



TD 98/5 - Income tax: when calculating separate net income for the purposes of claiming spouse rebate (a) can the cost of work related child care or travel be taken into account; and (b) do the substantiation rules apply?

 This cover sheet is provided for information only. It does not form part of *TD 98/5 - Income tax: when calculating separate net income for the purposes of claiming spouse rebate (a) can the cost of work related child care or travel be taken into account; and (b) do the substantiation rules apply?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *8 April 1998*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: when calculating separate net income for the purposes of claiming spouse rebate

- (a) can the cost of work related child care or travel be taken into account; and**
- (b) do the substantiation rules apply?**

Question (a)

1. Yes. The separate net income of a spouse is the total of the spouse's gross income less expenses that are direct costs against that income in accordance with ordinary accounting and commercial principles (*Case N49* 81 ATC 243 at 244; *Case 3* 25 CTBR (NS) 11 at 12). These direct costs can include the costs of child care incurred to enable the spouse to engage in income earning activities.
2. Only the **net** child care costs relating to child care provided because the spouse is engaged in income earning activities may be taken into account. This means that if, as a result of the *Childcare Rebate Act 1993*, an amount is received as a cash rebate in respect of the child care expenses, the cash rebate must be deducted from the gross child care costs before the separate net income of the spouse is determined.
3. Direct costs related to earning separate net income include travel to and from work and business travel. It also includes travel to deliver and collect the spouse's children from child care on days the spouse is engaged in income earning activities. For the purposes of calculating these travel expenses, if the travel is by car, the Commissioner will accept calculations based on a rate per kilometre multiplied by the actual number of kilometres travelled and is not limited to 5,000 kilometres. The rate that may be used is the same rate which is published each year in *TaxPack* to calculate car expenses.

Question (b)

4. No. The substantiation provisions of the *Income Tax Assessment Act 1997* ('the 1997 Act') do not apply to expenses taken into account in calculating separate net income. Taxpayers need not satisfy the formal requirements of the substantiation rules. However, they must be able to demonstrate that they actually incurred the relevant child care costs because the spouse worked or that the travel undertaken was for work or in earning business or investment income.

Example 1

5. Joan is the spouse of Albert. Joan places her child in child care, allowing her to work. Joan's income is \$6,000 and the cost of child care is \$4,000 for the period/days she worked. Joan also receives the child care rebate of \$1,800. The net cost of child care therefore reduces Joan's separate net income to \$3,800 ($\$6,000 - [\$4,000 - \$1,800]$).

Example 2

6. Assume a spouse uses her car to travel 6,000 kilometres to and from work during the year ended 30 June 1997. The appropriate rate for the car which has an engine capacity of 1,800cc is 53.1 cents per kilometre. To calculate the spouse's separate net income, the gross income of the spouse is reduced by \$3,186 ($6,000\text{km} \times 0.531$).

Note

7. The Tax Law Improvement Project is restructuring, renumbering and rewriting the income tax law in plain language. The Parliament is amending the income tax law progressively to reflect these aims. As new laws come into effect, Taxation Rulings (including Taxation Determinations) about old laws are being brought into line with them. This Determination rewrites and replaces Taxation Determination TD 94/46, which is now withdrawn.

Commissioner of Taxation8 April 1998

FOI INDEX DETAIL: [Reference No.](#) I 1015581

Previously issued as TD 94/46 and Draft TD 97/D6

[Related Determinations:](#)[Related Rulings:](#)[Subject Ref:](#) child care expenses; motor vehicle use substantiation; separate net income of dependants; spouse rebates; substantiation; travel expenses; work related expenses[Legislative Ref:](#)[Case Ref:](#) Case N49 81 ATC 243; Case 3 25 CTBR (NS) 11[ATO Ref:](#) NAT 97/6223-0

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