed at paragraphs 16 and 17 of the final Ruling (and having regard also to paragraph 32 of the final Ruling), the outcome in Example 3 of the Ruling is correct. For clarity, amendments have been made to Example 3 in the final Ruling.
10	Referring to Example 3 of the draft Ruling – Raj's employer requires him to work some weekdays at a different office to his usual office. We consider this is still part of his employment duties and is not distinguishable from the commentary at paragraph 33 onwards or Examples 4, 6 and 7 of the draft Ruling. It is difficult to see how Example 3 differs in any significant way from Examples 4 and 7 or the commentary in paragraph 46 of the draft Ruling. If anything, arguably, Sydney in Example 7 is more of an alternative regular place of work than Brisbane is in Example 3. In our view, both Examples 3 and 7 are illustrative of situations where the employment requires the employment duties to be carried out in more than one location.	Refer to our responses to Issues 8, 9 and 11 of this Compendium. Paragraphs 39 to 41 of the final Ruling address travel between work locations. In Example 3, Raj's home is not a work location as he does not commence work prior to leaving home so these paragraphs are not relevant. Example 3 has been amended in the final Ruling for clarity. Example 4 of the Ruling involves a question of whether the workplace is a regular work location or not and involves only one day of travel to an alternative work location. Example 7 of the Ruling involves a different issue where the question is not about regular place of work, but where the taxpayer is away from home overnight with one workplace close to home and at least one other distant. Following the recent decision in *Hiremani and Commissioner of Taxation* [2020] AATA 1653, Examples 6, 7 and 8 have been updated in the final Ruling to make the 'choice' element clearer.
11	The wisdom of adopting a 'regular place of work' concept is questioned. Whether home-to-work travel is deductible is a question of fact which may be influenced by whether the travel is a product of	Refer to the response to Issue 9 of this Compendium. Miscellaneous Taxation Ruling MT 2027 *Fringe benefits tax: private use of cars: home to work travel* (published on 18 September 1986)

	where the person chooses to live and whether the travel is part of a pattern (often associated with a 'regular place of work'), but these factors are not conclusive. Travel to an irregular place of work is similarly non-deductible in many circumstances under the *Lunney* principle, so taxpayers may take the view travel from home to irregular work places, including one-off places of work, is deductible if the ATO distinguishes 'regular workplace' and does not discuss 'irregular workplace'. Personally, I would avoid using 'regular workplace' but if you do, you'd need to include a paragraph something like the following to avoid taxpayers inferring travel to an irregular workplace is automatically deductible: This discussion is not suggesting that travel between home and an irregular workplace or one-off workplace is deductible. It depends on the circumstances. For example, if an employee is required by their employer to work at an alternative workplace in the same city or locality temporarily (for example, to relieve a staff member who is on leave), travel between the employee's home and the alternative work place is 'home to work travel' and is not deductible. This is despite the fact that the travel is not a product of where the employee has chosen to live and there may be no regularity or pattern to the travel.	considers the deductibility of transport expenses incurred by an employee who has a regular place of employment and travels directly from home to an alternative location (referred to as an alternative work location in the final Ruling) which, for the period of the visit, constitutes a place of employment. For example, travelling from home to visit a client's premises that might be located at a point on or close to the normal route travelled by the employee to the office or alternatively in the opposite direction to the normal work route. Paragraphs 34 and 35 of MT 2027 state the following (emphasis added): 34. **While the position is not free from doubt** and is perhaps clearer in some of the instances cited in paragraph 30 than in others, **it has been decided that the total journey from the employee's home to the client's premises and on to the office should be accepted as business travel.** This approach is to be adopted where - • the employee has a regular place of employment to which he or she travels habitually; • in the performance of his or her duties as an employee, travel is undertaken to an alternative destination which is not itself a regular place of employment (i.e., this approach would not apply, for example, to a plant operator who ordinarily travels directly to the job site rather than calling first at the depot or to an employee of a consultancy firm who is placed on assignment for a period with a client firm); and • the journey is undertaken to a location at which the employee performs substantial employment duties. As an illustration of this last point, travel to an employee's place of employment would not be accepted as business travel where the employee merely performs incidental tasks en route such as collecting newspapers or mail. Similarly, for example, the fact that a dentist may call in at a dental laboratory to collect dentures, etc., enroute to the surgery at which he or she is employed would not result in the trip being accepted as constituting business travel. 35. The preceding principles apply equally to cases where an employee makes a business call in the afternoon and travels from there to home, rather than returning to the office.

		Accordingly, for some time our view has been that employees can claim a deduction for transport expense incurred in travelling from home to an alternative work location provided it doesn't become a regular work location.
12	The draft Ruling has dropped the concept used in draft Taxation Ruling TR 2017/D6 *Income tax and fringe benefits tax: when are deductions allowed for employees' travel expenses?* of travel potentially being deductible where it is to a co-existing work location and either takes up a significant part of the day or requires an overnight stay (see Examples 3 and 6 of the draft Ruling). I note Example 3 (Raj) includes the statement 'does not require Raj to stay away from home overnight'. I think it is the practical demands of travel that take up a significant part of the day or require an overnight stay that reasonably cause employers to make that travel part of employment (*John Holland*). Regularity has little bearing. I also note Example 5 (Isabelle) refers to 'requires an employee to travel away from home overnight' in a positive way. Example 6 also uses 'requires overnight travel' in the heading. I suggest you review each time you've used 'regular place of work' in the draft Ruling and consider if 'regular' can be removed.	The final Ruling has been reviewed to consider the relevant usage of the term 'regular' (in the context of the phrase 'regular place of work') in particular instances.
13	Taxpayers will likely want a figure for what distant means, for example, 100 kms? It may be advisable to use *John Holland*-type language instead for example 'of the remoteness of employee's work location to their home'. While the remoteness of the work location may cause there to be a need for travel to be part of that for which employee is employed (*John Holland*, per Pagone J, at [59]), remoteness is not sufficient in itself to make the travel deductible. I note Example 10 of TR 2017/D6 (Brad). The terms 'significant part of the day' (Example 6 of TR 2017/D6) and 'reasonably requires an overnight stay away' (Examples 7 to 13 of TR 2017/D6) were used partly to avoid using subjective terms like 'very distant' – which may also be impacted by the type of transport used (air versus road). How far is geographically distant referred to in paragraph 46 of the draft Ruling? One to two hours travel was not far enough in Example 3.	We agree that in contemporary circumstances, 'distant' can be problematic. However, we have attempted to provide context and relevance via appropriate examples.

14	Paragraph 20 of the draft Ruling combines two separate questions in a way that could confuse the appropriate consideration of each. If an employee travels with regularity to the same place where the primary activities for which they are employed are carried out, there is a question of the point at which the employment commences. This was considered by the Full Federal Court in *John Holland* but the employee's regular place of work was clear. On the other hand, the draft Ruling is suggesting that an employee's regular place of work may not be clear if there is more than one location where the employee carries out the activities of their employment. The matters listed in paragraph 20 are probably more relevant to the first question than the second, but in any case, the wider list of factors cited in the judgment of Pagone J in *John Holland* at [58] would be a better place to start.	While some of the factors in paragraph 20 of the draft Ruling (now paragraph 26 of the final Ruling) may be an indication of when the duties of an employee commence, they may also useful in determining where the employee's regular place of work is. In *John Holland*, the employees essentially had two regular places of employment, Perth Airport and the site in Geraldton. The travel in that matter was considered travel between workplaces rather than travel to work.
15	Paragraph 21 and 22 of the draft Ruling discuss possible employment arrangements where there may be more than one regular workplace. In our view, more caution should be applied in this discussion because the draft Ruling goes beyond what has been considered, and principles established, by relevant cases. In *Newsom v Robertson (Inspector of Taxes*) [1953] 1 Ch 7 at [16] quoted by Edmonds J in *John Holland*, the reference is made to 'the base' as a single point from which someone's trade, profession or occupation is carried on. Pagone J also quotes the same passage in *John Holland* at [60]. There is an important question of whether an employee can actually have more than one 'base' from which their trade, profession or occupation is carried on and the factors cited in the draft Ruling may not be sufficient to establish a second location as such a 'base'. It is also unlikely that terms of any employment agreement or contract that refer to more than one work location would have the effect of denying a single base from which an employee usually operates.	*Newsom v Robertson* [1953] 1 Ch 7 is an English case dealing with English provisions and has been influential in Australian decisions. However, there also exists Australian authority which indicates that a person can have more than one regular place of work. This is an established ATO view in TR 95/34 (see paragraphs 81 to 82 of that Ruling). Refer to our response to Issue 9 of this Compendium.
16	Pagone J in *John Holland* at [54] makes specific reference to 'Government employees [who] may, similarly, be required to travel to different locations for the purpose of undertaking tasks and duties at the place of arrival'. He goes on to say that: In each case the travel may not be the primary activity for which the person is employed, but may be a necessary incident of the	Repeatedly attending a second work location does not necessarily mean that it becomes a regular work location. Refer to paragraphs 24 to 28 and 52 to 55 of the final Ruling. The reference by Pagone J in *John Holland* at [54] is to an employee travelling to different locations, not to the same location repeatedly.

	employment and undertaken in, and as part of, the employment for which the employee may be remunerated without specific reference to the travel. Repetition of travel to a second location would not ordinarily cause that location to become a 'second or subsequent places of work'.	Further, the taxpayers described by Pagone J at [54] would be travelling overnight away from their home for work purposes. In such cases, the employee is travelling on work time from the time they leave home until the time they arrive back at home. Refer to Edmonds J in *John Holland* at [35] for another example of such travel.
17	The circumstances of Mr Chan discussed by Pagone J in *John Holland* at [63] also provides clarity on travel to different locations. Mr Chan had a nominal base in Perth and in his role as senior contracts administrator he would travel by return economy flights 'to and from areas in which John Holland operates'. The flights were not charter flights arranged by John Holland, as was the case for Mr Bingham, but ordinary commercial flights arranged by Mr Chan himself. The employer's code of conduct and other policies applied to him whilst travelling to and from the project location. His role and location changed from time-to-time but Mr Chan would have spent a number of months or even a year or more at each project location. Pagone J referred to '… the specific demands occasioned by employment that required, as part of the employment, travel to a remote place'. The project locations were where Mr Chan travelled regularly but the travel was not regarded as private in nature.	The whole of [63] in *John Holland* needs to be considered not just the content identified. [63] also stated the following: Mr Chan was not employed on terms that required his attendance only at the project location but, rather, upon terms that required his attendance at an airport from which he was required to travel to the remote location in order to undertake the particular duties at that location. The requirement to attend at the airport was one arising from the particular nature of the tasks to be performed at remote locations. He was told, at employee briefings by management, as were all employees subject to the "fly in/fly out" basis, that his employer's code of conduct and other policies applied to him, and to the other employees, whilst travelling between Perth domestic airport and the project flight. Misbehaviour on flights "paid for by the company" could result in disciplinary action against him or other employees. The terms under which Mr Chan was employed meant that his travel to the project locations occurred on work time. One of his duties of employment was to report at the airport (his regular work location) in order to travel to the remote project locations. His travel from his home to his regular work location (the airport) was not deductible. His employment duties commenced after he arrived at the airport. This is also supported by the fact that he could face disciplinary action if he misbehaved on the flight to the project location. His travel from the airport (his regular work location) to the project location (another work location) was travel between workplaces. Refer to paragraphs 16, 17, 39 and 40 of the final Ruling.
Travel between home and a regular work location		
18	Paragraph 24 of the draft Ruling (Example 1) could be made clearer as it currently refers to the 'mere' fact and leaves it open to interpretation that if there are other facts the travel could be deductible. Suggest the last sentence in the paragraph should be changed to 'The fact that Misha undertakes work-related activities	Agreed – Example 1 (paragraph 30 of the final Ruling) has been amended in line with this suggestion.

	whilst travelling between work and home does not change the characterisation'.	
Alternative places of employment		
19	Examples 3 and 6 of the draft Ruling both consider alternative work locations, with different outcomes of deductibility. It appears (though it is not explicit) the main reason Raj's transport expenses in Example 3 are considered non-deductible is due to the travel not being overnight, in comparison to Duy in Example 6 who stays in Brisbane overnight. It is difficult to see how Example 3 differs in nature from Example 6, particularly as Example 6 does not have a specified fixed time period for the once per fortnight meeting. The only difference seems to be the need to fly, and as other parts of the draft Ruling state, distance alone should not be a criterion.	The Brisbane office in Example 3 of the Ruling is not an alternative work location. It becomes a second regular work location. If it was an alternative work location, the transport expenses would be deductible. Further, Raj's income-producing activities do not commence until he arrives at the Brisbane office. Refer to paragraph 48 of the final Ruling. For clarity, Examples 3 and 6 have been amended in the final Ruling.
20	Why would the ATO want to specify a timeframe when there is not one in case law? Taxpayers may seek to take advantage of this statement and could automatically start claiming travel between home and workplaces of shorter duration.	The timeframe in paragraph 32 of the final Ruling has been provided to assist taxpayers only in situations where it is difficult to conclude whether a second subsequent place of work has become a regular place of work. Consideration also must be given to the factors in the dot points listed at paragraph 32 .
21	The travel in Example 3 of the draft Ruling would arguably be private even if it was not for a sustained period.	The travel to Brisbane in Example 3 of the Ruling would be deductible if the Brisbane office was an alternative work location and not a regular work location.
22	If the irregular place in Example 4 of the draft Ruling was 5kms from home, would the travel be deductible if Aruni is not paid for the travel and under direction and control, and he drives home immediately afterwards? Note the example is a bit extreme. It is 253kms to Jabiru (only place with facilities at Kakadu), so it is a very long day for Aruni to travel there and back in one day and undertake training. Also, the wording in this Example is a bit questionable. Arguably if Aruni is 'travelling on work' to Kakadu he is commencing work or his work activities when he leaves Darwin; it is not correct to say 'his duties of employment require him to commence work at [Kakadu].'	Refer to our response to Issue 11 of this Compendium. While the position is not free from doubt, our long-standing view is that transport expenses incurred when travelling between home and an alternative work location are deductible. This is consistent with the approach in MT 2027 which recognises the point that, in spite of the fact that the employment duties will not generally commence until the employee arrives at the workplace, the expenditure from home to the alternative work location is deductible. For clarity, Example 4 has been amended in the final Ruling.
No regular place of work		

23	Paragraph 41 of the draft Ruling simply states that the draft Ruling does not deal with circumstances of an employee who has no regular place of work and the principles established in TR 95/34 should be considered for such cases. To be of more assistance to the reader, we recommend the principles from TR 95/34 be summarised briefly at paragraph 41 especially since there is a distinction made in TR 95/34 between a 'web' of workplaces (that is, the employee has no fixed place of work) and 'itinerant work'.	While it is acknowledged that including this content would make the final Ruling more comprehensive, the content would take several paragraphs to explain, would add length to an already lengthy Ruling and is covered by another Ruling. However, footnote 48 has been inserted into the final Ruling to refer readers to the appropriate paragraphs in TR 95/34.
Travel expenses when travelling away from home for work		
24	In relation to paragraph 43 of the draft Ruling (Example 5), some employees working from home have a requirement imposed by the employer to travel to another location to catch up with staff at 'head office' on a regular basis. Assume an employee does most of their work in Sydney for nine days a fortnight in their home office but their employer based in Melbourne may require the employee to travel to Melbourne once every two weeks to connect with the rest of the staff on business matters. It is suggested that Example 5 should be expanded to deal with this occurrence.	It is considered that Example 6 of the Ruling sufficiently covers this issue as one day per fortnight is less than the two days in that example.
25	Example 8 of the draft Ruling can be contrasted to its previous equivalent (Example 11 of TR 2017/D6). The distinction appears to be the employee must have an arrangement with the employer that the employee is required to attend both offices, in order for the transport to be deductible. Why should it be necessary that the requirement to attend both offices is documented in order for the transport to be considered tax deductible? Often more senior employees make decisions on the need to be at various offices of the employer based on business needs. Their travel to the different office should be tax deductible. The conclusion arrived at in Example 8 that Sue's travel to and from Melbourne was 'private' may not be the most likely outcome in ordinary work circumstances. Her travel differs from those in the case of *Payne* because it is not in between two places of unrelated income derivation. More information is needed about her leadership role and what activities she undertakes in Sydney, for example, how she interacts with Sydney-based personnel as part of her leadership role. In a senior position with a company with offices all around Australia, it	For clarity, Example 8 has been amended in the final Ruling to make it clear that Sue works in Sydney as a matter of choice and because it is convenient for her. More emphasis has also been placed on explaining that travel being necessary isn't always determinative of whether transport expenses are deductible. The duties of a person's employment dictate whether there is a need to travel to two different offices. Generally, where the employee wants to work at a different location to where their job is located, as in Example 8, the employee will have to get agreement from their employer to do that. In Example 8, the employee's job is located in their employer's Melbourne office and the duties of her employment do not require her to undertake any work at the Sydney office. She chooses to work in the Sydney office with her employer's permission because she doesn't want to move to where her job is located, that is, it is convenient for her to work in Sydney. The example would be the same if the employee in Example 8 worked from home for convenience for a few days a week instead of going into the office.

	is quite possible that the activities she carries out in Sydney are part of her role generally. Very seldom is any senior or other person located entirely in a single location when group activities are carried out in multiple locations. Company groups rarely work in geographic isolation. Therefore, in addition to the terms and conditions of Sue's employment, regard should be had to the 'whole of the operations of [her] business' and the 'bundle of tasks performed and duties to be observed' both taken from Melbourne and in Sydney. See [Pagone J's decision in *John Holland* at [58] and the quotation taken from *Day*.	Accordingly, her travel to the Melbourne office is simply between her home and her regular place of work so it is not deductible. This is different to employees whose duties require them to travel to another office. Accordingly, no agreement between the employer and employee is necessarily required.
26	An additional example that highlights that employees and employers should not enter into contrived arrangements where the employer requires the employee to work in two locations but there is no underlying reason for the employee to conduct the duties in more than one location should be included in the final Ruling.	Given the existing length of the final Ruling, no further examples will be added. It is also difficult to see how such a contrived arrangement would result in any transport expenses being deductible when the employee's duties in effect do not require them to work at more than one location.
27	Further guidance should be provided on the situation where travel costs are incurred in relation to working at more than one office location. In particular, guidance should be provided on whether the travel has to be relevant in relation to carrying out of employment duties.	Guidance on this issue is set out at paragraphs 52 to 55 of the final Ruling. Paragraphs 11 to 14 also state that the occasion of the transport expenses must be found in the employee's employment duties. The explanation around the travel being required by the duties of employment and the significance of choice in denying deductions has been amended in the final Ruling for clarification.
28	The statement at the end of paragraph 42 of the draft Ruling may be correct where the employee has one work location (Example 5, Isabelle). However, it doesn't make practical sense where an employer requires the employee to work in multiple locations which involve significant day or overnight travel. Travel to the alternative work location cannot be avoided by the employee choosing to live at the other location and the travel is a reasonable demand of the employee performing their duties. This paragraph should also start with 'Subject to paragraph 57 ...' to account for *John Holland*.	The statement referred to (now paragraph 48 of the final Ruling) only addresses travel from home to a regular place of work that is distant. It does not address an employee who has more than one workplace. Paragraphs 52 to 55 of the final Ruling address employees who are required to work at two locations that are geographically distant from each other. The purpose of Example 5 of the Ruling is to demonstrate that transport expenses incurred in travelling between a taxpayer's home and a regular place that is distant are not deductible where no other factors such as those identified in paragraphs 16 and 17 of the final Ruling are present.
29	It's not easy to understand what is meant by paragraph 44 of the draft Ruling, unless the ATO decides to mention the travel is to a different work location than the employee's regular work location(s).	The paragraph referred to (now paragraph 50 of the final Ruling) already states that the travel is to an alternative work location not a regular work location.

30	In relation to Example 6 of the draft Ruling, arguably, Brisbane is a regular place of work if Duy has to travel there every fortnight for two days (presumably indefinitely). As such, the sentence: *Duy has a regular place of work in Rockhampton and in the performance of his duties travel is undertaken to an alternative destination which is not a regular place of work.* should have the words 'which is not a regular place of work' removed.	While Duy from Example 6 of the Ruling attends another work location regularly, he must travel overnight in order to do so. Example 6 has been amended in the final Ruling to provide further clarity.
31	The first dot point in paragraph 53 of the draft Ruling should be changed to *Narelle carries out her employment duties at multiple locations (the North Coast Office and the Sydney office and other offices) which require her to travel overnight/are a significant distance apart. The travel is relevant to the practical demands of carrying out her work duties and is undertaken at the request of her employer.*	Example 7 has been amended in the final Ruling to provide further clarity on this point.
Direction and control		
32	Paragraph 61 of the draft Ruling (Examples 9 and 10) – does not provide any other situations where an employee would be considered to be under the direction and control of the employer. For example, a common situation is where a salaried employee regularly flies by themselves from an airport near their home to their work location and they undertake work on their computer while on the flight. Commonly, in this case, the employee's employment agreement says they are subject to the employer's workplace policies and procedures whenever working for the employer. Situations like this are not addressed in the draft Ruling, therefore the application of this concept to typical situations is uncertain.	Generally, an employee's employment contract or the applicable Award or enterprise bargaining agreement will provide guidance on when an employee commences work and therefore, when they are travelling on work time. The situation described is covered by other content in the final Ruling, namely travel to an alternative work location (see paragraph 42 of the final Ruling) and transport expenses when travelling away from home for work (paragraphs 48 to 62 of the final Ruling) without the need to specifically consider direction and control. Transit points have been addressed as a particular situation in which transport expenses can arise.
33	It is considered that Example 10 of the draft Ruling suffers from the narrow and rigid application of the factors instead of answering the underlying statutory question as guided by the principles in *John Holland* and summarised in paragraphs 8 and 9 of the draft Ruling.	Refer to our response to Issue 1 of this Compendium. Example 10 of the draft Ruling has been omitted from the final Ruling. In its place paragraph 69 of the final Ruling sets out a non-exhaustive list of factors which may lead to a conclusion that transport expenses between a transit point and a work location are not incurred in gaining or producing an employee's assessable income and accordingly, would not be deductible. Footnote 57 has also been added to the final Ruling as a reminder that the

		requirements under section 8-1 of the ITAA 1997 and the principles outlined in paragraphs 15 to 19 of this final Ruling remain key in determining the deductibility of transport expenses.
34	It is recommended that further guidance and/or further examples of what other circumstances, in addition to being under 'direction and control of the employer', would be sufficient for the travel costs to be deductible be included in the final Ruling. The examples referencing direction and control simply state whether a person is under 'direction and control', rather than explaining how or why this has occurred. The final Ruling should include an example to illustrate how an employer and employee should evidence that the employee is under the direction of the employer when they are driving to a distant worksite. There would be relatively less documentary evidence available than in the case where the employee was flying to such a destination. We suggest that reasonable evidence could include the requirement to use an employer-provided vehicle, or other specified vehicle type for safety reasons, a requirement to transport colleagues at the same time, and an obligation to take breaks at specified intervals and record these in a journey log.	Paragraphs 11 to 14 of the final Ruling set out the general principles of deductibility for transport expenses, and paragraphs 16 and 17 of the final Ruling sets outs a number of factors that may assist in determining whether the transport expenses are deductible. These must always be considered in the first instance. As per paragraph 67 of the final Ruling, an employee being under the direction and control of an employer does not alone determine whether an employee is entitled to claim a deduction for transport expenses. The need to be under the direction and control must be explained by the duties of employment and the need to travel for work. Example 9 of the Ruling states that Brian is under the direction and control of his employer because all his employer's workplace policies and procedures apply to him. At paragraph 67 of the final Ruling, footnote 52 states: In this context, 'direction and control' means the employee is subject to their employer's orders or directions, whether or not those orders or directions are exercised during the period of travel (*Stevens v Brodribb Sawmilling Co Pty Ltd* [1986] HCA 1, per Mason J). The evidence required to demonstrate that an employee is under the direction and control of their employer will vary. For example, in some cases the terms of the employee's employment contract will be sufficient whereas in others it may be the terms of the relevant Award or enterprise bargaining agreement. Further, the evidence an employee may require is not a question to be addressed in this Ruling.
35	There is too much emphasis on the 'factors' of employees being paid and being under the direction and control of their employer while they are undertaking travel. There are other factors that should be taken into account in determining whether the purpose of the travel is incurred in gaining or producing the employee's assessable income. Whether the employee is paid and/or whether the employee is under	Changes have been made to paragraph 15 and new paragraphs have been inserted (paragraphs 16 and 17) in the final Ruling to provide clarity on travelling on work time. Being paid and being under the direction and control of their employer were the reasons for concluding that the employees commenced their employment duties at Perth airport in *John Holland* (refer to [44], [45], [48] and [58]) however, they are not the only issues to be considered.

	the direction and control of their employer at the time are just two factors among others that should be considered.	
36	At paragraph 61, the draft Ruling says that where an employee commences their employment duties (that is, gets paid from) and whether they are under the 'direction and control' of their employer, are relevant but not determinative in considering whether the cost of the travel is deductible. However, it appears in Example 3 of the draft Ruling that these concepts have been applied as determinative. This seems contradictory. We suggest that the conclusion to Example 3 be amended accordingly.	For clarity, Example 3 has been amended in the final Ruling. However, the conclusion in Example 3 remains the same.
37	The conclusion in Example 10 of the draft Ruling that Bill's travel is private is inconsistent with the treatment of Mr Chan in *John Holland*. There is nothing in Bill's circumstances that distinguish his terms and conditions from those of Mr Chan whose travel costs were ruled deductible. Mr Chan's roles were those of a 'staff employee' and therefore he was similarly not 'rostered on' or paid specifically for his travel time. Mr Chan (and Bill) would be paid a salary that 'was calculated to reflect the hours worked to complete the employee's responsibilities' and in most similar practical cases the employer's code of conduct and other policies would apply to Bill during his travel to and from Perth airport. See *John Holland* at [20].	Refer to the response to Issues 33 and 34 of this Compendium. Mr Chan was found to be performing one of the activities required of him to perform his duties upon his arrival at Perth airport. Example 10 of the draft Ruling has been omitted from the final Ruling. In its place paragraph 69 of the final Ruling sets out a non-exhaustive list of factors which may lead to a conclusion that transport expenses between a transit point and a work location are not incurred in gaining or producing an employee's assessable income and accordingly, would not be deductible. Footnote 57 has also been added to the final Ruling.
38	It's a stretch to consider/cite Barnes' laboratory in *Sargent (Inspector of Taxes) vs Barnes* [1978] 2 All ER 737 at footnote 26 of the draft Ruling as a transit point (he did not change his means of transport there, or start to be paid or come under the direction and control of an employer) but I suppose there are no other better cases to cite.	This footnote has been removed.
39	The citation at footnote 29 of the draft Ruling doesn't appear to be correct as there is no mention of 'direction and control' in *Sargent (Inspector of Taxes) vs Barnes* [1978] 2 All ER 737, that's *John Holland* and *Stevens v Brodribb Sawmilling Co Pty Ltd* [1986] HCA 1.	This footnote (now footnote 54 of the final Ruling) has been amended.
Commencing or finishing duty at transit points		
40	There is a change in respect of Examples 9 and 10 in the draft Ruling compared to Examples 3 and 4 in TR 2017/D6. This mainly relates to references to 'transit points' rather than where rostered on duty (referred to as the point of hire). It is noted that the cost of travel	A 'point of hire' does not always accurately describe where the duties of employment commence when read in conjunction with all other terms of the employment contract. Accordingly, the term 'transit point' has been used. Example 9 has been amended in the final Ruling to

	between the transit point, and the place where the person carries out their substantive duties will be deductible. In contrast the exemption in subsection 47(7) of the FBTAA is for travel from usual place of residence to usual place of employment. Those not covered by the subsection 47(7) exemption would be workers that travel to remote locations but may not satisfy the definition of a FIFO worker.	include additional facts which were relevant in determining that the travel was deductible in *John Holland.* Example 10 of the draft Ruling has been omitted from the final Ruling. In its place paragraph 69 of the final Ruling sets out a non-exhaustive list of factors which may lead to a conclusion that transport expenses between a transit point and a work location are not incurred in gaining or producing an employee's assessable income and accordingly, would not be deductible. Footnote 57 has also been added to the final Ruling. While we acknowledge the inconsistency with the FBT legislation, this Ruling is about whether an employee's transport expenses are deductible under section 8-1 of the ITAA 1997. Expenses that are deductible are 'otherwise deductible' for FBT purposes but specific FBT exemptions must be considered separately.
41	The requirements of attracting skilled labour means that the provision of transport in what the ATO might consider 'private' circumstances under the draft Ruling could attract a higher cost (full FBT would nearly double the operational expense of the transport). More guidance on the meaning of 'transit points' is recommended.	What is meant by a 'transit point' is set out in paragraphs 63 and 64 of the final Ruling. There has been no change to the ATO view on when transport expenses are private. Accordingly, it is considered that this Ruling should not impact on the amount of FBT payable in respect of transport expenses going forward.
42	We are unsure how two different outcomes arise from Examples 9 and 10 of the draft Ruling where they are substantially similar in nature. The difference in outcome seems to be the emphasis placed on the fact that in Example 9, Brian is paid and under the direction and control of his employer from the time he arrives at Perth airport and therefore the cost of Brian's travel between Perth and Geraldton is deductible. In Example 10, Bill is not being paid nor is he under the direction and control of his employer from the time he arrives at Perth airport and therefore the cost of Bill's travel between Perth and Geraldton is not deductible. Again, these two factors are being used as determinative, even though paragraph 61 of the draft Ruling says these two factors are relevant but not determinative. It appears these factors have been drawn from *John Holland*. However, in that case these factors were just some of the relevant factors, but were not expressed to be determinative factors to the case outcome.	Paragraphs 16 and 17 of the final Ruling set out the factors that may support a characterisation of the transport expense being incurred in gaining or producing assessable income. Examples 9 and 10 of the draft Ruling have been reconsidered in the context of these factors. For clarity, changes have been made to Example 9 in the final Ruling. Example 10 of the draft Ruling has been omitted from the final Ruling. In its place paragraph 69 of the final Ruling sets out a non-exhaustive list of factors which may lead to a conclusion that transport expenses between a transit point and a work location are not incurred in gaining or producing an employee's assessable income and accordingly, would not be deductible. Footnote 57 has also been added to the final Ruling.

	In Example 10, the nature of the work, the remoteness of the location, the style of the accommodation, the limited availability of accommodation and the lack of choice in being able to live and work at the location should all be taken into account and, in our view, the travel between Perth and Geraldton should be otherwise deductible. Being paid for travel time is only one of the factors considered in *John Holland* as to whether the travel expenses are deductible or not and not be determinative on its own. It should also be recognised that the employees in *John Holland* were given the option to relocate to Geraldton and chose not to, though other employees who work 'fly-in fly-out' may not have that option available to relocate.	
43	The statement: *… the nature of Brian's work at different locations in Western Australia for relatively short periods of less than 12 months explains why Perth airport, in the context of his circumstances, is a transit point* in Example 9 of the draft Ruling is not justified. It is not mentioned in *John Holland*.	Example 9, including the facts, has been amended in the final Ruling to reflect the changes to paragraphs 16 and 17 of the final Ruling.
44	In paragraph 63 of the draft Ruling (Example 10) 'Geraldton' should be inserted after 'closest major airport' just to make it clear.	Example 10 of the draft Ruling has been omitted from the final Ruling. In its place paragraph 69 of the final Ruling sets out a non-exhaustive list of factors which may lead to a conclusion that transport expenses between a transit point and a work location are not incurred in gaining or producing an employee's assessable income and accordingly, would not be deductible. Footnote 57 has also been added to the final Ruling.
On call and standby arrangements		
45	The issue of on call and standby arrangements was not covered by TR 2016/D7 and mainly replicates MT 2027. The Ruling provides a simple example of where the 'standby travel' cost is not deductible but there is no example or further description of situations where 'standby travel' would be considered to be deductible. More guidance with respect to on call and standby arrangements is recommended.	Based on feedback regarding TR 2016/D7, on call and standby arrangements was included in the final Ruling for completeness. Standby travel will only be deductible if the employee commences their income-producing activity before they leave home. In most standby arrangements, this does not occur.
46	Example 11 of the draft Ruling covers the situation where duties have been substantively commenced at home and then completed at the regular work location for a highly trained computer consultant. We	Example 11 of the draft Ruling (now Example 10 of the final Ruling) is based on *Federal Commissioner of Taxation v Collings* 76 ATC 4254; 6 ATR 476 (*Collings*). While some employers may not provide

	query whether the example is dependent on Christine having specialised equipment installed at home given that nowadays, a computer consultant can work with a laptop with remote access to the business' intranet and server to deal with IT issues. We suggest this example be modified to reflect the more common scenario of the computer consultant using a work laptop with remote access to work from home.	specialised equipment or any equipment at all when an employee is on call, there are others that still do.
47	Paragraph 64 of the draft Ruling should include a footnote citing *Collings* and *Sargent (Inspector of Taxes) vs Barnes* [1978] 2 All ER 737. The first dot point should be changed to the employee's duties can be construed as having substantively commenced at their home (or another private location) and the employee is required to travel on to a regular place of work to continue those particular duties.	*Collings* has been added as a reference in footnote 60 (at the end of paragraph 70) of the final Ruling.
48	The third dot point in paragraph 64 of the draft Ruling should be changed to the travel to the workplace is not part of a normal journey to work that would have occurred within a few hours if the employee had not been called and had begun their duties at home (or another private location) anyway.	As per the response to Issue 47 of this Compendium, *Collings* has been added as a reference in footnote 60 in the final Ruling which should provide clarification on these dot points. Example 10 of the final Ruling (Example 11 of the draft Ruling) which is based on *Collings* also illustrates how these factors apply. We believe the addition of 'within a few hours' may cause confusion.
Working from home, remote working and flexible work arrangements		
49	It is submitted that employees working from home on a permanent basis are entitled to claim the costs associated with travelling from home to a client. It is not a 'personal' but a business reason for working from home. We suggest an example to deal with this.	An example is not considered necessary for this circumstance. Paragraph 78 of the final Ruling clearly states that where an employee has an area set aside as their sole base of operations (as defined in Taxation Ruling TR 93/30 *Income tax: deductions for home office expenses*), because their employer provides them no other area to work from, their home becomes their regular work location and travel from their home to a client's premises would be deductible. Paragraph 42 of the final Ruling also addresses travel from an employee's home to a client's premises, that is, an alternative work location.
50	There are many employers encouraging employees to work from home to save on office accommodation costs for the employer. What is the situation for employees who agree to work from home at the	As noted at paragraph 78 of the final Ruling, a common scenario where an employee would be considered to be travelling between workplaces would be where the employee has an area of their home

	encouragement of their employer? In these situations, it may well be convenient for the employee to work from home but the encouragement of the employer to do so to save on accommodation costs may have an important bearing on the deductibility of associated travel expenses. Consideration should be given to these arrangements particularly where the arrangement results in the employee spending the majority of their time working from home. Given the upward trend in working from home arrangements, further examples are requested to address other modern circumstances. This could include where an employee has two alternate work locations at home and at an office, where an employee takes a working holiday or where the employee works from home for at least one day a week because the employer does not have enough seating for all of its staff.	set aside as their sole base of operations as described in paragraphs 4 and 5 of TR 93/30. Accordingly, the arrangements described need to be considered in the context of TR 93/30. It is noted the requirements under section 8-1 of the ITAA 1997 and the principles outlined in paragraphs 15 to 19 of the final Ruling along with the full facts and circumstances of the specific working arrangement in place must always be considered in totality in determining the deductibility of the transport expenses incurred.
Transporting bulky equipment		
51	The draft Ruling does not provide any guidance establishing what would qualify as 'bulky'. This results in ambiguity and a lack of confidence for those who attempt to rely on the guidance as it remains unclear whether their circumstances would fall into this scenario should some equipment need to be transported. Further clarification is required surrounding the term 'secure' in the context of secure area, particularly as this draft Ruling seems to indicate that where a secure area is provided at a workplace to store equipment, then the transport will not be found to be deductible.	What is considered to be bulky is question of fact. As such, it is not possible to cover what will be bulky in every employee's circumstances.What is considered to be a secure storage area is also a question of fact; see *Reany and Commissioner of Taxation* [2016] AATA 672 (*Reany*) at [29]. Whether a storage area provided by an employer is secure should be determined based on the objective evidence rather than the employee's own opinion of the storage area provided (*Reany* at [56]).
Cross-references to TR 2017/D6		
52	The factors at paragraph 22 of TR 2017/D6 and paragraph 11 of the draft Ruling are different. In determining whether a transport expense is 'otherwise deductible' it is important that any factors are considered holistically and not merely in an unduly narrow manner to deny reasonable and appropriate deductions. This would address the potential scenario where one applies a set of factors without answering the underlying statutory test for deductibility set out in section 8-1 of the ITAA 1997. It is recommended that the tests in paragraphs 8 and 9 of the draft Ruling be elevated to ensure that the statutory question is addressed.	We are replacing TR 2017/D6 with two separate rulings, one concerning transport expenses and the other accommodation, food and drink. It has been decided that given the range of issues to be addressed, it is preferable to deal with them across two separate products.

	It is recommended that TR 2017/D6 be withdrawn and that the ATO's views on the treatment of expenses relating to transport be consolidated into a single ruling and that the guidance provided on the residual issues be included in a separate ruling. This will remove the confusion and ambiguity faced by employers needing to make an assessment on deductibility of travel expenses. The need to simplify the draft Ruling and TR 2017/D6 into one ruling is particularly important given that we understand another ruling, separate to the one covering meals, accommodations and incidentals is coming in 2020. *Relocation travel* The inclusion of this section is questionable give that it is appropriately covered in TR 2017/D6 (and expected to be included in the upcoming living away from home ruling). Providing only one paragraph of high-level guidance with limited application to a taxpayer's circumstances is unhelpful. As such it is recommended that this section be updated to refer to TR 2017/D6. *'Special demands' travel* This was a new concept referenced substantially in TR 2017/D6 and is absent from this draft Ruling. Instead this draft Ruling refers to being within the duties of employment and relevant to the practical demands of carrying out the work duties.	
Requests for additional examples and references		
53	A further example addressing where employees generally don't have a regular work location but travel to a location for periods of a week, month, six months, etcetera because the employers have contracts across wide areas would be helpful. The work often involves construction, maintenance, upgrading, etcetera at the site.	Given the existing length of the final Ruling, no further examples will be added.
54	It would be useful to consider transport expenses from the temporary accommodation to a worksite during a contract period and how the degree of impermanence and irregularity would affect the decision about whether the usual place of work rules should apply.	When employees travel overnight for work, they generally stay very close to where they need to be for work and therefore do not incur transport expenses when travelling from their hotel to the workplace or client's premises. If such expenses were incurred, they would be deductible. However, an employee who is 'living at a location' would not be entitled to claim a deduction for transport expenses incurred for travelling between where they are staying to their workplace. These expenses are simply private home to work travel expenses.

55	It would be useful to include an example dealing with the deductibility of transport expenses of an employee who generally works from 9am to 5pm in the CBD but is required to work until 3am one night to meet a project deadline and who catches a taxi home because the employer requires them to for safety reasons. Alternatively, the employee may arrange to drive to work so they can drive home at 3am.	See paragraph 28 of the final Ruling. This issue is already covered by existing precedent and case law. The transport expenses in these circumstances are not deductible merely because of the time the employee travels home from their regular place of employment.
56	The final Ruling should address the following matters which commonly arise in practice: • drive-in drive-out travel scenarios, including consideration as to whether the reimbursement of actual expenses and/or a cents per kilometre reimbursement are deductible • examples involving salaried employees where being paid separately for their travel time is not relevant • travel to multiple places of casual employment • scenarios under which a domestic employee is requested by their employer to take a secondment into another role with a different group entity on a part time basis (being two weeks per month) with travel required interstate, or • scenarios where a traveller is based outside Australia and undertakes work both inside and outside Australia in different roles within the same group of entities. This should include consideration of the comments at paragraph 33 of the draft Ruling with respect to transport costs incurred for different employers and the interaction with section 25-100 of the ITAA 1997.	It is not considered necessary to consider drive-in drive-out employees as the principles apply equally to all employees. The final Ruling already considers employees on salary who are not necessarily paid per hour for their travel time. Travel to multiple places of casual work is home to work travel. Alternatively, travel directly from one casual workplace to another casual work place (for another employer) may be deductible under section 25-100 of the ITAA 1997.Employees requested by their employer to take up a secondment into another role with a different group entity requiring interstate travel and employees based outside Australia who undertake work both inside and outside Australia in different roles within the same group of entities are not considered to be common arrangements. Accordingly, they will not be addressed in the final Ruling. Advice on these arrangements can be obtained by applying for a Private Ruling. The general principles along with the factors at paragraphs 16 and 17 of the final Ruling should be considered when determining whether transport expenses for such employees are deductible.
57	More guidance on the meaning of 'duties of employment' is recommended.	For an expense to be deductible it must be incurred in gaining or producing assessable income. This involves determining what is productive of assessable income (*Day* at [21]) or as Hill J stated in *Cooper*, it will often be necessary to analyse with some care the operations or activities that are regularly carried on by the taxpayer for the production of income and to determine whether the outgoings (or where relevant losses) are incidental and relevant to those operations of activities. Taxation Ruling TR 2020/1 *Income tax: employees: deductions for work expenses under section 8-1 of the Income Tax Assessment Act 1997* provides guidance on what this

		means when considering expenses incurred by employees (see paragraphs 13 to 36 of that Ruling).
Reintroduction of 21-day-rule		
58	The ATO has recently updated guidance on its website stating that pending the provision of additional guidance, the 21-day-rule originally included in Miscellaneous Taxation Ruling MT 2030 *Fringe benefits tax: living-away-from-home allowances* may still be applied by employees and employers for the purposes of concluding whether an employee is travelling on work or living away from home. In light of these comments, it remains unclear whether the introduction of the draft Ruling is the additional guidance being referred to or whether that reference is made in respect of a further draft ruling on the deductibility of meals and accommodation to be published in 2020. As the guidance about the 21-day-rule is only available on the 'Advice under development' section of the ATO's website, which taxpayers wouldn't access on a regular basis, it is requested this commentary be included within the draft Ruling and the Fringe Benefits Tax – a guide for Employers publication. This is important given there is no strict deadline for publishing the additional draft ruling on the deductibility of meals and accommodation.	Refer to our response to Issue 52 of this Compendium. A draft Practical Compliance Guideline will be issued at the same time as the draft Ruling on the deductibility of accommodation and food and drink is issued to address the 21-day rule.
Substantiation		
59	Paragraph 4 of the draft Ruling states that the Ruling does not address substantiation and refers to Taxation Ruling TR 2004/6 *Income tax: substantiation exception for reasonable travel and overtime meal allowance expenses*. TR 2004/6 has not been updated to appropriately factor in new working arrangements to reflect industry changes and the updated guidance within the draft Ruling. Whilst the ATO could update TR 2004/6, incorporating modern substantiation requirements within the final Ruling would be preferred. This would again limit the number of rulings that taxpayers need to rely on when addressing travel expenses.	TR 2019/D7 does not make any reference to TR 2004/6. Footnote 3 of the Ruling refers to Divisions 28 and 900 of the ITAA 1997 which set out the rules for substantiating work expenses (losses or outgoings incurred in producing salary and wage income). TR 2004/6 is not referred to because it provides guidance on the substantiation exception for reasonable travel and overtime meals allowance expenses. It does not address substantiation in relation to transport expenses. The legislation provides clear guidance on the substantiation required and there are several ATO view documents which address substantiation, for example, the Employees guide for work expenses.
General comments		
60	The draft Ruling's approach will not work so well in practice for employers who have paid their employees' transport expenses and	While it is acknowledged that employers, particularly large employers, do have the burden of determining whether any transport

	consequently need to consider the FBT implications. The ATO can expect individual employees to be fully aware of all the necessary details for applying the draft Ruling. However, it is not reasonable to expect employers to be able to consolidate all of this detail for tax reporting purposes, in the context of the increasing variety of workplace arrangements that will evolve over the coming years. Collating the necessary information and applying the criteria in the draft Ruling would contribute significantly to the FBT compliance costs that employers incur. This is against the background of the Board of Taxation having recently conducted an inquiry into opportunities for reducing FBT compliance costs.	expenses they incur on behalf of their employees or any transport they provide to their employees is otherwise deductible, that burden already exists. Accordingly, it is considered that the Ruling does not add to that burden. Further, given that it is the employer who sets the terms of employment, it is considered that an employer is more likely to be more aware of when they consider their employees to be on work time.
61	We query why meal and accommodation expenses are separated out. We consider that the treatment of these expenses should follow the same principles as the principles that apply to travel expenses. Inconsistencies and illogical outcomes may arise if meal and accommodation expenses are addressed in separate rulings.	While section 8-1 of the ITAA 1997 is the relevant provision to consider when determining whether expenditure incurred on transport, accommodation and food and drink is deductible, the case law does raise slightly different factors to consider when determining when expenditure in these two categories is incurred in gaining or producing an employee's assessable income. Producing separate rulings also allows us to provide additional guidance on both topics.