IT 2543 - Income tax : transport allowances : deductibility of expenses incurred in travelling between home and work

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TAXATION RULING NO. IT 2543

INCOME TAX : TRANSPORT ALLOWANCES : DEDUCTIBILITY OF EXPENSES INCURRED IN TRAVELLING BETWEEN HOME AND WORK

F.O.I. EMBARGO: May be released

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OTHER RULINGS ON TOPIC: IT 112, IT 113, IT 117, IT 2122, IT 2199, IT 2273, IT 2481, IT 2487, IT 2488, MT 2027

PREAMBLE In recent Administrative Appeals Tribunal cases the question of the deductibility of expenses claimed against certain travelling allowances (variously described as a Travelling Allowance - Case T100 86 ATC 1169; Case V103 88 ATC 664, 19 ATR 3655; Case V111 88 ATC 712; Private Motor Vehicle Allowance - Case U156 87 ATC 908; or Transport Allowance/Isolated Establishment Allowance - Case V131 88 ATC 838) was examined. These allowances, referred to in this Ruling as transport allowances, are paid to employees for additional costs incurred in travelling between home and work. This Ruling deals with the questions of the assessability of these allowances and whether expenses for travel between home and work are deductible against these allowances under section 51 of the Act.

2. This Ruling does not apply to expenses claimed against transport allowances where the claim is not subject to the substantiation rules of Subdivision F of Division 3 of Part III of the Act. Broadly, claims against transport allowances are not subject to the substantiation rules where the allowance payable under an award has not increased in amount over the level payable as at 29 October 1986. The deductibility of claims against these allowances will, because of the nature of the payments, be considered on a case by case basis having regard to the relevant duties required to be performed by particular individuals and groups and the relevant industry practices.

(Note : Legislation contained in the Taxation Laws Amendment Bill (No. 4) 1989, which is currently before the Parliament, proposes to exclude from the substantiation rules claims against transport allowance payments up to the level of the allowance at 29 October 1986 where the allowance may have increased subsequent to that date. The amendment is

proposed to apply from 1 July 1988.)

RULING Assessable Income

3. Transport allowances (as defined in paragraph 1 of this Ruling), including those paid on a cents per kilometre basis, are assessable income of an employee under section 25 or paragraph 26(e) of the Act. Where claims against these allowances cannot reasonably be expected to be deductible (see paragraphs 5 to 8 below), the allowances should be included as part of the gross salary on an employee's group certificate and tax instalments deducted at the appropriate rate. However, where expenditure incurred against these allowances may reasonably be expected to be deductible (for example, cases which fall into one of the excepted categories mentioned in paragraph 8 of this Ruling), applications for variation of tax instalments under section 221D of the Act should be considered in accordance with Taxation Ruling Nos. IT 2487 and IT 2488.

4. This treatment of transport allowances differs, of course, to the reimbursement by an employer of expenses incurred by an employee on transport. These situations fall to be considered under the fringe benefits tax legislation which generally places tax obligations (if any) on the employer and not the employee. However, some reimbursed car expenses will be exempt from fringe benefits tax by virtue of section 22 of the Fringe Benefits Tax Assessment Act 1986. Where this is the case paragraph 26(eaa) of the Income Tax Assessment Act specifically includes the reimbursement amount in the employee's assessable income.

Deductions

5. The administrative guidelines in relation to the deductibility of expenses incurred in travelling between home and work are outlined in Taxation Ruling Nos. IT 112 and MT 2027. In general, such expenses are not deductible for income tax purposes (Lunney v FCT; Hayley v FCT (1958) 100 CLR 478, 7 AITR 166). As stated by Williams, Kitto, and Taylor JJ. in that case at pages 498-499:

> "It is, of course, beyond question that unless an employee attends at his place of employment he will not derive assessable income and, in one sense, he makes the journey to his place of employment in order that he may earn his income. But to say that expenditure on fares is a prerequisite to the earning of a taxpayer's income is not to say that such expenditure is incurred in or in the course of gaining or producing his income."

The general principles established in Lunney and Hayley and the exceptions to these principles are dealt with in detail in the above two Taxation Rulings.

6. The principles outlined in Lunney and Hayley on the deductibility of costs of travel between home and work have again been considered in recent decisions of the Administrative Appeals Tribunal (Case T100, Case U156, Case V103, Case V111 and

Case V131) and by Northrop J. in FCT v Genys 87 ATC 4875; 19 ATR 356. The decisions help to clarify the application of these principles to factual situations where abnormal expenditure is incurred in travelling between home and work. In particular they confirm that:

- Lunney and Hayley establishes that the fundamental test in determining the deductibility of an expense under subsection 51(1) is the essential character of that expense. Further, the essential character of expenditure incurred in travelling between home and work is of a private nature (Genys Case, Case T100 and Case U156);

- generally, the duties of a salary and wage earner will not commence until the arrival at a place of work and will cease upon departure from work (Case U156);

- the mode of transport, the availability of transport, the lack of suitable public transport, the erratic hours and times of employment, the on-call nature of the employment, the time of travel, the distance of travel, the unavailability of residential accommodation near the place of work, the frequency of travel and the necessity of travel are not factors which will alter the essential character of travel between home and work (Case U156, Case V103, Case V111 and Case V131).

7. Further, Case T100 and Case U156 establish that the receipt of an allowance imparts no greater degree of deductibility to an expense which is incurred in relation to that allowance. In Case T100 at page 1175 and Case U156 at page 911, the Administrative Appeals Tribunal cited with approval the following passage from the reasons of the Taxation Board of Review in Case R22 84 ATC 212 at page 214 :

> "8. The fact that an allowance of a particular kind is paid to a taxpayer does not of itself impress an outgoing, ostensibly related to that allowance, with any greater degree of deductibility than that which it would have in the event that no such allowance was paid in fact. It is the character or nature of the allowance which determines whether it is properly to be included as assessable income; likewise, it is the nature of the outgoing itself, without regard to the nature of any allowance that might be received, that determines whether it is an outgoing or expenditure that properly falls for deduction under the provisions of the first limb of sec. 51(1) of the Assessment Act."

8. Accordingly, it is confirmed that where an employee is in receipt of an assessable transport allowance, deductions claimed against that allowance for expenditure incurred in travelling between home and work are generally not allowable under subsection 51(1) of the Act. Exceptions to this general view are set out in Taxation Ruling Nos. IT 112, IT 113, IT 2122, IT 2199, IT 2273 and MT 2027. Where allowances are paid in

circumstances referred to in these Taxation Rulings, deductions are allowable, subject to the application of the substantiation rules in Subdivision F of Division 3 of Part III of the Act. Briefly summarised, the exceptions are:

- where the taxpayer's home constitutes a place of employment and travel is between two places of employment or business such as the medical practitioner in Garrett v FCT 82 ATC 4060, 12 ATR 684 who carried on a business of primary production at home and a medical practice in the city (see Taxation Ruling No. IT 2199 for details);

- where the taxpayer's employment can be construed as having commenced before or at the time of leaving home such as the computer consultant in FCT v Collings 76 ATC 4254, 6 ATR 476 who was required to attend to the computer difficulties of her employer's customers from her home either over the telephone or through a computer terminal (see Taxation Ruling No. IT 113 for details);

- where the taxpayer has to transport by vehicle bulky equipment necessary for employment such as the professional musician in FCT v Vogt 75 ATC 4073, 5 ATR 274 who transported his instruments and associated equipment from his home to his places of employment (see Taxation Ruling No. IT 112 for details);

- where the taxpayer's employment is inherently of an itinerant nature such as the teacher in FCT v Wiener 78 ATC 4006, 8 ATR 335 who, while engaged in a pilot scheme, was required to teach at many different schools each week; and the itinerant shearers in Case S29 85 ATC 276 (see Taxation Ruling Nos. IT 112, IT 2122 and IT 2273 for details); and

- where the taxpayer is required to break his or her normal journey to perform employment duties (other than incidental duties such as collecting newspapers, mail, etc.) on the way from home to the usual place of employment, or from the place of employment to home (see paragraphs 28 to 36 of Taxation Ruling No. MT 2027 for details).

9. To the extent that this Ruling is inconsistent with any previous advice or administrative practice, it overrides that previous advice or practice on and from 1 July 1989 in relation to deductions claimed against transport allowances paid on and after that date. This Ruling does not affect any existing section 221D tax instalment deduction variations.

COMMISSIONER OF TAXATION
5 July 1989