

29 November 2019

Ms Kim Hall
Public Advice and Guidance
Australian Taxation Office

By email: Kim.hall@ato.gov.au

Dear Ms Hall

TR 2019/D4 Income tax: employees: deductions for work expenses under section 8-1 of the *Income Tax Assessment Act 1997*

As representatives of the Australian accounting profession (the Bodies), we have prepared this joint submission on *Taxation Ruling* TR 2019/D4 (the Draft Ruling). The Bodies represent the interests of more than 270,000 accounting professionals across Australia.

The Draft Ruling focuses on the general principles for deductibility under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA) and extends those principles to section 40-25 deductions. Appendix 1 usefully lists the relevant rulings, determinations and ATO materials that provide greater detail. As such, we find that the Ruling product will be a valuable source document for ATO communications, practitioners and taxpayers.

There are, however, two aspects of the Draft Ruling which raise concerns and need reconsideration:

1. The apportionment of travel expenses as illustrated in Example 9 (paragraph 40), and
2. The disallowance of home occupancy costs (paragraph 49).

1. 'To the extent' incurred – apportionment of travel expenses

The current wording in paragraph 40 of the Draft Ruling implies that the Commissioner expects time-based apportionment to be used by taxpayers and is silent on other factors that should be considered.

We do not find that this position is sufficiently explained or supported, given that expenditure must be apportioned on some fair and reasonable basis, and be specific to the facts.

While paragraph 70 of *Taxation Ruling* [TR 98/9](#) provides the 'common' example of apportioning airfare expenses on a time basis, the Courts have found to the contrary. Factors that should be considered include:

- The relative weights of the objects in undertaking the trip (Case R13 84 ATC 168)
- The exercise of judgment when apportioning travel expenditure "*which may or may not be capable of being expressed in terms of proportions or fractions*" (Case S26 85 ATC 266), and



- That the trip is work-related travel and airfares are not able to be readily apportioned as they are different to expenses such as accommodation which is charged as daily tariffs (*Amin v FCT 2017*).

The position taken in the Ruling should also be consistent with paragraph 17 of [TR 2017/D6](#) which allows travel expenses incurred in performing the employee's work activities to be fully deductible where the private or domestic element is merely incidental.

Further, [TR 2017/D6](#) allows the deduction of expenses related to special demands travel (paragraphs 39-42) which should be acknowledged in this Ruling.

Given the dependence of practitioners on the Ruling, its use by ATO auditors in reaching a position and it being the basis of tailored ATO communications, the Commissioner should also provide:

- if the dominant purpose for the travel is work-related, on what basis is apportionment justified
- his view of what constitutes a fair and reasonable basis
- further authorities on time-based apportionment
- details on special demands travel and similar examples.

2. Private or domestic expenditure – deductibility of home occupancy expenses

Paragraph 49 of the Draft Ruling states:

“The ‘domestic’ exclusion from deductibility is the basis on which home-occupancy expenses, such as rent, mortgage interest, rates and insurance have been held to be not deductible even when a portion of a residence has been set aside for use only as a home office. The domestic character of these home-occupancy expenses precludes a deduction notwithstanding that a connection may otherwise be established between the expenditure and the gaining of assessable income.”

Without further elaboration, this paragraph is misleading and not aligned with the ATO view contained in *Taxation Ruling* [TR 93/30](#).

When considering the deductibility of home office expenses, TR 93/30 makes the distinction between a place of business and a private study. Where part of the home is used for income-producing activities and has the character of a ‘place of business’, paragraph 2 of TR 93/30 states that some of the expenses incurred in respect of the home such as rent, interest, repairs, house and contents insurance, rates and property taxes may be partly deductible. Furthermore, paragraph 12 of TR 93/30 references cases where employees have been found to be able to claim home occupancy expenses in the absence of an alternative place for conducting income producing activities.

This distinction should be included and clarified in the Ruling, especially as remote working arrangements are increasingly commonplace and working from home is an occupational requirement for many employees.

We also recommend a reference to TR 93/30 should be included at the end of the commentary, e.g. 'Refer to Taxation Ruling TR 93/30 *Income tax: deductions for home office expenses* for more information on the deductibility of home-occupancy expenses'.

We are available to discuss this feedback further at your convenience. Please contact:

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Yours sincerely



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