

# Planes, trains and automobiles: new ATO draft ruling on work-related transport

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## In brief

On 13 December 2019, the Australian Taxation Office (ATO) released draft taxation ruling [TR 2019/D7](#) *Income tax: when are deductions allowed for employees' transport expenses?* which provides an updated view on when work-related travel expenses will be deductible.

The draft ruling only considers the deductibility of transport expenses consisting of travel by airline, train, taxi, car, bus, boat or other vehicle, and does not consider the deductibility of other travel expenses such as accommodation or incidentals.

The draft ruling reaffirms the following general principles established in [TR 2017/D6](#), which consider the deductibility and fringe benefits tax (FBT) implications of employee travel expenses:

- An employee's costs of travelling between home and a regular place of work are not deductible; and
- Travel expenses incurred in the performance of an employee's employment duties are deductible.

The ATO's updated guidance in TR 2019/D7 also clarifies the application of these general principles, indicating that employers should look beyond the categories of travel established within TR 2017/D6 to consider the nature of the relationship between an employee's employment and the relevant travel expense, so as to make an appropriate conclusion regarding the deductibility of a travel expense.

## In detail

Following an increase in modern working practices and case law changes, the ATO issued TR 2017/D6 to update its view on when travel expenses incurred by an employee were deductible. This draft ruling considered the deductibility of travel expenses from an employee's perspective as well as for employers that apply the 'otherwise deductible' rule for FBT purposes.

On 13 December 2019, the ATO has taken on feedback and released TR 2019/D7 which clarifies its view on when transport expenses will be deductible.

TR 2019/D7 explains the ATO's current view on when transport costs for work-related travel are tax deductible, specifically in relation to transport costs associated with flights, taxis, trains, cars, buses, boats or other vehicles. Other travel costs, such as accommodation and incidentals, or other transport situations, such as for self-education or itinerant workers, continue to be addressed in other relevant ATO rulings (including TR 2017/D6).

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Travel expenses are deductible where they are incurred in gaining or producing assessable income. In this regard, TR 2019/D7 states that whether travel expenses are incurred in gaining or producing assessable income is dependent on the following factors:

- the travel occurs on work time;
- the travel occurs when the employee is under the direction of the employer;
- the travel fits within the duties of employment;
- the travel is relevant to the practical demands of carrying out the work duties; and
- the employer asks for the travel to be undertaken.

These factors need to be considered on balance in the context of the form and substance of the employment arrangement.

The general rule remains that an employee's ordinary costs incurred in travelling between their home and regular work location are not deductible. This view has been expanded in TR 2019/D7 to capture scenarios where an employee travels between home and a number of regular work locations, and where travel occurs between home and a subsequent place of work that becomes a regular work location.

The draft ruling also provides guidance on what constitutes a regular place of work, as opposed to an alternative place of work (e.g. a site of a client of the employer or a training facility).

Notably, the ATO's current view extends the employer's consideration past the application of the travel categories provided in TR 2017/D6 to establish the deductibility of travel expenses but requires an analysis of each situation to better understand the relationship between a travel expense and the employee's employment. Upon such an assessment, it is seen that an appropriate conclusion can be reached as to the deductibility of a travel expense.

TR 2019/D7 also clarifies the deductibility of travel when an employee is on-call or standby, working from home, and transporting bulky equipment.

Once finalised, the views expressed in TR 2019/D7 are proposed to apply to income years and FBT years commencing before and after its date of issue.

### ***The takeaway***

With only a few months left of the 2020 FBT year, employers should review their travel policies to understand if the ATO's updated views in TR 2019/D7 have an impact on them.

Particularly, employers which have previously considered travel to be 'special demands travel' should ensure that the deductibility criteria set out in the draft ruling continue to be met.

Given the ATO's latest guidance on the deductibility of travel expenses only covers transport costs, rather than accommodation and incidentals, it is expected that TR 2019/D7 will be the first in a series of new rulings seeking to clarify the treatment travel costs originally covered by TR 2017/D6.

Regardless of whether and when any additional guidance is issued, employers should at this point take the time to review their travel policies in order to gain sufficient comfort that the treatment of travel expenses relevant to the current 2020 FBT year is reflective of the most up-to-date ATO guidance.

Submissions on the draft ruling are due on 28 February 2020. PwC will be preparing a submission and would welcome your feedback. If you would like to contribute, please contact your PwC contact.

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## ***Let's talk***

For a deeper discussion of how these issues might affect your business, please contact:

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