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# Australia: New draft tax ruling describes deductibility of employee travel expenses

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## In brief

The Australian Tax Office (ATO) released Draft Tax Ruling 2017/D6 *Income tax and fringe benefits tax: when are deductions allowed for employees' travel expenses?* (TR 2017/D6) on June 28, 2017. This draft ruling provides the ATO's interpretation of when an employee's travel expenses, including transport and accommodation, are, or would otherwise be, deductible for income tax and fringe benefits tax (**FBT**) purposes.

Key observations include the following:

- TR 2017/D6 provides a range of modern day travel examples to illustrate how to determine whether employee travel expenses are deductible, taking into account the ATO's view of the impact of the John Holland case (*John Holland Group Pty Ltd v FCT* [2014] FCA 1332).
- Greater guidance has been provided around how to determine if an employee is travelling for work or living away from home.
- The 21-day practical guideline for determining a travelling allowance versus a living away from home allowance (**LAFHA**) which was reflected in Miscellaneous Taxation Ruling MT 2030 (to be withdrawn) has been removed and not reinstated in TR 2017/D6.
- Employers should consider how this draft ruling may impact any work-related travel benefits provided in the current FBT year.

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## In detail

Where an employer provides or reimburses an employee for travel expenses, including transport and accommodation, meal and incidental expenses, FBT may arise. However, FBT can be reduced where the 'otherwise deductible' rule can be applied. That is, the

employer can reduce the taxable value of the benefit by the amount that the employee would have been entitled to claim as an income tax deduction, had the employee incurred the benefit themselves.

The release of TR 2017/D6 provides further guidance to taxpayers on when travel

expenses of an employee is, or would otherwise be, deductible. This draft ruling is timely given the increase in the incidence of travel as part of contemporary work practices and recent decisions by the Courts (including the John Holland case).

**Deductibility of transport expenses**

The general rule remains that an employee’s ordinary costs incurred in travelling between their home and regular work location are not deductible. Similarly, an employee’s costs of relocating for work and living away from home to work are not deductible.

Broadly, transport expenses (including airfares, train, car, or bus costs) are deductible where the travel is undertaken in performing an employee’s work activities.

It is a question of fact as to whether an employees’ travel will be deductible, however the draft ruling specifies that regard should be given to the following:

- whether the work activities require the employee to undertake the travel;
- whether the employee is paid, directly or indirectly, to undertake the travel;
- whether the employee is subject to the direction and control of their

employer for the period for the travel; and

- whether the above factors have been contrived to give a private journey the appearance of work travel.

TR 2017/D6 uses worked examples to illustrate when travel expenses of an employee may or may not be deductible. Some of these examples include:

Deductible travel	Non-deductible travel
Special demands travel (i.e., travel to remote work locations)	Ordinary home-to-work travel
A requirement to move continuously between changing work locations	Relocation travel
A requirement to work away from home for an extended period (for example, temporary alternative work locations)	
Travel between co-existing work locations	

**Deductibility of accommodation, meals, and incidentals**

Ordinary expenses incurred by, or for, an employee in respect of accommodation, meals, and incidentals are of a private nature and non-deductible. However, where these expenses are incurred by, or for, an employee in performing the employee’s work activities, these will be deductible.

According to the draft ruling, accommodation, meals, and incidental expenses are incurred in performing work activities in the following cases:

- an employee’s work activities require them to undertake the travel;
- the work requires the employee to sleep away from home overnight;
- the employee has a permanent home elsewhere; and
- the employee does not incur the expense in the course of relocating or living away from home.

In some cases, an apportionment may be required if accommodation, meals, or incidental expenses are used to an extent for private or domestic purpose, for instance, where family

may stay in the accommodation of an employee for recreational purposes.

**Changes to LAFHA**

TR 2017/D6, when finalised, will also replace Miscellaneous Taxation Ruling MT 2030 – *Fringe benefits tax: Living away from home allowance benefits* in providing guidance on LAFHA.

TR 2017/D6 continues to treat accommodation, meals and incidental expenses of employees that are living away from home to be private or domestic in nature and non-deductible.

However, updates have been made to the criteria the ATO will consider when determining if an employee is living away from home. TR 2017/D6 continues to look at this determination from a holistic perspective, but provides the following factors to determine whether an employee is living away from home:

- the time spent working away from home;
- whether the employee has a usual place of residence at a previous location;
- the nature of the accommodation; and
- whether the employee is, or can be, accompanied by family or visited by family or friends.

Importantly, the historical ATO guidance of 21 days as being the practical threshold between travelling and living away from home (set out in MT 2030) has been intentionally removed, given over-reliance being placed on it by taxpayers and the ATO alike.

Notwithstanding the updated guidance from the ATO on when an employee is living away from home, the FBT exemption for LAFHA benefits remain limited to a 12-month period for employees maintaining an Australian home, or employees working on a fly-in fly-out or drive-in drive-out basis.

### ***The takeaway***

Although TR 2017/D6 is helpful for providing some certainty for taxpayers and by including many good examples, in our view the ruling could further address the increasing

occurrence of flexible work practices and the home as a place to work.

Employers of mobile individuals should consider if TR 2017/D6 will impact the FBT treatment of any travel and LAFHA benefits that will be provided in the current 2018 FBT year. Employers may need to reassess if employees are travelling for work or are living away from home.

Employers should also consider if the view in TR 2017/D6 impacts how travel and LAFHA benefits historically have been treated for FBT purposes, to ascertain any voluntary disclosure or refund implications.

Comments can be made to the ATO on the draft ruling by August 11, 2017. PwC will be preparing a submission. If you have any comments on the draft ruling, your local employment tax team member would be happy to discuss.

## **Let's talk**

For a deeper discussion of how these issues might affect your business, please contact your PwC Global Mobility Services engagement team or one of the following professionals:

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