


# ***TR 1999/10A3 - Addendum - Income tax and fringe benefits tax: Members of Parliament - allowances, reimbursements, donations and gifts, benefits, deductions and recoupments***

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## Addendum

### Taxation Ruling

#### Income tax and fringe benefits tax: Members of Parliament – allowances, reimbursements, donations and gifts, benefits, deductions and recoupments

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Ruling TR 1999/10 to provide greater clarity around the tax treatment of allowances and accommodation expenses incurred in financing, holding and maintaining accommodation that a Member of Parliament purchases or leases and stays in when travelling away from home for work.

#### TR 1999/10 is amended as follows:

##### 1. Footnote 1

Omit the word 'draft' from the footnote.

##### 2. Paragraph 12

Omit the paragraph; substitute:

12. Because of a Withholding Variation, most domestic travel allowances for accommodation, food, drink or incidentals or overseas travel allowances for food, drink or incidentals will not be shown on a Member's payment summary (see **Withholding Variation applicable to travel allowances** paragraphs 57 to 64). Travel allowances not shown on a Member's payment summary are not required to be returned as assessable income on their tax return if:
- (i) the travel allowance received is a bona fide travel allowance; and
  - (ii) the travel allowance is used for travel related expenses; and
  - (iii) the travel allowance received does not exceed the amounts considered reasonable by the Commissioner for substantiation purposes; and
  - (iv) the Member chooses not to claim deductions for relevant expenses in his or her income tax return.

### 3. Paragraph 29

(a) Under the heading '**Party membership fees, levies and donations:**' omit the words '\*\* (paragraphs 257 to 259). **\*\*Note proposed legislation** (*These comments do not form part of the Ruling and are provided to alert readers to a potential legislative change*).'; substitute '(paragraphs 257 to 259)'.

(b) Under the heading '**Security costs:**' omit from the third sentence the words 'a second'; substitute 'an additional'.

(c) Under the heading '**Travel expenses:**' omit the sub heading '*Second property not used as a Member's residence:*' and paragraph; substitute:

*Additional property purchased or rented by Member used as accommodation for work-related travel*

A deduction is allowable for revenue expenses incurred in financing, holding and maintaining an additional property purchased or rented by a Member:

- if it is used by the Member for accommodation when he or she is undertaking work-related travel away from home; and
- if the travel is intermittent and temporary so that the additional property does not become the Member's home; and
- to the extent that the expenses are not of a capital or of a private or domestic nature; and
- if the Member includes the amount of travel allowance paid to them for the work-related travel in their return; and
- if the tests for substantiation are satisfied.

However, if the Member's revenue expenses in relation to the property are disproportionate to what the member would have paid for suitable commercial accommodation for the period of the travel, a deduction is not allowable to the extent that the expenses are incurred in the pursuit of another object unrelated to the earning of the Member's assessable income (paragraphs 328 to 336).

(d) Omit sub heading '*Second residence expenses:*' and the paragraph.

### 4. Paragraph 45

Omit the paragraph; substitute:

45. Because of a withholding variation, most domestic travel allowances for accommodation, food, drink or incidentals or overseas travel allowances for food, drink or incidentals will not be shown on a Member's payment summary (see **Withholding Variation applicable to travel allowances** paragraphs 57 to 64). Travel allowances not shown on a Member's payment summary are not required to be returned as assessable income on their tax return if:

- (i) the travel allowance received is a bona fide travel allowance; and
- (ii) the travel allowance is used for travel related expenses; and
- (iii) the travel allowance received does not exceed the amounts considered reasonable by the Commissioner for substantiation purposes; and

- (iv) the Member chooses not to claim deductions for relevant expenses in his or her income tax return.

**5. Paragraph 51**

Omit the paragraph and first dot point; substitute:

51. The Commissioner of Taxation publishes an annual Taxation Determination (Reasonable Allowances Ruling) that outlines amounts he or she considers reasonable in relation to certain 'work expenses'. For Members, these are:

- domestic travel allowance expenses for accommodation, food, drink or incidentals; and

**6. Paragraph 53**

Omit the paragraph; substitute:

53. However, notwithstanding the substantiation exception in relation to overseas travel allowance expenses referred to in paragraph 52, travel records for overseas travel must still be kept if the travel involves the Member being away from their ordinary residence for six or more nights in a row.

**7. Paragraph 55**

Omit the paragraph; substitute:

55. The annual Reasonable Allowance Amounts Ruling published by the Commissioner has detailed information on the amounts he or she considers reasonable, and relevant substantiation rules. (See for example, Taxation Determination TD 2016/13 *Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2016-17 income year?* for the 2016-17 income year). Where the exceptions to substantiation apply, a Member may be asked to show that the loss or outgoing was actually incurred (see paragraph 90) and it meets the tests for deductibility (see paragraphs 91 to 93).

**8. Paragraph 57**

Omit heading and paragraph; substitute:

***Withholding Variation applicable to travel allowances***

57. In the interests of reducing the costs of complying with taxation laws, the Commissioner has approved a variation of the amount required to be withheld and the reporting requirements for certain allowances. This obviates the need for tax instalments to be deducted from:

- domestic travel allowances for accommodation, food, drink or incidentals; and
- overseas travel allowances for food, drink or incidentals;

where the recipient of the allowance is expected to incur deductible expenses at least equal to the amount of the allowance (see *PAYG Bulletin no. 1 – taxing of allowances for the 2000/01 and future income years*). Travel allowances not shown on a Member's payment summary are not required to be returned as assessable income on their tax return if:

- (i) the travel allowance received is a bona fide travel allowance; and
- (ii) the travel allowance is used for travel related expenses; and
- (iii) the travel allowance received does not exceed the amounts considered reasonable by the Commissioner for substantiation purposes; and
- (iv) the Member chooses not to claim deductions for relevant expenses in his or her income tax return.

## 9. Paragraphs 58, 59 and 60

Omit the paragraphs; substitute:

58. If a Member receives a travel allowance of the kind described at paragraph 57 and each of the conditions is satisfied, the Member does not need to include the travel allowance in his or her assessable income and does not claim a deduction in his or her income tax return.

59. However, where a Member chooses to claim a deduction, the Member must include the full amount of the travel allowance in his or her assessable income, and may claim a deduction for the actual expenditure incurred provided, where necessary, the claim can be substantiated.

60. If a Member wishes to claim a deduction for expenditure in respect of a particular trip, or trips, it is only the amount of the travel allowance for the particular trip, or trips, that needs to be included as assessable income.

## 10. Paragraph 61

Omit the words 'group certificate'; substitute 'payment summary'.

## 11. Paragraph 93

Insert:

- (d) More recently, the High Court has focused on the question: Is the occasion of the outgoing found in whatever is productive of actual or expected income?' The High Court has emphasised that a narrow approach should not be taken to this question: *Federal Commissioner of Taxation v. Payne* (2001) 202 CLR 93; *Federal Commissioner of Taxation v. Day* (2008) 236 CLR 163; *Commissioner of Taxation v. Anstis* [2010] HCA 40.

## 12. Paragraphs 258 and 259

Omit the 'asterisks' and Note.

**13. Paragraph 283**

Omit the last sentence; substitute 'A deduction is also allowable for the depreciation and maintenance of a security system installed in an additional property (not used as a Member's residence) to the extent to which the Member is entitled to a deduction for expenses associated with that additional property (see paragraphs 328 to 336).'

**14. Paragraph 307 and 308**

Omit the paragraphs; substitute:

307. A deduction is allowable for the cost of travel incurred by a Member on work-related travel.

308. Under Subdivision 900-B of the ITAA 1997, a deduction is not allowable for travel expenses unless the expense qualifies as a deduction under a provision of the Act.

**15. Paragraphs 313 and 314**

Omit the paragraphs; substitute:

**313. The receipt of an allowance does not automatically entitle a Member to a deduction for travel expenses** (see Taxation Ruling IT 2543 *Income tax: transport allowances: deductibility of expenses incurred in travelling between home and work* and Taxation Determination TD 93/174 *Income tax: does the receipt of a travel allowance automatically entitle an employee to a deduction for travel expenses under section 8-1 of the Income Tax Assessment Act 1997?*). Travel expenses covered by a travel allowance for accommodation, food, drink and incidentals, but not fares, constitute 'travel allowance expenses' for substantiation purposes (see subsection 900-30(2)). This means a deduction is not allowable unless written evidence of the expense has been obtained and retained by the Member.

314. As explained at paragraphs 51 to 55, substantiation is not required when:

- (i) a Member receives a domestic travel allowance for accommodation, food, drink or incidentals, or an overseas travel allowance for food, drink or incidentals; and
- (ii) the amount of the deduction the Member claims for expenses covered by the allowance is no more than the reasonable amount notified in the annual Reasonable Allowances Ruling (see, for example, TD 2016/13 for the 2016-17 income year).

However, the Member must still be able to demonstrate the deductibility of the expenses incurred.

**16. Paragraph 315**

Omit the paragraph; substitute:

**315. Example:** In the 1998-99 year of income, a Member travels to a capital city and stays overnight. He is paid a travel allowance of \$320 (see paragraph 30 of Taxation Ruling TR 98/10 *Income tax: reasonable allowances amounts for the 1998-99 income year*). This amount is used for accommodation, meals and

incidentals. Because of the **Withholding Variation applicable to travel allowances** explained at paragraphs 57 to 64, the travel allowance is not shown on the Member's payment summary. The Member is not obliged to include the allowance received in his assessable income, provided that he has used the allowance for deductible travel related expenses and he does not claim as a deduction the travel allowance expenses in his income tax return.

**17. Paragraph 316**

Omit the paragraph.

**18. Paragraph 320**

Omit the words '(see, also, the example in **Administrative arrangements applicable to travel allowances** at paragraphs 57 to 64 and *Travel expenses covered by an annual entitlement* at paragraphs 323 to 325).'

**19. Paragraph 328**

Omit the heading and paragraph; substitute:

*Additional property purchased or rented by a Member as accommodation for work-related travel*

328 A Member may choose to rent or buy a property rather than stay in a hotel or other commercial establishment when travelling away from home for work.

328A. Whether a Member can claim a deduction for expenses associated with such a property, and to what extent, depends on the ordinary principles of deductibility under section 8-1 that apply to all taxpayers. If a Member claims deductions for a property used as accommodation for work-related purposes, they must declare any allowances as assessable income (see paragraph 11).

328B. A deduction can only be claimed to the extent that the expense is incurred 'in the course of' gaining or producing assessable income' meaning that it is 'incidental and relevant' to the income producing activities of the taxpayer: (see paragraph 93).

328C. There are a number of cases that have considered how the ordinary principles of deductibility apply to expenses incurred in financing, holding and maintaining accommodation occupied by a taxpayer for work. See *Charlton; FC of T v. Toms* (1989) 20 ATR 466; 89 ATC 4373.

328D. The prevailing principle derived from these cases is that where a taxpayer's expenses are incurred because of a choice they made about where to live, the expenses are of a private or domestic nature and are, therefore, not deductible.

328E. In *Roads and Traffic Authority of NSW v. FC of T* (1993) 43 FCR 223; (1993) 116 ALR 482; (1993) 26 ATR 76; 93 ATC 4508 (RTA), Hill J of the Federal Court found that where a taxpayer is 'required by his employer, and for the purposes of his employer, to reside, for periods at a time, away from home and at the work site', this operates to stamp associated expenditure (including on accommodation) with 'a business or employment related character'. Hill J emphasised the fact that the employees in that case did not spend inordinate periods of time at the work locations so that they became their home. The

employees maintained permanent homes elsewhere and travelled home regularly (see ATC 4522).

328F. While it is 'not for Courts or the Commissioner to say how much a taxpayer ought to spend in obtaining his income...' (*Tweddle v. FCT* [1942] HCA 40; (1942) 180 CLR 1; *Cecil Bros Pty Ltd v. Federal Commissioner of Taxation* (1964) 111 CLR 430 per Owen J at 434), there are a number of cases that have considered whether disproportionate expenditure is indicative of there being another object in incurring the expense that is not connected to the gaining or producing of the taxpayer's assessable income: *Robert G Nall Ltd v. Federal Commissioner of Taxation* (1937) 57 CLR 695; *Federal Commissioner of Taxation v. Phillips* (1978) 8 ATR 783; *Ure v. Federal Commissioner of Taxation* (1981) 11 ATR 783.

328G. In *Fletcher v. Federal Commissioner of Taxation* (1991) 173 CLR 1, the High Court stated that, where there is a 'disproportion between the detriment of the outgoing and the benefit of the income' one must examine the whole set of circumstances, including direct and indirect objects and advantages which the taxpayer sought in incurring the expense in order to properly characterise the expense (at CLR 18-19). Apportionment may be necessary where there is another object in incurring the expense other than producing assessable income (see CLR 19).

328H. A deduction is not available to the extent that the expense is capital, private or domestic in nature. It has been accepted by the Courts that an expense may be both incurred in gaining or producing assessable income *and* private or domestic in nature so that it is excluded from deductibility: *John v. Federal Commissioner of Taxation* (1989) 166 CLR 417 at 427; [1989] HCA 5.

*Application of principles to Members and additional properties*

328I. A deduction is allowable for expenses incurred by a Member in financing, holding and maintaining an additional property which they purchase or rent if it is occupied by them as accommodation in the course of travelling for work, except to the extent the expenses are of a capital, private or domestic nature.

328J. The Member may claim such expenses only if the travel is required in undertaking their duties, rather than because of a choice the Member has made as to where to live, and they are working away from home for relatively short periods and have a permanent home elsewhere: *Charlton, RTA*.

328K. **Example of property not used for work-related travel:** After a Member is appointed to the Federal Ministry at the beginning of a new Parliament, he purchases a house in Canberra so he can live close to the National Parliament. His wife and children move with him into the Canberra house, and he leases the family home in Melbourne on a commercial basis. The Member's children commence full time education in Canberra and in the relevant income year, the family reside in the Canberra house for nine months. During this period, the entire family is only ever away from the Canberra house on one occasion for a family holiday.

328L. The Member is considered to have moved to the Canberra house on a permanent basis. Therefore, it could not be said that the Member is travelling away from home for work-related duties during the period of occupancy. Any expenses incurred by the Member in relation to the Canberra house are private or domestic in nature, and are not allowable deductions.



328M. This view has equal application to State and Territory Members of Parliament.

328N. A Member whose permanent home is in their electorate and who travels temporarily to Canberra (or in the case of a regionally based State Member, another capital city) to attend Parliament is travelling in the course of their duties.

328O. The non-capital costs a Member incurs in financing, holding and maintaining a property they purchase or lease, and occupy during the year in undertaking this travel, may be productive of the Member's assessable income even though the Member occupies the property for only part of the year: a narrow approach should not be taken to what is productive of assessable income: *Federal Commissioner of Taxation v. Day* (2008) 236 CLR 163.

328P. However, if the expenses are disproportionate to what the member would have paid for suitable commercial accommodation for the period of the travel, a deduction is not allowable to the extent that the expenses are incurred in the pursuit of another object unrelated to the earning of the Member's assessable income: *Phillips, Ure, Fletcher*. Other objects may include investment or, income splitting with an associated person or with or through an associated entity.

328Q. Expenses that may be claimed for work-related travel include: lease payments; rent; interest on borrowings used to acquire the property; rates; taxes; insurance; general maintenance of the building and grounds. A deduction is also allowable for depreciation of plant (such as furniture and household equipment) used in connection with such a property.

328R. **Example:** A Member of a State Parliament maintains a residence in her country electorate. Her Parliamentary duties require her to stay intermittently in the capital city for a total of four months each year. The Member prefers not to stay in hotels. She takes out a three year lease of an apartment in the capital city to provide her with the necessary accommodation while travelling away from home. The yearly cost of the lease is commensurate with the cost of staying in short term commercial accommodation for the four month period. She leases the apartment through a real estate agent on commercial terms and the lessor is not an associate of the Member. The Member's husband and children remain in the family home, the only exception being the use of the city apartment on two weekends by her eldest daughter.

328S. The Member is entitled to deductions for the lease rental and other non-capital expenses, and depreciation of plant, in relation to the apartment without apportionment. The minimal use of the property by her eldest daughter may be disregarded.

328T. **Example:** A Member may buy a property in a location where they spend two weeks each year for a work-related purpose (for example, an annual visit to a regional town in the Member's electorate). The costs of financing, holding and maintaining the additional property for an income year are disproportionate to the costs the Member would otherwise incur for alternative commercial accommodation over a two week period. The costs are incurred both in gaining the Member's assessable income and in maintaining a capital investment. In these circumstances, apportionment of the Member's expenses is required.

**20. Paragraph 329**

Omit the first sentence; substitute 'Where a Member uses the property for a private or domestic purpose in addition to work related accommodation, the Member may similarly have to apportion relevant losses or outgoings between deductible and non-deductible components.'

**21. Paragraphs 330, 331 and 332**

Omit the paragraphs.

**22. Paragraph 333**

Omit the words 'paragraph 330'; substitute 'paragraph 328R'.

**23. Paragraphs 337, 338, 339, 340, 341, 342 and 343**

Omit the heading and paragraphs.

**24. Detailed contents list**

Omit:

'Administrative arrangements applicable to travel allowances	57
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Substitute:

Withholding variation applicable to travel allowances	57
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**25. Index of explanations**

Omit:

Second property not used as a Member's residence	328
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Substitute:

Additional property purchased or rented by a Member as accommodation for work- related travel	328
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**26. Case references**

(a) Omit:

- Case X4 90 ATC 116; AAT Case 5,545 (1989) 21 ATR 3120

(b) Insert:

- Cecil Bros Pty Ltd v. Federal Commissioner of Taxation (1964) 111 CLR 430; 37 ALJR 445
- FC of T v. Day (2008) 236 CLR 163; 2008 ATC 20-064; [2008] HCA 53
- FCT v. Phillips 78 ATC 4361; (1978) 8 ATR 783; (1978) 20 ALR 607; (1978) 36 FLR 399
- Fletcher v. Federal Commissioner of Taxation (1991) 173 CLR 1; 91 ATC 4950

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- John v. Federal Commissioner of Taxation (1989) 166 CLR 417; 89 ATC 4101; [1989] HCA 5
- Robert G Nall Ltd v. FC of T (1937) 57 CLR 695
- Tweddle v. FCT (1942) 180 CLR 1; [1942] HCA 40
- Ure v. FC of T (1981) 11 ATR 783; (1981) 50 FLR 219; (1981) 34 ALR 237; 81 ATC 4100

This Addendum applies to years commencing both before and after its date of issue.

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## Commissioner of Taxation

15 December 2016

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### ATO references

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