TR 97/D3 - Income tax: relief from the substantiation requirements

This cover sheet is provided for information only. It does not form part of *TR 97/D3 - Income tax: relief from the substantiation requirements*

This document has been finalised by TR 97/24.

Generated on: 29 November 2026, 01:38:30 AM

Draft Taxation Ruling
Income tax: relief from the substantiation requirements

other Rulings on this topic

IT 2645

contents para

What this Ruling is about 1

Class of person/arrangement 3

Cross-reference table of provisions 8

Date of effect 9

Previous Rulings 11

Ruling 12

Background 12

Commissioner's discretion to grant relief from the effects of a failure to substantiate 15

Reasonable expectation that substantiation would not be required 21

If documents are lost or destroyed 24

Explanations and Examples 29

Commissioner's discretion 29

Example 1 44

Reasonable expectation 46

Example 2 51

Lost/destroyed documents 53

Example 3 59

Detailed contents list 60

Your comments 61

Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office.

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. The Tax Law Improvement Project is restructuring, renumbering and rewriting the income tax law in plain language. The Parliament is amending the income tax law progressively to reflect these aims. As the new law comes into effect, Taxation Rulings about the old law are being brought into line with the new law.

2. Taxation Ruling IT 2645 dealt with section 82KZAA of the *Income Tax Assessment Act 1936* ('the old law'). That section, rewritten and included in the old law as section 8-1 of Schedule 2B in 1995, has now been renumbered and included in Subdivision 900-H of the *Income Tax Assessment Act 1997* ('the new law' or 'the Act'). This Ruling explains the rewritten provision. It also explains the other provisions which may grant relief from the effects of a failure to substantiate expenses.

Class of person/arrangement

3. This Ruling provides guidance on the three circumstances in which Subdivision 900-H of the new law, or Division 8 of Schedule 2B of the old law, may apply to grant relief where expenses have not been substantiated. Those three circumstances are:

- where there is **sufficient evidence** to indicate that the taxpayer has incurred the expense and is entitled to a deduction;

- where the only reason for the failure to substantiate was a **reasonable expectation** that substantiation would not be needed; or
- where documents have been **lost or destroyed** despite the taxpayer taking reasonable precautions.

4. This Ruling applies in respect of income tax deductions claimed for expenses covered by the substantiation provisions incurred in the 1994-95 or a later income year. These expenses are:

- work expenses;
- car expenses calculated under the 'one third of actual expenses' method;
- car expenses calculated under the 'log book' method; and
- business travel expenses.

5. It does not apply in respect of car expense deductions calculated under the 'cents per kilometre' method or the '12% of original value' method.

6. The entities affected by this Ruling are individuals and partnerships which include at least one individual as a partner. It does not apply to any other entity.

7. The general conditions for the deductibility of expenses are not discussed in detail in this Ruling.

Cross-reference table of provisions

8. Taxation Ruling IT 2645 dealt with section 82KZAA of the old law (for income years up to and including 1993-94). That section was rewritten in 1995 and included in the old law as section 8-1 of Schedule 2B (for the 1994-95, 1995-96 or 1996-97 income year). The rewritten section, renumbered, is included in Subdivision 900-H of the new law (for the 1997-98 or a later income year). The following table cross-refers provisions in the new law to the corresponding provision in the old law.

	New Law	Old Law	
Years	1997-98 and later	1994-95, 1995-96 and 1996-97	1993-94 and earlier
Statute	*Income Tax Assessment Act 1997*	*Income Tax Assessment Act 1936*	*Income Tax Assessment Act 1936*
Ruling	this Ruling	this Ruling	IT 2645
Sufficient evidence	section 900-195	section 8-1 of Schedule 2B	section 82KZAA and subsection 82KU(10)
Reasonable expectation	section 900-200	section 8-2 of Schedule 2B	section 82KZBB
Lost or destroyed	section 900-205	section 8-3 of Schedule 2B	subsections 82KZA(5), (6), (6A) and (7)

Date of effect

9. This Ruling applies for the 1994-95 or a later income year. However, for the 1994-95 income year, if Schedules 2A and 2B prevent a taxpayer from deducting an expense or allow a lesser deduction than under Subdivision F of Division 3 of the old law, a taxpayer can deduct the amount which would have been deductible under the old law.

10. 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).

Previous Rulings

11. Taxation Ruling IT 2645, which applied in relation to the period 8 January 1991 to 30 June 1994, will be withdrawn on finalisation of this Ruling.

Ruling

Background

12. It is a requirement of the substantiation provisions in Division 900 of the Act that, for income tax purposes, certain written evidence is maintained in respect of work expenses, car expenses and business travel expenses. Consistent with self-assessment, a taxpayer, although required to declare that this evidence has been kept, is not required to furnish it with the income tax return. A taxpayer must supply it to the Commissioner when called upon to do so. If the required written evidence is not available, the expenses cannot generally be claimed as deductions under other provisions of the Act.

13. However, in three limited sets of circumstances, Subdivision 900-H of the Act provides relief from the effects of a failure to observe strictly the substantiation requirements. For the purposes of these rules about relief from the effects of failing to substantiate, subsection 28-150(6) of the Act states that not doing something required by Division 28 in calculating deductions for car expenses, e.g., retaining a log book, is treated in the same way as not doing something necessary to follow the rules in Division 900. The three sections of the Act that may grant relief are:

- section 900-195 which provides a discretion to grant relief provided the nature and quality of the evidence available to substantiate a claim satisfies the Commissioner that a taxpayer incurred the expense and that there is an entitlement to deduct the claimed amount;
- section 900-200 which grants relief where the only reason for the failure to substantiate an expense was a reasonable expectation that this would not be needed in order to deduct that amount; and
- section 900-205 which grants relief where documents have been lost or destroyed despite a taxpayer taking reasonable precautions to prevent loss or destruction.

14. Subdivision 900-H does not diminish the general operation of the substantiation provisions, but does specify particular exceptional circumstances where relief from the effects of a failure to substantiate expenses (hereafter referred to as 'relief') may be granted. While the circumstances used in the examples in this Ruling provide general guidance, they do not replace the need for decisions on the granting of relief to be based on all the relevant facts. Rarely will the presence of one factor be determinative.

Commissioner's discretion to grant relief from the effects of a failure to substantiate

15. Section 900-195 of the Act (formerly section 8-1 of Schedule 2B of the old law) provides the Commissioner with the discretion to grant relief in particular circumstances. This discretion to grant relief applies if the nature and quality of the evidence available to substantiate an expense, satisfies the Commissioner that a taxpayer incurred the expense and that there is an entitlement to deduct the amount claimed. It is a question of fact and degree as to whether the evidence which is available satisfies these criteria.

16. However, it is consistent with the terms of the law that no relief is available in respect of a claim where there is no supporting documentation or factual material evidencing the expense. Where there is a major failure to comply with the substantiation requirements, the taxpayer could face practical difficulties in providing evidence of a nature and quality that satisfies the Commissioner that the claimed amount of an expense has been incurred and is deductible. Unsupported statements by a taxpayer as to the amount of an expense incurred do not constitute evidence of a nature and quality that satisfies the Commissioner that the discretion should be exercised.

17. The discretion provided for by this section is more likely to be exercised where a substantial amount of the required documentary evidence is retained. While the degree to which a taxpayer seeks to comply with the substantiation requirements is not directly relevant to the exercising of this discretion, from a practical point of view, a *bona fide* attempt to comply with the substantiation requirements is likely to assist a taxpayer in relation to the nature and quality of the evidence held (see paragraphs 34 to 40).

18. The exercise of this discretion to grant relief does not remove the need for a taxpayer to satisfy the requirements of the particular provision under which a deduction is sought to be claimed. An entitlement to claim a deduction must exist under another provision of the Act.

19. The Commissioner may exercise this discretion before an assessment is made or on review of an assessment. Where an assessment is subject to review, the taxpayer may supply relevant information and seek the application of this discretion. Conversely, the Commissioner on reviewing an assessment can initiate a request for relevant information to be supplied to consider applying relief. A taxpayer may apply for a private ruling requesting the Commissioner to exercise this discretion before an assessment is made. Full details should be provided of the supporting evidence held and the circumstances surrounding the failure to substantiate an expense.

20. This discretion was enacted to counter specific concerns that unreasonable hardship might otherwise arise. The rewritten law reflects similar policy considerations. The discretion allows a common sense approach to the administration of the substantiation provisions. It provides for a balancing of the need for the just and equitable treatment of taxpayers confronted with exceptional circumstances and the maintenance of an effective regime to only allow taxpayers deductions for expenses they have actually incurred. It supplements the general operation of Division 900 that requires taxpayers to retain specified documents, as a prerequisite to the allowance of a deduction in respect of that expense under another provision of the Act.

Reasonable expectation that substantiation would not be required

21. Section 900-200 of the Act (formerly section 8-2 of Schedule 2B of the old law) provides relief where the only reason for a taxpayer's failure to observe the substantiation requirements was a reasonable expectation that the substantiation requirements would not need to be met. The taxpayer needs to have held a genuine expectation that there was no need to meet the substantiation requirements and this expectation needs to have been reasonable in all the circumstances. Also, that expectation needs to be the only reason for the failure to substantiate an expense.

22. This may occur where the taxpayer had a reasonable expectation that expenses would not need to be substantiated because they were in one of the exception categories, e.g., work expenses less than $300; reasonable travel allowance expenses; reasonable award overtime meal allowance expenses; award transport payment expenses. This section operates where the taxpayer is unable to rely upon the exception to the substantiation requirements due to unforeseen circumstances. It is necessary that at the time of incurring the expense it was reasonable to believe that circumstances existed that would have allowed the exception to apply. Section 900-200 provides relief and any right to deduct those expenses is not affected (see paragraphs 41 and 42 for further information).

23. An expectation that the substantiation requirements would not apply that is based on a lack of knowledge of the law is not sufficient to attract the operation of this provision. There is an expectation that taxpayers have a knowledge of the operation of the law. There are a number of generally available sources of information, including TaxPack, to provide assistance to taxpayers. The section may, however, operate if a reasonable expectation that substantiation is not required is created by the advice or conduct of the Australian Taxation Office ('ATO'). This section does not grant relief where a taxpayer has

carelessly or recklessly disregarded whether an exception to the substantiation requirements would apply.

If documents are lost or destroyed

24. Section 900-205 of the Act (formerly section 8-3 of Schedule 2B) provides for relief, subject to certain conditions, if documents are lost or destroyed.

25. A copy or substitute document is treated as the original document if it is:

- a complete copy of the document (subsection 900-205(1)); or
- a substitute that meets all the original requirements for substantiation (subsection 900-205(5)).

26. However, if such a copy or substitute is not obtained, the granting of relief is subject to several conditions:

- it is necessary to show that the loss or destruction had occurred (if the documents never existed or there are insufficient grounds for accepting that they existed, section 900-205 does not apply);
- the Commissioner must be satisfied that reasonable precautions were taken to prevent loss or destruction (subsection 900-205(2));
- where the document was written evidence of an expense, it needs to be shown that it is not reasonably possible for the taxpayer to get a substitute document (subsections 900-205 (4) and (7)).

27. It will be necessary for the taxpayer to show that reasonable precautions were taken to protect documents. What might be viewed as 'reasonable precautions' depends upon the facts of each case. However, relief would not be granted if the circumstances indicate that the loss or destruction resulted from the taxpayer's carelessness or recklessness.

28. What might be viewed as 'reasonably possible' in obtaining a substitute document also depends upon the facts of each case. A taxpayer needs to show that a *bona fide* attempt has been made to obtain a substitute document; or there are reasonable grounds for believing that such efforts would not be successful (see paragraphs 43 to 49).

Explanations and Examples

Commissioner's discretion

History

29. Following the introduction of the substantiation provisions in 1986 it was found that those provisions may, in some circumstances, produce an unreasonably harsh result. Accordingly, section 82KZAA was added to the old law by an amendment to the Taxation Laws Amendment Bill (No 4) 1990. That amendment was introduced by the Government in the Senate. In the Second Reading speech on the Bill, as amended, in the Senate, it was stated that '[t]here will be no relaxation of the substantiation requirements in anything other than exceptional individual circumstances' and 'the Government is concerned to ensure that the integrity of the substantiation provisions [is] not threatened'.

Tribunal decisions

30. The Administrative Appeals Tribunal ('the Tribunal') has provided guidance on the operation of the substantiation provisions. In *Case 7/93* 93 ATC 135; *AAT Case 8590* (1993) 25 ATR 1066, the Tribunal considered that the purpose and design of the substantiation provisions was to outlaw the practice, and the problems which flowed from it, of making an annual estimate of deductible expenses without getting receipts or other evidence to support the allowance of deductions claimed. The general requirement of the legislation is that, if a deduction is sought, the substantiation requirements must be met. In that case, the Tribunal did not view with favour the nature and quality of the evidence of the taxpayer and decided not to exercise the discretion then available under the former section 82KZAA.

31. In *Case 1/93* 93 ATC 101; *AAT Case 8378* (1992) 24 ATR 1175, a truck driver produced a diary that the Tribunal concluded was a sham and it was decided there were no special circumstances which would warrant the exercising of the discretion available under the former section 82KZAA.

32. In *Case 2/95* 95 ATC 107; *AAT Case 9918* (1994) 30 ATR 1041, the discretion to allow relief from substantiation requirements was granted by the Tribunal to a truck driver who, based on advice from the ATO, relied on log book entries to support his claim for travel expenses. On the evidence given by the taxpayer and the nature of his employment, it was accepted by the Tribunal that the expenses had been incurred. It was also accepted that the taxpayer had a reasonable expectation, because of the advice given by the ATO, that the evidence which was kept was sufficient to substantiate his claims.

The deduction allowed by the Tribunal was less than the daily rate the ATO considered 'reasonable'.

33. Similarly, in *Case 9/96* 96 ATC 186; *AAT Case 10,666* (1996) 31 ATR 1349, a truck driver produced a diary that did not strictly comply with the substantiation requirements. The diary format had been accepted by the ATO on a previous occasion. While the case was decided against the taxpayer on the basis of insufficient evidence to establish deductibility under the former section 51(1), the Tribunal would have exercised the discretion under the former section 82KZAA to provide relief from the effects of failing to substantiate those expenses. The Tribunal had regard to its acceptance that the amounts claimed to be expended were in fact incurred by the taxpayer; the taxpayer's substantial compliance with the substantiation provisions; and his reasonable belief that his diary was acceptable to the ATO based on the acceptance of a similar record in the past.

Rewrite of the substantiation discretion

34. Section 8-1 of Schedule 2B replaced section 82KZAA with effect from 1 July 1994 as a result of the *Tax Law Improvement (Substantiation) Act 1995*. The section no longer requires the Commissioner to consider the extent to which a taxpayer attempted to comply with the substantiation provisions and whether any failure to do so was deliberate. It also removes the requirement that the discretion could only be considered on review. However, it retains the requirement that the Commissioner is to take into account the nature and quality of the evidence a taxpayer provides. Consequently, decisions reached by the Tribunal on the nature and quality of evidence required in order to attract the application of the previous discretion in section 82KZAA are still relevant.

35. Schedule 2B also introduced a number of practical changes which have made it easier for taxpayers to meet their substantiation obligations. These changes included the removal of the need to sign diary entries; a description of goods and services provided can be recorded by the taxpayer on a receipt or document; amounts shown on a group certificate can be evidence of payment; and bank statements can be used to show when a payment was made. Accordingly, a number of situations have been eliminated which previously may have required consideration of the Commissioner's discretion.

New law

36. Section 900-195 of the Act allows the Commissioner the discretion to grant relief where the nature and quality of the evidence available to substantiate a taxpayer's claim satisfies the Commissioner:

(i) that the expense was actually incurred by the taxpayer; and

(ii) that the taxpayer is entitled to deduct the amount claimed.

37. In reaching this decision, the Commissioner has to have regard to the nature and quality of the evidence that the taxpayer has available to substantiate the claim. It is consistent with the terms of the law that no relief is available in respect of a claim where there is no supporting documentation or factual material evidencing the expense.

Evidence

38. This discretion is more likely to be exercised where a substantial amount of the required documentary evidence is retained. While, from a practical point of view, the degree to which a taxpayer has sought to comply with the substantiation requirements is not directly relevant to the exercising of this discretion, a *bona fide* attempt to comply with the substantiation requirements is likely to assist a taxpayer in relation to the nature and quality of the evidence held. For example, where a taxpayer has retained almost all of the documents required but there has been a minor failure to observe the substantiation requirements, it is likely that the nature and quality of the evidence available will assist a taxpayer seeking the exercise of this discretion by the Commissioner.

39. The central issue to be considered in deciding whether this discretion ought to be exercised is whether the evidence available:

(i) satisfactorily quantifies the amount of the expense; and

(ii) establishes the extent to which the taxpayer is entitled to claim a deduction.

40. Unsupported statements by a taxpayer as to the amount of an expense incurred do not constitute evidence of a nature and quality that satisfies the Commissioner that the discretion should be exercised. It is not possible to specify the nature and quality of supporting evidence that will satisfy the Commissioner. Each case must be considered on its own merits and a common sense approach applied.

41. When deciding whether to exercise this discretion, the Commissioner is not limited to considering documentary evidence. A wide variety of factual information may be relevant in a particular case. For example, in deciding whether the Commissioner is satisfied that car expenses have been incurred and are deductible to the extent claimed, a relevant piece of evidence to be considered might be the fact that a particular motor vehicle is used in operating a driving school rather than for occasional use in producing assessable income.

42. If a taxpayer has made little or no attempt to comply with the substantiation requirements, the nature and quality of supporting evidence available is likely to be poor. It is the clear intention of the substantiation provisions that deductions are generally not to be allowed where there is no supporting documentation or factual material evidencing the expense. In cases where there has been a major failure to comply with the substantiation requirements, the taxpayer may well face practical difficulties in satisfying the Commissioner that the claimed amount of an expense has been incurred and is deductible. Such cases frequently involve estimates by the taxpayer of expenses incurred.

Estimates

43. The substantiation provisions are aimed at increasing the likelihood that a taxpayer will claim the correct amount as a deduction for the specified expenses. These provisions have the effect of precluding the practice of claiming deductions based on annual estimates of expenses, and the problems which flowed from it. It would be contrary to the intention of the law to use this discretion to grant relief and allow deductions based solely on such estimates. Therefore, a taxpayer's estimate of an expense supported only by an assertion by the taxpayer that the estimate is reasonable does not constitute evidence of a nature and quality to satisfy the Commissioner that the discretion to grant relief should be exercised.

Example 1

44. *Tom, a truck driver, is requested to substantiate his meal expense claim of $4,000 in respect of the 1995 income year. He is not paid any allowance in respect of these meal expenses which he incurred when he was required to sleep away from home while on work trips. Tom has maintained a log book which shows that he was required to sleep away from home on 100 occasions during the year. Tom has a combination of receipts and diary entries to support the amount of meal expenses for 95 of the 100 work trips on which he was required to sleep away from home. However, for five nights the diary entries did not record all required information, but Tom states that the cost of meals was similar to other trips. His diary entries show that he spent at least $40 a day on food and drink when he was required to sleep away from home while travelling for work and this is supported by the receipts he has available. In respect of the five trips where diary entries were not fully completed, his receipts, log book and diary support the fact that*

he spent at least $40 a day on meals on similar trips to those destinations.

45. *Tom requests that the Commissioner exercise the discretion to accept that $4,000 is incurred for work related meals and that he is entitled to this deduction. Since Tom can show that on similar trips he continued to spend $40 a day, in light of the nature and quality of the evidence available by way of log book entries, diary entries, receipts, and the taxpayer's statements, it appears appropriate to apply the discretion to grant relief from the effects of the failure to substantiate expenses in this case.*

Reasonable expectation

46. Section 900-200 of the Act allows for relief where the only reason a taxpayer did not obtain or retain documents or written evidence was that they had a reasonable expectation that they would not need to do so in order to claim a deduction for that amount. To attract the operation of this section, a taxpayer needs to satisfy the Commissioner that the only reason for the failure to meet the substantiation requirements was a genuine belief that those requirements did not need to be met and that this belief was reasonable in all the circumstances.

47. This may occur where the taxpayer had a reasonable expectation that expenses would not need to be substantiated because they were in one of the exception categories, e.g., work expenses less than $300; reasonable travel allowance expenses; reasonable award overtime meal allowance expenses; award transport payment expenses. The section operates where, due to unforeseen circumstances, the taxpayer is unable to rely upon the exception to the substantiation requirements. In this situation, it is necessary that, when incurring the expense, it was reasonable for the taxpayer to believe that circumstances existed that would have allowed the exception to apply.

48. An expectation that the substantiation requirements would not apply, based on a lack of knowledge of the law, is not sufficient to attract the operation of this provision. For example, if a taxpayer fails to substantiate work expenses because of a mistaken belief that only individual expenses over $300 need to be substantiated, this would not form the basis of a reasonable expectation that substantiation of expenses is not required. The general position is that there is an expectation that taxpayers have a knowledge of the operation of the law and that ignorance of the law is no excuse. There are a number of generally available sources of information, including TaxPack, which provide assistance to taxpayers.

49. However, where the advice or conduct of the ATO has created a mistaken belief by a taxpayer that the type of records held meet the substantiation requirements or that certain documents are not required, that belief can form the basis of a reasonable expectation which attracts the application of this section to provide relief. In any case where it is claimed that the failure to substantiate expenses was caused by the advice or conduct of the ATO, full details are expected to be supplied.

50. The section does not grant relief where a taxpayer has carelessly or recklessly disregarded whether an exception to the substantiation requirements would apply. For example, if a taxpayer fails to retain required documents and has no reasonable basis for believing that work expenses would be below $300, the discretion to provide relief would not be exercised.

Example 2

51. *Joe, an employed mechanic, was requested to provide receipts and other documentary evidence for $500 claimed as a deduction in the 1996 income year for work expenses. These expenses comprised $350 for replacement tools and $150 for laundry expenses. In previous years, Joe has only had to replace approximately $100 worth of tools annually due to wear and tear, as shown in his working papers used to prepare his income tax returns for previous years. In June 1996 the work shop was broken into and $250 worth of Joe's tools was stolen. He has a letter from the police related to the theft. Joe replaced those tools and while he has a receipt for that expense he does not have any receipts for earlier expenses of $100 spent on replacement tools or laundry expenses of $150 because he believed, based on his expenses in previous years, that his work expenses would not exceed the threshold of $ 300 below which work expenses need not be substantiated.*

52. *On the basis of his expenses in past years, Joe had a reasonable expectation that the substantiation provisions would not apply, i.e., that his work expenses would be less than $300, but this was not the case as a result of an unforeseen loss due to theft. In these circumstances, section 900-200 would operate to provide relief from the effects of failing to substantiate those expenses and the right to deduct the amount of $500 is not affected.*

Lost/destroyed documents

53. Section 900-205 of the Act allows relief if documents are lost or destroyed, subject to certain conditions. If a taxpayer has a complete

copy of a document that is lost or destroyed during the retention period, it is treated as the original from the time of loss or destruction. If a taxpayer does not have such a copy, any entitlement to claim a deduction is not affected if the Commissioner is satisfied that the taxpayer took reasonable precautions to prevent the loss or destruction and, if the document was written evidence, it is not reasonably possible to obtain a substitute document.

54. The following rules apply:

(a) if the lost or destroyed document was **a travel record, log book or other document that is not written evidence of an expense** under Subdivision 900-E, there is no need to replace it and any entitlement to a deduction is not affected by the failure to retain or produce the document.

(b) if the lost or destroyed document was **written evidence** of an expense under Subdivision 900-E, an attempt should be made to get a substitute document which meets all the requirements applying to the original document, except for the time limit for getting that evidence;

(i) if a substitute document is obtained, it is treated as the original from the time of the loss or destruction. Any entitlement to a deduction is not affected by the failure to retain or produce the original document;

(ii) if it is not reasonably possible to obtain a substitute document, any entitlement to a deduction is not affected by the failure to retain or produce the document;

(iii) if it is reasonably possible to get a substitute document, but it is not obtained, this section provides no protection from the consequences of failing to retain or produce the original.

55. For this section to apply, the taxpayer is expected to provide evidence, if requested, to show that the loss or destruction has occurred and that reasonable precautions were taken to protect the documents, e.g., evidence that the taxpayer's home was burgled or burnt or that a locked car containing written evidence was stolen.

56. It is not possible to define what may be 'reasonable precautions' to prevent the loss or destruction of documents. However, if the circumstances of a particular case indicate that the loss or destruction of a document resulted from the taxpayer's carelessness or recklessness, this section would not apply to provide relief where the taxpayer does not have a complete copy of the lost or destroyed document.

57. It is also not possible to define what may be 'reasonably possible' in all circumstances in relation to trying to obtain a substitute document if the lost or destroyed document was written evidence under Subdivision 900-E. However, a taxpayer needs to show either that a *bona fide* attempt has been made to obtain a substitute document or that there were reasonable grounds for believing that such efforts would have been unsuccessful, e.g., if a supplier who provided the original written evidence has ceased trading and the whereabouts of staff and records are unknown.

58. In deciding whether a taxpayer had taken 'reasonable precautions' to prevent loss or destruction of a document, or whether it was 'reasonably possible' to obtain a substitute document, each case must be considered on its own merits and a common sense approach applied.

Example 3

59. *Mary changed her address and decided to dispose of old records while packing and moving. She cannot locate her receipts for claimed tax deductions and thinks that she threw them out by mistake with some private receipts and paid bills which had accumulated in her desk drawer when she was cleaning up to move. She cannot get copies of the documents as she is unsure of the names of the suppliers.*

60. *In these circumstances, it would not be appropriate to apply this discretion as the taxpayer has not taken reasonable steps to ensure the safe storage of the documents. Depending on the facts relief may be available under other provisions.*

Detailed contents list

61. Below is a detailed list of the contents of this draft Ruling:

	paragraph
What this Ruling is about	**1**
Class of person/arrangement	3
Cross-reference table of provisions	**8**
Date of effect	**9**
Previous Rulings	**11**
Ruling	**12**
Background	12
Commissioner's discretion to grant relief from the effects of a failure to substantiate	15
Reasonable expectation that substantiation would not be required	21
If documents are lost or destroyed	24
Explanations and Examples	**29**
Commissioner's discretion	29
History	*29*
Tribunal decisions	*30*
Rewrite of the substantiation discretion	*34*
New law	*36*
Evidence	*38*
Estimates	*43*
Example 1	44
Reasonable expectation	46
Example 2	51
Lost/destroyed documents	53
Example 3	59
Detailed contents list	**60**
Your comments	**61**

Your comments

62. If you wish to comment on this draft Ruling please send your comments by: 25 July 1997:

to:

Contact Officer: Bob Barkley

Telephone: (077) 53 252

Facsimile: (077) 53 7269

Address: Australian Taxation Office
PO Box 9990
TOWNSVILLE QLD 4810.

Commissioner of Taxation

28 May 1997

ISSN 1039 - 0731

ATO references
NO 97/2162-2
BO

Not previously released to the public in draft form

Price $1.70

FOI index detail
reference number

subject references
- Commissioner's discretion
- substantiation

legislative references
- ITAA97 Div 28
- ITAA97 28-150(6)
- ITAA97 Subdiv 900-E
- ITAA97 Subdiv 900-H
- ITAA97 900-195
- ITAA97 900-200
- ITAA97 900-205

- ITAA36 51(1)
- ITAA36 82KZA(5)
- ITAA36 82KZA(6)
- ITAA36 82KZA(6A)
- ITAA36 82KZA(7)
- ITAA36 82KZAA
- ITAA36 82KZBB
- ITAA36 82KU(10)
- ITAA36 Schedule 2A
- ITAA36 Schedule 2B 8-1
- ITAA36 Schedule 2B 8-2
- ITAA36 Schedule 2B 8-3
- ITAA36 Div 3 Subdiv F

case references
- Case 7/93 93 ATC 135; AAT Case 8590 (1993) 25 ATR 1066
- Case 1/93 93 ATC 101; AAT Case 8387 (1992) 24 ATR 1175
- Case 2/95 95 ATC 107; AAT Case 9918 (1994) 30 ATR 1041
- Case 9/96 96 ATC 186; AAT Case 10,666 (1996) 31 ATR 1349