

AUSTRALIAN TAX ADVISER

2202: AUGUST 2021

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SECTION 1 — PROFESSIONAL DEVELOPMENTS

ACCOMMODATION AND MEAL CLAIMS FOR EMPLOYEES

¶2.1 Introduction

The story of the ATO's Tax Rulings in relation to work-related travel expenses is long, convoluted and marked by lengthy periods of uncertainty. It begins on 28 June 2017 with the release of TR 2017/D6 on the tax deductibility of travel and accommodation expenses. After a lengthy consultation period ended, no attempt was made to finalise the draft ruling. Instead, in 2019 the ATO announced that TR 2017/D6 was to be scrapped and two new rulings were to be issued, one dealing with transport expenses and the other with accommodation and meals.

TR 2019/D7 (released December 2019) duly followed, covering transport costs, i.e. the costs of travel by airline, train, taxi, car, bus, boat or other vehicles. A further period of silence followed before – in early 2021 – this was finalised as TR 2021/1.

At the same time, TR 2021/D1 was issued, covering (in draft form) the deductibility of accommodation, meals and incidental expenses.

TR 2021/1 and TR 2021/D1 override TR 2017/D6 where there is a conflict between the two.

¶2.2 General Principles

According to TR 2021/D1, an employee can only deduct accommodation and food and drink expenses under section 8-1 if:

- they incur the expense in gaining or producing their assessable income
- the expense is not capital, private or domestic
- the expense is not incurred in deriving exempt or non-assessable non-exempt income
- another provision of the Tax Act does not prevent a deduction

In addition, the relevant substantiation requirements must be met for the expense. These include written evidence and/or a travel diary (where the travel involves being away from home for six nights or more in a row), except where the employee is able to claim the substantiation exemption (where a 'bona fide' travel allowance is received).

Accommodation and food and drink expenses are normally private or domestic and not claimable under s 8-1. Examples include costs to run the home and costs of consuming food to go about daily activities (e.g., the cost of lunch or morning coffee). These are living expenses and not deductible.

However, where an employee travel and stays away from home overnight in the course of their job and incurs accommodation and food and drink expenses these can usually be claimed under s 8-1. A deduction **cannot** be claimed where an employee does not travel and stay away from home overnight for employment purposes.