TD 96/D10 - Income tax: where a taxpayer carries on a business of primary production on a property remote from their usual place of residence and employment/business, is a deduction automatically allowable for travel between:(1) the usual place of work and the property; or (2) the usual place of residence and the property?

This cover sheet is provided for information only. It does not form part of *TD 96/D10 - Income tax: where a taxpayer carries on a business of primary production on a property remote from their usual place of residence and employment/business, is a deduction automatically allowable for travel between:(1) the usual place of work and the property; or (2) the usual place of residence and the property?*

This document has been finalised by TD 96/43.

Australian Taxation Office

Taxation Determination TD 96/D10

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 taxpayer carries on a business of primary production on a property remote from their usual place of residence and employment/business, is a deduction automatically allowable for travel between:

(1) the usual place of work and the property; or

(2) the usual place of residence and the property?

1. No. The mere fact that a taxpayer travels from their home or usual workplace to a property where the taxpayer carries on a business of primary production does not automatically mean that a full deduction is available for the cost of the trip. The purpose of the trip will usually determine whether the expenses related to it will be an allowable deduction. Individual circumstances will determine whether the total expense, a portion of the expense, or no expense is deductible under subsection 51(1), or sections 53 or 54 of the *Income Tax Assessment Act 1936*.

Travel between the usual place of work and the primary production property

2. Claims for income tax deductions for expenses incurred in travelling directly between places of employment or business are generally allowable (refer to Taxation Ruling IT 2199). However, this may be different if, for example, the primary production property could also be regarded as a second residence or weekend retreat. In these cases, the purpose of each trip will determine whether a deduction is allowable. For example, a trip to complete renovations on a house on the property is not deductible as the purpose of the trip is not to engage in an income earning activity.

Travel between the usual place of residence and the primary production property

3. Travel between home and a primary production property in order to perform or to supervise farming activities is generally considered to be for the purpose of transporting the person to the place where they commence their income producing activities. The High Court has stated in relation to 'home to work' travel: '...it may be said to be a necessary consequence of living in one place and working in another...' (per Williams, Kitto and Taylor JJ in *Hayley v. FC of T* (1958) 100 CLR 478 at 501). Expenditure on such travel is considered to be private or domestic and therefore not deductible.

4. However, a deduction is generally allowable for any trip where bulky farm goods and equipment are carried (see *FC of T v. Vogt* 75 ATC 4073; 5 ATR 274), unless there is a reasonably secure storage area on the property (see *Case N78* 81 ATC 403; (1981) 25 CTBR (NS) *Case 32*; *Case Z22* 92 ATC 230; *Case 7944* (1992) 23 ATR 1189).

5. If a taxpayer travels from their home to inspect a remote primary production property, where they do not actually do the work, for example, where the property is rented to a tenant farmer, the expense will be an allowable deduction (*FC of T v. Green* (1950) 81 CLR 313). If the taxpayer's home is also their base of operations for several farming or other businesses, travel expenses from the home to the primary production property will be deductible even if they supervise or carry out work on the remote property (*Garrett v. FC of T* 82 ATC 4060; 12 ATR 684), unless the taxpayer had a private or domestic purpose for the trip.

Examples

1. Col Miner leaves from work after the night shift to go to his farm property 200 kms away where he conducts a cattle breeding business. This weekend he will be concentrating on completing the new kitchen in the house that is on the property and will do no farm work. The expense of the return trip from the mine to the property for this purpose is not deductible.

2. V G Grower travels 80 kms per day between his home and his large market garden where he stores his equipment in sheds. Sometimes he carries equipment home from the property to maintain his domestic garden and then returns it. This travel is considered to be 'home to work' and related expenses are not deductible. The equipment is not carried for a business purpose.

3. A Gardener is employed part time and also has a large market garden where she has all equipment stored in sheds. She travels from home to her job and then to her market garden. She then travels directly home. The expenses of the trip from her job to the market garden are fully deductible, but the first and last legs of the journey are private and therefore not deductible.

4. Mr and Mrs Orchard, school teachers of Capital City, travel from home to their cattle breeding farm 100 kms away a total of 40 weekends and 2 school holidays during the year. Each trip is made for regular farming activities for the time they are there. On 18 occasions, bulky farm goods are carried to the property and equipment requiring repair is transported from the property to the home. For these trips a deduction is allowable. No deduction is allowable for the other 24 trips as the travel is from home to work and is considered to be private.

5. W Rench owns a service station. He does all of his accounts, debt collection and ordering from his nearby home. He also owns two remote farms on which he employs managers and he directs these operations from home. He visits both farms four times each year - at shearing, crutching, mustering and when the managers go on holiday. He leaves for each trip from home or his business. A deduction is allowed for each trip in these circumstances as he is moving from the centre of his business operations to the remote farms.

Commissioner of Taxation
24 July 1996

FOI INDEX DETAIL: Reference No. Not previously released in draft form
Related Determinations: TD 96/D9
Related Rulings: IT 39; IT 112; IT 117; IT 2199; TR 95/34
Subject Ref: motor vehicles; primary production; travel expenses
Legislative Ref: ITAA 51(1); ITAA 53; ITAA 54
Case Ref: FC of T v. Green (1950) 81 CLR 313; FC of T v. Vogt 75 ATC 4073; 5 ATR 274; Garrett v. FC of T 82 ATC 4060; 12 ATR 684; Hayley v. FC of T (1958) 100 CLR 478; Case N78 81 ATC 403; (1981) 25 CTBR (NS) Case 32; Case Z22 92 ATC 230; Case 7944 (1992) 23 ATR 1189
ATO Ref: TOW 57; NAT 96/4343-5
ISSN 1038 - 8982