

## Travel

*Kindly note, that the current Taxation Determination sets out the annual rates for employee taxpayers both domestic and international and is published in our annual publication.*

*Be aware that some answers will make reference to earlier TDs. 2020/21 amounts are covered in TD 2020/5.*

### Question 1

**I have a good question regarding claiming travel expenses. I have shares in BHP Billiton and their AGM is in Melbourne and I would like to go to see what goes on. It is on the 17<sup>th</sup> of November 2011 starting at 10.30am. Do I need to fly in and out the same day? What can I claim?**

### Answer

It is suggested that if your dominant purpose for the travel is to attend the meeting you can claim a night's accommodation prior to the meeting, reasonable sustenance, and the airfares. You do not need to fly in and out on the same day. This presupposes the quantum of shares you hold makes this commercially realist.

### Question 2

**What is the travel allowance for Toronto, Canada for 4 days and New York, USA for 2 days? Also, where can I find this in your booklet?**

### Answer

Tax Determination TD 2011/17 sets out the rates for employee taxpayers who travel within Australia or overseas for work-related purposes and receive travel allowances. Substantiation requirements do not apply if accommodation, food and drink, and incidental expenses are within the ATO's reasonable amounts.

As a general rule, to be eligible for non-substantiation the time away from home must not exceed 21 days for domestic travel and six days for travel overseas.

When travelling overseas for work-related purposes, a record of activities must be kept if it involves six or more nights in a row, even if an overseas travel allowance is paid. The record or diary is to show activities undertaken in the course of producing assessable income - not expenses.

Both Canada and the US have the same cost group, being:

Salary	Meals	Miscellaneous	Total
Salary \$100,840 and below	\$130.00	\$35.00	\$165 per day
Salary \$100,841 to \$179,350	\$170.00	\$45.00	\$215 per day
Salary \$179,351 plus	\$205.00	\$50.00	\$255 per day

***Due to the sheer size of the determination, we only include the Australian capital city rates in the annual publication.***

### Question 3

**My son is a paramedic. He applied for a position with Ambulance NSW. He was required to attend an aptitude test in Sydney....we live in Melbourne. Are his travel expenses and hotel cost claimable?**

#### Answer

Unfortunately, the cost of travel to get a job is not tax deductible.

### Question 4

**I have a question regarding business related travel expenses.**

**The person involved is self-employed so is therefore unable to use TD 2010/19. Please advise if this assumption is incorrect.**

**The individual has kept a travel diary for trips greater than 5 days, which is indicated as a requirement in your publication. However, a rate or tax ruling / determination has not been advised.**

**Can you please point or provide what the allowable deduction is for business travel or is this a case of only actual costs incurred are deductible? Reference to any tax rulings / determinations would be greatly appreciated.**

#### Answer

As a self-employed person, your client would require full receipts for the travel, and should be able to demonstrate a clear link to earning assessable income.

If he were an employee of his own company, he would be able to pay himself a reasonable travel allowance.

### Question 5

**If a contractor for our business has to travel from where he resides to work i.e., air travel, are the airfares tax deductible for him?**

#### Answer

There are many variables to this arrangement, and more information would be required. In the case of a genuine contractor, these costs should be tax deductible. There are key ATO tests that define whether a person is actually a contractor and having an ABN alone does not suffice.

### Question 6

**Our travel policy states that when staff members combined Official University Business (OUB) with personal travel, the personal travel component should only be incidental to the overall purpose of the trip to avoid FBT. If the private travel component is greater than 30% of the total travel period, then the trip is considered 'dual purpose' and the traveller will pay 50% of the airfare to avoid FBT.**

**Our policy does not make reference to weekend and public holidays while staff is on annual leave but gives the traveller the advantage of including weekends and public holidays as business travel during OUB. TR 98/9 discusses apportionment of travel expenses.**

**Do we include weekends and public holidays when calculating the private component of the travel?**

#### Answer

We would not include weekends and public holidays, but given the lack of clear guidance, an application for a private ruling for an individual case in order to clear matters up is suggested.

### Question 7

**Our office is located in Sydney and one of our managers is moving to the Gold Coast and will be commuting to Sydney to work. We will be providing approximately \$40,000 for flights and accommodation for the 2013 calendar year. Is he eligible for LAFHA and what would be the FBT implications?**

#### Answer

If the Manager is moving to the Gold Coast, then we take it their Sydney residence will no longer exist (or may be rented out). In these circumstances if no home is maintained in Sydney then such a person cannot be said to be living away from home.

### Question 8

**I have 2 employees that will be travelling to a work convention. We will be picking up their flights and accommodation charges. How do I deal with incidentals each day for them e.g., breakfast/lunch/dinner etc? Do I pay them a daily allowance and if I do is this taxed, how much would it be each day and how do I account for this?**

#### Answer

We would refer you to Taxation Determination TD2012/17 paragraph 11. On the basis:

Your employees earn less than \$104,870 a year.

They will be in a state capital, the amount is \$98.40 per day for meals and \$17.85 a day for incidentals.

If they are on higher rates of pay, the amounts go up marginally.

### Question 9

**I have two questions which relate to employee travel.**

**If an employee travels overseas for business and decides to include their holiday in the one visit (business weeks 2/total stay 8 weeks), would their entire airfare be tax deductible or just a portion of it?**

**If the employee travelled with their spouse (they are disabled – wheelchair bound), would the expenses relating to the spouse be tax deductible for the employee if they paid for it?**

**These two questions have arisen from the need for us to determine if there are any FBT implications for us if we pay for the employee and their spouse to travel overseas for business.**

#### Answer

The entire airfare could be deductible given the dominant purpose was to attend to business. Here we are assuming that the employer has willingly paid the fare as the employee had to attend a conference or conduct business specified by the employer.

If the employee is paying it may be difficult to convince the Commissioner of 'dominant purpose' and an apportionment may need to be made.

### Question 10

**Do we have to include car allowance in the gross wages or show as an allowance? We pay our electrician fix amount per day for car allowance. They may work on the different construction site each week. Each day they travel from home to the job site directly. They are not required to come to the office before they start the work.**

#### Answer

This is to be shown as an allowance in their PAYG Payment Summary.

### **Question 11**

**I have a query about LAFHA. If a Company must find a contractor from interstate to come to Darwin to do some work for about 6 weeks and paying the contractor about \$300 a week, additional to the payment for the work to cover the food and accommodation?**

**Can this be treated as living away from home allowance? Can this contractor not pay any tax on this \$300 per week?**

### **Answer**

First, it appears that we are not dealing with an employer/employee relationship. If this is an independent contractor, the Company pays this additional amount, and it is up to the contractor to substantiate these claims as legitimate travel and accommodation expenses.

In the event you are contemplating an employer/employee relationship, please contact us with more details. Several different scenarios may arise.

### **Question 12**

**I have two queries...**

**My son works on a mine in Western Australia on a Fly in Fly out basis.**

**The company only pays for his flights from the mine site to Perth.**

**Can my son claim the flights from Perth to Melbourne as he was initially employed from Victoria and where he still maintains his base?**

**Also, on some trips he attends courses to enhance his career in Victoria.**

**My second query is, on my son's group certificate it shows his daily allowance as a meal allowance.**

**The company only supplies a house and all other costs he is required to cover.**

**My belief is he is entitled to the claim the travel allowance of \$97.75 per day as he earns more than \$100,840.00.**

### **Answer**

The flights from Victoria to Perth (and back) are in the nature of commuting and not a tax deduction. It is suggested your son attends courses in Victoria because that is where he lives.

Key points from TR 2004/6 about claiming travel allowance expenses and overtime meal allowance expenses that must be observed are:

Claim must be allowable – A deduction claim cannot exceed the amount actually incurred for work-related purposes. The payment of an allowance does not of itself allow a deduction to be claimed.

Allowance must be paid – The substantiation exception only applies if the employee is paid an overtime meal allowance or a travel allowance. The allowance must have an identifiable connection with the nature of the expense covered.

For travel allowance expenses – The employee must sleep away from home.

So, unless your son is actually paid the travel allowance, it cannot be claimed.

### **Question 13**

**Situation:**

**Residence in Gold Coast (i.e., domicile)**

Started with airline at the end of January and was told before commencement that my base would be in Brisbane. From the first day of employment, I was required to present myself in Sydney for training which will continue for approximately two months. During this training period my company do not pay for accommodation or meal expenses, however, do pay a "Training Allowance" in addition to my salary.

Reference: TR95/9 (airline industry employees – allowances, reimbursements, and work-related deductions)

Question: I am a bit confused: Paragraph 114 and 159 would seem to support a claim. But paragraph 160 might get me in trouble if I make a claim.

I am not sure my accountant appreciates how intricate the Tax law interpretation needs to be when it comes to pilots. I have seen a few get a nasty bite in my time.

### Answer

The key here is whether Sydney would be considered as a base by the ATO.

I would not think so and believe you would be allowed a deduction for the expenses hence the "Training Allowance". Your employer's pay office may be able to confirm this, if in any doubt apply for a private ruling.

### Question 14

I have a Company client which has conducted business for various clients in Australia for many years as an Engineering Project Manager. The Australian office is a substantial annex to its employees' residence. While the majority of the project management work for all clients is conducted on site, a great deal of work is also conducted from this office.

From the start of the 2012/13-year work has been hard to come by in Australia, so the client tendered for work overseas and was successful in obtaining two contracts, one in Japan and when that was completed, a different contract in China.

Each contract would take 6 to 9 months to complete. The client sent one of its employees (it only has two employees – an engineer and an administrator – his spouse) overseas to conduct the work. There was a small amount of work to continue in Australian clients during the period overseas. It would seem that the client will not need to obtain overseas clients from 2014/15.

The arrangement was that the employee would spend 6 weeks overseas and then 2 weeks back in the Australian office (where he would continue to work on both the overseas and Australian contracts) and this pattern would continue throughout both the Japan and China contracts.

Actual accommodation costs for the employee were paid by the Company client whereas meals and incidental cost were paid by the employee. Per diem allowances were paid to the employee in accordance with TD2012/17 while overseas.

The questions are:

- For the employee is the 'reasonable per diem' assessable or exempt?
- For the employee is the 'reasonable per diem' free from substantiation rules?

### Answer

We refer you to Taxation Determination TD2014/19 to establish and Taxation Ruling TR2004/09 to determine whether the allowances were paid were reasonable.

The ATO may be skeptical on the spouse being a legitimate administrator and may well take the view that the wife's travel was private and domestic.

To answer your specific questions the per diem allowances is assessable but is exempt from the substantiation requirements provided it complies with TD2014/19.

## Question 15

**We currently have employees travelling domestically and internationally for work. Would it be reasonable to tally the trips and calculate the ATO allowable travel allowance annually and then make an adjustment to their salary to disclose the calculated amount as Travel Allowance and reducing the individual's taxable income?**

### Answer

You do not mention who pays the expenses, but we assume it is the employer.

A key condition of salary packaging is that it cannot be retrospective, Taxation Ruling TR2001/10.

It is not possible to change the character of salaries into travel allowances after they have been paid – but we note you are planning for the forthcoming year.

Refer to Taxation Determination TD2014/19 for further guidance. TD2014/19 contains key points from Taxation Ruling TR2004/6.

The key expenses claimed must have been incurred (by the employee) and be an allowable deduction. Paying an allowance does not in itself allow a deduction to be claimed.

Before a deduction can be claimed:

- The expenses claimed must not exceed the actual expense and
- The expenses must be work-related and be tax deductible.

Allowance must be paid. The substantiation exception only applies if the employee is paid an overtime meal allowance or a travel allowance. The allowance must have clear nexus with the nature of the expense covered.

For travel allowance expenses, the employee must sleep away from home.

Where the amount claimed is no more than the applicable reasonable amount, substantiation of the claim with written evidence is not necessary.

If the amount claimed exceeds the reasonable amount, the whole claim must be substantiated, not just the excess.

In some cases, where the substantiation exception is relied on, the employee may still be required to demonstrate:

- How they worked out their claim
- The expense was actually incurred
- An entitlement to a deduction (for example that work related travel was undertaken)
- A bona fide travel allowance was paid, and
- If accommodation is claimed that commercial accommodation was used.

In the event the employer pays the travel expenses, re-characterising portion of the employee's salary as "travel allowance" and then suggesting they claim notional expenses simply does not work. In the event a travel allowance is paid, it is the employee who must incur the expense.

## Question 16

**A client (salesman based in Sydney) had provided the following information:**

**Payment summary:**

**Gross: \$xx,xxx**

**PAYGW: \$xx,xxx**

**(no allowance paid)**

He has provided a list of places he went, date and amount for expenses he was reimbursed by his employer for travel expenses whilst away from home. (summarised for this purpose, there were many more)...

Auckland 01/07/16 \$61.00

Brisbane 03/07/16 \$77.00

According to his colleagues at work he is entitled to claim a deduction for the reasonable allowance amount. If we assume, he can substantiate his claim up to the reasonable allowance amount, with written evidence.

I believe to claim a deduction of up to the reasonable allowance amount he must declare in the tax return the amount he was reimbursed, as the travel allowance. Then at item d2 claim the reasonable allowance amounts, that he can substantiate.

i.e., Allowance received (from the above) (61+77) \$138

Deduction claimed (\$109.35+\$150) (TD 2017/19) \$259.35

Is it correct to claim the reasonable allowance amounts and declare the amount paid as income or, is it only correct to not claim a deduction and not declare the amounts paid?

I see a third option to only claim the difference between the (\$239.35-138) \$101.35 at D2.

What is the correct way to maximise the claim?

### **Answer**

There is a lot of misinformation and pub talk on this issue and you should refer to Taxation Determination TD 2017/19. Note this determination is updated annually in our publication.

Certainly, the ATO now has a focus on these claims.

This outlines the terms and conditions for such a claim to be made.

To claim the daily limits in TD 2017/19 it is a condition that a travel allowance was actually paid.

This would not appear to be the case here.

So, it boils down to what expenses have been incurred and your comments about reimbursements are 100% correct.