
Back to Basics: Travel Expenses: Work, Play or a Bit of Both?

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1 Overview

- 1.1 Determining eligible tax-deductible expenses for an employee is not always clear cut in the best of times.
- 1.2 With an ever-changing landscape in how individuals are employed (such as increased work from home arrangements and the 'gig economy' with delivery drivers), tax practitioners need to be wary of the effect such arrangements have to the claiming of tax deductions.
- 1.3 Whilst the law and Australian Taxation Office (**ATO**) guidance may not be as up to date with the times as tax practitioners may want, the various existing ATO guidelines provide insight on how the ATO may treat more 'novel scenarios'.
- 1.4 This paper will consider the key principles for work related travel deductions by considering the extensive ATO guidelines available.
- 1.5 Specific travel scenarios to be considered will include:
 - (a) Travelling between home and an alternative work location.
 - (b) The cost of travel between home and a distant regular work-place.
 - (c) Travel between home and an alternative work-place that requires overnight travel.
 - (d) Travel as a result of being "on call".
 - (e) The distinction between "travelling on work" and "living at a location".
 - (f) Travelling with spouse and available apportionment methods.
 - (g) When travel expenses will be considered "itinerant".
- 1.6 Additional scenarios will also be considered in this paper, such as travel for study and conferences.
- 1.7 For ease of reference, each of the above scenarios will constitute a separate section and the author acknowledges potential simple positions for certain scenarios which may not require extensive discussion.
- 1.8 The author notes that the relevant ATO guidelines provide ample detailed examples and such examples will not be extracted for the purposes of this paper. Such examples will be referred to in the complementing presentation and may be viewed in the relevant ATO guideline.
- 1.9 Further examples will be considered in the complementing presentation querying 'novel scenarios'.



2 Foundational principles of what is deductible

2.1 Before considering the available guidance regarding deductibility of certain travel expenses, it is useful to understand the foundations that underpin what is deductible under tax law.

2.2 At it's simplest, section 8-1 *Income Tax Assessment Act 1997* (Cth) (**ITAA 1997**) allows a general deduction for a loss or outgoing provided that **either positive limb** is met:

“(a) it is incurred in gaining or producing your assessable income; or

(b) it is necessarily incurred in carrying on a business for the purpose of gaining or producing your assessable income.”

2.3 Not all losses or outgoings that meet an above positive limb will be deductible however, as section 8-1(2) ITAA 1997 provides *negative limbs* where the loss or outgoing will not be deductible:

“(a) it is a loss or outgoing of capital, or of a capital nature;

(b) it is a loss or outgoing of a private or domestic nature; or

(c) it is incurred in relation to gaining or producing your exempt income or your non-assessable non-exempt income; or

(d) a provision of [ITAA 1997] prevents you from deducting it.

Positive limbs

2.4 The first positive limb is relevant in determining whether a work related expense is deductible for an employee. Specifically, expenses incurred in order for a taxpayer to produce employment income will meet the test – this may include travel expenses.

2.5 As the second positive limb relates to expenses incurred in carrying on a business (i.e. trading stock), such section will not usually be of relevance to an employee.

2.6 In incurring an expense in the course of an employee producing assessable income, it is crucial that the expense is 'incurred' by the employee.

2.7 Taxation Ruling 97/7 outlines the meaning 'incurred' (as there is no definition of the term in the legislation), and the Australian Taxation Office Employees Guide for Work Expenses confirms that expenses incurred but reimbursed, or expenses incurred by others who gift the item to the employee will not meet the meaning of 'incurred'.

2.8 Only expenses incurred in gaining or producing employment income will be deductible. Where expenses are not required to be incurred as part of an employee's employment, such expenses will not be deductible.

2.9 Further, expenses incurred by an employee at the direction of an employer will not automatically be deductible¹

2.10 Instead, the expense must be something that *“might ordinarily be expected to occur in the carrying out the duties of the employment”*²

Negative limbs

¹ Taxation Ruling 1997/12

² IT 2198



- 2.11 Losses or outgoings that are capital in nature (i.e. for certain assets, otherwise known as **depreciating assets**) are not usually fully deductible immediately, with any deductions being spread out over a number of years over the effective life of the depreciating asset.³
- 2.12 Examples of employee work related expenses that may be capital in nature may include:
- (a) laptop or mobile devices;
 - (b) office equipment;
 - (c) furniture;
 - (d) motor vehicles.
- 2.13 While such expenses may fall within the negative limb, specific provisions of the legislation may allow such capital expenses to be tax deductible as opposed to depreciable.
- 2.14 In addition to expenses of a capital nature being non-deductible, the following negative limbs seek to make any related expenses non-deductible:
- (a) expenses of a private or domestic nature will not be deductible (i.e. losses or outgoings incurred as part of an employee's private life such as expenses on food and conventional clothing) – where an expense is incurred and is partially used in the gaining or producing of assessable income (i.e. phone claims), then apportionment and substantiation rules apply to allow a partial deduction;
 - (b) expenses incurred in producing exempt or non-assessable non-exempt income, such as any expenses incurred to produce income under Division 11 ITAA 1997; and
 - (c) losses or outgoings incurred specifically denied as being a deduction, such as:
 - (i) penalties under Australian law;⁴
 - (ii) bribes to foreign or Australian public officials;⁵
 - (iii) unsubstantiated work expenses.⁶
- 2.15 Later sections of this paper will consider the appropriate methods to apportion private use travel expenditure, particularly when travelling with a spouse.

³ See *Division 40 ITAA 1997*

⁴ *Section 26-5 ITAA 1997*

⁵ *Section 32-5 ITAA 1997*

⁶ *Section 900-10 ITAA 1997*



3 Travel expenses generally

- 3.1 Taxation Ruling 2021/1 (**TR 2021/1**) outlines the application of the general deductibility principles in relation to transport expenses.
- 3.2 It is accepted that where the need to occasion transport expenses are part of an employee's employment duties, such expenses are incurred in gaining or producing the employee's assessable income. That is, has the transport expense been incurred by the employee 'on work', as part of the employment or an incident in the employment'.⁷
- 3.3 In contrast, travel with a close connection to an employee's private or domestic life will generally be non-deductible.⁸
- 3.4 In relation to the question of whether travel expenses incurred between an employee's home and regular place of work are deductible - It is settled law that such expenses will **not be deductible**, with the Court noting in *Lunney v Commissioner of Taxation* [1958] HCA 5:
*"It is, of course, beyond question that unless an employee attends at his place of employment he will not derive assessable income and, in one sense, he makes **the journey to his place of employment in order that he may earn his income**. But to say that expenditure on fares is a prerequisite to the earning of a taxpayer's income is not to say that such expenditure is incurred in or in the course of gaining or producing his income ... Expenditure of this character is not by any process of reasoning a business expense; indeed it **possesses no attribute whatever capable of giving it the colour of a business expense. Nor can it be said to be incurred in gaining or producing a taxpayer's assessable income** or incurred in carrying on a business for the purpose of gaining or producing his income; **at the most, it may be said to be a necessary consequence of living in one place and working in another**"*
[emphasis added]
- 3.5 It should be appreciated (as alternative scenarios are considered further below) that slight changes to the circumstances may yield a different outcome.
- 3.6 In determining whether such scenarios enable a travel expense to be deductible, careful consideration is required whether the circumstances surrounding the travel expense are closely connected to the employee's income-earning activities. This requires consideration beyond the contractual duties outlined in the employment agreement and delves into the substantive nature of the work itself.⁹
- 3.7 Factors that support travel expenses being deductible include whether:¹⁰
- (a) the travel fits within the duties of employment, that is, the obligation to incur transport expenses arises out of the employment itself and not the employee's personal circumstances; and
 - (b) the travel is relevant to the practical demands of carrying out the employee's work duties or role, that is, the transport expenses are a necessary consequence of the employee's income-producing activity.
- 3.8 Factors that are not determinative but may be relevant in such determination includes whether:¹¹

⁷ TR 2021/1 at paragraph 12

⁸ TR 2021/1 at paragraph 13

⁹ TR 2021/1 at paragraph 15

¹⁰ TR 2021/1 at paragraph 16

¹¹ TR 2021/1 at paragraph 17



- (a) the employer asks for the travel to be undertaken;
- (b) the travel occurs on work time; and
- (c) the travel occurs when the employee is under the direction and control of the employer.

3.9 It is important to recognize that a single factor alone does not independently determine the deductibility of an expense. Rather, it requires a consideration of the totality of the employment arrangement, taking into account both its form and substance. For example, TR 2021/1 notes at paragraph 18:

“the mere fact that an employer asks the employee to attend their regular place of work on a particular day does not change the conclusion that such travel is a prerequisite to the employment, rather than being incurred in gaining or producing assessable income”

3.10 Further, the fact that an employee may consider the travel expense serving ‘an employment-related purpose is not sufficient to establish the deductibility of the expense’.¹²

Travel to a regular place of work

- 3.11 As established above, it is generally accepted that travel expenses incurred between home and a ‘regular place of work’ are not deductible as they are not considered as being incurred in the course of gaining or producing an employee’s assessable income (as such travel expense is regarded as a prerequisite to earning an employee’s assessable income’).
- 3.12 It is noted that this general position is unchanged even if an employee performs work-related tasks (such as responding to emails and taking calls) at home or whilst in transit as a matter of choice or convenience as the travel component remains private in nature.¹³
- 3.13 Different outcomes may arise where travel is not to a regular place of work or the work performed at home is not undertaken out of convenience.
- 3.14 The concept of a ‘regular place of work’ adopts its usual meaning but TR 2021/1 notes that where such circumstances are not clear, what constitutes a ‘regular place of work’ will depend on various factors such as the contract of employment, customary practice, the nature of the work duties, where these duties commence and at what point in time the employee is under the direction and control of their employer in order to determine where the employee’s regular place of work is.¹⁴
- 3.15 This may also result in there being more than one regular place of work, and the existence of a second regular place of work does not change the overarching principle.
- 3.16 For completeness, the non-deductibility of travel between an employee’s home and regular place of business will not change despite:¹⁵
- (a) the employee’s home being distant;
 - (b) a second regular place of work being distant;
 - (c) the need to travel to and from home and the regular place of work multiple times in a day;
 - (d) a lack of public transport being available;

¹² TR 2021/1 at paragraph 19

¹³ TR 2021/1 at paragraph 22

¹⁴ TR 2021/1 at paragraph 26

¹⁵ TR 2021/1 at paragraph 28



- (e) whether the employee receives a travel allowance;
- (f) whether the employee works overtime; or
- (g) whether the employee stops between their regular place of work and home to undertake incidental work.

3.17 Care should be taken to ensure it is understood where a taxpayer's regular place of work is located as such place can change over time. Whether it has will depend on an analysis of the above factors with an added consideration of whether the employee has any choice as to the matter.

Travel between work locations

- 3.18 Where an employee travels between separate work locations (of which neither is the employee's home), travel expenses will be ordinarily deductible.
- 3.19 TR 2021/1 specifically notes that this is the case if the different workplaces are for the same employer, clients of the employer and other locations where an employee is required to carry out their employment duties.¹⁶
- 3.20 Where a person travels between different workplaces for different employers, section 25-100 *Income Tax Assessment Act 1997* (ITAA 1997) applies to provide a tax deduction for such travel expenses incurred in such scenario (noting requirements must be met).
- 3.21 Importantly, the attendance at each separate work location must be for work purposes rather than convenience or any private purpose (such as attending to a private appointment closer to a workplace).

¹⁶ TR 2021/1 at paragraph 39



4 Travelling between home and an alternative work location

- 4.1 It was previously foreshadowed that travel expenses from home to a work location that is not 'a regular place of work' may be tax deductible. Whether it is will depend on if the '*duties of employment require that the employee travels from their home to somewhere other than the employee's regular place of work*'.¹⁷
- 4.2 This may include travel from home to a client's premise or other office (not deemed a regular place of work) but does not include the travel from home to a regular place of work prior to the end work destination. Conversely, an employee attending an incidental private matter en route to the alternative work location will not deny such travel expenses as being deductible.¹⁸
- 4.3 Whether travel is required under the duties of employment will depend on the circumstances. Travelling to such alternative work location will not be for the 'duties of employment' where it is merely for convenience and not a requirement of employment. Consideration will need to be given to the reasons for such travel and whether it is driven by private factors (such as family).
- 4.4 For example, where '*an employee of a national organisation who lives in Geelong arranges to work from the organisation's Darwin office for a period because of family reasons*', such travel expenses will be non-deductible as the reasons for the travel are primarily private.¹⁹
- 4.5 A similar analysis is required when determining whether travel expenses from such alternative work location to work are tax deductible.
- 4.6 Where an employee has no 'regular place of work', different considerations may apply and are considered further below under the heading '*When travel expenses will be considered "itinerant"*'.

¹⁷ TR 2021/1 at paragraph 42

¹⁸ Ibid

¹⁹ TR 2021/1 at paragraph 44



5 The cost of travel between home and a distant regular workplace

- 5.1 The general rules continue to apply regardless of the distance between an employee's home and regular place of work.
- 5.2 Where an employee lives far from their regular place of work, it is considered that such travel expenses incurred for the distance travel is due to the choice of the employee to live in relation to the regular place of work, and therefore be considered a private expense.²⁰
- 5.3 Different outcomes may result where the travel is to an alternative workplace, and where such travel is away from home overnight (discussed further below).
- 5.4 In relation to when an employee's duties of employment require them to work regularly at a distant location (but such location is not considered a regular place of work), the general principles apply (as was summarised in paragraphs 3.7 and 3.8) in determining whether such travel may be tax deductible.
- 5.5 A distinction is noted that when distant travel from home (to a location that is not the regular place of work) is required for employment duties needing to be performed in more than one location, such travel will not be attributed to an employee's choice of where to live.²¹

Commencing or finishing duty at transit points

- 5.6 Although not necessarily limited to travel between home and a distant regular workplace, thought should be had as to travel expenses incurred where an employee reports for work in a location different to where they carry out their substantive duties (a transit point).
- 5.7 Under the general principles, the following would usually be considered regarding travel expenses incurred:
- (a) travel from home to the transit point would be not deductible;
 - (b) travel from the transit point to the end location would be deductible.
- 5.8 *John Holland Group Pty Ltd v Commissioner of Taxation* [2015] FCAFC 82 applied such approach in the circumstances where the employer required employees to travel to Perth airport (the transit point) prior to taking a flight to Geraldton.
- 5.9 Whilst the case related to fringe benefits tax, the following was noted:²²

"The distance between an employee's home and place of work is, of course, not sufficient to make deductible the expense of travel from one place to the other. The taxpayer in Newsom v Robertson [1953] 1 Ch 7 was not entitled to a deduction for the cost of travel between Whipsnade (the location of the taxpayer's residence) and London (the location of the taxpayer's base of work) because the former location had no relevant connection with the taxpayer's derivation of income. Somervell L.J. observed at 14 that "Whipsnade as a locality [had] nothing to do with" the taxpayer's practice and that his purpose in making the journey "was to get home in the evenings or at week-ends". Denning L.J. (as he then was)...

The criteria for deductibility is thus not that there is a great distance to travel from home to work but that the travel is a part of the employment. A distant or remote location for the performance of employment duties may, however, be a relevant factor in determining whether travel is part of the employment. The location of the place at which work needs to

²⁰ TR 2021/1 at paragraph 48

²¹ TR 2021/1 at paragraph 53

²² *John Holland Group Pty Ltd v Commissioner of Taxation* [2015] FCAFC 82 at [60]



be performed may occasion a need for travel to be part of the employment. The remoteness of the project location in this case provides the explanation for the travel being part of the employment in contrast to the need to incur the “living expense” of the kind considered in Newsom.

[emphasis added]”

- 5.10 Whether the travel between transit point to work location is deductible (as with all travel) will depend on duties of employment.
- 5.11 For example, factors that may support the cost of travel from a transit point as deductible include (but is not determinative):²³
- (a) where the employee commences their employment duties
 - (b) whether the employee is substantively under the ‘direction and control’ of the employer during the travel; and
 - (c) whether such ‘direction and control’ is explained by the duties of employment and the need to travel for work.
- 5.12 In contrast, the presence of the following factors may indicate that such travel expenses may not be deductible:²⁴
- (a) the terms of the employee’s employment only requires their attendance at the work location (that is, the employee does not have to consistently attend a specified transit point);
 - (b) the employee does not work for the same employer on other projects after the project at the work location has concluded;
 - (c) the employee is rostered on duty and paid from the time they arrive on site at the work location (not the transit point);
 - (d) the employee is free to arrange their own travel and they can travel from and to a destination of their choice before their rostered duty commences and after it ceases;
 - (e) the employee is not under the direction and control of their employer, and the employer’s workplace policies and procedures do not apply while the employee is travelling to and from the transit point to the work location.

Travel between home and an alternative workplace that requires overnight travel

- 5.13 It is generally accepted that travel to a secondary location of work which requires:
- (a) an overnight stay away from home; and
 - (b) in which such stay cannot be linked to an employee’s choice of where to live, will be considered as part of the employment duties and therefore deductible.²⁵

²³ TR 2021/1 at paragraph 67

²⁴ TR 2021/1 at paragraph 69

²⁵ TR 2021/1 at paragraph 50 and 55



6 Travel as a result of being “on-call”

- 6.1 Whilst the general rule is that travel expenses incurred from home to a regular place of work is not deductible, exceptions may apply where an employee is ‘on call’ and the travel is sufficiently linked as part of the employee’s employment.
- 6.2 Scenarios that provide sufficient link to an employee’s employment duty will have all of the following factors present:²⁶
- (a) the employee’s duties can be construed as having substantively commenced at their home (or another private location) and the employee is required to travel to a regular place of work to complete those particular duties;
 - (b) undertaking the work in two locations is a necessary obligation arising from the nature of the duties; and
 - (c) the travel to the workplace is not part of a normal journey to work that would have occurred anyway.
- 6.3 This can be contrasted where the employee had not commenced any substantive employment duties prior to the travel to the regular place of work.
- 6.4 Consider a computer consultant who is on call 24 hours a day with specialized equipment installed at home and is required to travel to the office on the basis that the home could be regarded as another place of work given the on call nature.²⁷ This should be distinguished from an on-call nurse on standby who commences her shift upon arriving at a hospital following short notice.²⁸

²⁶ TR 2021/1 at paragraph 70

²⁷ TR 2021/1 at Example 10

²⁸ TR 2021/1 at Example 11



7 The distinction between “travelling on work” and “living at a location”

- 7.1 This paper has thus far considered the tax deductibility of travel expenses incurred to travel to and from different locations.
- 7.2 Whilst the concept of travel expenses may ordinarily be considered to include transportation costs (such as car, public transport or parking expenses incurred), it may also extend to meal (food and drink) expenses and accommodation expenses.
- 7.3 In determining the deductibility of such other expenses, it is important to understand the distinction between “travelling on work” and “living at a location”.
- 7.4 Taxation Ruling 2021/4 (**TR 2021/4**) provides guidance on this distinction.

General principles

- 7.5 Food and drink expenses are ordinarily considered private in nature and therefore not deductible with such expenses considered as ‘living expenses’²⁹.
- 7.6 TR 2021/4 quotes the following statement in this regard:
*“Food and drink are ordinarily private matters, and the essential character of expenditure on food and drink will ordinarily be private rather than having the character of a working or business expense.”*³⁰
- 7.7 If, however, such expenses are incurred in the course of performing one’s income-producing activities and is incurred in the course of travelling away from an employee’s usual residence overnight – such expenses may be deductible. In such circumstances, the expenses would have been incurred whilst the employee is ‘travelling on work’.³¹
- 7.8 In supporting this premise, TR 2021/4 notes the following statements from case law:
“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, and that employee incurs expenditure for the cost of sustenance, or indeed other necessary expenditure which, if the taxpayer had been living at home, would clearly be private expenditure, the circumstance in which the expenditure is incurred, that is to say, the occasion of the outgoing operates to stamp that outgoing as having a business or employment related character.”
“... if the Applicant is entitled to a deduction for meals he can be so entitled only when on a trip which required him to sleep away from home. In the absence of such a requirement, the expenditure must necessarily be regarded as private in nature.”
- 7.9 It should be noted the key requirement that an employee incur such expenses whilst away from home.

What does it mean to be ‘travelling on work’

- 7.10 An employee will be considered to be ‘travelling on work’ where they are required by their employer as part of their duties of employment to stay away from their usual residence overnight for relatively short periods of time.³²
- 7.11 In such circumstances, expenses incurred in relation to accommodation, food and drink will be considered as part of an employee’s income-producing activities.

²⁹ TR 2021/4 at paragraph 9

³⁰ TR 2021/4 at paragraph 11

³¹ TR 2021/4 at paragraph 10

³² TR 2021/4 at paragraph 19



- 7.12 In contrast, employees who are not required to stay overnight or choose to live distant from their regular place of work, will not be considered as 'travelling on work' (for the reasons outlined above in the case of choosing to live distant).
- 7.13 Certain circumstances will deem an employee as not 'travelling on work'. These include any of the following:³³
- (a) The expenses are incurred because the employee's personal circumstances are such that they live far away from where they gain or produce their assessable income (as considered above).
 - (b) The employee incurs the expenses because they are 'living at a location' (considered below).
 - (c) The employee incurs the expenses as a result of relocating from their usual residence (considered below).

When is an person 'living at a location'?

- 7.14 An employee will be considered as living at a location based on consideration of the following factors (with no single factor being decisive):³⁴
- (a) there is a change in the employee's regular place of work;
 - (b) the length of the overall period the employee will be away from their usual residence is a relatively long one;
 - (c) the nature of the accommodation is such that it becomes their usual residence; and
 - (d) whether the employee is, or can be, accompanied by family or visited by family and friends.
- 7.15 In reconciling the above with the general principles relating to deductibility of travel expenses:
- (a) Where there has been a change of an employee's regular place of work, such accommodation, food and drink expenses incurred to be closer to the new regular place of work are more akin to the employee's choice of residing, and such expenses are therefore not deductible.³⁵
 - (b) Where an employee chooses to stay away from their usual residence for an extended period rather than travelling back to their usual residence on weekends, it can again, be considered as the employee's choice to incur such expenses (and such expenses are more likely to be considered living expenses).³⁶
 - (i) Whether the length of period away is sufficient to be considered as 'living at a location' will ultimately depend on various circumstances subject to the employment duties of the employee and needs of the employer.³⁷
 - (ii) For example, ongoing travel by a performing artist at multiple location over an extended period may not be considered as 'living at a location'.

³³ TR 2021/4 at paragraph 24

³⁴ TR 2021/4 at paragraph 42

³⁵ TR 2021/4 at paragraph 45

³⁶ TR 2021/4 at paragraph 48

³⁷ TR 2021/4 at paragraph 51



- (iii) In contrast, an employee whose extended one-year stay away ended within one-month will not necessarily prevent the employee from being considered as living at a location.³⁸
 - (iv) Practical Compliance Guideline 2021/3 provides an overview of the ATO's approach in determining whether an employee is travelling on work and should be considered for taxpayers who may be travelling away from home for an extended period of time.
 - (v) Where such guideline is not followed, then the above factors are required to be considered.
- (c) The incurring of accommodation expenses for longer-stay accommodation may support the employee's choice as 'living at a location' away as opposed to short-term accommodation.³⁹
 - (d) Similarly, having family or friends accompanying an employee contributes to the notion that an employee is 'living at a location' rather than 'travelling on work'.⁴⁰

Relocation expenses

- 7.16 Expenses incurred by an employee in the course of relocating for work are considered living expenses and not deductible. This is regardless of whether such relocation is forced by the employer or not.⁴¹
- 7.17 This is due to the fact that various factors for relocating may be by choice of the employee.
- 7.18 Such factors that may indicate an employee relocating include if:⁴²
- (a) they are at the new location for an extended period;
 - (b) they are required to move to that location permanently or indefinitely in order to perform their duties;
 - (c) their usual residence is no longer available for them to occupy because they have either sold it or because it has been leased or rented out long-term;
 - (d) they are accompanied by their family and the family's belongings have been transferred to the new location;
 - (e) their children attend school at the new location;
 - (f) their spouse or partner obtains employment at the new location;
 - (g) they change their postal address and electoral role details to their new place of residence;
 - (h) they establish ties to the local community, for example, by taking up membership at local sporting and recreational clubs at the new location.

³⁸ TR 2021/4 at paragraph 52

³⁹ TR 2021/4 at paragraph 58

⁴⁰ TR 2021/4 at paragraph 61

⁴¹ TR 2021/4 at paragraph 79

⁴² TR 2021/4 at paragraph 80



8 Travelling with spouse and available apportionment methods

- 8.1 Where travel expenses are incurred in circumstances where spouses accompany an employee in relation to travel, appropriate steps should be taken to apportion any expenses that may be attributed to the spouse unless it can be shown that:
- (a) during the trip, the spouse performs substantial duties as an employee; and
 - (b) it is reasonable to conclude that the spouse would still have gone on the trip even in the absence of the personal relationship with the taxpayer,
- in which case such travel expenses would be deductible by the spouse.
- 8.2 Where such circumstances do not exist, steps should be taken to only claim such of the expense incurred in gaining or producing assessable income. That is, expenses may be deductible only in part and should be apportioned on a 'fair and reasonable' basis.⁴³
- 8.3 What constitutes fair and reasonable will depend on the circumstances.
- 8.4 Where the accommodation booked by an employee is not influenced by a spouse's presence, it may be appropriate to apportion based on nights stayed that are private in nature.⁴⁴
- 8.5 Alternatively, if the cost of the accommodation would have only decreased by an alternative proportion had the spouse not been present, there may be grounds for a lower proportion attributed for private use. Such apportionment does not necessarily need to be reduced by half.
- 8.6 Consider the circumstance where the difference between a hotel double and single room rates was 8% and the presence of the spouse influenced the employee to 'upgrade' to the double room. In such circumstance, the deductible portion of accommodation related expense could reasonably be considered to have been approximately 92% of the amount incurred.
- 8.7 Where food and drink expenses are incurred during a deductible component of the travel, only the employee's expenses incurred may be deductible. Food and drink expenses incurred during a private component of the travel will accordingly not be deductible.⁴⁵

⁴³ TR 2021/4 at paragraph 89 and TR 2020/1 at paragraph 38.

⁴⁴ TR 2021/4 at Example 11

⁴⁵ TR 2021/4 at paragraph 94



9 When travel expenses will be considered "itinerant"

- 9.1 Taxation Ruling TR 95/34 (**TR 95/34**) provides guidance on when employees are considered as carrying out 'itinerant' work.
- 9.2 Employees who have 'shifting places of work' are considered to be carrying out 'itinerant' work.
- 9.3 Where employees carry out itinerant work, they are considered as having no regular place of work and are therefore considered to be travelling in the performance of their duties from the moment of leaving home.⁴⁶
- 9.4 Employees will be considered as carrying out itinerant work where the following features are present (noting such list is not an exhaustive list):
- (a) travel is a fundamental part of the employee's work;
 - (b) the existence of a 'web' of work places in the employee's regular employment, that is, the employee has no fixed place of work;
 - (c) the employee continually travels from one work site to another. An employee must regularly work at more than one work site before returning to his or her usual place of residence;
 - (d) other factors that may indicate itinerancy (to a lesser degree) include:
 - (i) the employee has a degree of uncertainty of location in his or her employment (that is, no long term plan and no regular pattern exists);
 - (ii) the employee's home constitutes a base of operations;
 - (iii) the employee has to carry bulky equipment from home to different work sites;
 - (iv) the employer provides an allowance in recognition of the employee's need to travel continually between different work sites.
- 9.5 There is no single determinative factor and whether an employee's work is itinerant is not dependent on their occupation, industry or whether such work is permanent or temporary.

Travel as fundamental part of employee's work

- 9.6 Travel is an essential feature of itinerant work.
- 9.7 Situations considering an employee's work as itinerant includes:
- (a) *FC of T v. Wiener* 78 ATC 4006; (1978) 8 ATR 335 (*Wiener's case*) where a teacher was required to teach at a minimum of four different schools each day pursuant to a strict timetable.⁴⁷
 - (b) A manager responsible for supervising multiple chains of fashion stores which requires her to travel to several stores each day to assess the store's performance and to attend a head office weekly to file reports. In contrast with the above case, there is no regular pattern as to the visits.⁴⁸
- 9.8 In contrast, an agency nurse who travels to hospitals to relieve staff shortages and is employed by each hospital until she completes her shift will not be considered as

⁴⁶ TR 95/34 at paragraph 7

⁴⁷ Noted in TR 95/34 at paragraph 23

⁴⁸ TR 95/34 at paragraph 26



performing itinerant work as the nurse is not required to travel until the completion of her duty at a hospital.⁴⁹

'Web' of work places – employee has no fixed place of work

- 9.9 In addition to travel being a key requirement of the work, the performance by an employee of their duty at various work sites may support the notion that their work is itinerant.
- 9.10 This requires the performance of work at various locations prior to returning home, as performing of work at a single location for a day may constitute a regular place of employment.⁵⁰
- 9.11 An example of an employee with a 'web' of workplaces includes a salesperson who sells equipment and supplies for a pharmaceutical company who is required to travel to many clients each day to obtain sales of the company's products.
- 9.12 In contrast:
- (a) a carpenter who works at one place of employment for four days and another for one day for several months on end; and⁵¹
 - (b) an accountant who attends a head office three days a week and a suburban office for two days,⁵²

would not display a 'web' of work places.

Continual travel from one work site to another

- 9.13 Common to itinerant work is the need for an employee to attend various sites in different localities, with such travel a necessary condition of employment.
- 9.14 Examples of such continual travel may include:
- (a) an 'off-sider' dispatched to attend two or more building sights each day;
 - (b) a repairer for a manufacturer of office equipment who is advised throughout the day of further clients to visit;
- 9.15 Whilst there is no condition for such travel to occur in a single day, an employee will be more likely to be considered as performing itinerant if they are performing work at a particular sight for a short period of time provided their employment requires them to travel to more than one work site before returning to the employee's home.⁵³
- 9.16 Distinction should be made where:
- (a) A fruit picker works at many different farms (for multiple days at a time) prior to returning home, in which case the fruit picker may be considered as being engaged in itinerant employment.⁵⁴

⁴⁹ TR 95/34 at paragraph 27

⁵⁰ TR 95/34 at paragraphs 29 noting *Case U97 87 ATC 584*; AAT Case 68 (1987) 18 ATR 3491 where a fireman worked at a fire station for a number of days before travelling to a different one for another period and paragraph 31 which considers alternate facts relating to *Wiener's* case where a teacher only attends one school each day

⁵¹ TR 95/34 at paragraph 32

⁵² TR 95/34 at paragraph 33

⁵³ TR 95/34 at paragraph 37

⁵⁴ TR 95/34 at paragraph 43



- (b) Alternatively, a shearer who works at various farms (for multiple days at a time) but returns home each night will not be considered as being engaged in itinerant employment.⁵⁵

Other factors

9.17 Whilst the above factors are key in considering whether an employee is engaged in itinerant work, other factors can also support a finding of tax deductibility for travel where:

- (a) There is uncertainty as to the location of their employment.
 - (i) Such employees can distinguish their work from those who make a regular journey to a regular place of work.
 - (ii) This factor does not relate to the uncertainty of employment, but rather an employee who often does not know the next work site until the last minute.
 - (iii) Contrast should be had between the fruit picker who is uncertain whether they will be able to continue work at another location following completion of their current engagement,⁵⁶ and a shearer who travels on a circuit to the same farms each year (not necessarily knowing which farm is next) returning home periodically.⁵⁷
- (b) The employee's home is considered a base of operations.
 - (i) Where an employee is required as part of their duties to commence work before leaving to travel to work to discharge the work at the site, the employee's home may constitute a base of operations.
 - (ii) *FC of T v. Collings* 76 ATC 4254; (1976) 6 ATR 476 involved a computer consultant whose employment required her to be on call 24 hours a day.
 - (A) As part of her employment, the taxpayer was provided with a portable terminal to enable her to receive telephone calls at home and provide advice to work at the office when problems arose.
 - (B) Where problems were unable to be resolved over the phone or portable computer, the taxpayer would travel to the office to rectify the issue.
 - (C) It was accepted that the taxpayer had commenced her employment duties before leaving home and travelling to work. As he obligation was more than merely being on stand-by, the taxpayer's home constituted a base of operations.
 - (iii) It should be noted that the mere receipt of correspondence is not sufficient for a home to be classified as a base of operations.⁵⁸
- (c) There is a requirement to carry bulky equipment
 - (i) Where travel costs can be attributed to the transportation of bulky equipment rather than travel from home to work, a deduction may be available.⁵⁹

⁵⁵ TR 95/34 at paragraph 42

⁵⁶ TR 95/34 at paragraph 49

⁵⁷ TR 95/34 at paragraph 53

⁵⁸ TR 95/34 at paragraph 61

⁵⁹ TR 95/34 at paragraph 63



- (ii) A deduction will not be available where a work place provides a secure location to store such bulky equipment and the employee chooses not to utilize it.⁶⁰
- (iii) *FC of T v. Vogt* 75 ATC 4073; (1975) 5 ATR 274 considered a musician who was required to keep his instruments and equipment at home for storage and practice.
 - (A) Such equipment included an acoustic bass, electric bass, accompanying amplifying equipment, trumpet and flugel horn.
 - (B) The taxpayer was required to take such items to each place of performance.
 - (C) Key to enabling such travel to be deductible was the extreme bulk carrying such items entail. The case distinguished between a violinist transporting a violin with such travel not likely to be deductible given the lightweight nature of the instrument.
- (iv) Other examples of bulky equipment enabling a deduction includes a bricklayer is required to carry a cement mixer, ladder, shovel, trowels and other equipment to and from a site each day. As no secure storage area was provided at the work site, a deduction would be allowable (even despite the bricklayer not being engaged in itinerant work).⁶¹
- (v) In contrast:
 - (A) A flight sergeant who chooses not to keep his equipment in a locker at the workplace but rather travel with such equipment in a duffle bag (weighing 20kg in total) would not be allowed to claim a deduction due to bulky equipment as had all the items been removed, they could have been stored in the locker.⁶²
 - (B) An electrician who carries a small tool box would not be allowed to claim a deduction due to bulky equipment.⁶³

⁶⁰ TR 95/34 at paragraph 64

⁶¹ TR 95/34 at paragraph 70

⁶² *Case 43/94* 94 ATC 387; *AAT Case 9654* (1994) 29 ATR 1031

⁶³ TR 95/34 at paragraph 71



10 Other travel scenarios and considerations

Self-education travel

- 10.1 At the time of publishing of this paper, Draft Taxation Ruling TR 2023/D1 (**TR 2023/D1**) states the general principles governing the deductibility of self-education expenses (replacing Taxation Ruling 98/9).
- 10.2 In summary, self-education expenses are incurred in gaining or producing assessable income if either or both of the following apply:⁶⁴
- (a) An employee's income-earning activities are based on the exercise of a skill or some specific knowledge and the self-education enables the employee to maintain or improve that skill or knowledge.
 - (b) The self-education objectively leads to, or is likely to lead to, an increase in an employee's income from their current income-earning activities in the future.
- 10.3 Self-education expenses will not be deductible if either of the following applies:⁶⁵
- (a) The self-education will enable an employee to get employment, to obtain new employment or to open up a new income-earning activity (whether in business or in the employee's current employment). This includes studies relating to a particular profession, occupation or field of employment in which the employee is not yet engaged. These expenses are incurred at a point too soon to be regarded as incurred in gaining or producing the employee's assessable income.
 - (b) The employee is not undertaking income-earning activities to derive assessable income at the time the employee incurred the expenses. These expenses are not connected to any income-earning activity at the time they are incurred.
- 10.4 It is accepted that transport expenses incurred by an employee to travel either from home to the place of education and to home; or from work to place of education to work, may be deductible as such travel is incidental to self-education.⁶⁶ In line with the general principles relating to travel expenses, certain aspects of travelling from home to place of education to work will not be deductible, such as travel from home to a place of education (or vice versa) where the place of education is the employee's regular place of work.⁶⁷
- 10.5 Where the place of education is a stop between home and a regular place of work, travel expenses incurred to travel to the place of education may be deductible as it is considered incidental in getting an employee to the place of education. The second tranche of such journey would therefore be considered private in nature (i.e. from place of education to home or work).
- 10.6 As such, airfares incurred on overseas study tours or sabbatical, on work-related conferences or seminars, or attending an educational institution may be deductible. In order for accommodation and meal expenses to be deductible, a taxpayer is required to be away from home overnight and **not be considered** as 'living at the location' of the self-education activity (as per the general rules previously summarised):⁶⁸
- 10.7 In contrast, the following expenses related to self-education are not deductible:

⁶⁴ TR 2023/D1 at paragraph 22

⁶⁵ TR 2023/D1 at paragraph 23

⁶⁶ TR 2023/D1 at paragraph 144

⁶⁷ TR 2023/D1 at paragraph 146

⁶⁸ TR 2023/D1 at paragraphs 123 and 125



- (a) Expenditure on meals while attending an educational institution, work-related conference or seminar where the taxpayer is not required to sleep away from home.⁶⁹
 - (b) Expenditure on accommodation and meals where a taxpayer who has travelled to another location for self-education purposes is considered to be living at the location.⁷⁰
- 10.8 Care needs to be taken when determining whether the self-education expense relates to:
- (a) the cost of improving knowledge or skills; or
 - (b) keeping an employee up to date in their field,
- or if such expense is incurred to enable the employee obtain new employment or pivot into a different field unrelated to their current employment.
- 10.9 Where certain self-education expenses may be clear where a taxpayer 'pivots' into an unrelated field, uncertainty arises where such expenses relate to the specializing of the taxpayer.
- 10.10 Consider the *Highfield's case*⁷¹ which involved a self-employed dentist studying overseas for a specialist degree (periodontist) to enable the dentist to enhance such treatment offered as part of his services and charge higher fees as a general dentist. In this case, the self-education expenses were deemed deductible as the taxpayer did not obtain new employment or pivot to a different field.
- 10.11 In contrast:
- (a) A general medical practitioner who undertakes additional study in order to set up a specialist practice as a dermatologist will be unable to claim such expenses as such education sought to enable the practitioner to enter into a different field.⁷² Any travel expenses incurred linked to such study would be non-deductible.
 - (b) A medical registrar resigning before travelling to the United Kingdom to undertake specialized research to enable him to commence his own practice was unable to claim such self-education expenses.

International travel comments

- 10.12 The general principles of travel expenses outlined above may also apply in relation to international travel, noting that appropriate apportionment may be required where part of the purpose of travel relates to private purposes.
- 10.13 In determining the deductibility of expenditure incurred in an overseas study trip, Courts have considered key factors to demonstrate such connection with self-education may include:⁷³
- (a) an employee devoting all their time while overseas to the advancement of their knowledge relevant to their work;
 - (b) the trip is undertaken while the employee is employed in the relevant role;

⁶⁹ TR 2023/D1 at paragraph 124

⁷⁰ TR 2023/D1 at paragraph 126

⁷¹ FC of T v. Highfield 82 ATC 4463; (1982) 13 ATR 426

⁷² Taxation Ruling 98/9 at paragraph 62

⁷³ TR 2023/D1 at paragraph 28



- (c) the trip was not recreational or general in nature but rather showed a particular special circumstance to differentiate it from mere recreational satisfaction;
- (d) the trip was requested or supported by the employer.

Substantiation – general principles

10.14 Key in claiming travel expenses as deductions is the ability to substantiate on such claims.

10.15 Division 900 ITAA 1997 contains detailed provisions expanding on the substantiation requirements for such claims.

10.16 Specifically, in relation to substantiating work expenses generally, subdivision 900-B ITAA 1997 notes the following.

- (a) Deductions as a work expense must be substantiated with written evidence.⁷⁴
- (b) Travel records are required when claiming expenses for travel where an employee is away from their ordinary residence for 6 or more nights in a row.⁷⁵
- (c) Evidence is not required to be lodged with an employee's income tax return, but they must be retained for 5 years⁷⁶ in case the Commissioner requests for it to be produced.⁷⁷ Where the Commissioner requests for records to be produced, 28 days or more notice must be given.
- (d) A work expense can be categorized into the following:⁷⁸
 - (i) **Work expense** is a loss or outgoing incurred in producing the employee's salary or wages.
 - (ii) **Travel allowance expenses** are considered as work expenses which are covered by a travel allowance and relates to accommodation, food, drink or incidental losses/outgoings relating to travel undertaken in the course of fulfilling duties as an employee where the travel is away from the employee's ordinary residence.
 - (iii) **Meal allowance expenses** are considered as work expenses and relate to meal allowances which an employer pays an employee.

There may be other losses or outgoings considered as a work expense and such of the following rules may apply to them.

- (e) Where all of the work expenses excluding travel allowance expenses and meal allowance expenses intended to be deducted is \$300 or less, no written evidence or records are required to be kept.⁷⁹
- (f) Written evidence may not be required for certain:

⁷⁴ Section 900-15 ITAA 1997

⁷⁵ Section 900-20 ITAA 1997

⁷⁶ The 5 years starts the later of the due day for lodging or the date the return is lodged. It is noted that this period may be extended if the employee is in a dispute with the Commissioner.

⁷⁷ Section 900-25 ITAA 1997

⁷⁸ Section 900-30 ITAA 1997

⁷⁹ Section 900-35 ITAA 1997



- (i) travel allowance expenses up to an amount considered reasonable by the Commissioner for accommodation, food/drink and other losses or outgoings incidental to travel;⁸⁰ and
- (ii) overtime meal allowances.⁸¹

Taxation Determination 2020/5 provides guidance on what the reasonable travel and overtime meal allowance expense amounts are for the 2020/2021 financial year. Thought should be had to review the appropriate ATO guidance at the relevant time for future financial years.

- (g) Less relevant substantiation exceptions are available for:
 - (i) a work expense related to award transport payments;⁸² and
 - (ii) crew members on international flights not being required to keep travel records.⁸³
- (h) Where an expense is small (\$10 or less) and the total of all such expenses do not exceed \$200, a record of the expense will suffice rather than obtaining a document from a supplier.⁸⁴

10.17 Similar retention of evidence requirements are present for car expenses.⁸⁵

10.18 Section 900-E ITAA 1997 confirms what constitutes sufficient written evidence.

10.19 Although no time limit is required to obtain written evidence of the expense, written evidence is required to be entitled to a deduction. Where written evidence is not available at the time of lodgment of an employee's tax return, provided there is good reason to expect the written evidence within a reasonable time, the relevant expense may be deducted without having the evidence at the relevant time.⁸⁶

10.20 Any written evidence must contain the following from the supplier of the expense:⁸⁷

- (a) the name or business name of the supplier; and
- (b) the amount of the expense, expressed in the currency in which it was incurred; and
- (c) the nature of the goods or services; and
- (d) the day the expense was incurred; and
- (e) the day it is made out,

with only two potential exceptions being:

- (f) if the document does not show the day the expense was incurred, a bank statement or other reasonable, independent evidence that shows when it was paid may be relied on in its place;
- (g) if the document the supplier provides does not specify the nature of the goods or services, the employee may write the missing details themselves prior to lodgment.

⁸⁰ Sections 900-50 and 900-55 ITAA 1997

⁸¹ Section 900-60 ITAA 1997

⁸² Section 900-45 ITAA 1997

⁸³ Section 900-65 ITAA 1997

⁸⁴ Section 900-125 ITAA 1996

⁸⁵ Section 900-75 ITAA 1997

⁸⁶ Section 900-110 ITAA 1997

⁸⁷ Section 900-115 ITAA 1997



- 10.21 Crucially, such a document must be in English unless the expense incurred outside of Australia.⁸⁸
- 10.22 Work expenses shown on a payment summary provided by an employer may satisfy the evidentiary requirements.⁸⁹
- 10.23 Where expenses are being claimed associated to travel, a travel record is required.
- 10.24 In such circumstances, the following must be recorded in a diary or similar document.⁹⁰
- (a) nature of the activity;
 - (b) the day and approximate time when it began;
 - (c) how long it lasted;
 - (d) where you engaged in it.
- 10.25 Crucial is evidencing the income-producing activity to determine the relevant claims which were incurred for income-producing purposes. Failing to provide such record will result in such activity in being unable to be taken into account.⁹¹
- 10.26 It is at the Commissioner's discretion to review any failure to substantiate.⁹² Taxation Ruling 97/24 and Law Administration Public Statement 2005/7 and 2001/25 provides the Commissioner's view of such exercise of discretion.
- 10.27 Where documents have been lost or destroyed, then a complete copy will suffice. Failing such a copy, if the Commissioner is satisfied that reasonable precautions were taken, then a substitute document may be remade.⁹³

⁸⁸ Section 900-115(4) ITAA 1997

⁸⁹ Section 900-135 ITAA 1997

⁹⁰ Section 900-150 ITAA 1997

⁹¹ Section 900-155 ITAA 1997

⁹² Section 900-195 ITAA 1997

⁹³ Section 900-205 ITAA 1997



11 Disclaimer

11.1 This paper covers legal and technical issues in a general way. It is not designed to express opinions on specific cases. It is intended for information purposes only and should not be regarded as legal advice. Further advice should be obtained before taking action on any issue dealt with in this paper.

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