TR 94/D18 - Income tax: employee work-related deductions within the transport industry

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Draft Taxation Ruling
Income tax: employee work-related deductions within the transport industry

other Rulings on this topic

ITO 1217; IT 208; IT 2230; IT 2326; IT 2327; IT 2368; IT 2370; IT 2452; IT 2460; IT 2469; IT 2543; IT 2579; IT 2595; IT 2599; IT 2601; IT 2644; IT 2685; IT 2686; TD 92/157; TD 93/108; TD 93/174; TD 93/244; TR 92/15; TR 92/20; TR 93/22; MT 2038

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DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings which represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

What this Ruling is about

1. This Ruling deals with deductions for work-related expenses generally claimed by truck drivers who are employed within the transport industry, and with specific reference to Long Distance Truck Drivers as defined in this Ruling. The Ruling discusses whether or not deductions are allowable under either subsection 51(1) or section 54 of the *Income Tax Assessment Act 1936.*

2. Where an allowance of a particular kind is paid to a taxpayer this does not necessarily entitle an employee to a deduction, whether or not the allowance is received under an industrial award. It is the nature of the outgoing itself which determines whether the expenditure is deductible under the provisions of subsection 51(1). This is explained in Taxation Ruling IT 2543 and Taxation Determination TD 93/174.

3. While employment-related expenses over $300 in total need to be substantiated by documentary evidence (section 82KZ) to be allowable under subsection 51(1), this Ruling does not discuss these substantiation requirements in detail. Where special conditions apply these are discussed.

4. For the purposes of this Ruling, a Long Distance Truck Driver is a truck driver who is required to be absent from home overnight or for a period which would normally require accommodation and meal expenses to be incurred.

Ruling

5. Deductions in respect of these work-related expenses are treated in the following ways:

Allowances and reimbursements

Overtime meal allowances: Deductions are allowable against reasonable overtime meal allowances paid under an Industrial Award (refer TR93/22).

Travelling allowances: Deductions are allowable against eligible travelling allowances (refer TR 93/22).

Long/wide loads and similar allowances: Deductions against these allowances are not allowable.

Clothing

Protective clothing: Deductions for the cost of purchasing protective clothing are allowable.

Cleaning and maintenance of protective clothing: Deductions for the cost of cleaning and maintaining protective clothing are allowable.

Non-compulsory uniforms: Deductions for the cost of non-compulsory uniforms are not allowable unless the uniform is registered under the Approved Occupational Clothing Guidelines.

Uniform cleaning and maintenance: Deductions for the cost of cleaning and maintaining an approved uniform are allowable.

Footwear: Deductions for the purchase of protective footwear are allowable.

Sunglasses/prescription glasses: Deductions are not allowable for the cost of glasses or contact lenses.

Tools and equipment

CB radios: Deductions for the cost of CB Radios are not allowable.

Fridges: Deductions for the cost of, or depreciation of, fridges are not allowable.

***Working dogs*:** Deductions for the depreciation of the cost of working dogs, and deductions for their maintenance are allowable to livestock carriers.

Depreciation of tools: Deductions for the depreciation of the cost of tools are allowable.

Telephones and mobile telephones

Cost of calls: The cost of work-related calls are an allowable deduction.

Rental costs: Generally rental costs are not allowable as a deduction. However, a proportion of telephone rental is allowable where a truck driver can demonstrate that he or she is 'on call', or required to telephone his or her employer on a regular basis for the purpose of employment.

Installation costs: Installation cost of a telephone is a capital expense and no deduction is allowable.

Vehicle expenses

Driver's licence: Deductions for the cost and renewal of a driver's licence are not allowable.

Parking and speeding fines: Deductions for fines imposed under any law or by a court are not allowable.

Truck repairs: Deductions for the cost of repairs to trucks are allowable.

Truck washing: Deductions for the costs incurred in washing trucks at home are allowable.

General

Sickness and accident insurance: Premiums paid under a sickness and accident insurance policy are allowable deductions if the benefits obtained are assessable.

Travel from home to work: No deduction is allowable for travel from home to work and return.

Date of effect

6. This Ruling generally applies to years commencing both before and after its date of issue.

7. To the extent that this Ruling is inconsistent with any previous advice or administrative practice, it overrides that previous advice or practice on and from 1 July 1994.

8. Furthermore, this Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Explanations

Allowances and reimbursements

9. A payment is a reimbursement when the recipient is compensated exactly (meaning precisely, as opposed to approximately), whether wholly or partly, for an expense already incurred although not necessarily disbursed. In general, the provider considers the expense to be its own and the recipient incurs the expenditure on behalf of the provider (refer TR 92/15).

10. Reimbursements are not required to be included in assessable income of the employee, and no deduction is allowable under subsection 51(1).

11. A payment is an allowance when a person is paid a definite predetermined amount to cover an estimated expense. It is paid regardless of whether the recipient incurs the expected expense. The recipient has the discretion whether or not to spend the allowance. An allowance may also be to compensate for specific working conditions or for special qualifications.

12. Where a truck driver is paid an allowance, such as a long/wide loads allowance or a leading hands allowance, the amount is fully assessable. The amount is an extra payment and no deduction can be claimed against the allowance as the taxpayer has not incurred an expense under subsection 51(1). Other typical allowances treated in this manner are allowances for;

- collecting moneys;
- working in forests;
- carrying obnoxious materials;
- furniture removal and delivery;
- first-aid;
- collecting butchers' bones.

13. Allowances for overtime meals and travel expenses, where Long Distance Truck Drivers are required to be away overnight in the course of employment, are given special treatment with respect to substantiation. This is further explained in paragraphs 14 to 20.

Overtime meal allowances

14. An overtime meal allowance is paid under a law or industrial award for the purpose of enabling an employee to purchase food and drink at meal or rest breaks while working overtime.

15. An employee who does not receive an overtime meal allowance is unable to make any claim for overtime meals.

16. The general rule is that no deduction is allowed for these expenses unless documentary evidence, such as a receipt, is obtained. However, an important exception applies if the employee receives an overtime meal allowance which the Commissioner of Taxation considers reasonable. For the year ended 30 June 1994, an allowance up to an amount of $15 is considered reasonable by the Commissioner of Taxation (refer TR 93/22).

17. An employee can claim an overtime meal allowance paid under an industrial award without the need for documentary evidence, provided the claim does not exceed the allowance received (subsection 82KZ(4)). An employee wishing to claim more than the allowance received must have documentary evidence to support the total claim, not only the excess (section 82KZA).

18. Income Tax Rulings IT 2326, IT 2644, IT 2686 and Taxation Ruling TR 93/22 provide additional information on the subject of meal allowances.

Travel expenses

To and from work

19. Where a truck driver drives a private vehicle from home to collect a truck prior to starting work, such travel is a private expense and not allowable under subsection 51(1). In the decision of the full High Court in *Lunney v FCT* (1958) 7 AITR 166; 100 CLR 478, travel to and from work is seen as a prerequisite to the earning of assessable income rather than being incurred in the course of gaining that income. Its essential character is private or domestic, relating to personal and living expenses as part of the taxpayer's choice of where to live.

Overnight journeys

20. No deduction is generally allowable for expenses incurred by an employee for the cost of food, drink, accommodation and incidentals, unless documentary evidence is obtained. Where a person is travelling away from home within Australia for more than 5 nights, a travel diary containing particulars of each activity undertaken on the relevant travel also needs to be kept.

21. Where an employee is in receipt of an overnight expense allowance (or similar allowance paid to cover the cost of accommodation, food and drink) which the Commissioner considers reasonable, a deduction may be allowable for expenses incurred for accommodation, food and drink in respect of the travel to which the allowance relates.

22. Taxation Rulings setting out the amounts which the Commissioner considers to be reasonable for the purposes of subsection 82KZ(4) are released periodically. Refer to Income Tax Rulings IT 2601, IT 2644, IT 2686 and TR 93/22.

Accommodation expenses

23. Long Distance Truck Drivers would normally not incur any expense for accommodation as the usual practice is for drivers to sleep in their trucks. However, where an expense in respect of accommodation is incurred, a deduction would be allowable provided such expenditure is supported by documentary evidence in the form of a receipt or similar document.

Food and drink

24. Where an employee receives an allowance which the Commissioner considers reasonable, expenses incurred in respect of food and drink, which do not exceed the amount of the allowance received, may be claimed without the need for substantiation.

25. If the employee claims as a deduction an amount which is greater than the amount received, the deduction will only be allowed if the full amount of the expense is substantiated. This is confirmed in *Case 1* 93 AAT 101.

26. Where an employee does not receive an allowance, any claim for food and drink must be fully substantiated.

27. The costs of snacks taken between meals are not considered to be allowable deductions.

Proving claims for food and drink expenses

28. Under section 82KZ and section 82KZA, an income tax deduction is not allowable in respect of an 'eligible expense' in relation to a meal allowance, travel allowance, 'employment-related expense' or a travel expense unless documentary evidence of the expense has been obtained and retained by the taxpayer. Broadly speaking, documentary evidence of an expense is a receipt, invoice or similar document that sets out the particulars outlined in section 82KU.

29. In most instances receipts or similar documents can be obtained to verify the cost of food and drink. However, it is recognised that it is sometimes impracticable for truck drivers to obtain receipts for

various small items of food and drink (being amounts not exceeding $10).

30. Where a truck driver chooses not to obtain a receipt, a diary entry will satisfy the substantiation requirements. The maximum amount of work-related deductions which can be claimed using diary entries is $200 (subsection 82KU(7)). However, where the Commissioner considers it to be unreasonable to expect the taxpayer to obtain a receipt, no limit is placed on the total amount which can be claimed using diary entries (subsection 82KU(8)). Diary entries must comply with the provisions of subsection 82KU(1).

31. As an alternative to keeping a separate diary, Long Distance Truck Drivers may choose to record particulars of the amounts expended on the back of the relevant page of the Roads & Traffic Authority Drivers Log Book.

32. Details required would be:

- type of meal (e.g. dinner);
- the cost of the meal;
- the name of the vendor (eg Joe's Cafe; BP Service Station);
- the location where the meal was purchased (eg town/suburb).

Day trips

33. No deduction is allowable for the cost incurred by a truck driver in the purchase of food and drink on days where he or she returns home upon completion of a shift. The cost of food and drink is considered to be a private expense and not allowable under subsection 51(1).

34. The courts have held that to constitute an allowable deduction, an expense must be incurred in gaining or producing the assessable income. They have looked at the scope of the activity and the relevance of the expenditure thereto (*Amalgamated Zinc (De Bavay's Ltd) v. FC of T* (1935) 54 CLR 295, 309) and determined that meals are a private expense.

35. *Case 148* 87 ATC 868 resulted in a departure from this finding and truck drivers being allowed to claim meals under certain circumstances as set out in Income Tax Ruling IT 2579.

36. A truck driver by the very nature of his or her employment activity is required to be 'on the road' for the major part of his or her working day to perform his or her duties. It cannot be said that such activity is not 'ordinary'.

37. We now consider, based on more recent cases (*FC of T v. Cooper* 91 ATC 4396 and *Case Y8* 91 ATC 166), that this decision is

incorrect. From the effective date of this Ruling, Income Tax Ruling IT 2579 will be withdrawn.

Clothing

Protective clothing

38. Truck drivers may be provided with clothing by their employer for the protection of their conventional clothing, eg overalls. Expenses incurred in cleaning and maintenance of protective clothing are allowable deductions under subsection 51(1). Truck drivers may also choose to purchase additional items of protective clothing and the purchase of this clothing, and its maintenance, is an allowable deduction under subsection 51(1).

39. Taxation Determination TD 92/157 discusses the purchase of heavy duty clothing such as jeans, drill trousers and drill shirts. Expenditure on these items is considered a private expense and not deductible under subsection 51(1). This type of clothing is widely worn in the community; it is conventional in nature.

Non-compulsory uniforms

40. Since 1 September 1993, non-compulsory uniforms and corporate wardrobe expenses have been non-deductible (except for protective clothing), unless the design was approved in writing by the Commissioner of Taxation or entered on the Register of Approved Occupational Clothing. A transitional arrangement will allow deductibility of expenditure incurred between 1 September 1993 and 1 July 1995 on uniforms or wardrobes approved in writing by the Commissioner of Taxation.

Footwear

41. The cost of footwear which is protective, eg: steel-capped safety boots, is an allowable deduction. The cost of ordinary shoes, eg sandshoes, joggers, is not deductible.

Uniform laundry and maintenance

42. When clothing is considered allowable under subsection 51(1), a deduction for the expenses incurred in the cleaning and maintenance of such clothing will be allowed.

43. Further information can be found in Taxation Ruling IT 2452.

Sunglasses/prescription glasses

44 Many drivers wear glasses to reduce the glare and enhance their ability to see while driving.

45. TD 93/244 states sunglasses are merely protection from the natural environment and cannot be claimed as a deduction.

46. Sunglasses which have additional features which could be considered to be protective may be allowable. In *Case 10/94* 94 ATC 168 a police motorcycle patrolman was allowed a deduction for wrap-around sunglasses which were considered to provide protection from foreign particles.

47. Prescription glasses and contact lenses are considered to be a private expense, because they relate to a personal medical condition, and cannot be claimed as a deduction.

Tools and equipment

C.B. radios

48. C.B. radios are used for contact between truck operators to determine road conditions, etc. These activities are not necessary in the earning of assessable income and are considered private. Therefore, no deduction is allowable under subsection 51(1).

Fridges

49. Some truck drivers purchase fridges to keep food and drink cool. Truck fridges are considered a private expense and are not deductible under subsection 51(1).

Livestock carriers

50. Where a taxpayer can provide evidence to support the necessity for a working dog, eg. drivers who transport cattle and require dogs to herd cattle off and on the truck, the dog would be depreciable plant and subject to the depreciation provisions of section 54. Rates of depreciation are set out in Taxation Ruling IT 2685. Associated veterinary fees and pet food expenses are allowable under subsection 51(1).

Telephone and mobile telephone expenses

51. Telephone installation costs are a capital expense and no deduction is allowable (*Case M53*, 80 ATC 357).

52. It is accepted that there is a need for drivers to contact their employers on occasions to check working or delivery schedules. For these contacts to be made, the use of a telephone or mobile telephone is necessary. Therefore, the expense incurred in making work-related calls is an allowable deduction under subsection 51(1).

53. Work-related calls can be identified from the itemised telephone account. Where such an account is not provided, a reasonable estimate of call costs, based on diary entries of calls made over a period of one month, together with relevant telephone accounts will be acceptable substantiation. An appropriate basis for such

apportionment would be the ratio of incoming and outgoing work-related calls to private calls.

54. Claims for telephone rental by employees are generally not deductible. However where a driver can clearly establish that he or she is required to be 'on call' or to have regular contact with his or her employer, that portion of the rental relating to work calls may be an allowable deduction.

55. Where a truck driver is phoned by his or her employer to advise him or her of starting times for work, he or she is not considered to be 'on call' and no deduction for telephone rental is allowable. (*Nolder v Walters* (1930) 15 TC 380).

Depreciation of Tools

56. Some employees are required to provide their own tools for on-the-road repairs.

57. Tools are generally capable of being used for a number of years and so their cost is considered to be capital and not immediately allowable as a general deduction. Instead, a deduction for depreciation is allowable. The current depreciation rates are set out in Taxation Ruling IT 2685. Earlier rates are set out in Income Tax Order 1217.

58. For some items, there is an option of claiming the cost of replacements instead of depreciating the cost of initial purchases. Under this replacements basis, no deduction is allowed for the cost of initial purchases but the cost of replacements is fully deductible. Items for which the replacements basis is acceptable are also identified in Taxation Ruling IT 2685 and Income Tax Order 1217.

59. The tools mentioned in the two preceding paragraphs are subject to the 100% depreciation rate available for items purchased on or after 1 July 1991 and costing not more than $300 or with an effective life of three years or less.

Vehicle expenses

Driver's licences

60. As discussed in TD 93/108, although the holding of a driver's licence may be a condition of employment, it does not follow that the licence fees are deductible. They are private in nature and accordingly not deductible under subsection 51(1).

61. A truck driver needs an endorsed licence to perform duties. In the normal course of events these types of endorsements do not add to the cost of the licence.

Parking and speeding fines

62. Fines imposed under any law of the Commonwealth, a State, a Territory or a foreign country or by a court are not allowable deductions. Subsection 51(4) expressly excludes these payments from deductibility under subsection 51(1).

Truck repairs

63. Costs incurred in the purchase of parts for repair of trucks are allowable deductions. Where any reimbursement is received by an employee to cover these costs, these amounts must be offset against any claims made.

Truck washing

64. Where a truck driver is required to wash his or her truck at home, expenses incurred in the purchase of detergents, polish, etc, for this purpose will be allowed. Receipts, or diary entries for amounts below $10, provided the total of work-related expenses using diary entries does not exceed $200, will satisfy the substantiation requirements.

65. Where items of a capital nature are purchased, such as shampooing attachments for a hose, any deduction for depreciation should be apportioned between the work-related and private use to which the item is put.

General

Sickness and accident insurance

66 Premiums paid by truck drivers under a sickness and accident insurance policy may be deductible depending on the nature of the benefits obtained during the period of incapacity.

67. If the benefits received during the period of incapacity are periodic payments (ie weekly, monthly, etc), then a deduction is allowable for the premiums paid. The periodic payments are considered to be income in nature.

68. If the benefit received during the period of incapacity is a lump sum payment, then generally no deduction is allowable for the premiums paid as the lump sum payment is considered to be capital in nature.

69. If the benefits received during the period of incapacity are a combination of both periodic payments and a lump sum payment, then a deduction is allowable for that portion of the premiums applicable to the periodic payments.

70. This decision is confirmed in *Case J45,* 77 ATC 417 and *FC of T v. Smith* 81 ATC 4114. Taxation Rulings IT 208, IT 2230, IT 2370 and IT 2460 provide further information on the deductibility of sickness and accident premiums.

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- FC of T v. Cooper 91 ATC 4396; 21 ATR 1616;
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