TR 2017/D6 - Income tax and fringe benefits tax: when are deductions allowed for employees' travel expenses?

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Draft Taxation Ruling

Income tax and fringe benefits tax: when are deductions allowed for employees' travel expenses?

Contents Para

PROPOSED LEGALLY BINDING SECTION:

Summary – what this Ruling is about 1

Previous rulings 10

Ruling 12

Date of effect 256

NOT LEGALLY BINDING SECTION:

Appendix 1:

***Your comments* 257**

Appendix 2:

***Detailed contents list* 259**

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Summary – what this Ruling is about

1. This draft Ruling sets out general principles for determining whether an employee[1] can deduct travel expenses under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997).[2]

2. For the purposes of this Ruling, **a travel expense** is an expense relating to:

- transport (that is, travel by airline, train, car, bus or other vehicle), and
- accommodation, meal and incidental expenses of an employee when they travel away from home for work.[3]

3. Whether travel expenses can be deducted depends on the facts of each case. Accordingly, this draft Ruling uses examples to show how to determine the deductiblity of travel expenses in a range of situations.

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[1] An employee is a person who receives payments from which tax must be withheld under section 12-35, 12-40, 12-45 or 12-47 of Schedule 1 of Part 2-5 of *Taxation Administration Act 1953*.

[2] All legislative references in this ruling are to the ITAA 1997 unless otherwise specified.

[3] The definitions of 'travel expense', 'transport expense' and 'travel allowance expense' in Subdivision 900-B of ITAA 1997 (Substantiation rules) are not relevant to this ruling. Nor is the definition of 'work-related travel' in subsection 136(1) of the FBTAA relevant to this ruling.

4. Where an expense would be **deductible** to an employee but their employer incurs the expense, this draft Ruling refers to the expense as being **'otherwise deductible'** to the employer under the *Fringe Benefits Tax Assessment Act 1986* (**FBTAA**).[4]

5. An allowance is a living-away-from-home allowance (**LAFHA**) benefit if it is in the nature of compensation to the employee for additional expenses *(not being deductible expenses*) incurred by the employee by reason that the employment duties require them to live away from home'.[5] Therefore, if an expense an employee incurs in working away from home is deductible, an allowance they receive from their employer to cover the expense is not a LAFHA benefit.[6]

6. This draft Ruling applies to travel between work locations of the same employer as well as to travel between home and a work location. In this draft Ruling, a **work location** is any place an employee attends for work.[7] Where travel is between work locations of different employers or different income producing activities, section 25-100 applies.[8]

7. This draft Ruling applies to car expenses. The principles in this Ruling dealing with the deductibility of travel expenses under section 8-1 apply equally to Division 28.[9]

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[4] For example, sections 24 (expense payment fringe benefits), 44 (property fringe benefits) and 52 (residual fringe benefits) of the FBTAA. To the extent that an expense is 'otherwise deductible', the taxable value of the benefit is reduced, which reduces the employer's potential liability to fringe benefits tax (FBT).

[5] Section 30 of the FBTAA.

[6] Expenses an employee incurs in living away from home are not deductible under section 8-1 because they are of a private or domestic nature. Fringe benefits, including LAFHA benefits, provided to employees are non-assessable non-exempt income of the employee. Further information relating to the application of FBT is available in the *Fringe benefits tax: a guide for employers*, including the rules relating to living-away-from-home allowance benefits and how the 'otherwise deductible' rule applies generally.

[7] An employee may attend a place for different purposes at different times (sometimes for work, sometimes for private purposes). In this draft Ruling, a place is only a work location on occasions the employee attends there for work.

[8] We consider that section 8-1 applies to travel an employee undertakes between work places relating to the same employment and not section 25-100. Section 25-100 was enacted following the decision in *FC of T v. Payne* 2001 ATC 4027 in which the High Court denied a taxpayer's claim under section 8-1 for transport expenses between places where the taxpayer conducted separate income earning activities. We consider that section 25-100 applies to specifically confer a deduction for transport expenses where taxpayers travel between places where they engage in separate income producing activities, subject to the limitation that neither of the places is where they reside.

[9] That is, in the context of this draft Ruling, 'in the course of producing your assessable income' in subsection 28-25(3) and subsection 28-90(4) is considered to have the same meaning as 'incurred in gaining or producing your assessable income' in section 8-1.

Other rulings

8. This draft Ruling does not cover these issues which are addressed elsewhere:

- the substantiation exception for reasonable travel allowance expenses – Taxation Ruling TR 2004/6 *Income tax: substantiation exception for reasonable travel and overtime meal allowance expenses*
- exceptions to the general rule relating to travel between home and work discussed in Taxation Ruling TR 95/34 *Income tax: employees carrying out itinerant work-deductions, allowances and reimbursements for transport expenses*, and
- travel relating to self-education or study – Taxation Ruling TR 98/9 *Income tax: deductibility of self-education expenses incurred by an employee or a person in business*.

9. This draft Ruling does not address the deductibility of parking fees, road tolls and travel insurance expenses.

Previous rulings

10. The ATO has withdrawn Income Tax Rulings IT 112 *Deductibility of travelling expenses between residence and place of employment or business* and IT 113 *Computer consultant - travelling expenses between home and place of employment* and Taxation Determinations TD 93/113 *Income tax: are the costs incurred by teachers when travelling between their home and their regular school to attend Parent and Teacher meetings, sports and other school functions allowable as a deduction under subsection 51(1) of the Income Tax Assessment Act 1936?*, TD 93/174 *Income tax: does the receipt of a travel allowance automatically entitle an employee to a deduction for travel expenses under section 8-1 of the Income Tax Assessment Act 1997?*, TD 93/230 *Income tax and fringe benefits tax: is a camping allowance assessable under section 30 of the Fringe Benefits Tax Assessment Act 1986 (FBTAA) or under Division 6 of the Income Tax Assessment Act 1936 (ITAA)?* and TD 96/7 *Fringe benefits tax: is fringe benefits tax (FBT) payable on meals and accommodation provided to employees who work at remote construction sites, where the accommodation is not the usual place of residence of the employee?* because our views are consolidated and are included in this draft Ruling.

11. The ATO has withdrawn Miscellaneous Taxation Ruling MT 2030 *Fringe benefits tax: living-away-from-home allowance benefits* because of significant changes to the FBTAA since MT 2030 was issued in 1986. We discuss those changes in Chapter 11 of the *Fringe benefits tax: a guide for employers*. We have reviewed other

matters considered in MT 2030 and, where appropriate, have included them in this draft Ruling.

Ruling

12. An employee can deduct a travel expense under section 8-1 to the extent that:

- they incur the expense in gaining or producing their assessable income, and
- the expense is not of a capital, private or domestic nature.

13. The employee's purpose or reason for incurring travel expenses is not of itself enough to establish deductibility under section 8-1.[10]

14. An employee is not entitled to deduct an expense simply because they receive an allowance, including expenses the allowance is intended to cover. The nature of the expense and its connection to the income producing activities determines whether it is deductible.[11]

15. An employee's ordinary costs of travelling between home and work, and maintaining a home and consuming food and drink to go about their daily activities, are of a private or domestic nature and are not deductible.[12] Such costs are 'preliminary to the work' and are not incurred in performing the work activities.

16. Similarly, employee costs of relocating for work and living away from home to work are preliminary to the work and are not deductible.[13]

17. Where travel expenses are incurred in performing the employee's work activities and no part of them is of a private, domestic or capital nature, expenses are fully deductible. To the extent that any part of the expenses are of a private or domestic nature, the expenses must be apportioned – unless the private or domestic element is merely incidental to gaining or producing the employee's assessable employment income.

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[10] *Lunney and Hayley v. Commissioner of Taxation* (1958) 100 CLR 478 (*Lunney*), *Newsom v. Robertson (Inspector of Taxes)* [1953] 1 Ch 7 (*Newsom*), *Commissioner of Taxation v. Payne* [2001] HCA 3; 2001 ATC 4027 (*Payne*), *FCT v. Day* [2008] HCA 53; 2008 ATC 20 064; (2008) 70 ATR 14 (*Day*); *Amalgamated Zinc (De Bavay's) v FCT* (1935) 54 CLR 295 at 309.

[11] *Case T100*, 86 ATC 1169; *Case U156*, 87 ATC 908; *Case R22* 84 ATC 212 at page 21.

[12] *Lunney, FCT v. Cooper* (1991) 29 FCR 177; 91 ATC 4396.

[13] *Fullerton v. FCT* (1991) 32 FCR 486; 91 ATC 4983; (1991) 22 ATR 757. Certain FBT concessions are available to employers for costs incurred in relocating employees and their families (refer to the *Fringe benefits tax: a guide for employers.*)

18. Expenses incurred by an employee on transport and accommodation, meal and incidentals on the same trip are often deductible because all are incurred in performing the employee's work activities.[14] However, this is not always the case and so it is necessary to consider transport expenses separately from accommodation, meal and incidental expenses.[15]

Transport expenses: general principles

19. A transport expense is not deductible where the travel is to start work or depart after work is completed.[16] The cost of such travel is not incurred in gaining or producing the employee's assessable income.

20. In contrast, a transport expense is deductible where the travel is undertaken in performing the employee's work activities.

21. These principles apply to travel between:

- home and a work location
- a work location and another work location[17], and
- another place (that is neither home or a work location) and a work location.[18]

22. To determine whether travel is undertaken in performing an employee's work activities, consider the following factors:

(a) whether the work activities require the employee to undertake the travel

(b) whether the employee is paid, directly or indirectly, to undertake the travel

(c) whether the employee is subject to the direction and control of their employer for the period of the travel, and

(d) whether the above factors have been contrived to give a private journey the appearance of work travel.

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[14] See Examples 4-5 and 7-15 of this draft Ruling.
[15] See Examples 3 and 9 of this draft Ruling.
[16] *Lunney*; *FC of T v. Maddalena* 71 ATC 4161; *Case* L8, 79 ATC 52. This is not limited to daily 'home to work' travel and includes travel between another place (that is not a workplace) and work (note paragraph 4 of *FCT v. Payne* 99 ATC 4391), and relocation costs to start work at a new location: *Fullerton).*
[17] This draft ruling does not apply to travel between work locations of different employers or different income producing activities (see paragraph 6). Where this draft ruling discusses deductible travel between work locations which involve an overnight stay, the expenses may include travel between the employee's home, an airport, accommodation where the employee stays at an alternative work location or a work location, including by taxi.
[18] As referred to by Hill J in paragraph 4 of *FCT v Payne* 99 ATC 4391.

Required to travel

23. A transport expense is not deductible unless the work requires the employee to undertake the travel. Travel to start work is not required by the work activity but is preliminary to the work (see paragraph 14).

24. In many situations, it can be concluded from the nature of the work and the employee's duties that travel is required without referring to specific terms of employment.

25. Travel undertaken because of an employee's choice, such as where to live, is not usually incurred in gaining or producing the employee's assessable income and has a private or domestic character. However, if travel by an employee is required in performing their work duties or work activities, little regard is given to a choice the employee may have had which would have avoided or reduced the need for the travel.[19]

Paid to undertake travel

26. A transport expense is not deductible unless the relevant travel can be characterised as an income-producing activity for which the employee is paid.[20]

27. For wage-earning employees, this factor is satisfied where they are paid for the period of the travel – whether payment is expressed as wages or something else (like 'travel time').

28. For salary earners, the requirement that they be paid for the travel is satisfied where it is evident from the (express or implied) terms of their employment that the travel is undertaken in performing their work activities. This is because salaries generally recognise all aspects of an employee's position, including any requirement to travel to fulfil their duties.

29. It cannot be concluded that an employee is paid to undertake relevant travel merely because they receive a travel allowance. Nor can it be concluded that a wage-earning employee is paid to undertake relevant travel merely because they receive any other allowance that does not reflect pay for the period they spend travelling.[21]

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[19] This conclusion follows from the discussion by the Full Federal Court in *John Holland* about the impact of an employee's choice.
[20] *FCT v. Cooper* (1991) 29 FCR at 185; John Holland at [34-35], [45] and [54].
[21] For example, the fares allowance referred to in *Roads and Traffic Authority of New South Wales v. FCT* 93 ATC 4508 (see paragraph 14 and Example 2 of this draft Ruling).

Direction and control

30. In determining if travel is in the course of the employee's work activities, it is relevant to consider whether the employee is subject to the employer's direction and control during the period of the travel.[22]

31. 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 the travel.[23]

Contrivance

32. The above factors must reflect the substance of the travel arrangement. A private journey is not in the performance of an employee's work activities merely because an obligation to travel has been contrived to create the appearance of work travel.[24]

33. In determining whether a travel arrangement is contrived, it is relevant to consider:

- whether the work involves special demands (see paragraph 39), and
- whether the travel is attributable to the employee having co-existing work locations (see paragraph 43).

Transport expenses: expense categories

34. The examples in this draft Ruling show how these principles apply to four categories of travel:

- ordinary home to work travel
- special demands travel
- co-existing work locations travel, and
- relocation travel.

Ordinary home to work travel

35. **Ordinary home to work travel** involves ordinary travel between home and a regular work location. The cost of such travel is not deductible.

36. This travel is required for an employee to commence work or to depart after work is completed. These travel expenses are not incurred in gaining or producing the employee's assessable income. They are of a private or domestic nature, reflecting the

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[22] *John Holland.*
[23] *Stevens v. Brodribb Sawmilling Co. (*1986) 160 CLR 16 at [9].
[24] *John Holland* at [34-35], [45] and [54], *FCT v. Cooper* (1991) 29 FCR at 185.

employee's private choice about where to live[25] (see **Example 1** of this draft Ruling).

37. Ordinary home to work travel is usually evident without referring to specific terms of employment. The nature of this travel is not altered by an arrangement contrived to give a private journey the appearance of work travel.[26]

38. Travel within this category can include a journey between home and a regular work location which is temporary (see **Example 2** of this draft Ruling) or remote (see **Example 3** of this draft Ruling). In these circumstances it may be necessary to consider specific terms of employment (see *Special demands travel* at paragraph 39).

Special demands travel

39. **Special demands travel** involves travel between home and a regular work location where:

- the journey, or part of the journey, is included in the activities for which the employee is paid under the express or implied terms of their employment (see paragraphs 23-25), and
- this is reasonable because of the special demands of the work.[27]

40. In this context, **special demands** are specific physical or logistical requirements of the work activity. Special demands include:

- the remoteness of the work location28 (see **Example 4** of this draft Ruling)
- a requirement to move continuously between changing work locations (see **Example 5**)
- a requirement to work away from home for an extended period (see **Examples 14** to **16** of this draft Ruling)
- other special circumstances of the work activity, as addressed in Taxation Ruling TR 95/34.

41. Part of an employee's journey between home and a regular work location may be 'special demands travel'. For example, where a work location is remote, another location may be designated as a 'point of hire' under the relevant employment arrangement.

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[25] *Lunney, Hancox, Compass Group.* An example of this is a school teacher who travels between home and the school after hours to attend parent-teacher evenings. The teacher is simply travelling between home and work and the costs are not deductible.
[26] *John Holland.*
[27] *John Holland, Collings.*
[28] Note also that certain transport benefits provided to 'fly-in fly-out' employees who work on oil rigs and in remote areas (as defined) are exempt from FBT.

Employees must report to this point, after which they start being paid and are subject to the employer's direction and control.[29]

42. It is a question of fact whether such travel is in performing an employee's work activities. It may be necessary to examine specific terms of employment to apply the factors in paragraph 22 of this draft Ruling, including terms relating to direction and control by the employer during the travel period: compare **Example 4** with **Example 3** of this draft Ruling.

Co-existing work locations travel

43. **Co-existing work locations travel** involves travel which can be attributed to the employee having to work in more than one location. This is the case where:

- the travel is directly between work locations, or between home and an alternative work location, and
- it is reasonable to conclude that the travel is undertaken in performing the employee's work activities because of the requirement to work in more than one location.

44. For the purposes of 'co-existing work locations travel', an **alternative work location** is a work location other than a regular work location near the employee's home.[30]

45. Travel in this category is attributable to the employee having to work in more than one place, rather than their choice about where to live.

46. In some cases, it can be concluded that the travel is undertaken in performing the employee's work activities without referring to specific terms of employment. Examples in this category include travel which:

(a) takes up a significant part of the day (see **Example 6** of this draft Ruling), or

(b) reasonably requires an overnight stay away from home, including:

(i) short-term travel to a temporary, alternative work location (see **Examples 7-8** of this draft Ruling);

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[29] *John Holland.* Commonly, a point of hire is a depot or departure point for a group of employees who are transported by the employer to a work location at the start of a period of work, and also an arrival point to which employees are transported from a work location at the end of a period of work.

[30] For most employees, 'regular work location near the employee's home' is their usual work location or locations near their home. Where an employee's home is some distance from their usual work location or locations, 'regular work location near the employee's home' includes those work locations.

(ii) longer-term travel to a temporary, alternative work location (see **Example 9** of this draft Ruling), and

(iii) ongoing travel to an alternative work location (see **Examples 10** to **13** of this draft Ruling).

47. In other cases, the existence of co-existing work locations is not determinative, and it is also necessary to consider specific terms of employment and whether the work involves special demands (see **Examples 14-16** of this draft Ruling).

Relocation travel

48. **Relocation travel** involves travel undertaken in relocating for work. Expenses incurred in undertaking this travel are not deductible[31] (see **Example 17** of this draft Ruling).

49. Relocation travel is preliminary to work and the cost of such travel not incurred in performing an employee's work activities. It also has a private or domestic nature, often reflecting the employee's choice about where to live.[32] This can be concluded without referring to specific terms of employment.

Accommodation, meal and incidental expenses: general principles

50. It is a question of fact whether an expense for accommodation, meals or incidentals is incurred in gaining or producing assessable income or is of a private or domestic nature.

51. Subject to paragraph 60 of this draft Ruling, employee expenditure for accommodation, meal and incidentals is of a private or domestic nature. This includes the ordinary costs of maintaining a home and consuming food and drink to go about their daily activities, such as to attend work.[33] These costs are preliminary to the work, and are not incurred in the course of performing those activities.[34]

52. Likewise, where accommodation, meal and incidental expenses are incurred by an employee in relocating to a place of work or in living away from home to work, they are preliminary to the work and not deductible.[35]

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[31] *Fullerton*. Certain FBT concessions are available to employers for costs incurred in relocating employees and their families (refer to Chapter 20.4 of the *Fringe benefits tax: a guide for employers).*
[32] *Lunney, Hancox, Compass Group.*
[33] *Lunney, Cooper.*
[34] As Example 2 mentions, this could also include accommodation expenses that are incurred by an employee by choice and are preliminary to the work, rather than being incurred in performing their duties.
[35] *Toms, FC of T v. Charlton* 84 ATC 4415*; Fullerton.*

53. The private or domestic nature of these expenses often reflects a choice the employee has made.[36] This includes an employee's choice about where to live.[37]

54. Accommodation, meal and incidental expenses are incurred by an employee in performing an employee's work activities, and are therefore deductible, only where:

(a) the employee's work activities require them to undertake the travel

(b) the work requires the employee to sleep away from home overnight

(c) the employee has a permanent home elsewhere, and

(d) the employee does not incur the expenses in the course of relocating or living away from home.

55. Expenses must be apportioned to the extent that they are of a private nature or are not incurred in producing assessable income.

56. **Additional property expenses** are expenses an employee incurs to finance, hold and maintain residential property they have purchased or leased where the employee travels away from home for work and stays at the property.

57. Additional property expenses that can be claimed include: lease payments, rent, interest on borrowings used to acquire the property, rates, land tax, property insurance and general maintenance of the building and grounds.[38]

58. An employee's accommodation, meal and incidental expenses are deductible if they satisfy the requirements in paragraph 54:

- **Examples 12-13** of this draft Ruling involve additional property expenses.
- **Examples 3-5, 7-11** and **Examples 14-16** do not involve additional property expenses.
- **Examples 7-8** and **Examples 12-13**[39] of this draft Ruling may need to be apportioned (see paragraphs 86-90 of this draft Ruling).

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[36] *Roads and Traffic Authority, Lunney, Hancox, Toms, Charlton, Compass Group*

[37] Other relevant choices may include to stay away from home overnight when this is not required or reasonably required by the work.

[38] A deduction can also be claimed for the decline in value (depreciation) of depreciating assets, such as furniture and household equipment, used in connection with the property. See Division 40 of ITAA 1997 and the ATO's 'Guide to depreciating assets.'

[39] The basis for the Commissioner's view on additional property expenses is contained Taxation Ruling TR 1999/10 *Income tax and fringe benefits tax: Members of Parliament - allowances, reimbursements, donations and gifts, benefits, deductions and recoupments*, paragraphs 328-336 (updated by addendum on 15 December 2016).

Required to work away from home

59. Expenses an employee incurs on accommodation, meals and incidentals are not deductible under section 8-1 unless the work requires the employee to be away from home.[40] In many situations, it can be concluded from the nature of the work and scope of the employee's duties that the travel is required without referring to the specific terms of employment.

60. This is the case where it is reasonably necessary to incur the expense because of travel undertaken in the performance of the employee's work (see **Special demands travel** at paragraph 39 of this draft Ruling) and **Co-existing work locations travel** at paragraph 43 of this draft Ruling).

Required to sleep away from home

61. The accommodation, meal and incidental expenses are only deductible to the extent that the work requires the employee to sleep away from home.[41]

62. Where an employee is required to stay away from home overnight for work, such expenses that would otherwise be private have an employment-related character.[42]

63. In this draft Ruling, 'sleep away from home' does not describe the activities of employees who:

- are on duty while sleeping at a workplace near their home – for example, a hostel worker, care worker or overnight supervisor at a boarding school, or
- choose to sleep near their workplace, rather than returning home between their work shifts.

64. The requirement to sleep away from home overnight is a practical test that considers the circumstances of the work and the need for employees to have sufficient rest to perform their duties effectively. An employee's choice to return home and avoid staying away overnight does not affect the character of their expenditure if an overnight stay is reasonably required from a practical point of view.

Permanent home elsewhere

65. Expenditure on accommodation, meals and incidentals is only deductible where the employee has a permanent home elsewhere.

66. Where an employee has a transient lifestyle with no fixed place of residence, such costs are of a private or domestic nature.

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[40] *Roads and Traffic Authority, John Holland.*
[41] *Roads and Traffic Authority, Compass Group.* In the case of truck drivers, sleeping away from home overnight may include sleeping in the truck.
[42] Roads and Traffic Authority of NSW at 4521.

67. For these purposes, 'permanent home' is the residential accommodation where the employee ordinarily lives when not temporarily absent for work and where they intend to return to live immediately after the work travel.

68. Indicators that residential accommodation is an employee's permanent home include the employee's ownership or possession of the premises and occupation of the premises by members of the employee's family.

Not relocating or living away from home

69. Expenditure on accommodation, meals and incidentals is only deductible where the employee is travelling in performing their work activities and not living away from home.

70. Relocating or moving to live away from home for work is preliminary to work. The costs of doing so are not incurred in performing an employee's work activities. Such expenses also have a private or domestic nature, often reflecting the employee's choice about where to live.[43]

71. Expenditure on accommodation, meals and incidentals by an employee who is living away from home is likewise of a private or domestic nature.[44]

72. Whether an employee is living away from home depends on the facts of each case. Relevant factors are:[45]

(a) the time spent working away from home

(b) whether the employee has a usual place of residence at a previous location

(c) the nature of the accommodation, and

(d) whether the employee is, or can be, accompanied by family or visited by family or friends.

Time spent working away from home

73. The longer an employee spends working away from home, the more likely that the employee is living away from home. Whether an employee is considered to be travelling in performing their duties or living away from home depends on the circumstances. The time period is just one factor.

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[43] *Lunney, Hancox, Compass Group.*
[44] *Toms; Charlton; Michael Barrett v. FC of T* [2000] 184; *John Waters v. FC of T* [2010] AATA 846.
[45] Note that Division 7 of the FBTAA contains other conditions which determine whether an allowance an employee receives is a 'living-away-from-home allowance benefit' for fringe benefits tax purposes –see Chapter 11 of *Fringe benefits tax - a guide for employers.*

74. 'Time spent working away from home' means the time the employee spends working away at a particular work location. Where an employee works at one location for an extended period, that period is not broken by short trips they take from that location.[46] However, where an employee works at different locations for extended periods, each period is considered separately.

Whether the employee has a usual place of residence at a previous location

75. Whether an employee is living away from their 'usual place of residence' usually involves a choice between two places of residence – where the employee is living at the time and the location of the work.

76. An employee is only living away from home where it is reasonable to conclude that they intend to return to their previous location after work at the new location ceases. An employee who has permanently left their previous location is not living away from home but has relocated.

77. Indicators that an employee has a usual place of residence at a previous location include the employee's ownership or possession of premises at that location and occupation of the premises by members of the employee's family.[47]

The nature of the accommodation

78. The nature of an employee's accommodation while working away from home is relevant, but does not determine whether the employee is travelling in performing their duties or living away from home.

79. An employee may live and make their home in any kind of accommodation, including huts and caravans.[48] If the accommodation has amenities common in a home, such as an equipped kitchen and laundry, this would support the view that the employee is living away from home.

80. Where an employee works away from home for a considerable period and, for that period, stays in settled accommodation (such as a house, unit or apartment), this would support the view that they are living away from home.

81. By contrast, the rudimentary nature of accommodation available to an employee may indicate that they are not living away from home, even where they work at a particular location over an

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[46] See Example 16 of this draft Ruling.
[47] Employees who temporarily work in a different country to their home may be regarded as living away from home, even if they do not retain residential premises in their home country - providing they intend to return to live in their home country.
[48] See example 18 of this draft Ruling.

extended period. For employees, such as fly-in fly-out workers, this may be the case where:

- the employees have no choice about where they stay
- living quarters are shared and regularly used by different employees who are on rotating shifts
- living facilities do not allow employees to self-cater and provide limited if any storage space
- employees spend minimal amounts of time at the accommodation due to the long work shifts
- employees have to leave the work location between rostered work periods, and
- family or friends cannot visit the site.

82. Such an employee will not be living away from home where, in addition to these factors, they are on fixed period contracts or the projects they are working on having a limited life.

Whether the employee is or can be accompanied by family or visited by family or friends

83. An employee working away from home for an extended period who is accompanied by their family is likely to have relocated, and is therefore not living away from home.

84. The transfer of family belongings to the new location or the employee's children attending school at the new location would support this conclusion. In this case, accommodation and living costs at the new location are of a private nature and are not deductible.

85. By contrast, an employee may be living away from home if family members accompany them for a short stay after which the family members return to live at the family's permanent home, while the employee continues to work on at the temporary location.

Apportionment

86. In some circumstances, accommodation costs have to be apportioned to reflect occupancy or use for private purposes. Expenses are not deductible to the extent they are of a private or domestic nature, or are incurred for objectives that are unrelated to producing the employee's assessable income, such as capital investment or income splitting.

87. Expenditure on accommodation, meals and incidentals is of a private or domestic nature to the extent that the property is used for private purposes, except where that use is merely incidental.

88. This includes where the employee or members of their family stay in the accommodation for recreational or other private purposes.

89. An employee may have purchased or leased residential property away from home (**additional property)** which they use while travelling for work.[49] Non-capital expenses incurred by the employee to finance, hold and maintain such a property are deductible to the extent that the expenses satisfy the factors in paragraph 54 of this draft Ruling.

90. Where expenses are disproportionate to what the employee would have paid for suitable commercial accommodation for the period of their travel, the employee's expenditure must be examined to determine the extent to which it has been incurred for objectives unrelated to producing the employee's assessable income.[50] To the extent that the expenses are incurred for such objectives, they are not deductible under section 8-1.[51]

Accommodation, meal and incidental expenses: expense categories

91. The examples in this draft Ruling show how these principles apply to two categories of accommodation, meal and incidental expenses:

- work-related accommodation, and
- relocation or 'living away from home' accommodation.

Work-related accommodation

92. **Work-related accommodation** involves accommodation, meals and incidental expenses which satisfy the conditions in paragraph 54 of this draft Ruling. The cost of their accommodation is deductible, except to the extent that any apportionment is required (see paragraphs 86-90 of this draft Ruling).

93. This category does not include cases where an employee is relocating or living away from home (see paragraphs 99-98 of this draft Ruling).

94. Examples in this category involve expenses for accommodation, meals and incidentals which are incurred by an employee when travelling in the course of performing their work activities. This includes situations involving special demands travel[52] or co-existing work locations travel.[53]

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[49] See paragraphs 56-57 of this draft ruling.
[50] *Robert G Nall Ltd v. Federal Commissioner of Taxation* (1937) 57 CLR 695; *Federal Commissioner of Taxation v. Phillips* (1978) 8 ATR 783; *Fletcher v. Federal Commissioner of Taxation* (1991) 173 CLR 1.
[51] The detailed basis for the Commissioner's view on additional property expenses is contained in paragraphs 328-336 of TR 1999/10 (updated by addendum on 15 December 2016).
[52] See Examples 4-5 and Examples 14-16 of this draft Ruling.
[53] See Examples 6-16 of this draft Ruling.

95. This category also includes cases where expenses are deductible in part and must be apportioned. These cases include:

- occupancy or use for a private purpose (see **Examples 7** to **8** of this draft Ruling), and
- additional property expenses (see **Example 13** of this draft Ruling).

Relocation or 'living away from home' accommodation

96. **Relocation or 'living away from home' accommodation** involves accommodation, meal and incidental expenses for employees who relocate for work or live away from home to work.

97. Expenses in this category are not deductible, even though moving to a new location or working away from home may be required by the work. This can be concluded without referring to specific terms of employment. The fact that an employer has required the employee to relocate or live away from home does not alter the private nature of the expenditure.

98. **Examples 16** and **18** of this draft Ruling involve employees who are living away from home and **Example 17** of this draft Ruling involves employees who have relocated and are living away from home.

Examples

Example 1 – travel between home and a regular work location

Ordinary home to work travel (non-deductible)

99. *Mischa is a public servant who works in the Geelong CBD. She lives 30 kilometres from the office and travels between home and work by train.*

100. *Mischa's salary recognises all aspects of her position, including the need for her to be 'on-call' to manage work problems out of ordinary work hours and to work extended hours when required.*

101. *Mischa frequently checks and responds to work emails at home. She may at times spend an hour or more working at home either before travelling into the office or after she returns home in the evening. While on the train travelling to or from work, Mischa sometimes responds to work emails using a mobile device provided by her employer, and responds to work phone calls and texts.*

102. *Mischa's travel between home and the office is not work travel even though she:*

- *completes work tasks at home and on the way to work*
- *is on-call when travelling between home and the office, and*

- *receives a salary that recognises the need for her to perform work out of ordinary working hours.*

103. *The travel is not undertaken by Mischa in performing her duties and her transport expenses are not deductible because:*

- *Mischa is not required to start work at home and to travel to continue work at the office: she has chosen to start work at home, rather than at her regular work location, and*
- *the trip between Mischa's home and the office is a normal daily journey, reflecting her private choice about where to live (Return to paragraph 36 of this draft Ruling).*

Example 2 – travel between home and an alternative but regular work location

Ordinary home to work travel (non-deductible)

104. *Raj is an accountant who lives on the Gold Coast and is employed by an accounting practice located in Southport (15 minutes' travel from his home).*

105. *Raj's employer requires him to temporarily work at their Brisbane city office (1 hour's travel from home) each Wednesday to Friday while another employee is on three months' long service leave.*

106. *Under the temporary working arrangement, the employer requires Raj to make his own way to the city office and start and end work at the times he usually starts and ends work at Southport. Raj is paid a travel allowance of $300 per week for the three months to help cover the extra cost of his travel and for inconvenience.*

107. *Raj is not on paid duty, and is not subject to the employer's direction and control, for the period he travels between the Gold Coast and Brisbane. The travel between the Gold Coast and Brisbane does not require Raj to stay away from home overnight.*

108. *Raj's transport expenses travelling between home and the employer's Brisbane city office are home to work journeys to a regular but temporary work location. The travel is not an activity he is paid to do and it is preliminary to his work. The fact that Raj receives an allowance to cover the extra costs and compensate him for the extra travel does not make the travel deductible.*

109. *Raj must declare the allowance as income and cannot claim a deduction for his transport expenses between his Gold Coast home and Brisbane (Return to paragraph 38 of this draft Ruling).*

Example 3 – travel between home and remote location – fly-in fly-out employee

Ordinary home to work travel (non-deductible)

Work-related accommodation (deductible)

110. *Bill lives in Perth and works for an engineering firm that is overseeing construction at a mine site on a fly-in fly-out basis. The work assignment is for 12 months and Bill's roster is 20 days on, 7 days off.*

111. *Before the start of his roster, Bill travels at his own cost to Perth airport. Bill's employer pays for a flight from Perth airport to the airport nearest to the project location and a bus from that local airport to accommodation near the worksite.*

112. *Bill's rostered period starts when he arrives at the work site. Bill's rostered period ends when he leaves the worksite on day 20. Bill is then transported by bus to the local airport and from there is provided a return flight to Perth. Bill is paid travel time for the period he is travelling but is not subject to his employer's direction, control and code of conduct when he undertakes the travel.*

113. *Bill's travel between Perth airport and the project location, including between the accommodation near the project location and the worksite just before the start and just after the end of each of his rostered shifts is not deductible. The travel:*

- *is to and from work, and*
- *is not undertaken in performing his duties.*

114. *Therefore, these transport costs would not be 'otherwise deductible' to Bill's employer.*[54]

115. *Bill's transport costs between his home and Perth airport are similarly non-deductible private travel.*

116. *Bill and other employees are required to stay at accommodation provided by the employer near the mine site. The accommodation is rudimentary in nature and consists of demountable buildings. Single bedroom units are shared between 2 employees, a day shift employee and a night shift employee, with shared laundry, bathroom and recreational facilities. Meals and incidentals are provided by the employer at a canteen adjacent to a common dining area. There is no kitchen for employees to self-cater.*

117. *Employees work on a rotating roster and cannot stay at the work location when their work roster ends because their living quarters are required for employees who are arriving to replace them on the work site. Employees are not permitted to have family or friends stay with them or visit them at the site.*

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[54] Although the employer could not rely on the 'otherwise deductible rule' under the FBTAA, an FBT exemption may be available if the worksite is in a remote area.

118. *Bill has an apartment in Perth where he lives when not at the mine site.*

119. *Bill:*

- *is required by his employer to stay close to the remote work site*
- *is working away from home for relatively short periods of time (20 days)*
- *has no choice about the location or kind of accommodation he stays in at or near the work site during his roster*
- *frequently returns to his permanent residence between rostered shifts*
- *is not permitted to have family or friends stay with him or visit him at the accommodation*
- *is required to leave the accommodation at the end of his rostered shifts, and*
- *is not living away from home at the mine site.*

120. *Therefore, Bill's accommodation, meal and incidental expenses are 'otherwise deductible' to his employer under the FBTAA (Return to paragraph 38, 42 or 58 of this draft Ruling).*

Example 4 – fly-in fly-out employee – travel in the performance of work activities from point of hire

Special demands travel (deductible)

Work-related accommodation (deductible)

121. *Brian lives in Mandurah and works at a mine site on a fly-in fly-out basis. Brian's roster is 20 days on, 7 days off. On the day Brian's work roster starts, he travels at his own cost to Perth airport.*

122. *Brian is rostered on duty from the time he arrives at Perth airport and from this point is subject to his employer's direction and control. Brian is obliged to respond as required to any work calls or texts he receives while in transit except while he is in the air. His employer provides a charter flight from Perth to the airport nearest to the project location and a bus from that local airport to accommodation near the worksite.*

123. *A similar arrangement applies in reverse at the end of Brian's roster. On the day Brian's roster ends, his employer provides bus transportation between the worksite to the local airport and then provides a charter flight to Perth where Brian's roster ends. Brian makes his own way home from Perth airport.*

124. *Brian is paid on a per day basis for each of the 20 days in his roster.*

125. *Brian's employer has determined that the demands of the work reasonably require that Brian is paid for the period he spends travelling between Perth airport and the project location. This includes payment for the time he travels between the accommodation near the project location and the worksite at the beginning and end of each of his rostered shifts. Brian is subject to the direction and control of his employer for the period of this travel.*

126. *The transport expenses relating to Brian's journey beween Perth airport and the project location are 'otherwise deductible' to Brian's employer under the FBTAA. The travel is undertaken by Brian in performing his work activities, and reflects the special demands associated with working at a remote location.*

127. *Brian's transport costs between his home and Perth airport are non-deductible 'home to work' travel.*

128. *The accommodation provided to Brian by his employer near the mine site is the same as the accommodation provided to Bill in the previous example (Example 3) and the same principles apply in the circumstances. Therefore, Brian's accommodation, meal and incidental expenses are 'otherwise deductible' to his employer under the FBTAA.*

129. *If Brian chose not to return to Perth between his rostered shifts but to go elsewhere for his break, the cost of his accommodation, meal and incidental expenses for this period would be of a private nature and would not be deductible (Return to paragraph 40, 42 or 58 of this draft Ruling).*

Example 5 – working at new locations every few weeks and staying away from home

Special demands travel (deductible)

Work-related accommodation (deductible)

130. *Mike is an employee foreman specialising in road construction, particularly intersection construction. He works for a road construction firm, which has an office near Mike's home in Melbourne. Mike does not have a set desk as he is rarely in the office, only attending meetings one or two times per month.*

131. *Mike is mainly based and required 'on-site', which can be anywhere throughout Victoria. He generally works Monday to Friday, and is paid separate weekend rates if required to work on weekends.*

132. *Work equipment required for the projects is carried on trucks driven by other employees.*

133. *Projects can be between 50 to 200 kilometres away from Mike's home or the firm's office, and can last for periods ranging from one to eight weeks. Where a project is more than 100 kilometres from home, Mike is paid a daily 'travel allowance' by his employer for the number of days of the project to help cover the cost of his accommodation and meals.*

134. *Apart from being paid for weekend work and receiving the daily 'travel allowance', Mike's salary package recognises all aspects of his position, including the requirement for him to travel between Melbourne and various project sites at the start and end of each project. His employer requires Mike to respond to any work calls received while in transit between Melbourne and the project sites.*

135. *It is up to Mike to decide if he stays away from home overnight when at project locations. If he does stay away, he arranges his own accommodation and meals. Typically, where the project is more than 100 kilometres from home, Mike usually chooses to stay in short term accommodation such as motels, bed and breakfasts, or a cabin or caravan at a caravan park, depending on what is available in the area in which his 'road construction team' is working.*

136. *Mike always stays in one accommodation location for each project and commutes between that accommodation and the project site.*

137. *Mike does not travel from one project to the next or from one work site to the next. Mike will usually travel from home to a particular project site and then return home upon completion of that project.*

138. *On occasions Mike chooses to travel back to Melbourne from a project location during the week or on weekends, rather than staying away from home overnight. On these occasions, he returns to the project location in time to recommence work at the required time. He undertakes this travel at his own cost.*

139. *Mike's transport expenses for trips between Melbourne and the project locations at the start and end of each project and are deductible. Mike undertakes this travel in the performance of his work activities, which reflect special demands associated with ongoing travel between various work locations.*

140. *Mike's accommodation, meals and incidentals for the periods he spends away from Melbourne on projects are deductible because the travel is required by his work and he is not living away from home.*

141. *The cost of travel between project locations and Melbourne during the week and on weekends is not deductible. It is not undertaken in performing Mike's duties, and occurs by choice for personal reasons.*

142. *Further, Mike cannot deduct accommodation and meal expenses for periods when he has returned home, including for periods when Mike receives a travel allowance to cover the costs of working away from home and he chooses to travel home. These are private expenses (Return to paragraph 40 or 58 of this draft Ruling).*

Example 6 – day trip to alternative work location

Co-existing work locations travel (deductible)

143. *Duy works for a company in Rockhampton where he also lives. The company requires Duy to attend a day meeting in Brisbane each fortnight.*

144. *The company pays for Duy to fly from Rockhampton to Brisbane on an early morning flight on the day of the meeting and for him to return on a late afternoon flight on the same day.*

145. *Duy receives an annual salary which recognises all aspects of his position, including the requirement for him to travel to fulfil his duties. He is expected to respond as required to any work calls or texts he receives while in travelling between Rockhampton and Brisbane except while he is in the air.*

146. *Duy's travel costs are 'otherwise deductible' under the FBTAA. His travel is attributable to Duy having co-existing work locations and is part of his work activities (Return to paragraph 46 of this draft Ruling).*

Example 7 – short-term travel to a temporary alternative work location – private component – apportionment

Co-existing work locations travel (deductible)

Work-related accommodation (partially deductible)

147. *Thérèse is an employee health professional working in Albury. Thérèse is required by her employer to attend a five day course on the Gold Coast to obtain specialist skills in her profession.*

148. *All lunches are included in the course fee as well as an official dinner one evening with a key note speaker.*

149. *Thérèse's husband will join her on the Gold Coast for the period of the course and they will stay for an extra two days to have some leisure time together. While Thérèse is at the course, her husband will play golf and go to the beach. The room Thérèse has booked at the course venue costs $1,680 for the seven nights.*

150. *Her employer pays Thérèse's her usual salary for the five days she attends the course.*

151. *Thérèse's choice of room for the five nights of the course is not influenced by her husband accompanying her and the cost is not affected by him accompanying her.*

152. *Thérèse can deduct the cost of her journey to the Gold Coast.*[55] *The travel is attributable to Thérèse having co-existing work locations.*

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[55] If Thérèse receives an allowance from her employer, this is assessable income that she declares on her tax return. If Thérèse's costs are reimbursed by her

153. *Thérèse's deduction for her airline costs does not have to be apportioned. The object of her travel is to attend the course, the leisure component is merely incidental, and the cost of the flights is not affected by her having an extra two days on the Gold Coast.*

154. *No deduction is available for the cost of Thérèse's husband's flights.*

155. *Thérèse's accommodation and incidental costs for the first five days of her stay are deductible.*[56] *During this period, she was required to work away from home and stay away overnight because of travel undertaken in the course of performing her work activities.*

156. *Thérèse can claim the full cost of the room for the five days because her choice of room and the cost of the room were not affected by her husband accompanying her. The cost of the accommodation for the two days after Thérèse's course is a private expense. Therefore, Thérèse can claim a deduction of $1,200 for the accommodation – that is 5/7 days or 74.1% of the total cost. Thérèse can also claim the cost of meals and incidentals she incurred for herself, and were not included as part of the course fee, for the five days of the course* [57] *Return to paragraph 46, 58 or 87 of this draft Ruling).*

Example 8 – short-term travel to a temporary alternative work location (4 days) – private component – apportionment

Co-existing work locations travel (deductible)

Work-related accommodation (partially deductible)

157. *Aruni is a government employee who lives and works in Darwin. Aruni is required by his employer to attend a training course in Brisbane for four days – from Tuesday to Friday. Aruni's employer will meet the cost of Aruni's airfares and provide him with a travel allowance to cover the cost of his accommodation and meals in Brisbane.*

158. *Aruni has an elderly relative living in a nursing home in Brisbane who he rarely sees. Aruni requests that his employer agree for him to stay in Brisbane until Sunday so he can see his relative. Aruni's employer agrees and clarifies with Aruni that he will not be eligible for a travel allowance for Saturday or Sunday.*

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employer, the costs would not be deductible and the reimbursement is not assessable income.

[56] See footnote above regarding the tax treatment of any allowance or reimbursement received by Thérèse.

[57] Expenses an employee incurs to attend a course or seminar may also be deductible under section 8-1 if attendance is not required by their employer. The expense is deductible if the course or seminar will lead to, or is likely to lead to, an increase in the employee's assessable income from their current employment activities: refer TR 98/9.

159. *The cost of Aruni's travel is 'otherwise deductible' under the FBTAA. It is attributable to Aruni having co-existing work locations and is part of his work activities.*

160. *The work-related nature of the transport costs is not affected by Aruni's return flight to Darwin being scheduled to accommodate a personal arrangement or choice. The cost of this flight is 'otherwise deductible' under the FBTAA as the private arrangement is incidental to the work travel and was able to be accommodated as part of that travel at no additional cost to the employer.*

161. *Aruni's accommodation, meal and incidental costs are deductible for the period he was working. During that period, he was required to work away from home and stay away overnight because of travel undertaken in the course of performing his work activities. He declares his travel allowance as income in his tax return and claims a deduction for these expenses.*

162. *Aruni's accommodation, meal and incidental expenses from Friday night until Sunday are non-deductible private expenses (Return to paragraph 46, 58 or 87 of this draft Ruling).*

Example 9 – longer-term travel to temporary work location – training course (6 weeks)

Co-existing work locations travel (deductible)

Work-related accommodation (deductible)

163. *A group of new graduate employees have been hired by an employer. As part of their induction they are required to attend an intensive six week training course at a location in Australia away from their home cities.*

164. *Their employer will provide flights between their home cities and the course location. While they are travelling, the employees will be paid and will be under the direction of their employer and subject to the employer's code of conduct.*

165. *The employer will organise accommodation for the employees at the training course location as well as providing all meals.*

166. *At the end of the course the graduates will return to their respective home cities to work at the employer's business premises.*

167. *The cost of the graduates' travel is otherwise deductible to their employer under the FBTAA. It is attributable to the graduates having co-existing work locations and is part of their work activities.*

168. *Likewise, accommodation and meal expenses for the period of the training course are 'otherwise deductible' because the travel is required by the graduates' work and they are not living away from home (Return to paragraph 46 or 58 of this draft Ruling).*

Example 10 – ongoing travel to an alternative work location (car)

Co-existing work locations travel (deductible)

Work-related accommodation (deductible)

169. *Brad works for one employer who has two offices, one in the country close to Brad's home where he lives with his family and the other in the city approximately 200 kilometres away.*

170. *Although Brad usually works in the country office, Brad's employer requires him to work in the city office two days per week. Brad arranges with his employer to work in the country office on Monday, Tuesday and Wednesday, and in the city office on Thursday and Friday.*

171. *Brad's salary package recognises all aspects of his position, including the requirement for him to travel regularly between his home and the city office. He will be subject to the direction and control of his employer for the period of the travel. In this regard, Brad will monitor any work calls or texts he may receive while driving between these locations, and will respond to them if necessary during breaks in the journey.*

172. *Brad stays in a hotel on Thursday nights when he works in the city office to avoid having to travel 200 kilometres back home after work.*

173. *Brad travels to the city office directly from home on Thursday mornings, using his own car. However, on occasions, Brad travels to the country office first to do some work before travelling on to the city office late on Thursday morning.*

174. *The cost of Brad's travel is deductible. The travel is attributable to Brad having co-existing work locations and is part of his work activities.*

175. *Brad's accommodation, meal and incidental costs are deductible.*[58] *He is required to work away from home and stay away overnight because of travel undertaken in the course of performing his work activities (Return to paragraph 46 or 58 of this draft Ruling).*

Example 11 – ongoing travel to an alternative work location – lease of property by employer for use at alternative work location

Co-existing work locations travel (deductible)

Work-related accommodation (deductible)

176. *Sue lives with her family in Sydney. Sue takes on a leadership role with a company that has offices all around Australia. In this role, Sue is required to attend the Sydney office 2-3 days per week and the*

[58] If Brad receives an allowance from his employer, this is assessable income that he declares on her tax return. If Brad's costs are reimbursed by his employer, the costs would not be deductible and the reimbursement is not assessable income.

Melbourne office 2-3 days per week. Sue is required to travel to other offices on an ad hoc basis, usually for only one day. This arrangement is regular and ongoing. Sue's employer pays the airfares.

177. *Sue receives an annual salary which recognises all aspects of her position, including the requirement for her to travel between the company's offices to fulfil her duties.*

178. *Sue's employer leases an apartment in Melbourne in which Sue stays during the periods she is working there. Sue does not use the apartment for private purposes. Neither does her family visit her in Melbourne and stay in the apartment.*

179. *The cost of Sue's travel is deductible. The travel is attributable to Sue having co-existing work locations and is part of her work activities.*

180. *Sue's accommodation costs are 'otherwise deductible' to her employer under the FBTAA, as Sue is required to work away from home and stay away overnight in performing her work activites and she is not living away from home.*

181. *Likewise, Sue can deduct her meal and incidental costs*[59] *(Return to paragraph 46 or 58 of this draft Ruling).*

Example 12 – ongoing travel to an alternative work location – additional property – employee rents accommodation from spouse

Co-existing work locations travel (deductible)

Work-related accommodation (deductible)

182. *Anwar is a project manager for a large company. He lives with his wife in their apartment in Adelaide, near the company's headquarters where he works.*

183. *Anwar's employer requires him to work onsite at a new project in Mt Gambier for 9 months. Anwar is required to work on a four week rotation – three weeks at Mt Gambier and one week in Adelaide.*

184. *Anwar receives a travel allowance from his employer for periods when he works away in Mt Gambier.*

185. *Due to the frequency of his work at Mt Gambier and his preference to stay in home-like accommodation, rather than a hotel or motel, Anwar discusses with his wife the idea of purchasing a townhouse.*

186. *Anwar's wife subsequently purchases a townhouse at Mt Gambier as an investment. Anwar rents the townhouse from her for*

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[59] If Sue receives an allowance from her employer, this is assessable income that she declares on her tax return. If Sue's costs are reimbursed by her employer, the costs would not be deductible and the reimbursement is not assessable income.

the 9 months when he is working in Mt Gambier and pays $280 per week in rent, which is the commercial rate.

187. *During the periods that Anwar is not staying there, the townhouse is left vacant – it is not rented out. Anwar and his wife do not use the townhouse for private purposes during this period.*

188. *Anwar stays in the townhouse in Mt Gambier for 170 nights over the 9 month period of the work project. He pays a total of $10,920 in rent to his wife.*

189. *Anwar decides to use the ATO's reasonable travel expense rates[60] to estimate that the cost of him staying in suitable commercial accommodation for the periods he works in Mt Gambier would be $25,840 ($152 per night x 170 nights).*

190. *The cost of Anwar's travel is deductible. It is attributable to Anwar having co-existing work locations and is part of his work activities.*

191. *Anwar's meals and incidental costs are deductible, as he is required to work away from home and stay away overnight because of travel undertaken in the course of performing his work activities, and he is not living away from home.*

192. *Anwar's accommodation costs on rent for the 9 months are not disproportionate to the cost of suitable commercial accommodation for the periods he is required to stay in Mt Gambier for work. Therefore, the rent he pays to his wife is also deductible as a travel expense.*

193. *As Anwar receives an allowance to cover his travel expenses, this is assessable income (Return to paragraph 46 or 58 of this draft Ruling).*

Example 13 – ongoing travel to alternative work location – additional property that needs to be apportioned

Co-existing work locations travel (deductible)

Work-related accommodation (partially deductible)

194. *Narelle is Chief Executive Officer of a tourism company. She lives with her family on the north coast of New South Wales (NSW).*

195. *Due to her employment responsibilities both where she lives and in Sydney, Narelle frequently travels between the two locations, and to other locations, in performing her duties. This includes attending conferences and meeting with senior company staff.*

196. *During the income year, Narelle works a total of 20 weeks in Sydney (usually for 12 nights at a time), 24 weeks on the NSW north coast and 8 weeks elsewhere or on leave. Over the course of the*

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[60] See Table 2 rate (which applies to individuals on salaries $117,451 to $209,000) in Tax Determination TD 2016/13 *Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2016-17 income year?*

income year, Narelle stays in Sydney for 120 nights for work. Narelle's family remains at the family home when Narelle is away.

197. *When staying in Sydney on official business, Narelle receives a travelling allowance from her employer to cover the costs of her accommodation, meals and incidental expenses.*

198. *Due to her frequent trips, the convenience of staying at the same place each time she is in Sydney and the fact that Narelle anticipates the work travel arrangement to continue indefinitely, Narelle decides to purchase an apartment rather than stay in short-term commercial accommodation.*

199. *Narelle does not use the apartment for private purposes and her family does not stay there during the year.*

200. *The cost of Narelle's travel is deductible. The travel is attributable to Narelle having co-existing work locations and is part of her work activities.*

201. *Narelle's meals and incidental costs are deductible, as she is required to work away from home and stay away overnight in the course of performing her work activities.*

202. *Because Narelle only uses the Sydney apartment for 20 weeks and there is a continuous period of 10 weeks during the year that there is no work for her Sydney, she rents out the apartment on a short-term commercial basis for the 10 week period.*

203. *Narelle's costs of financing, holding and maintaining the property are deductible if they are not disproportionate to the cost of suitable commercial accommodation for the periods she is working there. The costs for the period Narelle rents out the apartment are also deductible.*

204. *Narelle's costs of financing, holding and maintaining the apartment in Sydney for the income year are $75,000. This consists of interest on the loan to buy the property, council rates, land tax, body corporate fees and charges (including property insurance but not special purpose sinking fund fees), maintenance, and depreciation of household appliances, equipment and furniture.*

205. *During the 10 weeks that Narelle rents out the apartment, she receives $12,000 in rent. She can claim deductions for the proportion of her costs to rent out the apartment (10/52 weeks x $75,000 = $14,423) for that part of the year.*

206. *Narelle estimates that the cost of her staying in suitable commercial accommodation for the periods she works in Sydney would be $29,520 ($246 per night x 120 nights) using the ATO's reasonable travel expense rates.*[61]

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[61] See Table 2 rate (which applies to individuals on salaries $117,451 to $209,000) in TD 2016/13.

207. *Narelle's costs of the Sydney apartment for the whole of the income year, after deducting costs to rent it out for 10 weeks, are $60,577 ($75,000-$14,423).*

208. *Narelle's costs of the Sydney apartment for the income year, not including the periods it is used to derive rent, ($60,577) are disproportionate to the cost of suitable commercial accommodation for the periods she was working in Sydney ($29,520).*

209. *The disproportion is explained by the fact that the costs were partly unrelated to the earning of her assessable income – that is, property investment.*

210. *In these circumstances it is reasonable to apportion Narelle's costs by limiting her deduction to the costs of suitable commercial accommodation for the periods she is required to work in Sydney ($29,520). The $31,017 costs that are not deductible (that is, $60,577 – $29,520) are of a capital nature.*[62]

211. *Narelle's travel allowance is included in her assessable income (Return to paragraph 46, 58 or 87 of this draft Ruling).*

Example 14 – short-term travel to a temporary, alternative work location (3 weeks)

Special demands travel (deductible)

Co-existing work locations travel (deductible)

Work-related accommodation (deductible)

212. *Aisha lives in Melbourne and is employed by a company there. The company requires Aisha to attend its Ballarat office to train new staff for a three week period.*

213. *Due to the travel demands of Aisha working away from home temporarily in Ballarat, the company has advised Aisha she will be on paid duty at her normal hourly rate from her regular start time (9.00am) to travel from her home in Melbourne to Ballarat on each of the three Mondays. As Aisha will be on paid duty, she will be subject to the direction and control of the company for the period of the travel. In this regard, Aisha will be obliged to monitor any work calls or texts she may receive while driving between Melbourne and Ballarat, and to respond to them if necessary during breaks in the journey.*

214. *Aisha will commence training at 10.30am on Mondays and 9.00am on the other weekdays. Aisha will stay at a motel in Ballarat on the Tuesday, Wednesday and Thursday nights over the three week period of the training and receive an allowance from her employer to cover her costs.*

215. *The company has similarly advised Aisha she will be on paid duty at her normal hourly rate for the period she travels home to*

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[62] The non-deductible costs are included in the cost base of the property for capital gains tax purposes: subsections 110-25(4) and 110-45(1B) of the ITAA 1997.

Melbourne on Friday after she completes each week of training, and will be subject to the direction, control and code of conduct of the company, for the period of this travel.

216. *Aisha drives her own car between Melbourne and Ballarat on the Mondays and Fridays when she is working away from home.*

217. *The cost of Aisha's travel between Melbourne and Ballarat is deductible. The travel is between co-existing work locations and her employer has determined that the demands of Aisha having to work away from home reasonably require that the travel is part of her work.*

218. *Aisha's accommodation expenses are also deductible. She is required to stay away overnight because of travel undertaken in the course of performing her work activities and she is not living away from home. Aisha's allowance is included in her assessable income (Return to paragraph 40, 47, 58 of this draft Ruling).*

Example 15 – working temporarily at a different location for an extended period (2 months)

Special demands travel (deductible)

Co-existing work locations travel (deductible)

Work-related accommodation (deductible)

219. *Chris is an IT consultant working for a large consultancy firm based in Sydney and is paid an annual salary.*

220. *A large client based in Melbourne is about to undertake a major upgrade of its computer system, and Chris is required to travel to Melbourne for two months to oversee the system upgrade.*

221. *The following arrangements have been agreed to between Chris and his employer for the two-month period that Chris will be in Melbourne:*

- *Chris's employer will arrange and pay for an airfare from Sydney to Melbourne at the start of his two month work assignment and from Melbourne to Sydney at the end*
- *Chris's employer has decided that the specific demands of his work, including his remoteness from Sydney and his family, reasonably require that the airline travel between Melbourne and Sydney each week will be arranged and paid for by the employer. Chris will be subject to the direction and control of the employer during the period of the travel*
- *Chris will receive a daily travel allowance from his employer to cover his costs of accommodation, meal and incidental expenses for the periods he is working in Melbourne (Chris will not receive the allowance for weekends as he will be at home in Sydney)*

- *Chris will rent a furnished apartment in Melbourne CBD for the period, and*
- *Chris's family will remain in Sydney in the family home.*

222. *The costs of Chris's flights between Sydney and Melbourne are 'otherwise deductible' to his employer under the FBTAA. The flights are attributable to Chris having co-existing work locations and his employer has determined that the special demands associated with him working away from home for an extended period reasonably require that the travel is part of his work.*

223. *Expenses Chris incurs for accommodation, meals and incidentals for the periods he stays in Melbourne are deductible, as Chris is required to work away from home and stay overnight because of travel undertaken in the course of performing his work activities, and he is not living away from home. Chris declares his travel allowance as income in his tax return and claims a deduction for these expenses (Return to paragraph 40, 47 or 58 of this draft Ruling).*

Example 16 – working at a different location for an extended period (4 months)

Special demands travel (deductible)

Co-existing work locations travel (deductible)

Living away from home accommodation (non-deductible)

224. *Yumi works as a senior executive for an employer based in Brisbane and is paid a salary that recognises all aspects of her position, including the requirement for her to travel to fulfil her duties.*

225. *Yumi's employer requires her to travel to Townsville to set-up a new office for the employer. Yumi will be in Townsville for four months after which she will return to her usual employment in the Brisbane office. During this period, Yumi will have occasional, one or two day business trips to Brisbane and Sydney.*

226. *The following arrangements have been agreed to between Yumi and her employer for the period that Yumi is in Townsville:*

- *Yumi's employer will fund her airfare to Townsville at the start of the four month work assignment and her return flight*
- *Yumi will live in a two-bedroom apartment in Townsville which has been leased by her employer. The apartment has a fully equipped kitchen, laundry, and other amenities associated with a home*
- *Yumi's family will remain in the family home in Brisbane during the period Yumi works in Townsville, and*

- *Yumi's employer agrees that, because of the specific demands of her work in Townsville, including the length of her stay there and her remoteness from Brisbane and her family, airline travel between Townsville and Brisbane each week will be arranged and paid for by the employer. Under the arrangements, Yumi will be subject to the direction of the employer during the period when she undertakes this travel.*

227. *The cost of Yumi's flights between Townsville and Brisbane are 'otherwise deductible' to her employer under the FBTAA. The travel is attributable to Yumi having co-existing work locations and her employer has determined that the special demands associated with her working away from home for an extended period reasonably require that the travel is part of her work.*

228. *Yumi will be living away from home for the four month period of the work assignment because, even though she is required to stay in Townsville, she:*

- *will be staying away from her permanent home at one work location for an extended period*
- *will be staying in home-like accommodation when she is in Townsville, and*
- *will not be travelling regularly for work.*

229. *Therefore the meal and incidental expenses Yumi will incur in Townsville will not be deductible.*

230. *Any allowance Yumi receives from her employer to cover the costs of her meal and incidental expenses while she is in Townsville will be a 'living-away-from-home allowance' which is exempt income.*

231. *Alternatively, assume that Yumi's employer decided that her weekly flights between Townsville and Brisbane during the period Yumi works away from home will not be part of her work and will be undertaken in Yumi's own time. In this case, the cost of these trips travelling between Townsville and Brisbane each week would not be deductible (or 'otherwise deductible' to the employer), since the travel would not be undertaken in the performance of Yumi's work activities. However, the cost of flights between Brisbane and Townsville at the start and end of the work assignment are attributable to co-existing work locations and would remain 'otherwise deductible' to the employer under the FBTAA (Return to paragraphs 40, 47 or 90 of this draft Ruling).*

Example 17 – Secondment to Australia for between 90 and 120 day project work – accommodation, meal and incidental expenses

Relocation travel (non-deductible)

Living away from home accommodation (non-deductible)

232. *The employer is an Australian resident company. It is part of a global audit/consulting business. The nature of work is project based and the business model matches the right skills to the project to appropriately serve their clients.*

233. *A project in Australia requires that the employer sources employees with the specialist skills from one of their overseas affiliates on a temporary basis.*

234. *Overseas based employees selected by the employer will relocate to Australia to work for a period of time to complete their part of the project at one location under the direction and control of the project director. The amount of time that the employees will work in Australia is pre-determined as a part of a project plan.*

235. *The employees:*

- *continue to be employees of their home country employer whilst seconded to the taxpayer*
- *are present in Australia for a period of between 90 days and 120 days*
- *are required to work for the entire period they are in Australia (other than weekends and public holidays) in one location, with occasional, brief, overnight trips to other Australian locations*
- *do not bring their family to Australia*
- *retain a permanent home outside of Australia, and*
- *stay in apartment-style accommodation arranged by the employer while in Australia in accordance with its temporary accommodation guidelines.*

236. *Accommodation costs in Australia are either met by the employer or paid by the employee after which a reimbursement is made in full by the employer for the actual expenditure.*

237. *While the employee remains formally employed and paid by the home country employer, the employer bears the cost and pays the home employer an amount equal to the salaries, home country social security costs and other employment benefits as well as meeting additional costs of the project such as visa costs, travel and accommodation.*

238. *The employees are from various locations overseas and are not returning permanently to Australia.*

239. *The employer provides return flights to the employees between their place of origin and Australia at the start and end of their secondment.*

240. *The expenses incurred by the employer in flying the employees between their place of origin and Australia are relocation expenses and would not be 'otherwise deductible' to the employer under the FBTAA.*[63]

241. *While they work in Australia:*

- *the employees work and stay in one location (they are not regularly travelling from place to place and their work is not of a transient nature)*
- *the period they stay away from home at the location is considerable (90-120 days), and*
- *their temporary accommodation is not their permanent home.*

242. *In the circumstances, the employees are living away from home and their accommodation, meal and incidental expenses while in Australia are of a private or domestic nature.*

243. *The following factors do not carry sufficient weight for the expenses to be characterised as deductible:*

- *the travel is undertaken by the employees in performing their employment duties*
- *the employees have a permanent home overseas*
- *they were not accompanied by family, and*
- *they do not have a choice, or need to make a choice, about where they live (because their employer funds the travel and the temporary accommodation).*

244. *If, rather than the employer providing accommodation or reimbursing the employees, the employees receive an allowance to cover accommodation (and meals), this does not affect the character of the expenditure. The allowance, however, would be a living-away-from-home allowance (which is considered under the FBTAA) and is exempt income of the employees.It is therefore not included by them as income in their tax returns.*

245. *FBT concessions potentially apply to the provision of living-away-from-home allowances, or the provision of accommodation or reimbursement of accommodation expenses, where employees are living away from home. However, there would be no concession on the provision of benefits for accommodation in the circumstances of this example because the employees are not maintaining a normal residence in Australia (Return to paragraph 48 or 98 of this draft Ruling).*

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[63] Note: an FBT exemption applies so that the employer would not be subject to FBT on the provision of this travel: section 58F of the FBTAA.

Example 18 – Rudimentary accommodation

Living away from home accommodation (non-deductible)

246. *Giuseppe works as a train driver for a large company that provides rail and freight services.*

247. *He lives with his family in Newcastle which is also his permanent work base.*

248. *From time to time the company requires employees to be based temporarily at different locations around the State to operate its services. The company advises Giuseppe that he has to work from Narrabri for three months after which he will have to work from Coffs Harbour for three months.*

249. *While Giuseppe is based at Narrabri and Coffs Harbour he works 8-10 hour shifts. His work journeys involve Giuseppe driving a train from the base location for 3-4 hours, having a break and then driving another train back to the base location. Occasionally, the length of the work journey or the time of his work roster require Giuseppe to stay away from the base location overnight.*

250. *For the periods Giuseppe works away from his permanent work base in Newcastle, he receives a daily allowance to cover the costs of his accommodation and meals.*

251. *Giuseppe rents a caravan at Narrabri and Coffs Harbour for the periods he stays there. Each caravan park has a block which provides toilet, bathroom and laundry facilities which are shared by park occupants. Giuseppe's caravan has a bed, a small dining table, a small sink, and basic cooking facilities and utensils.*

252. *Any trips Giuseppe takes from Narrabri or Coffs Harbour to Newcastle to see his family are taken at his own cost between his rostered work shifts.*

253. *When Giuseppe works from Narrabri and Coffs Harbour:*

- *he stays away from his permanent home at one work location for an extended period (the return trips he takes by choice in his own time and at his own cost are not taken into account)*
- *his family does not accompany him, and*
- *he has a permanent home elsewhere.*

254. *Giuseppe is living away from home for each of his three month work placements. Therefore, his accommodation and meal expenses in Narrabri and Coffs Harbour are not deductible.*

255. *The allowance Giuseppe receives from his employer to cover the costs of his accommodation and meals while in Narrabri and Coffs Harbour is a 'living-away-from-home allowance' which is exempt income and is therefore not included by him as income in his return, and he cannot claim a deduction for his accommodation and*

meal expenses in Narrabri and Coffs Harbour (Return to paragraph 98 of this draft Ruling).

Date of effect

256. When the final Ruling is issued, it is proposed to apply both before and after its date of issue. However, the Ruling will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation
28 June 2017

Appendix 1 – Your comments

257. You are invited to comment on this draft Ruling, including the proposed date of effect. Please forward your comments to the contact officer by the due date.

258. A compendium of comments is prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments, and
- be published on the ATO website at www.ato.gov.au.

Please advise if you do not want your comments included in the edited version of the compendium.

Due date: **11 August 2017**

Contact officer details have been removed following publication of the final ruling.

Appendix 2 – detailed contents list

259. The following is a detailed contents list for this ruling:

	Paragraph
Summary – what this Ruling is about	**1**
Other rulings	8
Previous rulings	**10**
Ruling	**12**
Transport expenses: general principles	**19**
Required to travel	23
Paid to undertake travel	26
Direction and control	30
Contrivance	32
Transport expenses: expense categories	**34**
Ordinary home to work travel	35
Special demands travel	39
Co-existing work locations travel	43
Relocation travel	48
Accommodation, meal and incidental expenses: general principles	**50**
Required to work away from home	59
Required to sleep away from home	61
Permanent home elsewhere	65
Not relocating or living away from home	69
Time spent working away from home	73
Whether the employee has a usual place of residence at a previous location	75
The nature of the accommodation	78
Whether the employee is or can be accompanied by family or visited by family or friends	83
Apportionment	86
Accommodation, meal and incidental expenses: expense categories	91
Work-related accommodation	92
Relocation or 'living away from home' accommodation	96
Examples	99
Example 1 – travel between home and a regular work location	99

Ordinary home to work travel (non-deductible) 99
Example 2 – travel between home and an alternative but regular work location 104
Ordinary home to work travel (non-deductible) 104
Example 3 –travel between home and remote location – fly-in fly-out employee 110
Ordinary home to work travel (non-deductible) 110
Work-related accommodation (deductible) 110
Example 4 – fly-in fly-out employee – travel in the performance of work activities from point of hire 121
Special demands travel (deductible) 121
Work-related accommodation (deductible) 121
Example 5 – Example 5 – working at new locations every few weeks and staying away from home 130
Special demands travel (deductible) 130
Work-related accommodation (deductible) 130
Example 6 – day trip to alternative work location 143
Co-existing work locations travel (deductible) 143
Example 7 – short-term travel to a temporary alternative work location – private component – apportionment 147
Co-existing work locations travel (deductible) 147
Work-related accommodation (partially deductible) 147
Example 8 – short-term travel to a temporary alternative work location (4 days) – private component – apportionment 157
Co-existing work locations travel (deductible) 157
Work-related accommodation (partially deductible) 157
Example 9 – longer-term travel to temporary work location – training course (6 weeks) 163
Co-existing work locations travel (deductible) 163
Work-related accommodation (deductible) 163
Example 10 – ongoing travel to an alternative work location (car) 169
Co-existing work locations travel (deductible) 169
Work-related accommodation (deductible) 169
Example 11 – ongoing travel to an alternative worklocation – lease of property by employer for use at alternative work location 176
Co-existing work locations travel (deductible) 176
Work-related accommodation (deductible) 176

Example 12 – ongoing travel to an alternative work location – additional property – employee rents accommodation from spouse 182
Co-existing work locations travel (deductible) 182
Work-related accommodation (deductible) 182
Example 13 – ongoing travel to alternative work location – additional property that needs to be apportioned 194
Co-existing work locations travel (deductible) 194
Work-related accommodation (partially deductible) 194
Example 14 – short-term travel to a temporary, alternative work location (3 weeks) 212
Special demands travel (deductible) 212
Co-existing work locations travel (deductible) 212
Work-related accommodation (deductible) 212
Example 15 – working temporarily at a different location for an extended period (2 months) 219
Special demands travel (deductible) 219
Co-existing work locations travel (deductible) 219
Work-related accommodation (deductible) 219
Example 16 – working at a different location for an extended period (4 months) 224
Special demands travel (deductible) 224
Co-existing work locations travel (deductible) 224
Living away from home accommodation (non-deductible) 224
Example 17 – Secondment to Australia for between 90 and 120 day project work – accommodation, meal and incidental expenses 232
Relocation travel (non-deductible) 232
Living away from home accommodation (non-deductible) 232
Example 18 – Rudimentary accommodation 246
Living away from home accommodation (non-deductible) 246
Date of effect **256**
Appendix 1 – Your comments **257**
Appendix 2 – Detailed contents list **259**

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

IT 2199; IT 2543; TR 95/34; TR 98/9; TR 2004/6; TR 2005/16; TR 2006/10; TD 94/14; TD 96/42; TD 2016/13

Previous Rulings/Determinations:

MT 2030; IT 112; IT 113; TD 93/113; TD 93/174; TD 93/230; TD 96/7

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