



# Decision impact statement

## Commissioner of Taxation v Shaw [2026] FCA 197

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

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<b>Venue:</b>	Federal Court of Australia
<b>Venue reference No:</b>	WAD 112 of 2025
<b>Judgment date:</b>	4 March 2026

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## Summary of decision

1. This Decision impact statement outlines the ATO's response to this case, which considered whether the taxpayer was entitled to a deduction under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) for work-related travel expenses for meals.
2. The Federal Court 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 ended 30 June 2021 (relevant income year).
3. All further legislative references in this Decision impact statement are to the ITAA 1997, unless otherwise indicated.
4. All judgment references in this Decision impact statement are to the judgment of *Commissioner of Taxation v Shaw* [2026] FCA 197, unless otherwise indicated.

## Overview of facts

5. During the relevant income year, the taxpayer worked as an employee long-haul truck driver.<sup>1</sup> He drove long distances, was away from home for 6 days every week and he slept in his truck.<sup>2</sup> The taxpayer was paid a travel allowance by his employer.<sup>3</sup>
6. 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>4</sup> To ensure that he did not have to rely on the food outlets on the road, the taxpayer regularly did a 'big shop' at the supermarket or he transferred funds to his wife to do the big shop for him. This big shop was done on a Monday or sometimes a Sunday to ensure his truck was fully stocked each week before he went on the road on a Monday.<sup>5</sup> The taxpayer had a freezer in his truck and a hot plate so he could prepare his own meals.<sup>6</sup>
7. The taxpayer used cash to pay for some food and drinks at roadhouses and supermarkets during his trips.<sup>7</sup>
8. The taxpayer said he spent more than the maximum reasonable daily amount on food during his trips away but only claimed a deduction for the lower reasonable daily amount for the days he was away. For the relevant income year, he claimed a total of \$32,782.50 for meal expenses.<sup>8</sup>

## History of the dispute

9. At audit, the taxpayer did not provide the Commissioner with any written evidence of the deductions said to have been incurred or how he worked out the amounts claimed as a deduction.
10. The taxpayer relied on the exception from the substantiation provisions in section 900-50 on the basis that he was in receipt of a travel allowance. The amount he claimed for meal expenses were based on the Commissioner's reasonable amounts set out in

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<sup>1</sup> At [1].

<sup>2</sup> At [45] and [47].

<sup>3</sup> At [2].

<sup>4</sup> At [45] and *Shaw and Commissioner of Taxation* [2025] ARTA 224 (*Shaw ART*) at [21b–21c].

<sup>5</sup> At [45], [47] and *Shaw ART* at [21g–21h].

<sup>6</sup> At [45] and *Shaw ART* at [21f].

<sup>7</sup> At [45] and *Shaw ART* at [21d].

<sup>8</sup> At [45] and *Shaw ART* at [21o].

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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>9</sup>

11. In the alternative, the taxpayer sought relief from the effects of failing to substantiate on the basis that, for the purposes of section 900-200, he had a reasonable expectation that he would not need to substantiate.<sup>10</sup> The taxpayer said that he spent more than the maximum reasonable amount on meals during his trips away, but he claimed less than he spent because of the advice given to him by his tax agent.<sup>11</sup> The tax agent's advice was that if he claimed less, he did not need to keep records to substantiate his expenses.<sup>12</sup>

12. As a consequence of the audit, the Commissioner reduced the taxpayer's deduction for meal expenses to zero and issued a Notice of Amended Assessment to that effect.<sup>13</sup>

13. At objection, the taxpayer provided his logbook, fatigue diary and some bank statements. Based on a review of these documents, the Commissioner allowed the taxpayer's objection in part, increasing his allowable deductions for meal expenses.<sup>14</sup> The Commissioner issued a Notice of Amended Assessment giving effect to the objection decision. The taxpayer sought review of the objection decision by the then Administrative Appeals Tribunal.<sup>15</sup>

14. The Administrative Review Tribunal<sup>16</sup> (Tribunal) set aside the objection decision and allowed the full amount of the claimed deduction.<sup>17</sup>

15. The Commissioner appealed the Tribunal's decision to the Federal Court. The Federal Court dismissed the Commissioner's appeal on the basis that none of the grounds of appeal relied on were established.

## Issues decided

16. Before dealing with the specific issues raised by the Commissioner's grounds of appeal, the Federal Court analysed the statutory framework of Division 900. Importantly, it emphasised that when it comes to a deduction for work expenses, there is a difference between qualifying for the deduction and substantiation of the deduction. Both requirements must be met.<sup>18</sup>

17. The Federal Court then went on to consider the Commissioner's grounds of appeal which challenged the Tribunal's reasoning on issues including apportionment, burden of proof and the operation of the substantiation provisions in Division 900.

## ***The significance of the distinction between qualification for deduction and substantiation***

18. The Federal Court found that the substantiation rules (including their exceptions) in Division 900 do not provide the qualification for a deduction.<sup>19</sup> Rather, to qualify for a

<sup>9</sup> At [27–31] and *Shaw ART* at [10].

<sup>10</sup> At [43].

<sup>11</sup> At [45].

<sup>12</sup> At [45], [48] and *Shaw ART* at [11].

<sup>13</sup> At [1] and *Shaw ART* at [15].

<sup>14</sup> At [1] and *Shaw ART* at [12] and [17].

<sup>15</sup> The Administrative Appeals Tribunal was replaced by the Administrative Review Tribunal on 14 October 2024.

<sup>16</sup> *Shaw ART*.

<sup>17</sup> At [1].

<sup>18</sup> At [6] and [18].

<sup>19</sup> At [6].

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deduction, the work expense must come within a provision of the Act 'outside' Division 900 – in this case, the work expense had to meet the requirements for a deduction under subsection 8-1(1).<sup>20</sup>

19. Therefore, to demonstrate that an amount spent by an employee on food or drink while travelling for work purposes is deductible, it is necessary for the employee to establish that the expense was incurred in producing the employee's salary or wages. If that is demonstrated, it may also be necessary to substantiate the expense by getting written evidence that meets the requirements of Division 900.<sup>21</sup>

20. The publication of reasonable amounts in TD 2020/5 does not relieve a taxpayer of the requirement to demonstrate that the amount claimed qualifies as a deduction.<sup>22</sup> For claims under the maximum reasonable amount in TD 2020/5, the Federal Court maintained that 'there is no need to meet the *specific substantiation* requirements in Division 900, but there remains a need to *substantiate deductibility*'.<sup>23</sup>

21. When it comes to considering the nature of the proof that may be required to 'substantiate' deductibility in such cases, a taxpayer would not be expected to keep detailed records of the kind that would otherwise be required to meet the Division 900 substantiation requirements. The Federal Court found that '[a]n obligation of that kind would defeat the operation of the exceptions and relief provisions in Division 900'.<sup>24</sup>

22. Even with the application of section 900-200 there would still be a need for the taxpayer to demonstrate the basis for the deduction. Section 900-200 only relieves a taxpayer from the requirement to substantiate in the manner provided for in Division 900.<sup>25</sup>

## **The Tribunal's approach to the issue of apportionment**

23. Regarding the Tribunal's approach to the issue of apportionment, the Federal Court did not accept the Commissioner's contention that the taxpayer could only succeed if the Tribunal undertook an analysis of the bank statement amounts and reached a conclusion as to how much of those amounts were for private expenditure.<sup>26</sup> It found the Tribunal did not need to reach a firm conclusion about apportionment (between expenditure on food and the taxpayer's wife's personal expenses) of specific bank statement amounts.<sup>27</sup>

24. The Federal Court found that the key issue for the Tribunal was whether the amounts claimed by the taxpayer for meals *had been incurred* under subsection 8-1(1) while he was travelling for work.<sup>28</sup>

25. The Federal Court reasoned that the Tribunal did not make an apportionment finding of the kind relied on by the Commissioner because:

- the Tribunal made an unqualified finding as to the credibility of the taxpayer and accepted the whole of the taxpayer's evidence advanced<sup>29</sup>
- the Tribunal was of the view that there were ways of evaluating the taxpayer's evidence that was consistent with the taxpayer spending more than the amount claimed on meals<sup>30</sup>

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<sup>20</sup> At [4–5].

<sup>21</sup> At [17–18] and [23].

<sup>22</sup> At [31].

<sup>23</sup> At [40].

<sup>24</sup> At [41].

<sup>25</sup> At [36].

<sup>26</sup> At [108–110].

<sup>27</sup> At [111–114].

<sup>28</sup> At [112].

<sup>29</sup> At [116].

<sup>30</sup> At [122].

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- there was a considerable amount of evidence (including about how the taxpayer's meal costs were incurred, the fact the taxpayer did the big shop himself at times, evidence that some meals were bought for cash on the road, and an explanation as to why the taxpayer did not have detailed records and evidence that his daily expenditure was more than \$105.75 per day) that had been considered by the Tribunal as credible<sup>31</sup>
- this evidence supported the conclusion that the bank statement amounts were linked to the expenditure of amounts for meals and, therefore, it was not necessary to undertake the kind of precise apportionment agitated by the Commissioner<sup>32</sup>
- the Tribunal made a supplementary finding that the taxpayer's evidence also gave a broad mechanism for apportionment<sup>33</sup>
- having found that the taxpayer's evidence was enough to satisfy that the amount has been incurred (including a finding that the taxpayer spent and incurred more on meals than that claimed), the Tribunal found that the evidence provided a mechanism that could have addressed most of the Commissioner's concerns.<sup>34</sup>

26. Further, the Tribunal's comments<sup>35</sup> about the steps that the Commissioner could have taken to establish a reasonable basis for apportionment of private expenditure did not form a part of the Tribunal's reasons for finding that the taxpayer had discharged his burden of proof to establish that he had incurred the claimed expenses.<sup>36</sup>

## ***Did the Tribunal reach a conclusion on apportionment in the absence of evidence?***

27. For the purposes of apportioning private expenditure under paragraph 8-1(2)(b), the Federal Court found that the Tribunal did not reach a specific conclusion that the personal expenditure of the taxpayer's wife was limited to \$50 per transfer. Rather, it reasoned that the taxpayer's evidence gave a broad mechanism for apportionment.<sup>37</sup>

28. The Federal Court found that the evidence given was not to the effect that the wife potentially spent \$50 here and there on herself or the household. It was 'legally faulty reasoning' to treat the evidence on that basis. In any event, the Federal Court found this finding did not invalidate the Tribunal's decision as it was not used in reaching the Tribunal's conclusion on deductibility.<sup>38</sup>

## ***Did the Tribunal reverse the onus of proof in section 14ZZK of the Taxation Administration Act 1953?***

29. The Federal Court found that the Tribunal had not reversed the onus of proof in section 14ZZK of the *Taxation Administration Act 1953* and had not required the Commissioner to prove that the meal expenses were not deductible.<sup>39</sup>

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<sup>31</sup> At [123].

<sup>32</sup> At [123].

<sup>33</sup> At [118–119], [121].

<sup>34</sup> At [116–123].

<sup>35</sup> *Shaw ART* at footnotes 44, 45 and 73.

<sup>36</sup> At [124–127].

<sup>37</sup> At [144].

<sup>38</sup> At [152–153].

<sup>39</sup> At [106] and [138].

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30. The Federal Court was not persuaded that the Tribunal:
- took the failure by the Commissioner to adopt the methodologies that the Tribunal suggested (including referencing footnotes suggesting possible investigative methods) as a basis upon which the taxpayer succeeded
  - found that the taxpayer succeeded because the Commissioner failed to disprove apportionment.<sup>40</sup>

31. The overall structure of the Tribunal's reasons and its reliance upon the credibility of the taxpayer's account showed that the Tribunal found those matters sufficient to discharge the taxpayer's onus of proof.<sup>41</sup>

## ***Did the Tribunal apply a general reasonableness standard to the question of deductibility under subsection 8-1(1)?***

32. The Federal Court found that the test for deductibility in subsection 8-1(1) did not involve the application of some form of reasonableness standard.<sup>42</sup> Where subsection 8-1(1) is the basis for the deduction, it must be shown that a loss or outgoing was *incurred* in gaining or producing assessable income.<sup>43</sup> The concept of what was reasonable was confined to the exception from substantiation under section 900-50 and relief from the effects of failing to substantiate in section 900-200.<sup>44</sup>

## ***Tribunal's conclusions concerning the application of section 900-200***

33. The Federal Court observed that if the taxpayer was not entitled to rely upon the exception under section 900-50<sup>45</sup>, section 900-200<sup>46</sup> applied to relieve him of that substantiation obligation.<sup>47</sup>

34. The Tribunal did not find that the existence of a reasonable expectation within the meaning of section 900-200 relieved the taxpayer of his obligation to prove that the relevant expenses were incurred within the meaning of subsection 8-1(1).<sup>48</sup>

35. The factual aspect of the Tribunal's reasoning of whether the taxpayer had a reasonable expectation for the purpose of section 900-200 was not challenged by the Commissioner.<sup>49</sup>

## ***Did the Tribunal's views about section 900-200 infect its reasoning as to subsection 8-1(1)?***

36. The Tribunal's views about section 900-200 did not infect its reasoning as to subsection 8-1(1).

37. The Federal Court observed that relief from the Division 900 substantiation requirements under section 900-200 does not relieve a person from the need to demonstrate that they incurred the amounts claimed.<sup>50</sup> The Tribunal did not reduce the

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<sup>40</sup> At [131–136].

<sup>41</sup> At [136].

<sup>42</sup> At [140].

<sup>43</sup> At [140].

<sup>44</sup> At [141–142].

<sup>45</sup> See paragraph 10 of this Decision impact statement.

<sup>46</sup> See paragraph 11 of this Decision impact statement.

<sup>47</sup> At [157].

<sup>48</sup> At [160].

<sup>49</sup> At [165].

<sup>50</sup> At [169].

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evidentiary threshold that was required by subsection 8-1(1) on the basis of some form of 'reasonable expectation' held by the taxpayer. Further, the Tribunal did not excuse the taxpayer from having to prove that he incurred the expenses on the basis that he believed that he did not need to maintain records.<sup>51</sup>

## ATO view of this decision

### General comments

38. We consider that this decision confirms that:

- Deductibility of expenses must first be established under section 8-1 and<sup>52</sup>
  - the Commissioner will continue to assess claims for deductions of meal expenses by reference to all relevant evidence to ensure that deductions are only allowed where the statutory requirements under section 8-1 are satisfied
  - this includes consideration of whether expenses were incurred in gaining or producing assessable income and whether any private component requires apportionment.
- Once deductibility is established, Division 900 may require certain specific substantiation requirements to be met<sup>53</sup> – while the exception from the substantiation provisions in section 900-50 or seeking relief from the effects of failing to substantiate in section 900-200 may relieve taxpayers from complying with the formal substantiation requirements in Division 900, neither provision dispenses with the requirement to establish that the claimed expenses were incurred in gaining or producing assessable income within the meaning of section 8-1.<sup>54</sup>
- While the taxpayer still bears the burden of establishing the deductibility of expenses, the Commissioner should not insist on a taxpayer keeping detailed records of the kind required to meet the substantiation requirements in Division 900 when an operative exception or relief from compliance with those requirements applies.<sup>55</sup>

39. However, we consider that this decision **does not**:

- establish that particular forms of evidence, including bank statements or oral testimony, will always show a consistent pattern of travel and eating and spending habits, and be sufficient to demonstrate that the meal expenses have been incurred in gaining or producing assessable income under section 8-1
- remove the need to consider apportionment of meal expenses where those expenses relate in part to private purposes – whether the evidence is adequate in establishing a broad mechanism for apportionment will depend on the facts and circumstances of each case
- provide an automatic statutory deduction when the meal expenses claimed are within the Commissioner's published guideline on 'reasonable amounts'.

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<sup>51</sup> At [172–173].

<sup>52</sup> At [6] and [17].

<sup>53</sup> At [6] and [17].

<sup>54</sup> At [40].

<sup>55</sup> At [41].

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## ***Distinction between qualification for deduction and substantiation***

40. The Federal Court's reasoning is consistent with established principles – the primary question of eligibility for a deduction is distinct from the question of substantiation.<sup>56</sup> A taxpayer must first establish an entitlement to a deduction under section 8-1 for the relevant amount and then determine whether an exception to substantiation under section 900-50 or relief from the effects of failing to substantiate under section 900-200 applies.<sup>57</sup>

## ***Apportionment***

41. In accepting the taxpayer's evidence, the Federal Court found that the Tribunal provided a foundation for its conclusion that the claimed expenditure had been incurred and that the evidence of the taxpayer gave a broad mechanism for apportionment.<sup>58</sup> We accept on the facts found by the Tribunal, and the evidence provided by the taxpayer, that this conclusion was available to the Court.

## ***Onus of proof***

42. The Federal Court found that the Tribunal ultimately decided the matter on the taxpayer's evidence, and not on any failure by the Commissioner to adopt the methodologies that it suggested.<sup>59</sup> We accept that this conclusion was available to the Court and is consistent with established principles regarding a taxpayer's onus of proof.

## ***Reasonableness standard***

43. The Federal Court confirmed that the references by the Tribunal to 'reasonableness' were only relevant in the context of the exceptions in Division 900 and not in relation to the application of section 8-1.<sup>60</sup> These findings are consistent with the Commissioner's view on the application of the relevant provisions.

## ***Section 900-200***

44. We note that the Federal Court made some observations regarding the application of section 900-200 and the existence of a reasonable expectation where a taxpayer received incorrect advice from a tax agent.<sup>61</sup> These observations were not central to the finding that the meal expenses were deductible.

45. Where a taxpayer is relieved from the requirement to substantiate expenses under Division 900, the Commissioner will not insist on a taxpayer keeping detailed records of the kind that would otherwise be required to meet the substantiation requirements.<sup>62</sup>

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<sup>56</sup> At [1–43].

<sup>57</sup> At [6] and [17].

<sup>58</sup> At [118–121].

<sup>59</sup> At [131–138].

<sup>60</sup> At [140–142].

<sup>61</sup> At [162–165].

<sup>62</sup> At [40–41].

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## Implications for affected advice or guidance

46. We are:

- reviewing the impact of this decision on related advice and guidance, including Taxation Ruling TR 2004/6 *Income tax: substantiation exception for reasonable travel and overtime meal allowance expenses*
- considering whether a Practical Compliance Guideline about claiming and substantiating work-related travel expenses would be appropriate.

47. We will also ensure that the annual Taxation Determination setting out the reasonable travel and overtime meal allowance expenses amounts for the 2026–27 income year is updated accordingly.

## Comments

48. We invite you to advise us if you feel this decision has consequences we have not identified. Please forward your comments to the contact officer.

**Due date:** 12 June 2026  
**Contact officer:** Stephanie Oates  
**Email:** [Stephanie.Oates@ato.gov.au](mailto:Stephanie.Oates@ato.gov.au)  
**Phone:** 07 3213 6625

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**Commissioner of Taxation**

13 May 2026

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## References

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*Related rulings and determinations:*

TR 2004/6; TD 2020/5

- ITAA 1997 900-200

- TAA 1953 14ZZK

*Legislative references:*

- ITAA 1997 8-1

- ITAA 1997 8-1(1)

- ITAA 1997 8-1(2)(b)

- ITAA 1997 Division 900

- ITAA 1997 900-50

*Case references:*

Commissioner of Taxation v Shaw

[2026] FCA 197; 2026 ATC 21-002

Shaw and Commissioner of Taxation

[2025] ARTA 224; 2025 ATC 10-750

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ATO references

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