



Interim decision impact statement

Hall and Commissioner of Taxation [2025] ARTA 600

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Table of Contents	Paragraph
Summary of decision	1
Administrative treatment	6
Overview of facts	7
Issues decided by the Tribunal	19
<i>Issue 1 – whether the occupancy expenses were incurred in gaining or producing assessable income</i>	20
<i>Issue 2 – whether the car expenses were incurred in gaining or producing assessable income</i>	26
ATO view of decision	31

Venue:	Administrative Review Tribunal
Venue reference No:	2022/8986
Member Name:	Deputy President Thompson SC
Judgment date:	21 May 2025

Summary of decision

1. This Interim decision impact statement outlines the ATO's interim response to *Hall and Commissioner of Taxation* [2025] ARTA 600, which considered whether an employee sports presenter and producer (taxpayer) was entitled to a deduction under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) for occupancy expenses, and a deduction under section 28-12 of the ITAA 1997 for car expenses claimed in the income year ending 30 June 2021 (relevant income year).
2. Deputy President Thompson determined that the taxpayer was entitled to a deduction in the relevant income year for both the occupancy expenses and car expenses.
3. This decision is currently subject to appeal to the Federal Court of Australia.

Interim decision impact statement

4. All decision references in this Interim decision impact statement are to the decision of *Hall and Commissioner of Taxation* [2025] ARTA 600 unless otherwise indicated.

5. All legislative references in this Interim decision impact statement are to the ITAA 1997, unless otherwise indicated.

Administrative treatment

6. Pending the outcome of the appeal process, we are administering the law in accordance with the current ATO views set out in paragraph 31 of this Interim decision impact statement.

Overview of facts

7. During the relevant income year, the taxpayer was employed full time as a sports presenter and producer by the Australian Broadcasting Corporation (ABC) in Melbourne.¹

8. On relocating to Melbourne with his wife in June 2020, the taxpayer rented a 2-bedroom apartment in his own name.² The second bedroom was to be used as a place for him to work from home. Prior to moving to Melbourne, the taxpayer was advised by his manager that he would need to work from home when he moved there.³

9. During the relevant income year Melbourne was subject to mandatory lockdowns ordered by the Victorian Chief Health Officer due to the COVID-19 pandemic.⁴ The taxpayer worked at home for part of his duties due to these lockdowns and subsequent employer directions.⁵

10. The taxpayer's role with the ABC had 2 quite distinct parts:

- ABC Sport Digital Radio station (Digital Role), which comprised 75% of his employment related duties⁶, and
- producing ABC live sports broadcasts (Live Role), which comprised the remainder of his employment-related duties – the Live Role could only be undertaken at his employer's premises in Southbank (Southbank Studios).⁷

11. During the relevant income year, the restrictions imposed by the Victorian Chief Health Officer and his employer prevented⁸ him from attending his usual place of employment (Southbank Studios) to perform the Digital Role. He was only allowed to attend the Southbank Studios to undertake the Live Role.⁹

12. The taxpayer's usual work week was from Thursday to Monday. His general pattern of work was a mix of either¹⁰:

- solely performing his duties at home (Digital Role)

¹ At [2].

² At [7].

³ At [64].

⁴ At [27].

⁵ At [12].

⁶ At [9].

⁷ At [10].

⁸ During the 2021 year, there were no restrictions imposed by the Victorian Chief Health Officer on the taxpayer working at the Southbank Studios between 26 March 2021 and 27 May 2021 (at [28]). Although the ABC permitted some staff to work from their offices between 29 March 2021 and 25 May 2021, the taxpayer was not in the group of permitted staff allowed by the ABC to return to the Southbank Studios on a full-time basis (at [30–31]).

⁹ At [22–30].

¹⁰ At [12].

Interim decision impact statement

- commencing his Digital Role duties at home and then travelling to the Southbank Studios to undertake his Live Role duties, or
- a variety of the 2 roles depending on the sporting season.

13. The taxpayer asserted that he undertook his Digital Role from a laptop in the second bedroom of his rented apartment.¹¹ This room was solely used for this purpose as he needed a quiet place to work from.¹² The room was only sparsely furnished, which included a small desk, a dining chair and a bookcase.¹³ There was nothing to separate or distinguish that space from the rest of the apartment.

14. The taxpayer's wife was a yoga instructor who continued her work by doing classes online. The classes were conducted from the main living area of the apartment.¹⁴

15. To support his claims for a deduction for occupancy expenses (representing a portion of his rent attributable to the home office space) and car expenses for travel between his home and the employer's premises, the taxpayer contended that:

- it was beyond his control where he worked, and he had to do the majority of his work from home¹⁵, and
- he could only perform part of his employee duties at the employer's premises.

16. The taxpayer drove from his home to the Southbank Studios in his private car to undertake his Live Role.¹⁶

17. The taxpayer sought to claim a deduction in the relevant income year of:

- \$5,878.87 for occupancy expenses¹⁷ for his home office, and
- \$1,148.40 for car expenses¹⁸ for travel for work from his home to the Southbank Studios on the days he undertook both the Digital Role and the Live Role.

18. At audit and at objection, the taxpayer was denied, in full, a deduction for both expenses.

Issues decided by the Tribunal

19. The Tribunal confirmed that the taxpayer bears the onus of proof that the 'assessment is excessive or otherwise incorrect, and what the assessment should have been' for the relevant income year.¹⁹

¹¹ At [2].

¹² At [14].

¹³ At [15].

¹⁴ At [8].

¹⁵ At [24].

¹⁶ At [19] and [20].

¹⁷ Which represent the portion of the total rent paid during the year which was attributable to the second bedroom on a per square metre basis.

¹⁸ Based on the cents per kilometre method for claiming motor vehicle expenses.

¹⁹ At [55].

Interim decision impact statement

Issue 1 – whether the occupancy expenses were incurred in gaining or producing assessable income

20. The Tribunal noted that the past cases on claiming occupancy expenses for a home office have only been allowed in very limited circumstances.²⁰

21. Notwithstanding this, the Tribunal formed the view that during the relevant income year as result of the Victorian Government-imposed restrictions and those of his employer²¹, the second bedroom was the taxpayer's main workplace for that year and he was entitled to a deduction for occupancy expenses.²²

22. The Deputy President inferred that the taxpayer rented the 2-bedroom apartment with the intention of using the second bedroom for work, stating that it was 'notable' that the taxpayer rented the apartment when he moved to Melbourne with the knowledge that it would be his workplace, at least for the foreseeable future.²³

23. The Commissioner's position was that the occupancy expenses sought to be deducted are not deductible as they are:

- not outgoings that have a sufficient nexus with the taxpayer's employment income to be deductible under the first (positive) limb of section 8-1, and
- outgoings of a 'private or domestic nature' and fail the deductibility test under the second (negative) limb of section 8-1.

24. In reaching its decision, the Tribunal did not agree with the Commissioner and determined that the occupancy expenses were deductible as the evidence established that the taxpayer's main workplace for the entire relevant income year was the second bedroom, it was necessary for him to work there²⁴, and the expense was not purely of a private or domestic nature.²⁵

25. The Deputy President was careful in restricting the implications of this decision to the specific facts at hand, by stating that²⁶:

... This decision has no impact on what can be claimed by Mr Hall in any later year of income, which would need to be assessed based on the facts which prevailed at that later time.

Issue 2 – whether the car expenses were incurred in gaining or producing assessable income

26. The Tribunal stated that travelling to work is not enough to be eligible for a deduction for car expenses.²⁷ A critical factor is whether the employee had commenced their employment duties prior to undertaking the travel for which they are seeking a deduction.²⁸

²⁰ At [60].

²¹ At [27], [28] and [31].

²² At [68] and [69].

²³ At [64].

²⁴ At [65].

²⁵ At [65].

²⁶ At [68].

²⁷ At [71].

²⁸ At [71].

Interim decision impact statement

27. The Tribunal also noted that the taxpayer had some unique aspects to his working arrangements²⁹:

- he only had one employer but had 2 distinct roles (Digital Role and the Live Role) which were respectively undertaken from his home and the Southbank Studios, sometimes on the same day, and
- his employment was not arranged in 2 shifts split between different aspects of his role.

28. The key in reaching a decision was 'whether he had commenced his working day at his primary workplace, his home', on the days that the taxpayer sought to claim a deduction for travel from his home to the Southbank Studios or another venue³⁰ where he undertook his Live Role.³¹

29. The Commissioner's position was that the car expenses sought to be claimed were not deductible³² as the taxpayer did not travel 'business kilometres' 'in the course of' producing his assessable income as required by paragraph 28-25(3)(a).

30. The Tribunal accepted that the taxpayer:

- had kept reasonable records to base his claim on
- had commenced his work on the relevant days from his home prior to travelling to the Southbank Studio (or another venue) and back home (that is, all his claimed car expenses were 'on work'³³), and
- was therefore entitled to claim the car expenses.

ATO view of decision

31. Until the appeal process is finalised, we do not intend to revise the current ATO views contained in the following documents dealing with the deductibility of occupancy expenses and work-related transport expenses:

- Taxation Ruling TR 93/30 *Income tax: deductions for home office expenses*
- Taxation Ruling TR 2021/1 *Income tax: when are deductions allowed for employees' transport expenses?*
- *Employees guide for work expenses.*

32. As a general rule, expenses associated with a taxpayer's home, such as rent, are of a private or domestic nature and do not qualify as deductions for taxation purposes. An exception to this general rule is where part of the home is used for income-producing activities and has the character of a 'place of business', and the expense loses its essential character as private or domestic. Subject to the outcome of the appeal, in our view, the mere fact that a room in the house has been set aside during the circumstances of COVID-19 lockdowns for work purposes is not sufficient to enable a deduction for a portion of the rent.

33. The cost of travel from home to a regular place of work is not deductible (subject to very limited exceptions). The mere fact that an employee undertakes some work duties at home does not make expenses of travel to their regular place of work deductible. This is

²⁹ At [76].

³⁰ On one occasion the taxpayer commenced his Digital Role at home prior to travelling to AAMI Park to undertake his Live Role.

³¹ At [73].

³² Under section 28-12 using the method in section 28-25.

³³ At [76(b)].

Interim decision impact statement

because these expenses are not incurred in gaining or producing assessable income as they are a prerequisite to earning assessable income. In our view, this treatment will not change even if the travel occurs during work hours. Subject to the outcome of the appeal, we do not consider that the circumstances of COVID-19 lockdowns requiring some work to be undertaken at home changes this outcome.

Commissioner of Taxation

25 June 2025

Interim decision impact statement

References

Related rulings and determinations:

TR 93/30; TR 2021/1

ITAA 1997 28-25

Other references:

Employees guide to work expenses

Legislative references:

ITAA 1997 8-1

ITAA 1997 28-12

ATO references

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