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# Interim Decision impact statement

## Shaw and Commissioner of Taxation [2025]

### ARTA 224

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#### **📌 Relying on this Decision impact statement**

This publication provides our view on the implications of the court or tribunal decision discussed, including on related public advice or guidance.

Taxpayers can rely on this Decision impact statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty, nor will they have to pay interest on the underpayment provided they reasonably relied on this Decision impact statement in good faith. However, even if they do not have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

<b>Table of Contents</b>	<b>Paragraph</b>
Summary of decision	1
Overview of facts	6
Issues decided by the Tribunal	17
<i>Issue 1 – whether the taxpayer incurred the meal expenses in gaining or producing assessable income under section 8-1</i>	17
<i>Issue 2 – whether the taxpayer is entitled to rely upon an exception from substantiation under section 900-50</i>	21
<i>Issue 3 – in the event that the exception from substantiation under section 900-50 did not apply to the taxpayer, whether section 900-200 applied to relieve the taxpayer from the obligation to substantiate the meal expenses</i>	24
ATO view of decision	25
Administrative treatment	27

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<b>Venue:</b>	Administrative Review Tribunal
<b>Venue reference No:</b>	2024/1049
<b>Member Name:</b>	General Member Dunne
<b>Judgment date:</b>	19 March 2025

#### **Summary of decision**

1. This Interim decision impact statement outlines the ATO's interim response to this case, which considered whether an employee long-haul truck driver (taxpayer) was entitled to a deduction under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) for work-related travel expenses claimed in respect of meals.

# Interim decision impact statement

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2. General Member Dunne of the Administrative Review Tribunal (Tribunal) determined that the taxpayer was entitled to a deduction under section 8-1 of the ITAA 1997 for the expenses claimed in the income year ending 30 June 2021 (relevant income year).

3. The Commissioner subsequently appealed the Tribunal's decision to the Federal Court of Australia.

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

5. All judgment references in this Interim decision impact statement are to the judgment of *Shaw and Commissioner of Taxation* [2025] ARTA 224 unless otherwise indicated.

## Overview of facts

6. During the relevant income year, the taxpayer worked as an employee long-haul truck driver for his employer in Western Australia. He drove long distances, was away from home for considerable periods each week and slept in his truck.<sup>1</sup> The taxpayer was paid a travel allowance by his employer.<sup>2</sup>

7. Given the taxpayer drove long distances through remote parts of Australia, there were often no available food outlets or, where there were, the food options were not always healthy.<sup>3</sup> So that he did not have to always rely on these remote food outlets, the taxpayer had a freezer in his truck and a hot plate so he could prepare his own meals.

8. The taxpayer would transfer funds to his wife (Ms Fisher) to conduct a 'big shop' at the supermarket to ensure his truck was fully stocked with food each week.<sup>4</sup> He did not ask Ms Fisher, and did not know, how his wife spent the funds transferred to her, and there was no evidence before the Tribunal from Ms Fisher. In addition, the taxpayer maintained about \$1,500 in cash in his truck, some of which he used to purchase food or drink at outlets while on the road when taking a break from driving as well as to pay for anything such as oil or other items for his truck.<sup>5</sup>

9. The taxpayer claimed a deduction of \$32,782.50 for the cost of the 'big shops' and the cost of food and drink consumed by him at outlets along the routes driven by him as a truck driver.

10. The taxpayer did not keep receipts for his purchases of food and drink and did not, initially, provide the Commissioner with any written evidence of the deductions said to have been incurred.

11. The taxpayer relied on the relief from the substantiation provisions in the income tax law on the basis that he was in receipt of a travel allowance. The amounts he claimed for meal expenses were based on the Commissioner's reasonable daily amounts set out in Taxation Determination TD 2020/5 *Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2020-21 income year?*<sup>6</sup>

12. At audit, the Commissioner reduced Mr Shaw's claimed deduction to zero and issued a Notice of Amended Assessment to that effect.<sup>7</sup>

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<sup>1</sup> At [5] and [21a].

<sup>2</sup> At [6].

<sup>3</sup> At [21b] and [21c].

<sup>4</sup> At [21g] and [21h].

<sup>5</sup> At [21d].

<sup>6</sup> At [10].

<sup>7</sup> At [15].

# Interim decision impact statement

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13. At objection, the taxpayer provided his logbook, fatigue diary and some bank statements to the Commissioner. The fatigue diary did not say when meals were taken, just when there were breaks, and that meals were irregular<sup>8</sup> and the logbook stated how many days the taxpayer was away from home.<sup>9</sup>

14. The Commissioner allowed the taxpayer's objection in part, increasing his allowable deductions for meal expenses to \$5,890 based on a review of his logbook, fatigue diary and bank statements. The Commissioner determined that the taxpayer did not provide a methodology to apportion or estimate the expenditure incurred in gaining or producing assessable income.<sup>10</sup> A Notice of Amended Assessment was issued to give effect to the Commissioner's objection decision.<sup>11</sup>

15. The taxpayer then filed proceedings for a review of the Commissioner's objection decision in the Tribunal<sup>12</sup> on the basis that the meal expenses he claimed should be allowed in full.<sup>13</sup>

16. The taxpayer said that he spent more than the maximum reasonable daily amount in TD 2020/5 on meals during his trips away, but he claimed less than he spent because of the advice given to him by his tax agent. The tax agent's advice was that if he claimed less, he did not need to keep records to substantiate his expenses.<sup>14</sup>

## Issues decided by the Tribunal

### ***Issue 1 – whether the taxpayer incurred the meal expenses in gaining or producing assessable income under section 8-1***

17. The Tribunal noted that the taxpayer bears the onus of proof that the 'assessment is incorrect and what the assessment should have been'.<sup>15</sup>

18. The Tribunal decided that as the taxpayer incurred the meal expenses while on trips away from home, it followed that he had incurred the disputed meal expenses in gaining or producing his assessable income under section 8-1.<sup>16</sup> The Tribunal was not sure how the Commissioner thought that anyone would fund 3 meals a day for \$19.<sup>17</sup>

19. The Commissioner's position was that the taxpayer had not been able to demonstrate that his claim was for entirely work-related expenses, as opposed to food acquired for private purposes.<sup>18</sup> Further, the Commissioner was of the view that the taxpayer had not provided clear, contemporaneous or corroborative evidence as to the fact the disputed expenses were actually incurred in gaining or producing assessable income and had dismissed the bank statements as not connecting the disputed meal expenses to the taxpayer with any specificity. The Commissioner suggested that an inference could be drawn from the 'big shops' undertaken by the taxpayer (or Ms Fisher) and that they were also for private purposes.<sup>19</sup>

20. In reaching its decision, the Tribunal did not agree with the Commissioner that there was an insufficient linkage between the expenditure on bank statements and the

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<sup>8</sup> At [12].

<sup>9</sup> At [10], [12] and [17].

<sup>10</sup> At [30].

<sup>11</sup> At [18].

<sup>12</sup> At [19].

<sup>13</sup> At [9].

<sup>14</sup> At [11] and [21o].

<sup>15</sup> At [3].

<sup>16</sup> At [49].

<sup>17</sup> At [31].

<sup>18</sup> At [44].

<sup>19</sup> At [45].

# Interim decision impact statement

taxpayer's work.<sup>20</sup> Rather, the Tribunal found that the taxpayer's evidence was credible and provided that link. The Commissioner had 'a lot of data available and there were available areas for investigation'.<sup>21</sup> The taxpayer's evidence gave a broad mechanism for apportionment and that basis could have covered many of the Commissioner's concerns.<sup>22</sup>

## ***Issue 2 – whether the taxpayer is entitled to rely upon an exception from substantiation under section 900-50***

21. The Tribunal decided that the exception from substantiation under section 900-50 applied to the taxpayer because:

- he was paid a travel allowance by his employer
- the Tribunal had determined that the taxpayer had incurred the expenditure in gaining or producing his assessable income
- the taxpayer's expenditure fell within the reasonable daily amount limits of TD 2020/5, and
- there was no dispute that the meal expenses incurred by the taxpayer were covered by the travel allowance.<sup>23</sup>

22. In reaching this decision, the Tribunal noted that:

- from a practical perspective, a well-advised truck driver claiming the maximum reasonable daily amount (or in fact any amount) would maintain full substantiation of meal expenses for a short period in each year when relying upon TD 2020/5<sup>24</sup>, and
- the taxpayer's tax agent's approach was stated to the Commissioner as being equal to the number of days that the taxpayer was away multiplied by the maximum reasonable daily amount in TD 2020/5.<sup>25</sup>

23. The Tribunal found the tax agent's submission that it is not open for the Commissioner to determine a reasonable amount different to the published yearly taxation determinations as reflective of 'an idea that there was some sort of automatic deduction available to truck drivers which is not the position'.<sup>26</sup> TD 2020/5 was about substantiation, did not provide a one-off set deduction for truck drivers and there was no statutory provision providing for that.<sup>27</sup> Instead, the Tribunal found that if a tax agent in Australia took a similar approach to the taxpayer's tax agent in the context of TD 2020/5, they should change their practice as it was not supportable at law.<sup>28</sup>

## ***Issue 3 – in the event that the exception from substantiation under section 900-50 did not apply to the taxpayer, whether section 900-200 applied to relieve the taxpayer from the obligation to substantiate the meal expenses***

24. The Tribunal decided that even if the Tribunal was wrong 'about any aspect' of the analysis in relation to the application of section 8-1, section 900-200 would have applied to relieve the taxpayer from the obligation to substantiate the meal expenses. It found that the

<sup>20</sup> At [49].

<sup>21</sup> At [31].

<sup>22</sup> At [49].

<sup>23</sup> At [52].

<sup>24</sup> At [39]. For example, see TD 2020/5 at paragraphs 3, 25, 29 and 30.

<sup>25</sup> At [34].

<sup>26</sup> At [36].

<sup>27</sup> At [34].

<sup>28</sup> At [35].

# Interim decision impact statement

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taxpayer had a reasonable expectation that TD 2020/5 would apply due to the advice received from his tax agent (being that if he claimed less than the maximum reasonable daily amount, he did not need to keep records to substantiate his expenses).<sup>29</sup>

## ATO view of decision

25. The Commissioner appealed the Tribunal's decision to the Federal Court. The Federal Court in *Commissioner of Taxation v Shaw* [2026] FCA 197 dismissed the Commissioner's appeal on the basis that none of the grounds of appeal relied on were established.

26. Our response to the decision of the Federal Court is contained in the [Decision impact statement](#) for *Commissioner of Taxation v Shaw* [2026] FCA 197.

## Administrative treatment

27. The Commissioner's administration practices concerning deductions for work-related travel expenses and record keeping outlined in this Interim decision impact statement have now been replaced by the administrative treatment outlined in the [Decision impact statement](#) for *Commissioner of Taxation v Shaw* [2026] FCA 197.

28. Up until the publication date of the Decision impact statement for *Commissioner of Taxation v Shaw* [2026] FCA 197, the Commissioner's administration practices were as follows:

Until the appeal process is finalised, we do not intend to revise the current ATO views contained in the following public rulings dealing with work-related travel expenses and record keeping, including substantiation and the substantiation exception:

- Taxation Ruling TR 2004/6 *Income tax: substantiation exception for reasonable travel and overtime meal allowance expenses*
- Taxation Ruling TR 95/18 *Income tax: employee truck drivers-allowances, reimbursements and work-related deductions*
- Taxation Ruling TR 97/24 *Income tax: relief from the effects of failing to substantiate*
- Taxation Determination TD 2020/5 *Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2020-2021 income year?* and other Determinations issued annually on reasonable travel and overtime meal allowance expenses amounts.

29. The impact of the decision in *Commissioner of Taxation v Shaw* [2026] FCA 197 is no longer being reviewed on:

- Taxation Ruling TR 95/18 *Income tax: employee truck drivers-allowances, reimbursements and work-related deductions* as it was withdrawn with effect from 19 June 2025
- Taxation Ruling TR 97/24 *Income tax: relief from the effects of failing to substantiate* as it isn't specific to the reasonable travel and overtime meal allowance expenses regime.

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**Commissioner of Taxation**

28 May 2025

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<sup>29</sup> At [11] and [54].

# Interim decision impact statement

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## Amendment history

13 May 2026

Part	Comment
Summary of decision, ATO view of this decision and Administrative treatment	Updated to note and refer to the Decision impact statement issued for <i>Commissioner of Taxation v Shaw</i> [2026] FCA 197.

# Interim decision impact statement

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## References

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*Related rulings and determinations:*

TR 95/18  
TR 97/24  
TR 2004/6  
TD 2020/5

*Legislative references:*

ITAA 1997 8-1  
ITAA 1997 900-50  
ITAA 1997 900-200

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ATO references

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