TR 2020/1EC - Compendium

Public advice and guidance compendium – TR 2020/1

Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Taxation Ruling TR 2019/D4 *Income tax: employees: deductions for work expenses under section 8-1 of the Income Tax Assessment Act 1997*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

Issue number	Issue raised	ATO response
1	Regarding the apportionment of travel expenses as illustrated in Example 9 (paragraph 40) of the draft Ruling: • Paragraphs 39 and 40 of the draft Ruling suggest a time-based apportionment is applicable to travel expenses where an employee takes some leave in connection with work-related travel. • Example 9 of the draft Ruling suggests that a portion of the cost of airfares becomes non-deductible by applying a time-based apportionment in such cases. This view is overly simplistic, incorrect and would have significant implications for fringe benefits tax. The position is not sufficiently explained or supported given expenditure should be apportioned on some fair and reasonable basis and be specific to the facts. The position taken in the Ruling should be consistent with paragraphs 17 and 39 to 42, as well as Examples 7 and 8 of Draft Taxation Ruling TR 2017/D6 *Income tax and fringe benefits tax: when are deductions allowed for employees' travel expenses?* The appropriate test should be whether the trip has a predominant business purpose or not, and if it does then 100% of the airfare cost is deductible even where the employee may take some leave associated with the trip. The full deductibility presumption should only be displaced where the leave component is sufficiently	The purpose of Example 9 is to show that where expenditure is not wholly incurred for an income-producing purpose it must be apportioned, and to illustrate how time-based apportionment can be a fair and reasonable method. For this reason, and because the ATO view on apportioning travel expenses is already explained in detail at paragraphs 63 to 70 of Taxation Ruling TR 98/9 *Income tax: deductibility of self-education expenses incurred by an employee or a person in business*, Example 9 has been amended in the final Ruling to illustrate the principle more generally in relation to a work-related expense other than travel expenses. The need to apportion expenses and the question of what constitutes a fair and reasonable apportionment will depend on the facts and circumstances of particular cases. Guidance on reasonable apportionment methods for specific expense types (such as travel) under various circumstances would be covered more appropriately in a less general guidance product.

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	disproportionate to the work component so as to displace the presumption that work is the predominant purpose. Example 9 should be expanded to cover other circumstances in which there is a private element incidental to work travel.	
2	Without further elaboration, paragraph 49 of the draft Ruling is misleading and not aligned with the ATO view contained in Taxation Ruling TR 93/30 *Income tax: deductions for home office expenses*. TR 93/30 makes a distinction between a place of business and a private study and, where part of the home has the character of a place of business, some expenses incurred in respect of rent, interest, repairs, house and contents insurance, rates and property taxes may be deductible. The distinction should be included in the Ruling, especially as remote working arrangements are increasingly commonplace and working from home is an occupational requirement for many employees.	Paragraph 49 of the final Ruling has been amended so that it aligns more closely with the ATO view contained in TR 93/30.
3	Where cases have been cited, we suggest the exact paragraph in the case be referred to or, preferably, the relevant quote referred to be reproduced.	All cases and references in the final Ruling have been cited in accordance with ATO guidelines, which require the medium neutral citation of a case to be used as the primary reference. For pre-1999 judgments, the use of paragraph numbers was not common. However, given that the majority of cases are now accessed in an online environment, excerpts are easily found without pinpoint referencing.
4	The draft Ruling cites *Commissioner of Taxation v Payne* [2001] HCA 3 (*Payne*) however the Ruling should also cite the more recent decision in *Federal Commissioner of Taxation v Day* [2008] HCA 53 where the High Court repeatedly expresses the need for expenditure to be 'productive of income' to be deductible.	A reference to *Commissioner of Taxation v Day* [2008] HCA 53 has been included in footnote 12 (to paragraph 13) of the final Ruling.
5	The examples relating to the section 'in gaining or producing assessable income' (paragraphs 13 to 36 of the draft Ruling) are all very straightforward. Some additional examples representative of less obvious scenarios are suggested.	Examples in the final Ruling have been used to illustrate various principles rather than provide guidance on marginal or nuanced cases. Examples addressing such cases are not generally considered to be helpful as they often turn on a particular question of fact.
6	Paragraph 19 of the draft Ruling makes reference to a quote from	Paragraph 19 of the final Ruling does not contain a direct quote from

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	Commissioner of Taxation v Payne [2001] HCA 3. The whole paragraph which the quote comes from should be included in the final Ruling.	*Commissioner of Taxation v Payne* [2001] HCA 3, but it is based on observations made in that case and *Commissioner of Taxation v Day* [2008] HCA 53. Both cases have been referred to in footnote 14 (at the end of paragraph 19) of the final Ruling.
7	A more detailed explanation of why travel to work and child care costs (referred to in Example 4 of the draft Ruling) are not considered to be incurred in the course of the income-earning activities should be included in paragraph 23 of the final Ruling. The explanation should reference cases such as *Payne* and *Lunney v Commissioner of Taxation* [1958] HCA 5 where the expenses were not deductible and compare with other *cases including Federal Commissioner of Taxation v Ballesty* 77 ATC 4181, *Federal Commissioner of Taxation v Vogt* 75 ATC 4073 and *Federal Commissioner of Taxation v Collings* 76 ATC 4254where the particular circumstances meant that expenses were deductible.	Example 4 of the Ruling is intended to outline a basic case illustrating the general principle that expenses must be incurred in the course of earning assessable income to be deductible. More detailed guidance on travel expenses, including more nuanced examples of home to work travel, can be found in more specific guidance products such as those referred to in paragraph 68 of the final Ruling.
8	The reference to 'education expenses to obtain qualifications for new employment' in paragraph 25 of the draft Ruling should be footnoted with relevant authorities.	Footnote 15 referring to *Commissioner of Taxation (Cth) v Maddalena* (1971) ALJR 426 has been included at the end of paragraph 25 of the final Ruling.
9	At paragraphs 26 to 28 the draft Ruling states that a private expense does not become deductible merely because the employer requires it to be incurred. However, this does not mean that employer requirements are irrelevant and paragraph 48 of the draft Ruling portrays the other half of the picture regarding expenses incurred in the course of required work travel that would ordinarily be private in nature. Paragraphs 26 to 28 of the draft Ruling should reflect that employer requirements are not irrelevant to the question of deductibility and make reference to paragraph 48. Paragraph 41 of the draft Ruling from the decision in *Mansfield, Jill Honor v Commissioner of Taxation* [1995] FCA 1008 should be included in paragraph 28 of the draft Ruling as it clearly demonstrates the two elements required for an expense an employer requires an employee to incur to be deductible to the employee that may otherwise only be considered to be private in nature and not deductible.	Additional text has been added to paragraph 31 of the final Ruling concerning the relevance of employer requirements and footnote 17 (referring to paragraph 48 of the final Ruling) has been included. The decision *in Mansfield, Jill Honor v Commissioner of Taxation* [1995] FCA 1008 is already referred to in the footnote at the end of paragraph 28 of the final Ruling. It is considered that the view in paragraph 41 of that decision is covered by the existing content at paragraphs 26 to 36 of the final Ruling, along with paragraph 48 of the final Ruling.

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10	Paragraph 30 of the draft Ruling states that a driver's licence is not deductible. It should be deductible, at least in proportion to the extent that it is used to enable certain employees to perform their duties, for example, courier and taxi drivers (when they are considered employees). In this regard the cost of the licence is not wholly a personal or private expense. In the event that the Commissioner maintains his view, legislative or case law authority should be provided for this proposition.	The ATO view and relevant authority on the deductibility of driver's licences is set out in Taxation Determination TD 93/108 *Income tax: are taxpayers entitled to a deduction for the cost of renewing a driver's licence?* This Determination was not originally included in Appendix 1 of the draft Ruling but has now been included in the final Ruling.
11	Why is a bank statement proving that the expense has been incurred (assuming the entry on the statement is clear as to the expense it relates to) in Example 10 of the draft Ruling not sufficient to be acceptable substantiation?	An explanation has been included at the end of Example 10 of the final Ruling as to why a bank statement on its own would not ordinarily be considered to be acceptable for substantiation purposes.