



Decision impact statement

Commissioner of Taxation v Hall [2026] FCAFC 43

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

Summary of decision

1. This Decision impact statement outlines the ATO's response to this case, which considered the taxpayer's entitlement to deductions for occupancy (rent) expenses under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997), and car expenses under section 28-12 of the ITAA 1997 or, alternatively, section 8-1 of the ITAA 1997.

2. The Full Federal Court determined that the taxpayer was not entitled to claim a deduction under section 8-1 of the ITAA 1997 for occupancy expenses, nor a deduction for car expenses under section 28-12 of the ITAA 1997 or, alternatively, section 8-1 of the ITAA 1997 in the income year ended 30 June 2021 (relevant income year).

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3. All judgment references in this Decision impact statement are to the judgment of *Commissioner of Taxation v Hall* [2026] FCAFC 43 unless otherwise indicated.
4. All further legislative references in this Decision impact statement are to the ITAA 1997 unless otherwise indicated.

Overview of facts

5. During the relevant income year, the taxpayer was employed full time by the Australian Broadcasting Commission (ABC) in Melbourne as a sports presenter and producer.¹ His role comprised 2 components: a predominantly digital role², and a live broadcast role performed at the ABC's Southbank Studios.³
6. After moving to Melbourne in June 2020, the taxpayer rented a 2-bedroom apartment.⁴ The taxpayer was required by his employer to work from home⁵, and therefore he set aside one bedroom for this purpose. COVID-19 lockdowns and employer directions prevented⁶ him from attending the ABC's Southbank Studios for the digital production duties, requiring that work to be performed from home, and attending the studios only for live broadcast duties.⁷ His work pattern involved either working entirely from home or undertaking the digital production duties at home before travelling to the studios for live broadcasts.⁸
7. The taxpayer used the second bedroom exclusively as a workspace, though it was not physically distinct from the rest of the apartment.⁹ His wife separately conducted online yoga classes from the living area.¹⁰ The taxpayer travelled by private car between his home and Southbank Studios when performing live broadcast duties.¹¹
8. The taxpayer claimed deductions of \$5,878.87 for occupancy expenses¹² relating to the home workspace and \$1,148.40 for car expenses¹³ for travel between home and the studios on mixed-duty days. These claims were disallowed at audit and objection, and the taxpayer subsequently sought a review of the Commissioner's objection decision in the then Administrative Appeals Tribunal.¹⁴
9. The Administrative Review Tribunal¹⁵ (Tribunal) set aside the Commissioner's objection decision and allowed the deductibility of both expenses in full.¹⁶
10. The Commissioner appealed the Tribunal's decision to the Federal Court. The appeal was heard by the Full Court of the Federal Court, which allowed the

¹ *Hall and Commissioner of Taxation* [2025] ARTA 600 (*Hall – first instance*) at [2].

² *Hall – first instance* at [9].

³ *Hall – first instance* at [10].

⁴ *Hall – first instance* at [7].

⁵ *Hall – first instance* at [64].

⁶ In 2021, no Victorian Chief Health Officer restrictions prevented the taxpayer from working at the Southbank Studios between 26 March and 27 May (*Hall – first instance* at [28]). Although the ABC allowed some staff to return to the Southbank Studios between 29 March and 25 May, the taxpayer was not among those permitted to do so full-time (*Hall – first instance* at [30–31]).

⁷ *Hall – first instance* at [22–30].

⁸ *Hall – first instance* at [11].

⁹ *Hall – first instance* at [2], [14] and [15].

¹⁰ *Hall – first instance* at [8].

¹¹ *Hall – first instance* at [19] and [20].

¹² This amount represented the portion of the total rent paid during the year attributable to the second bedroom, calculated on a per square metre basis.

¹³ This amount was calculated using the cents per kilometre method for motor vehicle expenses.

¹⁴ The Administrative Appeals Tribunal was replaced by the Administrative Review Tribunal on 14 October 2024.

¹⁵ *Hall – first instance*.

¹⁶ *Hall – first instance* at [6] and [83].

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Commissioner's appeal, set aside the Tribunal's decision and affirmed the Commissioner's objection decision.¹⁷

Issues decided

11. The Court considered the Commissioner's appeal from the Tribunal's decision, addressing the following questions of law, being whether:
- (a) a portion of rent paid for domestic accommodation referable to use as a home office is deductible under section 8-1; and
 - (b) car expenses for travel between a home office and a workplace, calculated by reference to paragraph 28-25(3)(a), are deductible.

Occupancy expenses – characterisation of expenditure under section 8-1

12. Subsections 8-1(1) and 8-1(2) operate cumulatively¹⁸ but address distinct inquiries. Subsection 8-1(1) requires that the loss or outgoing be sufficiently connected to gaining or producing assessable income. This involves identifying the essential character of the expenditure.¹⁹ That character is not determined by use, necessity, or lack of choice²⁰, and is not displaced merely by apportionment.²¹ By contrast, subsection 8-1(2) asks whether the outgoing is nevertheless of a kind expressly excluded from deductibility, including because it is private or domestic in character (paragraph 8-1(2)(b)).²²

13. The Court confirmed and applied the High Court authorities of *Faichney*²³, *Handley*²⁴ and *Forsyth*²⁵, which establish that a home office ordinarily remains part of the home and does not become a business premises merely because it is used regularly or necessarily for income-earning activities. A separate enquiry is still required as to whether the expense is private or domestic. The Court found that the Tribunal erred in identifying and applying the correct legal principles of the High Court authorities by treating the necessity to use, and the use of, the second bedroom as determinative of the essential character of the rent.²⁶

14. The Court considered *Swinford*²⁷, a case relied on by the taxpayer, where Hunt J of the New South Wales Supreme Court held that a self-employed scriptwriter's home office constituted a business premises. It observed that Hunt J appeared to treat satisfaction of the positive limb in former subsection 51(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) (now subsection 8-1(1)) as sufficient, without separately addressing whether the expense was private or domestic under the negative limb in former subsection 51(1) of the ITAA 1936 (now subsection 8-1(2)).²⁸ Hunt J held that the second bedroom was the scriptwriter's business premises because it was the 'sole base of operations'.²⁹ However, the Court observed that the correct test is drawn from *Handley* and *Forsyth*, that the determinative question is instead the essential character of what the outgoing secured.³⁰

¹⁷ At [101].

¹⁸ At [7].

¹⁹ At [5].

²⁰ At [9].

²¹ At [8].

²² At [6].

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

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

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

²⁶ At [67] and [70]. Also refer to [104].

²⁷ *Swinford v Federal Commissioner of Taxation* [1984] 3 NSWLR 118.

²⁸ At [48].

²⁹ At [46].

³⁰ At [49].

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15. The Court found that the Tribunal erred in allowing a deduction for occupancy expenses³¹ by treating a single outgoing for rent as 2 outgoings where one was 'additional expenditure' for the second bedroom.³² The Tribunal placed undue weight on work-related use, necessity to use, and exclusivity of the space³³ without separately considering the essential character test. The Court confirmed that an expense can be connected to income-earning activities yet remain non-deductible if its essential character is private or domestic.³⁴ The Court indicated that it was not appropriate to treat part of the rent as a separate outgoing³⁵ or that the use of the second bedroom for income-producing activities makes it a business premises.³⁶ The Court confirmed that an outgoing does not need to be 'purely' private or domestic to be excluded by paragraph 8-1(2)(b).³⁷

16. In applying subsection 8-1(1), the Court considered that the outgoing for rent had a connection to the derivation of assessable income, in that part of the premises was used for income-producing activities and not merely for personal convenience.³⁸ However, the Court emphasised that this did not conclude the inquiries.³⁹

17. In separately considering paragraph 8-1(2)(b), the Court held that the essential character of the expenditure was rent paid to secure domestic accommodation. That character was not altered by the taxpayer's use of part of the premises for work, nor by the circumstances requiring him to work from home. Accordingly, the outgoing was excluded from deductibility as private or domestic in nature.⁴⁰ The deduction for occupancy expenses was denied on these grounds.

Car expenses – travel to work versus travel in work

18. Section 28-12 allows a deduction for car expenses if a taxpayer owned or leased a car⁴¹ for an amount calculated using one of 2 prescribed methods: the cents per kilometre method or the logbook method.⁴² A taxpayer must use one of these methods unless an exception applies. If neither method can be used, no deduction is available for car expenses.

19. Section 28-25 sets out the formula for the cents per kilometre method, limiting deductions to travel that qualifies as income-producing or between workplaces.⁴³ Subsection 25-100(3) excludes home-to-work travel.⁴⁴ In such a case, the only available basis for claiming a deduction is car expenses incurred in the course of producing assessable income under paragraph 28-25(3)(a).⁴⁵

20. The Court found that the Tribunal erred in allowing a deduction for car expenses⁴⁶ on the basis of its finding that the taxpayer was 'at work the entire time' while travelling between home and the Southbank Studios.⁴⁷ This finding did not support the conclusion

³¹ At [75] and [100]. Also refer to [104].

³² At [57].

³³ At [58] and [70].

³⁴ At [59].

³⁵ At [62] and [71–74].

³⁶ At [63] and [71].

³⁷ At [59].

³⁸ At [71].

³⁹ At [72].

⁴⁰ At [73].

⁴¹ Refer to [82–85].

⁴² At [83].

⁴³ At [84].

⁴⁴ At [79–81] and [85].

⁴⁵ At [84] and [87].

⁴⁶ At [99] and [100].

⁴⁷ At [98].

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that the travel was in the course of producing assessable income or that the expenses were incurred in gaining that income.⁴⁸

21. Accordingly, distinct duties performed by the taxpayer at different locations constitute separate income-earning activities, which cease and commence as the taxpayer moves between the locations.⁴⁹ Travel between those locations is not income-producing where no work is performed during the journey.⁵⁰ Such travel is properly characterised as travel 'to' perform work, or after work has ceased, rather than travel 'in' performing work.⁵¹ Travel is not in the course of employment unless it forms part of an activity already under way at the time of the journey.⁵²

ATO view of decision

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

Occupancy expenses

23. Occupancy expenses (for example, rent, mortgage interest, rates) are generally private and not deductible and may only be apportioned on a reasonable basis where the home (or a part of it) is a place of business, not merely a place of convenience for performing work.

24. The Court's reasoning is consistent with this approach: even where substantive work is performed at home, that does not, of itself, alter the essential character of the expenses that relate to the home. Necessity or employer requirement to work from home is not, of itself, determinative of deductibility of occupancy expenses. What matters is whether the home is properly characterised as a place of business forming part of the income-earning structure, rather than simply a location where work is undertaken.

25. The Court's analysis of the relevant High Court authorities reaffirms that a home office remains part of the home. It does not become business premises merely because it is used regularly or necessarily for income-earning activities. A separate assessment is always required to determine whether an occupancy expense is private or domestic. This position is consistent with long-standing High Court authorities and is unaffected by contemporary or pandemic-era working arrangements.

26. Running expenses (for example, internet, electricity, depreciation of equipment) of a home office differ to occupancy expenses and may be deductible to the extent those expenses relate to work use.

⁴⁸ At [98]. Also refer to [104].

⁴⁹ At [95].

⁵⁰ At [95].

⁵¹ At [96].

⁵² At [97].

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Work-related transport expenses

27. The cost of travel between home and a regular workplace is generally private and not deductible (subject to very limited exceptions). Travel expenses are not deductible where they are incurred merely as a prerequisite to commencing income-earning activities, rather than in the course of performing those activities.

28. The Court's decision aligns with this approach: where duties at home and another location are separate and no work is undertaken during travel, the travel is to commence or resume work, not in performing it.

29. Accordingly, working from home does not, of itself, convert home-to-work and work-to-home travel into income-producing travel, nor alter its character as ordinary commuting. This position is unaffected by contemporary or pandemic-era working arrangements.

Implications for affected advice or guidance

30. We are reviewing the impact of this decision on the public advice and guidance listed at paragraph 22 of this Decision impact statement.

Comments

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

Due date: 17 July 2026
Contact officer: Kheng Vinh
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Commissioner of Taxation
17 June 2026

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References

Related rulings and determinations:

TR 93/30; TR 2021/1

Legislative references:

- ITAA 1936 51(1)
- ITAA 1997 8-1
- ITAA 1997 8-1(1)
- ITAA 1997 8-1(2)
- ITAA 1997 8-1(2)(b)
- ITAA 1997 25-100(3)
- ITAA 1997 28-12
- ITAA 1997 28-25
- ITAA 1997 28-25(3)(a)
- Administrative Review Tribunal Act 2024 172

Cases:

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

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

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

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

Cases distinguished:

Hall and Commissioner of Taxation [2025] ARTA 600; 2025 ATC 10-758

Commissioner of Taxation v Hall [2026] FCAFC 43; 315 FCR 189; 2026 ATC 21-010

Other references:

Employees guide to work expenses

ATO references

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