


***TD 97/D6 - Income tax: when calculating separate net income for the purposes of claiming spouse rebate(a) can the cost of work related child care or travel be taken into account; and (b) do the substantiation rules apply?***

 This cover sheet is provided for information only. It does not form part of *TD 97/D6 - Income tax: when calculating separate net income for the purposes of claiming spouse rebate(a) can the cost of work related child care or travel be taken into account; and (b) do the substantiation rules apply?*

This document has been finalised by TD 98/5.

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: when calculating separate net income for the purposes of claiming spouse rebate

- (a) can the cost of work related child care or travel be taken into account; and
- (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* 81 ATC 243 at 244; *Case 3* 25 CTBR (NS) 11 at 12). The costs of work related child care are such expenses.

2. Only the **net** child care costs relating to child care provided because the spouse is working may be taken into account. This means that if, as a result of the *Childcare Rebate Act 1993*, an amount is received as a cash rebate in respect of the child care expenses, the cash rebate must be deducted from the gross child care costs before the separate net income of the spouse is determined.

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 *Tax Pack*.

4. These rates for the 1996-1997 income year are:

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)
1600cc (1.6 litre) or less	800cc (0.8 litre) or less	47.0
1601cc - 2600cc (1.601 litre - 2.6 litre)	801cc - 1300cc (0.801 litre - 1.3 litre)	53.1
2601cc (2.601 litre) and over	1301cc (1.301 litre) and over	53.5

#### Question (b)

5. No. The substantiation provisions of the *Income Tax Assessment Act 1997* ('the 1997 Act'), section 900-15 and section 900-70, 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 worked or that the travel undertaken was work related.

### Cross reference table of provisions

6. Provisions of the 1997 Act, to which this Determination refers, express the same ideas as provisions of the *Income Tax Assessment Act* ('the 1936 Act'). The following table cross references the provisions of the 1997 Act to the corresponding provisions of the 1936 Act.

1997 Act	1936 Act	
1997-98 or later income years	1994-95, 1995-96 or 1996-97 income years	1993-94 or earlier income years
section 900-15	section 2-3 of Schedule 2B	subsection 82KZ
section 900-70	section 3-2 of Schedule 2B	section 82KUA and section 82KX

### Example 1

7. *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. Joan also receives the child care rebate of \$1,800. The net cost of child care therefore reduces Joan's separate net income to \$3,800 (\$6,000 - [\$4,000 - \$1,800]).*

### Example 2

8. *Assume a spouse travels 6,000 kilometres to and from work during the year ending 30 June 1997. The appropriate rate for a car with an engine capacity of 1,800cc is 53.1 cents per kilometre. To calculate the spouse's separate net income, the gross income of the spouse may be reduced by \$3,186 (6,000km x 0.531).*

### Note

9. 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 new laws come into effect, Taxation Rulings (including Taxation Determinations) about old laws are being brought into line with them. This draft Taxation Determination rewrites and replaces Taxation Determination TD 94/46, which will be withdrawn on finalisation of this draft Determination.

### Your comments

10. If you wish to comment on this draft Determination, please send your comments by **17 October 1997** to:

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**Commissioner of Taxation**17 September 1997

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FOI INDEX DETAIL: [Reference No.](#)

Previously issued as TD 94/46

[Related Determinations:](#)[Related Rulings:](#)[Subject Ref:](#) child care expenses; motor vehicle use substantiation; separate net income of dependants; spouse rebates; substantiation; travel expenses; work related expenses[Legislative Ref:](#) ITAA36 2-3 of Schedule 2B; ITAA36 3-2 of Schedule 2B; ITAA36 82KUA; ITAA36 82KX; ITAA36 82KZ; ITAA97 900-15; ITAA97 900-70[Case Ref:](#) Case N49 81 ATC 243; Case 3 25 CTBR (NS) 11[ATO Ref:](#) NAT 97/6223-0

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