


TD 2017/8 - Income tax: is the cost of travelling to have a tax return prepared by a 'recognised tax adviser' deductible under section 25-5 of the Income Tax Assessment Act 1997 (ITAA 1997)?

 This cover sheet is provided for information only. It does not form part of *TD 2017/8 - Income tax: is the cost of travelling to have a tax return prepared by a 'recognised tax adviser' deductible under section 25-5 of the Income Tax Assessment Act 1997 (ITAA 1997)?*



Taxation Determination

Income tax: is the cost of travelling to have a tax return prepared by a ‘recognised tax adviser’ deductible under section 25-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)?

❶ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner’s opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. Yes. However, to the extent that the travel relates to another non-incidental purpose the expenditure must be apportioned.

Example 1: sole purpose of travel

2. *Maisie and John are partners who carry on a business of sheep farming on a station near Broken Hill. Every year they travel to Adelaide for the sole purpose of meeting with their tax agent to finalise preparation of their partnership return. They stay overnight at a hotel, meet with their tax agent the next day and fly back to Broken Hill that night. The full cost of their trip, including taxi fares, meals, accommodation and travel insurance, is deductible.*

Example 2: apportionment when travel is equally for managing tax affairs and private purposes

3. *Julian is a sole trader who carries on an art gallery business in Oatlands. He travels to Hobart for two days to attend a friend’s birthday party and to meet his tax agent to prepare his tax return. He stays one night at a hotel.*
4. *Because the travel was undertaken equally for the preparation of his tax return and a private purpose, Julian must reasonably apportion these costs. In the circumstances, it is*

reasonable that half of the total costs of travelling to Hobart, accommodation, meals, and any other incidental costs are deductible.

Example 3: apportionment when travel is incidental to main private purpose

5. *Erin is an employee working in Warragul. She has her tax return prepared by a tax agent in Melbourne. When travelling to Melbourne for a week long football training camp, she decides to stay an extra night in a hotel to visit her tax agent the following day. She travels back to Warragul after the meeting.*

6. *As Erin's trip is mainly for private purposes, and visiting the tax agent is incidental to that main purpose, she must reasonably apportion the costs.*

7. *In the circumstances, it is reasonable that only the direct costs of her accommodation for the extra night, incidental costs associated with this time, and the taxi fares from the hotel to her tax agent's premises and back to the hotel are deductible.*

Date of effect

8. This Determination applies to income years commencing both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

29 March 2017

Appendix 1 – Explanation

❗ This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.

9. Expenditure incurred by a taxpayer in managing their tax affairs is deductible.¹
10. A reference to 'tax affairs' includes affairs relating to income tax assessed under the *Income Tax Assessment Act 1936* and the ITAA 1997.²
11. The cost of travelling to have a tax return prepared by a 'recognised tax adviser'³ is expenditure incurred to manage tax affairs.
12. Costs incurred that are incidental to the travel (for example accommodation, meals, taxi fares or travel insurance) are fully deductible where the sole purpose of the trip is to meet with a recognised tax adviser for the preparation of a tax return (see *Example 1*).
13. However, where managing tax affairs is only one of the purposes of travel, the expenditure incurred must be reasonably apportioned between the different purposes. Whether or not a method of apportionment is reasonable will depend on the facts of each case. Only those costs that reasonably relate to managing tax affairs are deductible.
14. Where travel is undertaken equally for the preparation of a tax return and another private purpose, and the costs relate equally to each purpose, half of the travel and incidental costs of the trip are deductible (see *Example 2*).
15. Where the preparation of a tax return is only incidental to another main purpose of a trip, only those expenses directly attributable to the preparation of the tax return are deductible (see *Example 3*).
16. Taxpayers should be able to demonstrate the reasonableness of the apportionment methodology used, including keeping any relevant evidence, to support the deduction claimed.⁴

¹ Paragraph 25-5(1)(a) of the ITAA 1997.

² Definitions of 'tax affairs', 'tax' and 'this Act' in section 995-1 of the ITAA 1997.

³ A 'recognised tax adviser' is a registered tax agent, BAS agent or tax (financial) advisor or a legal practitioner: definition of 'registered tax adviser' in section 995-1 of the ITAA 1997.

⁴ *Drummond v Commissioner of Taxation* [2005] FCA 1129; (2005) 2005 ATC 4783; (2005) 60 ATR 356; (2005) 220 ALR 691; [2006] ALMD 730.

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TD 93/63; TD 93/92; TD 94/91;
TD 2003/10; TD 2003/11; TR 2004/2;
TR 2006/10

Previous Rulings/Determinations:

TD 92/20W; TD 94/92W

Legislative references:

- ITAA 1936
- ITAA 1997
- ITAA 1997 s25-5
- ITAA 1997 s25-5(1)(a)
- ITAA 1997 s995-1
- TAA 1953

Cases relied on:

- Drummond v. Commissioner of Taxation
[2005] FCA 1129; (2005) 2005 ATC 4783;
(2005) 60 ATR 356; (2005) 220 ALR 691;
[2006] ALMD 730

ATO references

NO: 1-ADTR7FB
ISSN: 2205-6211
BSL: TCN
ATOlaw topic: Income tax ~~ Deductions ~~ Managing tax affairs

**© AUSTRALIAN TAXATION OFFICE FOR THE
COMMONWEALTH OF AUSTRALIA**

You are free to copy, adapt, modify, transmit and distribute
this material as you wish (but not in any way that suggests
the ATO or the Commonwealth endorses you or any of
your services or products).