

New ATO Ruling on Deductibility of Employees Transport Expenses

The ATO has released [Taxation Ruling 2021/1](#) on when deductions are allowed for employee's transport expenses.

The Ruling largely follows existing law and ATO practice - a summary of the Ruling follows.

General principles: Travel between home and a regular place of work, with limited exceptions, is not deductible, Lunney's case. At most it is a necessary consequence of living in one place and working in another.

Tax deductibility of transport expenses involves consideration of the proper scope of an employee's work activities to determine if the transport expense have a sufficiently close connection to earning the employment income. You must have regard to the duties of employment and the nature of the work as a matter of substance. The travel must fit within the duties of employment and be relevant to the practical demands of carrying out the employee's work duties or role, i.e. the travel must be a necessary consequence of the employee's income producing activity.

In addition the factors to be considered are: the employer asks for the travel to be undertaken: the travel occurs on work time: and the employee is under the direction and control of the employer.

The Ruling has quite a number of sub-headings of common circumstances for expenses and 12 Examples. The headings and some examples follow.

Travel to a regular place of work: not deductible. This is not changed by the fact that the employee performs work-related tasks at home as a matter of choice or for their convenience. Nor does the conduct of some work activities whilst travelling (for example, answering emails on the train) convert the travel to being part of the employment if it is otherwise private. Similarly, where the employee travels to their regular place of work from another location in which they undertake private activities, for example a café or a holiday location, the cost of the travel is not deductible.

A second or subsequent place of work would be a regular place of work if it is also a normal or routine place where the employee works, such that travelling between there and the employee's home is better characterised merely as part of the necessity of travelling to and from work.

There are three Examples under this heading. In essence they provide that home to work travel is not deductible even if: you live in Brisbane and travel to Sydney to work for the week; you travel to work twice in a day, e.g. for a parent teacher night; there is no public transport or you can only use a boat; you receive a transport allowance; you stop for incidental tasks,

e.g. a dentist picking up dentures or a secretary picking up newspapers; you check your work emails first on or the transport.

However Example 3 shows that Raj an accountant on the Gold Coast may obtain a deduction if he has to **travel to another office in Brisbane for three months or less, but not five months**, as this may then be a regular place of employment.

Travel between work locations not including home: Tax deductible whether different locations of an employer, clients of an employer or other locations, e.g. a client work site. There is an exception if one place is near a private appointment.

Travelling to a location other than a regular place of work: Deductible whether client premises or another workplace of employer. The fact that an employee might incidentally attend to private matters at, or en route to, an alternative work location, does not prevent the transport expenses to that location being deductible. Example 4: Aruni travels to and from a one day training course not at the employer's premises.

However, the cost of travelling from home to a location other than a regular place of work is not deductible if it reflects a choice of the employee at their mere convenience to work at a different location. In this situation the travel is not explained by their duties of employment, rather by their personal choice. For example, if an employee of a national organisation who lives in Geelong arranges to work from the Darwin office for a period because of family reasons, the cost of travel to Darwin is not deductible. The expenses are not incurred in gaining or producing the employee's assessable income and they are also private in nature.

Similarly, if the duties of employment are such that it does not matter where they are carried out, travel from home to wherever the employee chooses to carry out their work duties is a matter of mere convenience and is not deductible.

Transport expenses when travelling away from home to work: The mere fact that an employee lives a significant distance from their regular place of work does not make their transport expenses deductible, for example, if they are required to fly to attend work. In such instances, the transport expenses are incurred because the employee lives at a distance from their regular place of work, rather than the employment itself being the occasion for the expenses. Example 5 - Isabelle lives in Brisbane but works in Sydney two days per week, even though she stays overnight.

In contrast, where the nature of the employment requires an employee to travel away from home overnight, for purposes explained by their employment and not because of where they have chosen to live, the transport expenses incurred in travelling to the alternative work location will be incurred in the course of gaining or producing the employee's assessable income and therefore tax deductible.

Example 6: Duy works for a company in Rockhampton, where he lives. One of the employment duties attached to Duy's role is to attend a two-day meeting and meet clients in Brisbane once a fortnight. Duy flies from Rockhampton to Brisbane on the day of the meeting and returns home the following evening. The cost of Duy's flights and taxis between his home in

Rockhampton and the office in Brisbane are deductible. Duy has a regular place of work in Rockhampton and in the performance of his duties travel is undertaken to an alternative destination which is not a regular place of work. Duy is required by the specific requirements of his role to carry out his duties of employment both in Rockhampton and Brisbane. The travel to Brisbane is not attributable to Duy's choice to live in Rockhampton, or do part of his job in Brisbane. Therefore, the transport expenses are incurred in gaining or producing Duy's assessable income and are deductible.

Where the employee's duties of employment necessarily require them to work with some regularity for the same employer at two or more locations that are geographically distant from each other, a question arises as to whether travel to both places ought to be characterised as private in nature, or whether travel to the more distant location for the performance of employment duties may instead be an incident of the employment.

Unlike the ordinary case of home-to-work travel, in this situation travel to the more distant location may not be attributable to the employee's choice of where to live, but may instead be a necessary consequence of the employment duties needing to be performed in more than one location.

Example 7: Narelle lives on the North Coast. She manages staff at the North Coast and other offices. During the income year, Narelle works a total of 24 weeks on the NSW north coast, 20 weeks in Sydney and eight weeks elsewhere or on leave. When Narelle is working in Sydney she stays there, rather than travelling back to her North Coast home.

Narelle's position is based on the North Coast and the office located there is her regular place of work. Although she travels frequently to Sydney, the following factors indicate that the travel between her home and the Sydney office is better characterised as a consequence of the employment requiring the duties to be performed in more than one location and not attributable to Narelle's choice about where to live:

- Narelle carries out her employment duties at the North Coast Office and the Sydney office. The travel is relevant to the practical demands of carrying out her work duties and is undertaken at the request of her employer.
- The distance between the North Coast of NSW where her regular workplace is located and Sydney creates the need for the travel to be part of that for which Narelle is employed.
- Narelle's travel is different to her ordinary daily trips to work and involves overnight stays. These two matters contribute to the business character of the travel, in contrast to the travel being a mere private matter of getting to her regular place of work.

Example 8: Sue lives with her family in Sydney. She takes on a leadership role with a company that has offices all around Australia. The role is based in Melbourne and the duties attached to it can be primarily performed in Melbourne. However, Sue enters into an arrangement with her employer where she must attend the Melbourne office at least three days per week, but at her discretion (or choice) can work out of the Sydney office up to two days per week.

Although the Melbourne office is a distant work location and Sue carries out her duties at the Melbourne and Sydney offices, Sue's travel from home to those offices will not be deductible. This is not a case where the role Sue undertakes necessarily requires travel to be undertaken. The substantive duties attached to Sue's role do not require her to travel between Sydney and Melbourne. The travel is attributable to Sue's choice to remain living in Sydney whilst taking on a Melbourne-based role. Sue is required to work in Melbourne, and, for convenience, she may also work part of the time in Sydney. The transport expenses incurred in travelling between Sydney and Melbourne are not incurred in gaining or producing her assessable income and therefore not tax deductible. The travel is better characterised as travel from home to a regular work location which is attributable to her private circumstances, that is, her choice about where to live rather than being a necessary incident of her employment.

On call and standby arrangements: May be deductible if your duties start at home.

Example 10: Deductible. Christine is a highly-trained computer consultant who is involved in supervising a major conversion in computer facilities which her employer provides for its customers. This requires her to be on call 24 hours a day. In order to assist in diagnosing and correcting computer faults while she is at home after her normal work hours, Christine's employer installs specialised equipment at her home. Typically, matters can be resolved by Christine at home with the use of this equipment but if the problem cannot be resolved at home, Christine travels to the office in order to progress the matter further.

Christine's cost of travel between her home and the office every day is not incurred in gaining or producing her assessable income. They relate to private travel between her home and her regular work location. However, in circumstances where Christine is called to correct a fault after hours and where she commences work on that fault at home but has to travel to her employer's premises because she cannot rectify it at home, the cost of travel between her home and the office will be deductible.

Example 11: Not deductible. Linda is a nurse, who is sometimes required to be on standby duty. If Linda is called by her employer while she is on standby duty, she travels from her home to the hospital and starts her shift once she gets there. Linda's travel is between her home and a regular work location with short notice of her start time. The transport expenses are not incurred by Linda in gaining or producing her assessable income. The expenses are a prerequisite to Linda's income-earning activities and are private in nature. The transport expenses Linda incurs in travelling from her home to the hospital are not deductible.

Working from home, remote working and flexible work arrangements: The mere fact that an employee undertakes some work duties at home at their convenience does not make expenses of travel to their regular place of work deductible. This is because the travel itself is not explained by the employment duties and is thus not part of the employment. This treatment will not change even if the travel occurs during work hours. Moreover, travel from home to a regular place of work in this situation is still explained by where an employee chooses to live in relation to their regular place of work, which is a private or domestic matter. It does not matter whether the work at home occurs informally or as part of a regular arrangement with the employer.

Example 12: Nico works as a travel agent. As he has a small child, his employer allows him to work from home rather than in the office. Nico has a home office that he uses exclusively for work. At least twice per month, Nico is required to attend the office for regular staff meetings. Nico's home office is not a place of business because Nico's employer would normally accommodate him at their office. At Nico's request they have agreed to let him work from home so that he can work at whatever time is convenient for him within an extended bandwidth. The transport expenses relating to travel from Nico's home to the office are not incurred in gaining or producing his assessable income and are private in nature. Nico works from home for his mere convenience so he can look after his small child and work flexible hours. Accordingly, his travel from home to his regular place of work at the office is not explained by his work duties, that is, the travel is not relevant to the practical demands of carrying out Nico's work duties. It is a consequence of Nico's choice to work from home rather than in the office. Nico is not entitled to claim a deduction for his transport expenses.

The fact that the employee might choose to undertake their duties at a location other than home or a regular place of work at their convenience does not make the cost of travel to that place deductible. For example, a person working remotely cannot deduct the cost of travel to a resort that they choose to work from. Such expenses are not incurred in gaining or producing an employee's assessable income and are private in nature.

Where an employee has an area of their home set aside as their sole base of operations because their employer provides them with no other location to work from, that area of their home becomes their regular place of work. Such an employee will be entitled to a deduction for expenditure incurred in travelling to perform their duties, such as travel to a client's premises.

Transporting bulky equipment: Where the nature of the employment creates a practical necessity, explained by work duties, to transport bulky equipment to and from a regular place of work (including to and from home to a regular place of work), the expenses of transporting that bulky equipment to and from that regular place of work may be deductible.

To come within this exception it is necessary that:

- 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, and
- 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 work⁶⁵ or the equipment needs to be transported to a different site each day.

Transport expenses to relocate: Transport expenses incurred in undertaking permanent relocation are not incurred in the course of gaining or producing an employee's assessable income. They are a prerequisite to earning employment income, reflecting the private characteristics of the employee. Therefore they are not deductible.

Similarly, where an employee is living at a location away from their usual residence (usually on a temporary basis) for work but retains a connection to their previous home (for example, family remains behind), transport between their new work location and their previous home would not be deductible. This is the case even if the agreement with their employer involves the employer agreeing to provide or fund such transport.

Other: The Ruling omits specific mention to two notable exceptions: the commercial traveller whose travel, starting from home, is an integral part of his employment and the casual teacher who travels to several schools as part of their employment. Presumably these two circumstances are still considered tax deductible travel from home.

This Ruling has retrospective effect.