

the travel is relevant to the practical demands of carrying out the work duties, and whether the above factors have been contrived to give a private journey the appearance of work travel.

Travel expenses could cover not only transportation costs but also the cost of meals, accommodation and travel between the accommodation and the place or places of business visited while away (TR 2017/D6). While the costs of maintaining a second home in a place the taxpayer regularly visits on business are unlikely to be deductible (Case X4 90 ATC 116), the Commissioner has stated a preliminary view that additional property expenses an employee incurs to finance, hold and maintain residential property they have purchased or leased where they travel away from home for work and stays at the property may be claimed. This is provided that the employee's work activity requires them to travel, sleep away from home overnight, they have a permanent home elsewhere and are not relocating or living away from home (TR 2017/D6).

For the deductibility of travel expenses incurred in relation to self-education, see ¶16-450. For travel claims by investors, see ¶16-660. The deductibility of motor vehicle expenses is considered at ¶16-310.

Special substantiation rules apply to overseas and domestic travel (¶16-300) and to domestic car travel (¶16-320).

#### Travel between places of work or business

The costs of travel between two places of employment as part of the same job are deductible on the basis that the travel is undertaken in performing an employee's work activities (TR 2017/D6). The employment must be the occasion for the travel expenses (TR 2019/D7). The costs of travel between one place of business and another for the purposes of the one business are also deductible as are the costs of travelling between two unrelated workplaces, eg in Kaley 2011 ATC ¶10-193, an architect was allowed a deduction for the cost of travelling between two unrelated places of employment.

A specific deduction is available for revenue expenses for travel directly between unrelated workplaces, ie travel between a place where the taxpayer is engaged in income-producing activities or business activities and a second place if: (a) the purpose of travel to the second workplace is to engage in income-producing activities or business activities; and (b) the taxpayer did engage in such activities (ITAA97 s 25-100). However, the deduction is not available if: (i) the taxpayer resides at one of the two workplaces (including a holiday home, shared accommodation and a second residence); or (ii) at the time of the travel, the arrangement by which the assessable income was gained or produced, or the business in which the taxpayer engaged in the activities at the first workplace, has ceased permanently.

Where part of an amount which is otherwise deductible as a transport expense for travel between workplaces (one of which is a business) under s 25-100 is attributable to a business activity which is subject to the non-commercial loss provisions in Div 35 (¶16-020), an apportionment must be made on a "fair and reasonable" basis, generally 50% to each activity (TD 2006/61).

The specific deduction was introduced to overcome the effect of the High Court decision in Payne 2001 ATC 4027. In that case, a pilot claimed a deduction for the costs of travelling between his income-producing deer farm and his place of employment at an airport. In rejecting the claim, the court said that the travel was neither part of the taxpayer's job as an employee, nor part of his business as a farmer — instead, it related to the intervals *between* those two types of income-earning activity. It was therefore not sufficiently connected with either income-producing activity and the costs should not be allowable.

Although Payne 2001 ATC 4027 involved the additional factor that the deer farm was also the taxpayer's home, the High Court's view did not seem to be limited to that situation. To this extent, it seemed to be more restrictive than earlier views. For example, the Commissioner had previously drawn a distinction in these cases according to whether the home was involved (IT 2199). Where the home is not involved, the Commissioner evidently considered that travel directly between two places of employment or business was deductible if the travel was undertaken *for the purpose of enabling* the taxpayer to engage in income-producing activities. Where the home was involved, it appeared to be necessary to show that the travel was part and parcel of the income-producing activities. For example, a doctor who conducted a home surgery would be allowed a deduction for travel from home to a hospital to carry out medical duties, but a house painter operating from home would not be allowed a deduction for travel from home to a part-time bar job.

The earlier case of Garrett 82 ATC 4060 involved a doctor who lived in a country centre where he carried on both a farming business and a medical practice. He used an aircraft to travel to various other medical practices that he ran and to transport vaccines. His claim for the leasing costs of the aircraft was allowed. The Commissioner accepted the decision but expressed the view that travel between a taxpayer's home at which a business of primary production is conducted and the taxpayer's other business or employment is generally not deductible unless: (a) some significant activity related to the primary production business is undertaken on the trip (eg carrying feed or stock to market); or (b) the employment circumstances warrant deductibility (eg the employment is itinerant or the home constitutes a base of the other business or employment activities) (TD 96/42). Even after Payne 2001 ATC 4027, it may be that Garrett 82 ATC 4060 is still supportable on the ground

that the medical practices were related or that the transport of the vaccines was a significant part of the taxpayer's business.

[FTR ¶33-120 – ¶33-270]

#### ¶16-230 Deductibility of travel between home and work

Expenses of commuting between home and place of work are generally not deductible, ie where the travel is to start work or depart after work is completed (Lunney (1958) 11 ATD 404; (1958) 100 CLR 478), even where a travel allowance is received (*Draft* TR 2017/D6; IT 2543), incidental tasks are performed en route, the travel is outside normal working hours or the travel involves a second or subsequent trip. This also extends to where the employee travels to work from another location, eg a café or holiday location, or travels from home to a different location that is more convenient as a work location, ie the travel is not explained by their employment duties but their personal choice: *Draft* TR 2019/D7.

However, a deduction may be allowed in certain exceptional circumstances — eg where the taxpayer's job is itinerant, where the taxpayer is required to carry bulky tools or equipment to work, where the taxpayer is on call or stand by, or where the taxpayer is required to attend a business trip on the way to or from work (¶16-220). Even though the taxpayer is required to carry bulky equipment to work, no deduction is allowable if a secure storage area is provided at the workplace (Crestani 98 ATC 2219; TR 95/8; Brandon 2010 ATC ¶10-143; Rafferty 2017 ATC ¶10-456).

The ATO has stated its view in TR 2017/D6 that travel expenses are deductible where the travel is undertaken in performing an employee's work activities. This can include travel described as "special demands travel" which involves travel between home and a work location where the journey, or part of it, is included in the activities for which the employee is paid under the terms of their employment, meaning there may be another location treated as the "point of hire". Whether or not an employee is subject to the direction and control of the employer for the period of the travel is one of the relevant factors to determine whether such travel is undertaken in performing an employee's work activities. It may also include travel between home and an alternative work location where an employee is required to work in more than one location ("coexisting work locations travel").

A similar concept is described as the "transit point" in TR 2019/D7 from which point an employee travels to reach the place where their substantive duties are carried out. The cost of travel between home and the transit point would not be deductible, but travel between the transit point and the second place will be deductible, on the basis that it is the point from which the employee commences their duties. The form and substance of the arrangement and the need for the transit point must fit within the reasonable expectations of the

particular duties of employment, eg the remoteness of a location as in *John Holland Group Pty Ltd* 2015 ATC ¶120-510. Here, air fare costs incurred by an employer to fly employees from Perth to Geraldton (WA) for a rail upgrade project (along with the return trip), were otherwise deductible to the employees for FBT purposes (¶35-680). This was because the employees were travelling in the course of their employment at their employer's direction from the time they arrived at Perth airport, and they were paid to do so. This situation subsisted until they returned to Perth at the end of their rostered-on time (also see [Decision Impact Statement: John Holland](#)).

#### Examples of deductible home to work travel

**Academic** living in semi-retirement was allowed a deduction for the cost of travel from his home to the city some 180 km away where he lectured two days a week. The claim was allowed on the ground that he used his home as a base for extensive work in preparing lectures and marking exam papers. He was also allowed a deduction for accommodation costs on the nights he had to stay in the city (Case W4 89 ATC 133). Note that somewhat similar claims have been disallowed in earlier cases, so the position is not clear. A taxpayer's home may not be regarded as an alternative work location (as described in *Draft TR 2017/D6*) to enable the travel between home to work to be deductible as "co-existing work locations travel" as in the Commissioner's view, this category is attributable to an employee having to work in more than one place, rather than their choice about where to live. Living a significant distance from work does not make the transport expense deductible, unless the travel is not attributable to the employee's choice of where to live, but due to the requirement of their employment duties (TR 2019/D7).

**Computer consultant** on call 24 hours a day was allowed the costs of travel between home and the office outside the normal daily journey since her home could be regarded as another place of work (Collings 76 ATC 4254; TR 2019/D7).

**Employed carpenter** was allowed a deduction for car expenses in travelling between home and work because he had to transport heavy tools to work (Case U29 87 ATC 229; Crestani 98 ATC 2219). However, an aircraft maintenance engineer was denied a deduction for expenses in transporting his tools by car each day where this was done purely for convenience and not for reasons of practical necessity (Case Z22 92 ATC 230).

**Employed dentist** who had to transport sensitive, valuable and potentially embarrassing items between one surgery and another was entitled to deductions for car expenses even though most of the journeys involved travel from his home (Scott (No 3) 2002 ATC 2243). The Commissioner had

previously stated that a deduction should not be allowed simply on the ground that the items that are required to be transported are valuable (TR 95/20).

**"Itinerant" teacher** engaged in a special scheme, which involved teaching at five schools each day and using her home as a base for preparing lessons and keeping materials, was allowed her car travelling expenses between schools and between home and school (Wiener 78 ATC 4006; Kerry 98 ATC 2295). See TR 95/34 for a list of factors that indicate itinerancy.

**Plumber** working for a construction company who is assigned to work at different sites every day can claim a deduction for the cost of home to work travel (ATO *Plumber employees — claiming work-related expenses*).

**Professional footballer** was allowed a deduction for car expenses in travelling: (a) from his place of full-time work to training sessions and then home; and (b) from home to various matches (both "home" and "away") and back home again (Ballestry 77 ATC 4181).

**Professional musician** who worked at various clubs and had to transport bulky musical equipment was allowed a deduction for car travel between home and his places of work (Vogt 75 ATC 4073). The cost of preparing for and attending an audition is not deductible to employee performing artists (TR 95/20).

**Self-employed shearers** can claim expenses (including accommodation and meals) incurred in travelling between home and places where they exercise their trade or between home and a place of assembly for a shearing tour (IT 2273; Gaydon 98 ATC 2328). For the deductibility of expenses of *employee* shearers, see TR 95/34.

#### Examples of non-deductible home to work travel

**Casual nurse** whose jobs were arranged through an agency, usually at short notice, and involved her working at a number of different hospitals each week (Genys 87 ATC 4875). Thus, working on a casual basis for a different employer each day and often being called at short notice may not be enough to support a deduction for the cost of travelling between the home and the place where the taxpayer works on a particular day. See also *Draft TR 2019/D7*.

**Employee building worker** even if the worker is required to have a car available at work or if it is impracticable to use public transport (TR 95/22; TR 95/34).

**Labourer** who held a number of short-term jobs in regional locations and lived in a motorhome so he could be close to his work, was not an itinerant worker. Accordingly, he could not rely on TR 95/34 to claim car or travel expenses related to travelling to and from work (*Hill* 2016 ATC ¶10-430; see also Walker 2017 ATC ¶10-449).

**Pilot** who claimed he was obliged to drive his car from home to the airport when flying because of the weight of documents and equipment he was required to carry (Yeates [2014] AATA 10). The pilot was not entitled to deductions for his home to work travel expenses because his employer provided most of the documents and equipment he required when flying.

**Radiographer** who, despite being on call, did not commence the income-producing duties until arrival at the hospital (Pitcher 98 ATC 2190). The mere fact that a taxpayer, such as an airline pilot, is on stand-by duty at home is not sufficient to justify the deductibility of home/work travel.

**Sheet metal worker** who transported bulky tools to and from work because he did not believe his workplace storage lockers to be secure. The taxpayer's associated transport costs were not deductible because he was not required to transport his bulky tools to work each day, but rather did so out of a personal choice based on unfounded security concerns (*Reaney* [2016] AATA 672).

**Teachers** travelling between their home and their regular school to attend parent-teacher meetings and other school functions even when the trip is made outside school hours or is a second or subsequent trip (*Draft TR 2017/D6*).

**Tugboat crewman**, despite the lack of public transport, the erratic hours and times of his job, the receipt of an out-of-hours travel allowance and the on-call nature of the job (Case U156 87 ATC 908).

#### Travel to client's premises

The total journey from an employee's home to a client's premises and then on to the office will be accepted as deductible business travel (MT 2027) where:

- the employee has a regular place of employment and travels to it habitually
- in the performance of the duties as an employee, travel is undertaken to an alternative destination that is not itself a regular place of employment (ie this would not apply, for example, to a plant operator who ordinarily travels directly to the job site rather than calling first at the depot, or to an employee of a consultancy firm who is placed on assignment for a period with a client firm)
- the journey is undertaken to a location at which the employee performs substantial employment duties.

These principles apply equally to cases where an employee makes a business call in the afternoon and travels from there to home, rather than returning to the office.



## Personal service providers

Home/work travel expenses that are not allowable to employees are also not available where they relate to personal services rendered by individual contractors who are not conducting a personal services business ([¶130-600](#)).

[FITR ¶133-140 – ¶133-200]

## ¶116-240 Deductibility when travel allowances received

Payment of a travel allowance indicating official recognition by an employer may indicate that travel is a necessary element of the employment. Payment of an allowance must be considered together with the other characteristics of the employee's work in determining the deductibility of the travel expense. Thus, receipt of an allowance does not automatically entitle the employee to a deduction (TR 95/34). Equally, absence of an allowance does not necessarily prevent the travel expenditure from being deductible. It is the nature of the expense and its connection to the income-producing activities that determines whether it is deductible (*Draft TR 2017/D6*).

For the assessability of travel allowances and of reimbursements of car expenses on a cents per kilometre basis, see [¶110-060](#).

All allowances must be shown as assessable income in the employee's tax return, except where all the following conditions are satisfied:

- the allowance is not shown on the employee's payment summary
- the allowance received is a bona fide overtime meal allowance or a bona fide travel allowance
- the allowance received does not exceed the reasonable amount, and
- the allowance has been fully expended on deductible expenses.

Where the allowance is not required to be shown as assessable income in the employee's tax return, and is not shown, a deduction for the expense cannot be claimed in the tax return (TR 2004/6).

In general, car expenses are not deductible unless written evidence is kept ([¶116-320](#)). A corresponding rule applies to overseas and domestic travel ([¶116-300](#)). See [¶116-210](#) for the rules that apply where an employee receives a domestic or overseas travel allowance.

[FITR ¶133-210]

## ¶116-260 Deducting travel expenses: attending a convention

Deductible travel expenses include those incurred by the taxpayer in attending a convention relating to the taxpayer's business or employment (ITAA97 s 8-1). The fact that vacation or leave time is utilised in attending such conferences, or that attendance is voluntary, will not necessarily preclude a deduction. Where only part of the purpose of the trip was attendance at the convention, the expenses may be apportioned ([¶116-290](#)). See [¶116-450](#) for the deductibility of convention expenses as self-education expenses.

[FITR ¶133-220]

## ¶116-270 Overseas travel expenses

The deductibility of overseas travelling expenses depends on the same principles as the deductibility of ordinary travelling expenses (ITAA97 s 8-1), whether the expenses are incurred, reimbursed or allowed for by an employer, or are incurred by an employee or self-employed person on their own account. See also *Draft TR 2019/D7* and *Draft TR 2017/D6* for the Commissioner's preliminary views on claiming travel expenses.

In the case of a business taxpayer, fares to Australia of a new employee whose duties are related to the production of business income are deductible (but not if the employee is needed to set up the business structure). The cost of overseas travel to obtain a new employee would also be deductible, but not the costs of hiring a partner (Case T36 86 ATC 303).

In general, travel expenses aimed at obtaining new agencies or assets, or otherwise expanding the business structure, are non-deductible, while travel expenses in seeking new marketing or manufacturing trends, ie in keeping abreast or ahead, are deductible. The cost of an importing company's first overseas buying trip would be deductible if it had previously secured firm provisional orders (Case T46 86 ATC 379).

It seems that travelling expenses in connection with overseas agencies are deductible where the purpose of the trip is to maintain and improve relations in regard to existing agencies, but not where its purpose is to obtain new agencies. On the other hand, as long as the gaining or losing of agencies is merely an incident in the taxpayer's business so that compensation received for an agency cancellation would be assessable ([¶110-114](#)), travel and other expenses in seeking or gaining an agency should equally be deductible as a revenue outgoing.

Similarly, in the case of professional persons and academics, whether in private practice or employment, expenses of overseas travel undertaken to

keep aware of new developments, attend conferences and conventions are deductible (Finn (1961) 12 ATD 348; (1961) 106 CLR 60; [¶116-450](#)).

The travel costs of an employee's spouse who accompanied him as a personal carer when travelling overseas to attend work-related conferences were not deductible to the taxpayer on the basis that the costs were incurred in relation to the taxpayer putting himself in a position where he was able to engage in employment. The expenses were in connection with gaining or producing assessable income but were not in the course of gaining or producing that assessable income (Case 8/2016 2016 ATC ¶11-086).

There have been some remarkable successes in relation to overseas travel claims. For example, two junior police officers (a husband and wife) won a claim to deduct \$25,000 incurred on an overseas trip, during which they made pre-arranged visits to numerous police stations to gain knowledge of new police methods (Case W73 89 ATC 659).

Many cases have involved schoolteachers or other persons associated with education whose travel overseas is associated, to varying degrees, with their professional interests. The question here is principally whether the necessary connection can be found between the travel and the teacher's income-producing activities ([¶116-450](#)). Although many of these claims fail, there have been a number of cases in which deductions have been allowed, for example: an academic's trip to India to conduct a project while on sabbatical (Chaudri 99 ATC 2138); an ancient history teacher's trip to Italy and Greece (Case Q104 83 ATC 522) and to historic sites and museums (Case W75 89 ATC 686); a curriculum research officer's trip to the USA and Canada (Case Q114 83 ATC 585); a history teacher's trip to China (Case R20 84 ATC 201); an Indian history teacher's trip to Burma, Nepal and Thailand (Case T65 86 ATC 464); a music teacher's trip to Europe to take up a specialist music scholarship (Case V1 88 ATC 101); an outdoor education teacher's canoeing expedition in Canada (Case V74 88 ATC 529); a teacher's trip to Canada to participate in a teacher exchange program (Case V82 88 ATC 577; [ID 2001/329](#)) and a Studies of Society and the Environment (SOSE) teacher's trip to Asia, the UK and Europe (Lenten 2008 ATC ¶10-017). It may be that teachers qualifying as "master" teachers are more likely to succeed in such claims (Case R73 84 ATC 509). It is not necessary that there be an express direction from the school to take the trip (Case S1 85 ATC 101).

Employers are allowed a general deduction for annual fees incurred on airport lounge memberships for employees (eg Qantas Club memberships): TD 2016/15. No deduction is permitted, if such fees are incurred to produce the employer's exempt or non-assessable non-exempt income. The deduction is available, even if an employee uses the membership substantially for private purposes (eg when they are on holidays). An FBT