TD 94/D57 - Income tax: where a person provides 'consultancy services' as an employee of an interposed entity (such as a non-arm's length company, trust or partnership), are travel expenses incurred by the person in travelling between his or her place of residence and a place where the person performs the services deductible?

This cover sheet is provided for information only. It does not form part of *TD 94/D57 - Income tax: where a person provides 'consultancy services' as an employee of an interposed entity (such as a non-arm's length company, trust or partnership), are travel expenses incurred by the person in travelling between his or her place of residence and a place where the person performs the services deductible?*

This document has been finalised by TD 94/71.

Australian Taxation Office

Taxation Determination TD 94/D57

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: where a person provides 'consultancy services' as an employee of an interposed entity (such as a non-arm's length company, trust or partnership), are travel expenses incurred by the person in travelling between his or her place of residence and a place where the person performs the services deductible?

1. Generally no. The same principles apply to the deductibility of travel expenses of such persons as apply to other employees. Except in the exceptional circumstances outlined in Taxation Ruling IT 2543, or where the person is carrying on a business at his or her residence, the expenditure is of a private nature and not deductible.

2. Where a computer consultant has, for example, contracted through an interposed entity with a client to provide services for a period (irrespective of its length) at the client's premises, the consultant is commuting to a place of work as distinct from travelling on his or her work. The expenditure is of a private nature irrespective of whether the taxpayer is an employee of an interposed entity, is in partnership or is a self employed sole proprietor.

3. The question of whether the interposed entity is carrying on a business at the employee's residence is, in general, a question of fact. The nature of the activities conducted by contract consultants in providing professional services will not generally constitute the consultant's home as being a place of business. In cases where the contract consultant carries out administrative functions or even some contractual work at home, that use of the residence may, at best, constitute a home office. Accordingly, a claim for the deductibility of motor vehicle expenses would not be available.

4. In *FC of T v Collings* 76 ATC 4254, at 4266, Rath J quoted with approval the judgment of Lord Wilberforce in *Taylor v. Provan* [1975] AC 194 in which he said:

> 'It is only if the job requires the man to travel that his expenses of that travel can be deducted, i.e. if he is travelling on his work, as distinct from travelling to his work.'

Lord Wilberforce went on to say that for travel expenses to be regarded as being **on work** rather than **to work**, the taxpayer:

> 'must be required by the nature of the job itself to do the work of the job in two places: the mere fact that he may choose to do part of it in a place separate from that where the job is objectively located is not enough.'

5. Rath J (at 4266) also referred to the views expressed by Lord Simon in that case that 'what is required is proof 'in a real sense' that the taxpayer had two places of work' and that:

> 'the double work location must not be merely colourable, but also that the two places of work were a necessary obligation arising from the very nature of the office or the

employment itself and not from the circumstances of the particular person appointed or employed.'

6. The fact that a taxpayer may be required to undertake incidental employment duties (such as collecting newspapers, mail or conducting banking) between home and the place of employment would not qualify such travel as being of a business nature.

Commissioner of Taxation
26/5/94

FOI INDEX DETAIL: Reference No.
Related Determinations:
Related Rulings:
Subject Ref: travel expenses
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