


TD 94/D80 - Income Tax: substantiation: can a taxpayer change the amount of an unsubstantiated claim for a transport expense which is in excess of the award transport allowance back to the award amount during the course of an audit?

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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: substantiation: can a taxpayer change the amount of an unsubstantiated claim for a transport expense which is in excess of the award transport allowance back to the award amount during the course of an audit?

1. No. Once the deduction claimed exceeds the amount of the transport allowance paid under an industrial award that was in force on 29 October 1986, the entire deduction must be substantiated.

2. Section 82KZBA of the *Income Tax Assessment Act 1936* refers to the substantiation provisions that apply to eligible transport allowances. Paragraph 82KZBA(1)(b) establishes a precondition for the exemption from the substantiation provisions provided for under paragraph 82KZBA(1)(c). This precondition is that 'the total of the **eligible expenses**...claimed by the taxpayer as deductions...does not exceed the amount of the **eligible transport payment**...'. If this precondition is not satisfied then the exemption from the substantiation provisions does not apply.

3. An **eligible expense** is defined in subsection 82KT(1) to include (inter alia) a **transport expense** incurred against an **eligible transport payment**. Under the same subsection, a **transport expense** means an expense in connection with transport (e.g. train, bus, aeroplane, motor vehicle, etc.) but does not include an outgoing in respect of accommodation, food or drink or expenditure incidental to transport. An **eligible transport payment** is defined in subsection 82KT(1) to be the amount of the transport allowance payable under an industrial award that was in force on 29 October 1986.

Examples

1. *Sarah is an employee of a major airline. She is required to travel from the airline's head office to the airport to help the porters unload aircraft. She is paid an allowance of \$700 under a relevant industrial award. In her tax return she claims the entire amount of \$700 as a deduction. Upon audit, Sarah can only substantiate \$150 in travel deductions and she seeks to reduce her claim to \$500, the amount the relevant award specified as of 29 October 1986. She cannot do this as she can only claim the amount that can be substantiated, i.e. \$150. If Sarah had limited the initial deduction to the amount the award specified as of 29 October 1986 (in this example - \$500) she would have been entitled to that deduction without substantiation.*

2. *Alex is a circuit relief Physical Education teacher. He receives an allowance for travelling from school to school which is of a greater amount than the 29 October 1986 award rate. He teaches at several schools each day. Alex claims the full amount of the allowance as a deduction against his income when lodging his return. Alex is selected for an audit and he is asked to substantiate his claim for travel expenses. Unless Alex can prove that he has used his own vehicle and expended his allowance for travel between schools, any unsubstantiated portion of his claim will be disallowed.*

Commissioner of Taxation

21/7/94

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Related Rulings: IT 112, IT 113, IT 117, IT 2122, IT 2199, IT 2481, IT 2487, IT 2543, IT 2644, MT 2027

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