TR 2019/D7 - Income tax: when are deductions allowed for employees' transport expenses?

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This document has been finalised by TR 2021/1.

There is a Compendium for this document: **TR 2021/1EC** .

Draft Taxation Ruling

Income tax: when are deductions allowed for employees' transport expenses?

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Relying on this draft Ruling

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply.

If this draft Ruling applies to you and you rely on it reasonably and in good faith, you will not have to pay any interest or penalties in respect of the matters covered, if the draft Ruling turns out to be incorrect and you underpay your tax as a result. However, you may still have to pay the correct amount of tax.

Summary – what this draft Ruling is about

1. This draft Ruling[1] sets out when an employee can deduct transport expenses under section 8-1 of the *Income Tax Assessment Act 1997*.[2] This includes the cost of travel by airline, train, taxi, car, bus, boat or other vehicle.

2. This Ruling explains that transport expenses incurred for ordinary travel between home and a regular place of work are not deductible. In contrast, transport expenses incurred by an employee in travelling between work locations usually are deductible. This Ruling also explains a number of special cases or exceptions to these general rules.

3. This Ruling also applies for the purposes of the *Fringe Benefits Tax Assessment Act 1986* in determining whether such expenses paid by the employer would have been 'otherwise deductible' if incurred by the employee.

4. This Ruling does not address:

- the substantiation of transport expenses[3]
- transport expenses related to self-education or study – refer to Taxation Ruling TR 98/9 *Income tax: deductibility of self-education expenses incurred by an employee or a person in business*
- the deductibility of parking fees

[1] All further references to 'this Ruling' refer to the Ruling as it will read when finalised. Note that this Ruling will not take effect until finalised.
[2] All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* unless otherwise indicated.
[3] See Division 28 and Division 900.

- employees carrying out itinerant work – refer to Taxation Ruling TR 95/34 *Income tax: employees carrying out itinerant work – deductions, allowances and reimbursements for transport expenses*
- fringe benefits tax generally, except for the application of the 'otherwise deductible' rule.

Previous ruling

5. The subject matter of this draft Ruling partially overlaps with that of draft Taxation Ruling TR 2017/D6 *Income tax and fringe benefits tax: when are deductions allowed for employees' travel expenses?*. To the extent that this Ruling has different views to TR 2017/D6 in relation to transport expenses, the views in this draft Ruling should be referred to as the current ATO view.

Ruling

6. An employee can only deduct a transport expense under section 8-1 to the extent that:

- they incur the expense in gaining or producing their assessable income[4]
- the expense is not of a capital, private or domestic nature
- the applicable substantiation requirements[5] are satisfied.

7. For an expense to be incurred 'in' gaining or producing assessable income it is both sufficient and necessary that the occasion of the expense should be found in whatever is productive of the assessable income.[6]

Deductibility of transport expenses – general principles

8. Where the occasion of transport expenses can be found in the employee's employment duties, the expenses will be incurred in gaining or producing the employee's assessable income.

[4] This Ruling assumes that the income from the employment is assessable income of the employee.
[5] See Division 28 and Division 900.
[6] *Commissioner of Taxation v Payne* [2001] HCA 3 (*Payne*) at [9]; *Ronpibon Tin NL v Commissioner of Taxation (Cth)* [1949] HCA 15; *Commissioner of Taxation v Day* [2008] HCA 53 (*Day*) at [30]. If no assessable income is produced, the occasion of the expense should be found in what would be expected to produce assessable income.

9. It has long been established that the term 'incurred in gaining or producing assessable income' is understood as meaning incurred 'in the course of gaining or producing' assessable income.[7] Other ways that this has been expressed in the context of transport expenses, is that the employee is travelling 'on work'[8], the travel is part of the employment[9] or the travel is an incident of the employment.[10]

10. Conversely, a close connection between a journey and the employee's private or domestic life is a strong indication that the journey occurs outside of the employee's income-producing activity and is not deductible. Where the employee is travelling between home and a regular place of work, the transport expenses are usually a prerequisite to, rather than being incurred in, gaining or producing the employee's assessable income, and are simply a necessary consequence of living in one place and working in another.[11]

Incurred in gaining or producing assessable income

11. Determining whether a particular transport expense is incurred in gaining or producing assessable income will involve consideration of the proper scope of the particular employee's work activities to determine if the circumstances of the transport expense have a sufficiently close connection to earning the employment income. It is important to have regard not just to the duties in the contract of employment, but to the nature of the work as a matter of substance. The following factors may support a characterisation of transport expense as being incurred in producing assessable income:

- the travel occurs on work time
- the travel occurs when the employee is under the direction of the employer
- the travel fits within the duties of employment[12]
- the travel is relevant to the practical demands of carrying out the work duties
- the employer asks for the travel to be undertaken.

12. The factors need to be considered in the context of both the form and substance of the employment arrangement. No single factor on its own will necessarily support a conclusion that an expense is

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[7] *Payne* at [9], per Gleeson CJ, Kirby and Hayne JJ.
[8] *John Holland Group Pty Ltd v Commissioner of Taxation* [2015] FCAFC 82 (*John Holland*) at [45], per Edmonds J.
[9] *John Holland* at [60], per Pagone J.
[10] *John Holland* at [36], per Edmonds J referencing *The Roads and Traffic Authority of New South Wales v Commissioner of Taxation* [1993] FCA 445.
[11] *Lunney v Commissioner of Taxation* [1958] HCA 5 (*Lunney*).
[12] This has regard to not just the express terms of any contract of employment, but also implied terms of employment, applicable awards, industrial instruments or statutes, and applicable principles of common law.

deductible. For instance, the mere fact that an employer asks the employee to attend their regular place of work on a particular day does not change the conclusion that such travel is a prerequisite to the employment, rather than being incurred in gaining or producing assessable income.

13. Reaching a conclusion as to the deductibility of a transport expense requires an assessment of the relationship between the employment and the expense. The fact that an employee considers a transport expense serves an employment-related purpose is not sufficient to establish the deductibility of the expense.[13]

Deductibility of transport expenses – common circumstances

14. The balance of this Ruling considers the deductibility of employee transport expenses in a range of common circumstances. However, it does not purport to deal exhaustively with all situations. The deductibility of employee transport expenses ultimately requires a judgment in any case about whether the expense is incurred in the course of gaining or producing assessable income.

Private travel to a regular place of work

15. With limited exceptions, an employee's costs of travelling between home and a regular place of work are not deductible. This is because such costs are explained by where the employee lives in relation to where they report for work. They are not incurred in the course of gaining or producing an employee's assessable income. This expenditure is merely a prerequisite to earning an employee's assessable income and is private in nature.

16. This is not changed by the fact that the employee performs work-related tasks at home as a matter of choice or for their convenience. Nor does the conduct of some work activities whilst travelling (for example, answering emails on the train) convert the travel to being part of the employment if it is otherwise private. This is because the travel itself is a prerequisite to commencing the work duties (refer to Example 1 of this Ruling).

17. Similarly, where the employee travels to their regular place of work from another location in which they undertake private activities, for example a café or a holiday location, the cost of the travel is not deductible. Such expenses are not deductible as they are not incurred in the course of earning assessable income and are private in nature.

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[13] *Newsom v Robertson (Inspector of Taxes)* [1952] 2 ALL ER 728 (*Newsom*); *Payne*; *Day*; *Amalgamated Zinc (De Bavay's) Limited v Federal Commissioner of Taxation* [1935] HCA 81 (*Amalgamated Zinc*), per Dixon J.

Regular place of work

18. 'Regular place of work' is a concept used in this Ruling to assist in identifying whether certain travel is incurred in gaining or producing assessable income, or instead is private in nature.

19. Most employees have a regular place of work, being a usual or normal place where the employee starts and finishes their work duties with a particular employer.

20. In most cases identifying an employee's regular place of work is clear. In circumstances where it isn't clear, it may be necessary to consider in more depth the contract of employment, customary practice, the nature of the work duties, where these duties commence and at what point in time the employee is under the direction and control of their employer in order to determine where the employee's regular place of work is.

21. In some employment arrangements there may be more than one regular workplace established. This may be expressly provided for in the employment agreement or contract between the employer and employee, or it may arise as a matter of practice in the relationship between employer and employee. A second or subsequent place of work would become a regular place of work if it has become a normal or routine place where the employee works, such that travelling between there and the employee's home is better characterised merely as part of the necessity of travelling to and from work.

22. The usual position that the cost of travel between home and the employee's regular place of work is not deductible does not change merely because:

- the employee's home is very distant (for example, requiring a flight) from their regular place of work.[14] For example, an employee takes a job based wholly in Sydney but chooses to continue to live in Brisbane with their family and flies to their work in Sydney each week (refer to Example 5 of this Ruling)
- a second or subsequent regular place of work is distant to the employee's home (refer to paragraphs 46 to 49 of this Ruling for further discussion)
- the employee needs to travel to and from their regular place of work more than once a day. For example, a teacher who drives to school after hours to attend parent teacher interviews
- the location of the employee's home or their regular place of work limits the choices of travel, for instance if no public transport is available[15], or their regular place

[14] *Case P49* 82 ATC 227.
[15] *Case R22* 84 ATC 212; *Case R69* 84 ATC 491.

of work can only be reached by a particular mode of transport such as a boat

- the employee receives an allowance related to travel
- the employee works overtime, or works shift hours that begin or end during the night. For example, a nurse who works night shift and drives to their regular place of work because there is no public transport available at the time they start work[16]
- the employee stops en route to their regular place of work to fulfil an incidental work task. For example, a dentist calling into a dental laboratory to collect dentures on their way to the surgery[17] or a secretary collecting newspapers or mail on their way to the office.

Example 1 – travel between home and a regular work location-transport expenses not deductible

23. *Mischa is a public servant who works in Geelong. She lives 30 kilometres from the office and travels between home and work by train. Mischa frequently checks her work emails at home on her work phone and sometimes chooses to do some work tasks before she leaves for work, or after she gets home from work. While on the train travelling to work, Mischa sometimes uses her work phone to respond to work emails and texts and make work-related phone calls.*

24. *Mischa's travel is undertaken to put her in the position to undertake her duties. The cost of Mischa's travel between her home and the office is not incurred in gaining or producing Misha's assessable income. Rather, the travel is private travel between her home and her regular place of work and is merely a prerequisite to earning her assessable income. The mere fact that Mischa undertakes some work-related activities at home and during her journey does not change this characterisation. Mischa is not entitled to a deduction for her travel.*

Example 2 – travel between home and regular work locations – transport expenses not deductible

25. *Aisha works for a retail company. Under the terms of her employment contract she works on a Monday, Thursday and Friday at a store located in a suburban shopping centre and on a Tuesday and Wednesday at a store of the same employer in a different suburb of the same city. Aisha is not entitled to a deduction for the cost of her travel between home and the stores at either location. Both of the*

[16] *Case R22* 84 ATC 212; *Case R69* 84 ATC 491.
[17] Refer to paragraph 34 of Miscellaneous Taxation Ruling MT 2027 *Fringe benefits tax: private use of cars: home to work travel.*

stores are considered to be regular places of work for Aisha because they are routine places she commences work. The journey to each is merely part of the ordinary necessity of getting to work and thus a prerequisite to earning her assessable income.[18]

26. The regular place or places of work of an employee may change over time. This may occur by agreement between employer and employee. It may also occur by custom. In situations where it is difficult to conclude whether a second or subsequent place of work has become a regular place of work, an actual or anticipated duration of three months or more at the location would usually be sufficient for the location to amount to a regular place of work. However, consideration should also be given to matters including:

- the nature of the employment. A briefer period may be sufficient in the context of a short-term contract rather than ongoing employment
- the frequency at which the employee attends the workplace. Attending a location once a fortnight for four months would not usually be sufficient to establish a location as a regular place of work
- whether any element of choice on the part of the employee is influential, such as the choice of where to live[19]
- whether the travel to a new workplace occurs when the employee is on work time, or substantively under the direction and control of the employer. This would tend to support the characterisation of the travel to the location as being part of the employment rather than a prerequisite to travel to another regular place of work.

Example 3 – travel between home and a subsequent place of work that has become a regular work location – transport expenses not deductible

27. *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).*

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

29. *Under the temporary working arrangement, the employer requires Raj to make his own way to the Brisbane city office and start*

[18] Refer to paragraph 10 of this Ruling.
[19] *Commissioner of Taxation v Toms, A.J.* [1989] FCA 153 (*Toms*); *The Commissioner of Taxation of Australia v Charlton, Robert Ewing Scott* [1984] VicSC 297 (*Charlton*).

and end work at the times he usually starts and ends work at Southport.

30. *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.*

31. *This example has a range of factors which need to be balanced. The location is temporary but nevertheless a workplace for a sustained period. Raj routinely travels to the Southport and Brisbane offices on the same days each week for this sustained period. Additionally, Raj is not on work time or under any direction or control from his employer during this travel.*

32. *On balance, and having regard to the broader nature of the arrangement, including the factors in paragraph 31, it is considered that the transport expenses incurred by Raj in travelling between his home and the employer's Brisbane city office are home to work journeys to a regular place of work. The expenses of the travel are not incurred in gaining or producing his income and are private in nature. Accordingly, Raj is not entitled to a deduction for the transport expenses he incurs in travelling to the Gold Coast office or the Brisbane office.*

Travelling between work locations that do not include your home

33. Expenses of travelling between work locations, neither of which are the employee's home[20], are deductible provided that the employment is the occasion for the expenses. This includes different workplaces of the same employer, clients of the employer and other locations where the employee carries out their employment duties (for example, a court of law or at a client's work site). Where travel is between work locations of different employers or different income-producing activities, section 25-100 applies.[21]

34. Where, for example, an employee is required to travel from their regular place of work to attend a meeting at another office of their employer, the outgoings for transport for travel between the workplaces, occasioned by the employee's employment duties and the factors outlined in paragraph 11 of this Ruling, support the

[20] This excludes an employee's home where it is a 'place of business' as per paragraphs 4 and 5 of Taxation Ruling TR 93/30 *Income Tax: deductions for home office expenses.*

[21] 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 *Payne* where 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.

characterisation of the transport expense being incurred in producing assessable income as:

- the travel would occur on work time
- the employee is under the direction and control of their employer
- the employer generally asks for the travel to be undertaken
- the travel fits within the duties of employment
- the travel is relevant to the practical demands of carrying out the employee's work duties.

Accordingly, the transport expenses would be deductible.

35. Conversely, where an employee works at one of their employer's other workplaces for part of the day for private purposes (for example, they have a private appointment in the morning nearby that office) and then they travel to their normal office and work there for the rest of the day, the outgoings for transport for travel between the two offices is not occasioned by the employee's employment. The occasion of the outgoing is to be found in the employee's private decision to work from the other office for their mere convenience. In this scenario, consideration of the factors outlined in paragraph 11 of this Ruling support the conclusion that the transport expenses are not incurred in producing assessable income and are not deductible.

Travelling to a location other than a regular place of work

36. If the duties of employment require that the employee travels from their home to somewhere other than the employee's regular place of work[22] (alternative work location), for example to attend a client's premises or another office of their employer, then the costs of such travel may be deductible. The cost of travel from home to such a work location can be characterised as being incurred in the course of gaining or producing the employee's assessable income. However, this does not include travel from home to a regular place of work where an employee completes minor work-related tasks, including a stopover, while en route. The cost of this travel would not be characterised as being incurred in the course of gaining or producing the employee's assessable income and accordingly, would not make their travel deductible. Conversely, the fact that an employee might incidentally attend to private matters at, or on route to, an alternative work location, does not prevent the expenses of travel to that location being deductible.

[22] If the employee has more than one regular place of work, this includes all of their regular places of work.

Example 4 – travel between home and an alternative work location – transport expenses are deductible

37. *Aruni is a government employee who lives and works in Darwin. He is required by his employer to attend a training course in Kakadu National Park. Aruni drives directly from his home to the training venue and back home at the end of the day when the training is finished. Aruni is requested to undertake the travel by his employer and the travel is relevant to the practical demands of carrying out his work duties. The expenditure is incurred in gaining or producing his assessable income because his duties of employment require him to commence work at a location other than his regular place of work in the performance of his duties. Aruni is entitled to claim a deduction for the cost of his travel from home to the training venue and return.*

38. The cost of travelling from home to a location other than a regular place of work is not deductible, if it reflects a choice of the employee at their mere convenience to work at a different location. In this situation the travel is not explained by their duties of employment, rather by their personal choice. For example, if an employee of a national organisation who lives in Geelong arranges to work from the organisation's Darwin office for a period because of family reasons, the cost of travel to Darwin is not deductible. It is private in nature.

39. Similarly, if the duties of employment are such that it does not matter where they are carried out, travel from home to wherever the employee chooses to carry out their work duties is a matter of mere convenience and is not deductible.

40. The same principles in paragraphs 36, 38 and 39 of this Ruling apply to travel back home from an alternative work location.

41. This Ruling does not deal with circumstances of an employee who has no regular place of work. The principles established in TR 95/34 should be considered for such cases.

Transport expenses when travelling away from home for work

42. The mere fact that an employee lives a significant distance from their regular place of work does not make their transport expenses deductible, for example, if they are required to fly to attend work. In such instances, the transport expenses are incurred because the employee lives at a distance from their regular place of work, rather than the employment itself being the occasion for the expenses. The expenses are explained by where the employee lives in relation to where their regular place of work is located and are private expenses.[23]

[23] *Lunney* per Williams J, Kitto J and Taylor J; *Toms; Charlton.*

Example 5 – travel between home and a distant regular work location – transport expenses not deductible

43. *Isabelle is a specialist technician who lives in Brisbane. She works as an employee for a company based in Sydney on a part-time basis. On the days she is required to work (Wednesdays and Thursdays) she drives from her home in Brisbane to the airport, catches a flight to Sydney and then a taxi to her company's office. She stays overnight in Sydney on Wednesday night and returns home on Thursday evening. Isabelle's transport expenses (travel between her home and Brisbane airport, return flights from Brisbane to Sydney and taxis between Sydney airport and her office) are not deductible. Isabelle's travel is undertaken to put her in the position to commence her duties and the expenses are not incurred in gaining or producing her assessable income. The expenses are incurred as a necessary consequence of Isabelle choosing to live in Brisbane and work in Sydney and are a prerequisite to gaining or producing her assessable income. Isabelle's travel is between her home and her regular workplace is private in nature.*[24]

44. In contrast, where the nature of the employment requires an employee to travel away from home overnight, for purposes explained by their employment and not because of where they have chosen to live, the transport expenses incurred in travelling to the alternative work location will be incurred in the course of gaining or producing the employee's assessable income.

Example 6 – travel between home and an alternative work location that requires overnight travel – transport expenses are deductible

45. *Duy works for a company in Rockhampton, where he lives. The company requires Duy to attend a two-day meeting in Brisbane once a fortnight. Duy flies from Rockhampton to Brisbane on the day of the meeting and returns home the following evening. He also catches a taxi from his home to Rockhampton airport and from Brisbane airport to the office. He does the same in reverse when he returns home. The cost of Duy's flights and taxis between his home in Rockhampton and the office in Brisbane are deductible. Duy has a regular place of work in Rockhampton and in the performance of his duties travel is undertaken to an alternative destination which is not a regular place of work. Further, the travel is not attributable to Duy's choice to live in Rockhampton. Therefore, the transport expenses are incurred in gaining or producing Duy's assessable income.*

46. Where the employee's duties of employment necessarily require them to work with some regularity for the same employer at two or more locations that are geographically distant from each other, a question arises as to whether travel to both places ought to be characterised as private in nature, or whether travel to the more

[24] Refer to paragraph 10 of this Ruling.

distant location for the performance of employment duties may instead be an incident of the employment. The factors set out in paragraph 11 of this Ruling need to be considered in deciding whether the cost of transport is deductible.

47. Unlike the ordinary case of home to work travel, in this situation travel to the more distant location may not be merely attributable to the employee's choice of where to live, but may instead be a necessary consequence of the employment duties needing to be performed in more than one location. In other words, the distance or remoteness of a place of work may cause the need for the travel to be part of that for which the employee is employed.

48. It is essential to deductibility in such cases that the travel fits within the duties of employment and is relevant to the practical demands of carrying out the work duties. If, in contrast, the employment arrangement contemplates the employee being allowed to undertake some of their work at or near their home, but their role is fundamentally based at the distant location, the cost of travel to that distant location would be regarded as a private expense and not deductible. This is because the work duties do not necessitate the travel, but the travel is instead explained by the employees' private circumstances (refer Example 8 of this Ruling).

49. Subject to the requirements of paragraph 11 of this Ruling, the Commissioner will accept that travel to a secondary location of work which would typically require an overnight stay from home would be construed as a necessary incident of the employment and therefore the cost would be deductible.

Example 7 – travel between home and work location is part of employment duties – transport expenses deductible

50. *Narelle works for a tourism company and she lives with her family on the north coast of New South Wales (NSW).*

51. *The company that Narelle works for has offices in various locations in NSW. The head office is on the North Coast of NSW and Narelle is based there. Another significant office is in Sydney. The requirements of her work, including supervising staff, attending conferences and attending internal and external meetings necessarily require her to travel to Sydney regularly, and less frequently to other locations.*

52. *During the income year, Narelle works a total of 24 weeks on the NSW north coast, 20 weeks in Sydney and eight weeks elsewhere or on leave. When Narelle is working in Sydney she stays there, rather than travelling back to her North Coast home.*

53. *Narelle's position is based on the North Coast and the office located there is her regular place of work. Although she travels frequently to Sydney, the following factors indicate that the travel between her home and the Sydney office is better characterised as a*

consequence of the employment requiring the duties to be performed in more than one location:

- *Narelle carries out her employment duties at the North Coast Office and the Sydney office. The travel is relevant to the practical demands of carrying out her work duties and is undertaken at the request of her employer.*
- *The distance between the North Coast of NSW where her regular workplace is and Sydney creates the need for the travel to be part of that for which Narelle is employed.*
- *Narelle's travel is different to her ordinary daily trips to work, and involves overnight stays. These two matters contribute to the business character of the travel, in contrast to the travel being a mere private matter of getting to work.*

54. *Accordingly, the cost of travelling from Narelle's home to the Sydney office is deductible. Narelle's transport expenses to the other locations (not including the North Coast) will also be deductible for the reasons listed in paragraph 53 of this Ruling.*

Example 8 – travel between home and work location not part of employment duties – transport expenses not deductible

55. *Sue lives with her family in Sydney. Sue takes on a leadership role with a company that has offices all around Australia. The role is based in Melbourne. Sue's arrangement with her employer is that she must attend the Melbourne office at least three days per week, but at her discretion can work out of the Sydney office up to two days per week.*

56. *Although the Melbourne office is a distant work location and Sue carries out her duties at the Melbourne and Sydney offices, Sue's travel from home to those offices will not be deductible. This is not a case where the role Sue undertakes necessarily requires travel to be undertaken. Sue is required to work in Melbourne, and, for convenience, she may also work part of the time in Sydney. The travel to Melbourne is thus better characterised as attributable to her private circumstances, that is, her choice about where to live rather than being a necessary incident of her employment.*

Commencing or finishing duty at transit points

57. Sometimes the location where an employee reports for work will be different to where they carry out their substantive duties. The employee travels to a place (a transit point) from which further travel is needed to reach the place substantive duties are carried out.

58. In these cases the cost of travel between home and where the employee regularly reports for work at the transit point is not deductible as it is a prerequisite to gaining or producing their assessable income. However, the cost of travel between the transit point and the place where they carry out their substantive duties will be deductible where it can be said that the employment is the occasion for the expense.

59. In order to determine whether the employment is the occasion for the transport from a transit point, it is necessary to take into account both the form and substance of the arrangements as discussed at paragraph 11 of this Ruling.

60. Consideration should also be given to the contract of employment, any applicable award and the practical needs of the employment. Importantly, the need for a transit point must fit within what would be reasonably expected by the duties of employment and not by the private characteristics of the employee, such as where they live in relation to where they report for work. For instance, in the *John Holland* case the remoteness of the project location provided an explanation for the travel being part of the employment.[25]

61. When considering whether the cost of travel from a transit point is deductible, it is also relevant, but not determinative[26] to consider where the employee commences their employment duties, and whether the employee is substantively under the 'direction and control'[27] of the employer during that travel. It is important however to consider direction and control in the overall context of the facts and circumstances of each case, because direction and control alone is not sufficient to establish the relevant connection with employment.[28] The need to be under the direction and control must be explained by the duties of employment and the need to travel for work.[29]

Example 9 – travel between home and a transit point – transport not deductible; Travel between a transit point and the work location – transport expenses deductible

62. *Brian lives in Sydney and works for a mining company based in Perth. The mining company requires him to undertake extended assignments at different locations in Western Australia usually for periods of less than 12 months. Brian has a work assignment for 12 months at a mine site in Geraldton. Brian's roster is 20 days on and seven days off. On the day Brian's roster starts, he travels from*

[25] *John Holland* at [60] and [64].
[26] *Sargent (Inspector of Taxes) v Barnes* [1978] 2 ALL ER 737 (*Sargent*); *Commissioner of Taxation v Cooper, R.J.* [1991] FCA 190 (*Cooper*).
[27] In this context, 'direction and control' means the employee is subject to their employer's orders or directions, whether or not those orders or directions are exercised during the period of travel (*Stevens v Brodribb Sawmilling Co Pty Ltd* [1986] HCA 1, per Mason J).
[28] *Cooper*.
[29] *Sargent.*

his home to Sydney airport and catches a flight to Perth airport. Brian is rostered on duty and is paid from the time he arrives at Perth airport. From the time he arrives at the airport he is also subject to his employer's direction and control, that is, all of his employer's workplace policies and procedures apply to him. Brian catches a charter flight organised by his employer, along with other employees, from Perth airport to Geraldton airport and then a bus chartered by his employer, from the Geraldton airport to the work site. A similar arrangement applies in reverse at the end of Brian's roster. Brian is not entitled to a deduction for the expenditure he incurs for travelling between his home and Sydney airport or the cost of the flights between Sydney and Perth airport. This travel is private and is a merely a prerequisite to gaining or producing Brian's assessable income. However, the expenses Brian incurs in travelling from Perth airport to Geraldton airport and return and from Geraldton airport to the work site and return are incurred in gaining or producing Brian's income and will be deductible. The nature of Brian's work at different locations in Western Australia for relatively short periods of less than 12 months explains why Perth airport, in the context of his circumstances, is a transit point. Further, from the time Brian arrives at the Perth airport, he is on duty, he is subject to the direction and control of his employer and he is being paid for the time he spends travelling from the transit point to the work site which is consistent with the nature of the work and duties of Brian's employment.

Example 10 – travel between home and a transit point – transport expenses not deductible; Travel between a transit point and the work location – transport expenses not deductible

63. *Bill lives in Perth and has been specifically engaged to work on a 12-month contract at a mine site near Geraldton (work site) on a fly-in fly-out basis. Bill's employer agrees to pay for his flights to and from the closest major airport to his home in Perth. It does not matter to Bill's employer where he lives during his down time. As such, Bill can choose another major airport where he flies to and from at the start and end of each roster period, provided it is not more than the cost of the trip from his home in Perth. Bill's roster is 20 days on and seven days off. Before the start of his roster, Bill travels from his home to Perth airport, flies from Perth to Geraldton and then a catches a bus from Geraldton airport to the work site. Under the terms of the agreement he is employed under, Bill's rostered period does not start until he arrives at the work site and it ends when he leaves the work site on day 20, from which point he is on leave. At the end of his roster period, he catches the bus to Geraldton airport, flies from Geraldton to Perth and then travels from Perth airport to his home. Bill's travel does not occur on work time and it is not part of his employment. As Bill does not commence duty until he arrives at the work site and ceases duty when he leaves the work site, the occasion of his travel between his home and the work site is not his employment and accordingly, it is not deductible. The travel is private as it is merely a prerequisite to earning his assessable income. That*

is, the expenses are incurred in order to put him in the position to perform his duties of employment rather than in the course of performing the duties which are productive of his salary and wage income.

On call and standby arrangements

64. In some limited cases, travel that occurs whilst an employee is 'on call' may be construed as part of the employment, rather than a private matter even if it is between home and a regular place of work. Care is needed to distinguish between travel that is part of the employment, and travel that is merely necessary and a prerequisite to arriving at the workplace. The fact that an employee is awaiting a call from their employer to attend a regular place of work, does not in itself justify characterising travel to the regular place of work as deductible. For an employee who is on call, the travel would usually be characterised as part of the employment if all of the following factors are present:

- the employee's duties can be construed as having substantively commenced at their home (or another private location) and the employee is required to travel to a regular place of work to complete those particular duties
- undertaking the work in two locations is a necessary obligation arising from the nature of the duties
- the travel to the workplace is not part of a normal journey to work that would have occurred anyway.

Example 11 – travel between home and a regular work location where duties have substantively commenced at home and completed at regular work location – transport expenses deductible

65. *Christine is a highly trained computer consultant who is involved in supervising a major conversion in computer facilities which her employer provides for its customers. This requires her to be on call 24 hours a day. In order to assist in diagnosing and correcting computer faults while she is at home after her normal work hours, Christine's employer installs specialised equipment at her home. Typically, matters can be resolved by Christine at home with the use of this equipment but if the problem cannot be resolved at home, Christine travels to the office in order to progress the matter further.*

66. *Christine's travel between her home and the office every day is private travel between her home and her regular work location. The costs of this travel are not incurred in gaining or producing her assessable income. However, in circumstances where Christine is called to correct a fault after hours and where she commences work on that fault at home but has to travel to her employer's premises*

because she cannot rectify it at home, the cost of travel between her home and the office will be deductible. Although this travel is between her home and a regular work location, the cost of these abnormal journeys are deductible because Christine commences substantive work prior to leaving home and then completes that work once she attends the office. Christine does not choose to do part of the work of her job in two separate places, but rather the two places of work are a fundamental part of Christine providing specialised support arising from the nature of her special duties. The expenses she incurs in travelling to the office in such circumstances are incurred in gaining or producing her assessable income.

67. A contrasting situation is where an employee awaits at home for advice from their employer whether they are required to work, in a sense on 'standby', and does not commence any substantive duties at the place where they receive the call or request from their employer. In such a case, when the employee is advised that they are required at their regular place of work, the expenses of travelling to that regular place of work are not deductible. Although the employee may not be working regular hours, in these circumstances, the employee commences duty on arrival at their regular place of work[30] and the travel is a prerequisite to gaining or producing the employee's income.

Example 12 – travel between home and a regular work location when on 'stand-by' – transport not deductible

68. *Linda is a nurse. Sometimes Linda is required to be on standby duty. If Linda is called by her employer while she is on standby duty, she travels from her home to the hospital and starts her shift once she gets there. Linda's travel is between her home and a regular work location with short notice of her start time. The travel does not occur on paid work time and accordingly, the expenses are a prerequisite to Linda's income earning activities. The transport expenses Linda incurs in travelling from her home to the hospital are private and not deductible.*

Working from home, remote working and flexible work arrangements

69. The mere fact that an employee undertakes some work duties at home at their convenience does not make expenses of travel to their regular place of work deductible. This is because the travel itself is not explained by the employment duties and is thus not part of the employment. This treatment will not change even if the travel occurs during work hours. Moreover, travel from home to a regular place of work in this situation is still explained by where an employee chooses to live in relation to their regular place of work, which is a private or

[30] *Commissioner of Taxation v Genys, H.M.* [1987] FCA 520.

domestic matter. It does not matter whether the work at home occurs informally or as part of a regular arrangement with the employer.

Example 13 – travel between home and work location when working at home for convenience – transport expenses not deductible

70. *Nico works as a travel agent. As he has a small child, his employer allows him to work from home rather than in the office. Nico has a home office that he uses exclusively for work. At least twice per month, Nico is required to attend the office for regular staff meetings. Nico's home office is not a place of business*[31] *because Nico's employer would normally accommodate him at their office. At Nico's request they have agreed to let him work from home so that he can work at whatever time is convenient for him. The travel from Nico's home to the office is not incurred in gaining or producing his assessable income. Nico works from home for his mere convenience so he can look after his small child and work flexible hours. Accordingly, his travel from home to his regular place of work at the office is not explained by his work duties, that is, the travel is not relevant to the practical demands of carrying out Nico's work duties. It is a consequence of Nico's choice to work from home rather than in the office. Nico is not entitled to claim a deduction for his travel as it is private or domestic in nature.*

71. The fact that the employee might choose to undertake their duties at a location other than home or a regular place of work at their convenience, does not make the cost of travel to that place deductible. For example, a person working remotely cannot deduct the cost of travel to a resort that they choose to work from. Such expenses are private in nature.

72. Where an employee has an area of their home set aside as their sole base of operations[32] because their employer provides them with no other location to work from, that area of their home becomes their regular place of work. Such an employee will be entitled to a deduction for expenditure incurred in travelling to perform their duties, such as travel to a client's premises.

Transporting bulky equipment

73. Where the nature of the employment creates a practical necessity, explained by work duties, to transport bulky equipment[33] to

[31] Refer to paragraphs 4 and 5 of TR 93/30 for guidance on what is a 'place of business'.
[32] TR 93/30 refers to this as a 'place of business'.
[33] It is a question of fact whether equipment is bulky. In *Crestani and Commissioner of Taxation* [1998] AATA 612, Senior Member Block stated at [7] '…I do not think that the term "bulky" should be construed to refer to only an article which is of large size, such as the musical instruments which were the subject of the decision in

and from a regular place of work (including to and from home to a regular place of work), the expenses of transporting that bulky equipment to and from that regular place of work may be deductible. It is construed by the Commissioner as a narrow exception to the ordinary principle that travel from home to a regular place of work is private and thus not deductible.

74. To come within this exception it is necessary that:

- the equipment is essential for the performance of the employee's employment duties
- the equipment is bulky such that transportation by car or other private vehicle is the only realistic option
- transporting the items to and from their regular place of work is a practical necessity because there is no secure area for the storage of the equipment provided at the employee's regular place of work[34] or the equipment needs to be transported to a different site each day.

75. However, if equipment is transported by the employee as a matter of their mere convenience or personal choice, the transport costs are private and no deduction is allowable.[35]

Relocation travel

76. Relocation travel involves travel undertaken in relocating for work, usually because of a change in employment conditions such as a regular place of work. Expenses incurred in undertaking relocation travel are not incurred in the course of employment. Rather they are a prerequisite to work, reflecting the private characteristics of the employee. Therefore they are not deductible.[36] Similarly, where an employee has relocated for work, even temporarily, but retains a connection to their previous home (for example, family remains behind), transport between their new work location and their previous home for private reasons would not be deductible. This is the case even if the agreement with their employer involves the employer agreeing to provide or fund such transport.

FCT v Vogt 75 ATC 4073. The term is, in my view, more aptly construed as similar to "cumbersome" in the sense that it is not easily portable.'

[34] *Re Taxation Appeals* [1994] AATA 315 (*Case 59/94* 94 ATC 501; AAT Case 9808 29 ATR 1232); *Reany and Commissioner of Taxation* [2016] AATA 672.

[35] Refer to paragraphs 63 to 71 of TR 95/34, paragraphs 37 and 38 of MT 2027 and paragraph 8 of Taxation Ruling IT 2543 *Income tax: transport allowances: deductibility of expenses incurred in travelling between home and work*.

[36] *Fullerton, L.W. v Commissioner of Taxation* [1991] FCA 702. Certain fringe benefits tax concessions are available to employers for costs incurred in relocating employees and their families (refer to *Fringe benefits tax: a guide for employers*).

Date of effect

77. 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 *Public Rulings*). To the extent that there is any conflict between the final Ruling and draft Ruling TR 2017/D6, the Commissioner would have regard to the earlier draft in deciding whether to apply compliance resources in income years to which the earlier draft applies.

Commissioner of Taxation
13 December 2019

Appendix 1 – Your comments

78. 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.

79. A compendium of comments is prepared for the consideration of the relevant Public Advice and Guidance 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 people providing comments
- be published on ato.gov.au.

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

Due date: **28 February 2020**

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

Appendix 2 – Detailed contents list

80. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

IT 2543; TR 93/30; TR 95/34; TR 98/9; TR 2006/10; MT 2027

Previous Rulings/Determinations:

TR 2017/D6

Legislative references:

- ITAA 1997 8-1
- ITAA 1997 25-100
- ITAA 1997 Div 28
- ITAA 1997 Div 900
- FBTAA 1986

Cases relied on:

- AAT Case 9808 (1994) 29 ATR 1232
- Amalgamated Zinc (De Bavay's) v Federal Commissioner of Taxation [1935] HCA 81; 54 CLR 295; 9 ALJ 342; 3 ATD 288; [1936] ALR 67
- Case P49 (1982) 25 CTBR (NS) 808; 82 ATC 227
- Case R22 84 ATC 212
- Case R69 84 ATC 491
- Case 59/94 94 ATC 501
- Commissioner of Taxation v Cooper, R.J. [1991] FCA 190; 29 FCR 177; 99 ALR 703; 91 ATC 4396; 21 ATR 1616
- Commissioner of Taxation v Day [2008] HCA 53; 236 CLR 163; 2008 ATC 20-064; 70 ATR 14; 250 ALR 388
- Commissioner of Taxation v Genys, H.M. [1987] FCA 520; 17 FCR 495; 87 ATC 4875; 19 ATR 356; 77 ALR 527
- Commissioner of Taxation v Payne [2001] HCA 3; 202 CLR 93; 177 ALR 270
- Commissioner of Taxation v Toms, A.J. [1989] FCA 153; 89 ATC 4373; 20 ATR 466
- Commissioner of Taxation v Vogt [1975] 1 NSWLR 194; 75 ATC 4073; 5 ATR 274
- Crestani and Commissioner of Taxation [1998] AATA 612; 98 ATC 2219; 40 ATR 1037
- Fullerton, L.W. v Commissioner of Taxation [1991] FCA 702; (1991) 32 FCR 486; 91 ATC 4983; 22 ATR 757
- John Holland Group Pty Ltd v Commissioner of Taxation [2015] FCAFC 82; 232 FCR 59; 2015 ATC 20-510; 99 ATR 73; 321 ALR 53
- Lunney v Commissioner of Taxation [1958] HCA 5; 100 CLR 478; 32 ALJR 139; [1958] ALR 225; 11 ATD 404
- Newsom v Robertson (Inspector of Taxes) [1952] 2 ALL ER 728; [1953] 1 Ch 7; 31 ATC 429; [1952] 2 TLR 636; [1952] TR 401; (1952) 96 Sol J 696
- Reany and Commissioner of Taxation [2016] AATA 672
- Ronpibon Tin NL v Commissioner of Taxation (Cth) [1949] HCA 15; 78 CLR 47; [1949] ALR 785; 8 ATD 431
- Sargent (Inspector of Taxes) v Barnes [1978] 2 ALL ER 737; [1978] 52 TC 335; [1978] STC 322; [1978] 1 WLR 823
- Stevens v Brodribb Sawmilling Co Pty Ltd [1986] HCA 1; 160 CLR 16; 63 ALR 513; 60 ALJR 194; [1986] ACL 36085
- The Commissioner of Taxation of Australia v Charlton, Robert Ewing Scott [1984] VicSC 297; (1984) 15 ATR 711; 84 ATC 4415
- The Roads and Traffic Authority of New South Wales v Commissioner of Taxation [1993] FCA 445; 43 FCR 223; 93 ATC 4508; 26 ATR 76; 116 ALR 482

Other references:

- Fringe benefits tax: a guide for employers

ATO references

NO:	1-9M51TVC
ISSN:	2205-6122
BSL:	I&I SB
ATOlaw topic:	Income tax ~~ Deductions ~~ Work related expenses ~~ Home to work travel Income tax ~~ Deductions ~~ General deductions - section 8-1 ~~ Other Income tax ~~ Deductions ~~ Employment expenses ~~ Salary and wages Income tax ~~ Deductions ~~ Employment expenses ~~ Expenses incurred by employer for employees Fringe benefits tax ~~ Expense payment benefits ~~ Taxable value ~~ Otherwise deductible rule

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