



## Interim decision impact statement

# Commissioner of Taxation v Hall [2026] FCAFC 43

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

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|----------------------------|------------------------------------|
| <b>Venue:</b>              | Full Federal Court of Australia    |
| <b>Venue reference No:</b> | VID 779 of 2025                    |
| <b>Member Name:</b>        | Thawley, McElwaine and Wheatley JJ |
| <b>Judgment date:</b>      | 10 April 2026                      |

### **Summary of decision**

1. This Interim decision impact statement outlines the ATO's interim response to the Full Federal Court's decision in *Commissioner of Taxation v Hall* [2026] FCAFC 43, which allowed the Commissioner's appeal and set aside the Administrative Review Tribunal's (Tribunal) decision of 21 May 2025.<sup>1</sup>

2. In its decision, the Court determined that Mr Hall, an employee sports presenter and producer (taxpayer) was not entitled to a deduction under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) for occupancy expenses, nor a deduction for car expenses claimed under section 28-12 of the ITAA 1997 or, alternatively, section 8-1 for the income year ended 30 June 2021 (relevant income year).

<sup>1</sup> *Hall and Commissioner of Taxation* [2025] ARTA 600 (*Hall – first instance*).

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3. All decision references in this Interim decision impact statement are to the decision of *Commissioner of Taxation v Hall* [2026] FCAFC 43 unless otherwise indicated.

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

## Administrative treatment

5. Pending the outcome of any appeal process, we are continuing to administer the law in accordance with the Full Court's decision, which supports the existing ATO views set out in paragraphs 31 to 33 of this Interim decision impact statement.

## Overview of facts

6. 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.<sup>2</sup>

7. On relocating to Melbourne with his wife in June 2020, the taxpayer rented a 2-bedroom apartment in his own name.<sup>3</sup> 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.<sup>4</sup>

8. During the relevant income year, Melbourne was subject to mandatory lockdowns ordered by the Victorian Chief Health Officer due to the COVID-19 pandemic.<sup>5</sup> The taxpayer worked at home for part of his duties due to these lockdowns and subsequent employer directions.<sup>6</sup>

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

- producing the ABC Sport Digital Radio station (Digital Role), which comprised 75% of his employment-related duties<sup>7</sup>, 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).<sup>8</sup>

10. During the relevant income year, the restrictions imposed by the Victorian Chief Health Officer and the ABC prevented<sup>9</sup> the taxpayer 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.<sup>10</sup>

11. The taxpayer's usual work week was from Thursday to Monday. His general pattern of work was a mix of either<sup>11</sup>:

- solely performing his Digital Role duties at home

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<sup>2</sup> *Hall – first instance* at [2].

<sup>3</sup> *Hall – first instance* at [7].

<sup>4</sup> *Hall – first instance* at [64].

<sup>5</sup> *Hall – first instance* at [27].

<sup>6</sup> *Hall – first instance* at [12].

<sup>7</sup> *Hall – first instance* at [9].

<sup>8</sup> *Hall – first instance* at [10].

<sup>9</sup> 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 (*Hall – first instance* 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 (*Hall – first instance* at [30–31]).

<sup>10</sup> *Hall – first instance* at [22–30].

<sup>11</sup> *Hall – first instance* at [12].

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- 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.

12. The taxpayer asserted that he undertook his Digital Role from a laptop in the second bedroom of his rented apartment.<sup>12</sup> This room was solely used for this purpose as he needed a quiet place to work from.<sup>13</sup> The room was only sparsely furnished, which included a small desk, a dining chair and a bookcase.<sup>14</sup> There was nothing to separate or distinguish that space from the rest of the apartment.

13. 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.<sup>15</sup>

14. 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 home<sup>16</sup>, and
- he could only perform part of his employee duties at the employer's premises.

15. The taxpayer drove from his home to the Southbank Studios in his private car to undertake his Live Role.<sup>17</sup>

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

- \$5,878.87 for occupancy expenses<sup>18</sup> for his home office, and
- \$1,148.40 for car expenses<sup>19</sup> for travel for work from his home to the Southbank Studios on the days he undertook both the Digital Role and the Live Role.

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

18. The taxpayer sought a review of the Commissioner's objection decision in the Tribunal. The Tribunal allowed the deductibility of both expenses in full.

## Questions of law decided by the Court

19. This proceeding was an appeal against the decision of the Tribunal brought by the Commissioner under section 172 of the *Administrative Review Tribunal Act 2024* on the following questions of law.

### Question 1 – home office (occupancy) expenses

20. The Court outlined that deductibility under section 8-1 turns on the essential character of the expenditure. A sufficient connection to income-earning activities under the

<sup>12</sup> *Hall – first instance* at [2].

<sup>13</sup> *Hall – first instance* at [14].

<sup>14</sup> *Hall – first instance* at [15].

<sup>15</sup> *Hall – first instance* at [8].

<sup>16</sup> *Hall – first instance* at [24].

<sup>17</sup> *Hall – first instance* at [19] and [20].

<sup>18</sup> 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.

<sup>19</sup> Based on the cents per kilometre method for claiming motor vehicle expenses.

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positive limb in subsection 8-1(1) is necessary but not determinative of deductibility. An outgoing remains non-deductible under the negative limb in paragraph 8-1(2)(b) if it is private or domestic in nature.<sup>20</sup> That character is not determined by use, necessity or lack of choice<sup>21</sup>, and apportionment of an outgoing does not, of itself, preclude it from being characterised as private or domestic.<sup>22</sup>

21. The Court's discussion of the High Court authorities of *Faichney*<sup>23</sup>, *Handley*<sup>24</sup> and *Forsyth*<sup>25</sup> on home office expenses highlights the structure of section 8-1, confirming that a study or home office ordinarily remains part of the home and does not become business premises merely because it is used regularly or necessarily for income-earning activities, and that a separate inquiry is required to determine whether the outgoing remains private or domestic.

22. The Court also considered *Swinford*<sup>26</sup>, a case relied on by the taxpayer, in which Hunt J of the New South Wales Supreme Court, held that a self-employed scriptwriter's home office constituted business premises, notwithstanding that it formed part of the home. The Court made 2 observations about *Swinford*. First, Hunt J appeared to treat satisfaction of the positive limb as sufficient, without separately analysing why the expenditure was not private or domestic.<sup>27</sup> Secondly, although Hunt J, referring to *Forsyth*, concluded that the second bedroom was the scriptwriter's business premises because it was the sole base of operations<sup>28</sup>, the Court observed that the majority in *Handley* (heard with *Forsyth*) focused on the essential character of what the outgoing secured rather than treating reasons of convenience as determinative.<sup>29</sup>

23. The Court identified 2 errors in the Tribunal's reasoning:

- First, the Tribunal wrongly treated a single rent payment as separate outgoings, isolating 'additional rent' for the home office and thereby avoiding the proper application of paragraph 8-1(2)(b).<sup>30</sup>
- Second, the Tribunal failed to undertake the distinct inquiry required by paragraph 8-1(2)(b) of the negative limb, instead treating satisfaction of the positive limb in paragraph 8-1(1)(a) as determinative.<sup>31</sup>

24. The Court rejected the Tribunal's approach that an expense must be *purely* private or domestic to be excluded by paragraph 8-1(2)(b). The Court instead held that an expense may be sufficiently connected to income-earning activities yet still be non-deductible because its essential character remains private or domestic.<sup>32</sup>

25. The Court also held that the Tribunal misapplied section 8-1 by treating necessity and exclusive work use as determinative of deductibility. Although the taxpayer was compelled to work from home and used the second bedroom almost exclusively for work, the rent was incurred to secure domestic accommodation and retained that essential character.<sup>33</sup> It was not open to split the rent into separate outgoings or to treat the room as business premises.<sup>34</sup> While the rent had a sufficient connection to income-earning

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<sup>20</sup> At [7].

<sup>21</sup> At [9].

<sup>22</sup> At [8].

<sup>23</sup> At [11–16] (*Federal Commissioner of Taxation v Faichney* [1972] HCA 67).

<sup>24</sup> At [17–22] (*Handley v Federal Commissioner of Taxation* [1981] HCA 16).

<sup>25</sup> At [23–31] (*Federal Commissioner of Taxation v Forsyth* [1981] HCA 15).

<sup>26</sup> At [41] (*Swinford v Federal Commissioner of Taxation* [1984] 3 NSWLR 118). Also refer to [104].

<sup>27</sup> At [48].

<sup>28</sup> At [46].

<sup>29</sup> At [49].

<sup>30</sup> At [57].

<sup>31</sup> At [58].

<sup>32</sup> At [59].

<sup>33</sup> At [71–73].

<sup>34</sup> At [71–73].

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activities to satisfy the positive limb, that did not displace the negative limb.<sup>35</sup> The essential character of the rent remained private or domestic, and the Tribunal therefore erred in allowing a deduction for the 'additional rent' (in fact a portion of rent).<sup>36</sup>

## Question 2 – car expenses

26. The Court outlined the statutory framework for deductibility of car expenses.<sup>37</sup> The Court explained that section 28-12 refers to 2 prescribed methods for calculating a deduction for car expenses – the cents per kilometre method and the logbook method.<sup>38</sup>

27. The taxpayer used the cents per kilometre method prescribed in section 28-25, under which deductions are confined to 'business kilometres'.<sup>39</sup> Business kilometres are limited to kilometres travelled in producing assessable income or as travel between workplaces, with section 25-100 expressly excluding travel between a workplace and the taxpayer's residence.<sup>40</sup> Because section 25-100 excludes home-to-work travel, the only remaining basis for the taxpayer to claim a deduction was car expenses incurred in the course of producing assessable income under paragraph 28-25(3)(a).<sup>41</sup>

28. The taxpayer argued that the deduction arose under section 28-12, or alternatively section 8-1.<sup>42</sup> The Commissioner argued that section 28-12 did not operate independently of section 8-1, and that claiming car expenses under the cents per kilometre method in paragraph 28-25(3)(a) cannot avoid the application of the essential character test or the exclusion for private or domestic outgoings.<sup>43</sup>

29. The Court held that the Tribunal erred in finding that the taxpayer was 'at work the entire time' while travelling between his home and the Southbank Studios (and back) and therefore erred in law in allowing a deduction for car expenses.<sup>44</sup>

30. The Court found that the taxpayer's work at home and at the Southbank Studios involved distinct income-earning activities that ceased and commenced at different locations, and that he performed no income-producing activities while travelling.<sup>45</sup> His travel was therefore undertaken *to* begin work or *after* work had ended, not in the course of work already underway, and was properly characterised as ordinary commuting rather than income-earning travel.<sup>46</sup> The Tribunal therefore erred in allowing a deduction for car expenses.<sup>47</sup>

## ATO view of decision

31. The Full Federal Court's decision supports the ATO views in the following public advice and guidance dealing with the deductibility of occupancy expenses and work-related transport expenses:

- Taxation Ruling TR 93/30 *Income tax: deductions for home office expenses*

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<sup>35</sup> At [72–74].

<sup>36</sup> At [74–75] and [100].

<sup>37</sup> Refer to [76–85].

<sup>38</sup> At [83].

<sup>39</sup> At [86].

<sup>40</sup> At [79–81].

<sup>41</sup> At [87].

<sup>42</sup> At [92].

<sup>43</sup> At [92].

<sup>44</sup> At [98].

<sup>45</sup> At [95].

<sup>46</sup> At [96–97].

<sup>47</sup> At [99] and [100]. Also see [105].

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

32. Generally, 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. The Full Federal Court decision confirms that 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, and that the positive limb and negative limbs of section 8-1 operate cumulatively, with a separate inquiry required to determine whether the outgoing is private or domestic in its essential character.

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 because these expenses are not incurred in gaining or producing assessable income as they are a prerequisite to earning assessable income. The Full Federal Court decision confirms that this treatment will not change even if the travel occurs during work hours. The decision also confirms that the circumstances of COVID-19 lockdowns requiring some work to be undertaken at home do not change this outcome.

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**Commissioner of Taxation**

29 April 2026

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## References

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### *Related rulings and determinations:*

TR 93/30; TR 2021/1

### *Legislative references:*

ITAA 1997 8-1

ITAA 1997 8-1(1)

ITAA 1997 8-1(1)(a)

ITAA 1997 8-1(2)(b)

ITAA 1997 8-5

ITAA 1997 8-10

ITAA 1997 28-12

ITAA 1997 28-25

ITAA 1997 28-25(3)(a)

ITAA 1997 28-100

Administrative Review Tribunal Act 2024 172

### *Cases:*

Commissioner of Taxation v Faichney  
[1972] HCA 67; 129 CLR 38; 72 ATC  
4245; 3 ATR 435; 47 ALJR 35

Commissioner of Taxation v Forsyth [1981]  
HCA 15; 148 CLR 203; 81 ATC 4157; 11  
ATR 657; 55 ALJR 340

Handley v Commissioner of Taxation  
[1981] HCA 16; 148 CLR 182; 81 ATC  
4165; 11 ATR 644; 55 ALJR 345

Swinford v Commissioner of Taxation  
[1984] 3 NSWLR 118; 80 FLR 1; 84 ATC  
4803; 15 ATR 1154

### *Other references:*

Employees guide to work expenses

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### ATO references

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