TD 96/42 - Income tax: is the cost of travel between a taxpayer's residence, being a property on which the taxpayer carries on a business of primary production, and a place of employment or business, deductible?

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Australian Taxation Office

Taxation Determination **TD 96/42**

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does 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 the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: is the cost of travel between a taxpayer's residence, being a property on which the taxpayer carries on a business of primary production, and a place of employment or business, deductible?

1. Generally, no. The fact that a business of primary production is being carried on at the residential property by the taxpayer does not automatically make deductible the expenses incurred in travelling between the property and the taxpayer's other business or employment. The Commissioner's view, as stated in Taxation Ruling IT 2199, is that the expenses incurred in travelling from home to work are not deductible as they are outgoings of a private nature. 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 *Lunney v. FC of T; Hayley v. FC of T* (1958) 100 CLR 478 at 501; (1958) 11 ATD 404 at 414).

2. The purpose of the trip will determine whether the related expenses will be an allowable deduction. Travel by a taxpayer from their residential property, where a primary production business is also carried on, to work, will generally maintain its character as non-deductible private expenditure, i.e., it is travel **to** work and not **on** work. This principle is supported by the Board of Review decisions in *Case Q49* 83 ATC 237; *Case 113* 26 CTBR (NS) 776 and *Case F43* 74 ATC 245; *Case 61* 19 CTBR (NS) 420.

3. Exceptions:

(a) If the taxpayer is undertaking some significant primary production related activity such as carrying produce or stock to market, or carrying feed or veterinary supplies home, the costs of travelling on that particular trip may constitute an allowable deduction. This travel may be considered to be **on** work or business (see *FC of T v. Vogt* 75 ATC 4073, (1975) 5 ATR 274).

(b) If there is sufficient nexus between the travel and the employment of the taxpayer. For example, travel costs may be deductible where the taxpayer's employment is itinerant (see *FC of T v. Wiener* 78 ATC 4006, (1978) 8 ATR 335) or where the home constitutes a base of their non-primary production business activities or employment (see *Garrett v. FC of T* 82 ATC 4060, (1982) 12 ATR 684). Refer also to Taxation Rulings IT 112; IT 113; IT 2543 and TR 95/34.

Examples

1. Mr and Mrs Brown live on a property on which they run a cattle breeding business. Mr Brown also works at the local mine and Mrs Brown is a partner in a local accounting firm. Before going to their respective places of employment each day, they check the water available to the cattle. The costs of travelling from the property to their places of employment is not deductible as it is considered to be of a private character. Those travel costs arise as an incident of living away from the place of work and are incurred for the purpose of transporting Mr and Mrs Brown from their home to their place of work. The undertaking of a minor business activity immediately prior to departure is not considered to alter the character of that travel.

2. Assume the same facts as above but, once a week on her way home from work, Mrs Brown picks up veterinary supplies and some bales of hay for the cattle. The expenses of her trip to the suppliers from work and from the suppliers to home will be deductible as they are for business purposes. The expenses incurred in relation to her journey to work, however, are not deductible as that travel remains private.

3. Ms Smith has a primary production business of growing strawberries, selling most of her produce to local wholesalers. She also works at a bank. Occasionally, she takes 3 or 4 punnets of strawberries to work to sell to her co-workers at fully commercial prices. Carrying this small amount of produce will not, on its own, be sufficient to change the nature of the trip, which remains home to work travel. The carriage of such an insignificant quantity of produce does not confer a different character to the trip. The expense of that travel is not deductible.

Commissioner of Taxation
16 October 1996

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Related Rulings: IT 112; IT 113; IT 2199; IT 2543; TR 95/34

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Case Ref: FC of T v. Vogt 75 ATC 4073; (1975) 5 ATR 274; FC of T v. Wiener 78 ATC 4006; (1978) 8 ATR 335; Garrett v. FC of T 82 ATC 4060; (1982) 12 ATR 684; Case F43 74 ATC 245; Case 61 19 CTBR (NS) 420; Case Q49 83 ATC 237; Case 113 26 CTBR (NS) 776; Lunney v. FC of T; Hayley v. FC of T (1958) 100 CLR 478; (1958) 11 ATD 404

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