

TD 94/D36 - Income tax: when calculating separate net income for the purposes of the spouse rebate under section 159J of the Income Tax Assessment Act 1936 - (a) can the cost of work related child care or travel be taken into account? (b) do the substantiation rules apply?

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This document has been finalised by TD 94/46.

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Draft Taxation Determination

Income tax: when calculating separate net income for the purposes of the spouse rebate under section 159J of the *Income Tax Assessment Act 1936* - (a) can the cost of work related child care or travel be taken into account? (b) do the substantiation rules apply?

Question (a)

1. Yes. The separate net income of a spouse is the total of the spouse's gross income less expenses that are direct costs against that income in accordance with ordinary accounting and commercial principles (*Case N49*, (1981) ATC 243 at 244; *Case 3*, 25 CTBR (NS) 11 at 12). The costs of work related child care and travel are such expenses.

2. Only child care costs relating to child care provided because the spouse is working may be taken into account.

3. Work related travel includes travel to and from work, business travel and travel to deliver and collect children from work related child care. For the purposes of calculating work related travel expenses, if the travel is by car, the Commissioner will accept calculations based on a rate per kilometre multiplied by the number of kilometres travelled. The rate that may be used is the same rate as is used to substantiate motor vehicle expenses, which is published each year in Taxpack. On 11 February 1994 the Assistant Treasurer announced that the rates for the 1993-94 year will be as follows:

Engine capacity of car not powered by a rotary engine (cubic centimetres)	Engine capacity of car powered by a rotary engine (cubic centimetres)	Rate per kilometre (cents)
Not exceeding 1600	Not exceeding 800	46.5
Exceeding 1600 but not exceeding 2000	Exceeding 800 but not exceeding 1000	52.7
Exceeding 2000 but not exceeding 3000	Exceeding 1000 but not exceeding 1500	54.4
Exceeding 3000	Exceeding 1500	56.9

Question (b)

4. No. The substantiation provisions of the Act, sections 82KUA and 82KZ of Subdivision F of Division 3 of Part III, do not apply to deductions made in calculating separate net income. Taxpayers need not satisfy the formal requirements of the substantiation rules. However, they must be able to demonstrate that they actually incurred the relevant child care costs because the spouse was required to work or that the travel undertaken was work related.

Example 1

Joan is the spouse of Albert. Joan places her child in child care allowing her to work. Joan's income is \$6,000 and the cost of child care is \$4,000. The cost of child care may be deducted from Joan's income to calculate her separate net income. Joan's separate net income will be \$2000 (\$6,000 - \$4,000).

Example 2

Assume a spouse travels 6,000 kilometres to and from work during the year ending 30 June 1994. The appropriate rate for a car with an engine capacity of 1800cc is 52.7 cents per kilometre. To calculate the spouse's separate net income the gross income of the spouse may be reduced by \$3162.00 (6000 km x 0.527).

Commissioner of Taxation

7/4/94

FOI INDEX DETAIL: Reference No.

Related Determinations: CGT Determination Number 49

Related Rulings: IT 255; IT 2114; IT 2187; IT 2391; IT 2453

Subject Ref: separate net income; child care expenses; travel expenses; spouse rebate

Legislative Ref: ITAA 159J; ITAA Subdivision A of Division 3 of Part III; ITAA 82KUA; ITAA 82KZ

Case Ref: Case N49, (1981) ATC 243; Case 3, 25 CTBR (NS) 11

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