

Income tax

When are deductions allowed for employees' transport expenses?

On 13 December 2019 the Commissioner issued Draft Taxation Ruling TR 2019/D7 to replace one half of the existing Draft Taxation Ruling TR 2017/D6.

The Draft Taxation Ruling confirms that generally travel from work to home will be considered private in nature and consequently cannot be deducted. For transport to be deductible it must be considered to be incurred in the course of gaining or producing assessable income which may be supported by the following factors:

- the travel occurs on work time
- the travel occurs when the employee is under the direction of the employer
- the travel fits within the duties of employment
- the travel is relevant to the practical demands of carrying out the work duties
- the employer asks for the travel to be undertaken

The 2019 Draft Ruling provides several examples that were not considered in the 2017 Draft Ruling which provided guidance on when the travel may be considered in respect of employment and not private in nature. The Commissioner highlighted the following key areas of guidance:

Direction and control

- In light of the John Holland case the Draft Ruling expands upon the ATO's view in the 2017 Draft Ruling when considering the concept of 'direction and control.'
- The specific facts and circumstances of each case need to be considered, as the existence of 'direction and control' alone may not be sufficient
- The 2019 Draft Ruling still fails to consider whether an employee who is working at an airport or on a plane on their laptop would be considered under the 'direction and control' if travelling alone

- Employer's policies would be crucial in showing that an employee is under the 'direction and control' whilst working in transit.

Consideration of on-call and stand by arrangements

Where an employee is on call the travel would be deductible if all of the following are true:

- The employee's duties substantively commence at their home and the employee is required to travel to a regular place of work to complete those particular duties.
- Undertaking the work in two locations is a necessary obligation arising from the nature of the duties.
- The travel to the workplace is not part of a normal journey to work that would have occurred anyway.

The transportation of bulky equipment

Travel costs will be tax deductible where:

- The equipment is essential for the performance of the employee's employment duties
- The equipment is bulky such that transportation by car or other private vehicle is the only realistic option
- Transporting the items to and from their regular place of work is a practical necessity because there is no secure area for the storage of the equipment provided at the employee's regular place of work or the equipment needs to be transported to a different site each day.



Working from home

- Where an employee undertakes work duties at home at their convenience, it does not make expenses of travel to their regular place of work deductible
- Disappointingly the 2019 Draft Ruling demonstrates that it does not matter whether an employee spends the majority of their time working from home, it will not be considered a place of business.



Other key takeaways and insights

Interestingly the new Draft Ruling does not consider 'special demands travel', a concept that was introduced in the 2017 Draft Ruling to account for the deductibility of certain travel due to the special demands associated with certain work and industries.

We expect that the ATO will soon release part 2 of the update to TR 2017/D6 outlining the FBT treatment which we anticipate will contain guidance regarding LAFHA and relocation benefits.

Other key takeaways that have been retained from the 2017 Draft Ruling compared to the now withdrawn MT2030 are:

- Further guidance has been provided on the concept of 'direction and control.'
- Guidance and examples considering flexible working arrangements where employees work from home
- A larger range of modern day examples considering likely scenarios.



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