TR 2021/4EC - Compendium

Australian Government
Australian Taxation Office

Public advice and guidance compendium – TR 2021/4

Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Taxation Ruling TR 2021/D1 *Income tax and fringe benefits tax: employees: accommodation and food and drink expenses, travel allowances, and living-away-from-home allowances*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

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1	Given that employers must now refer to separate rulings to consider the deductibility of transport, accommodation and food and drink, it would be beneficial to have some form of informal publication (for example, a fact sheet) that summarises the guidance that different rulings/guidelines (including newly-released draft Practical Compliance Guideline PCG 2021/D1 *Determining if allowances or benefits provided to an employee relate to travelling on work or living at a location – ATO compliance approach*) provide with respect to travel costs.	At this stage, there is no plan to release such a product, however web content will be updated once the final Ruling is issued. Chapter 11 of *Fringe benefits tax – a guide for employers* will also be updated.
2	We note that the draft Ruling specifically only relates to accommodation and food and drink expenses. We wish to highlight that we think this potentially creates confusion as to why accommodation and meal expenses have been separated from transport expenses. In the event the two rulings are not combined, we suggest that it be considered whether there can be greater linkages in the draft Ruling to the recently finalised Taxation Ruling TR 2021/1 *Income tax: when are deductions allowed for employees' transport expenses?* In particular, we believe the ATO could consider the provision of	TR 2021/1 has issued in its final form and will not be combined with any of the content addressed in the final Ruling. Footnote 6 has been added to the final Ruling to explain why this Ruling has been developed in addition to TR 2021/1. Where considered appropriate, references to TR 2021/1 have been inserted in the final Ruling in the form of footnotes.

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	specific linked examples which consider a variety of benefits covered under both Rulings to clarify consistency.	
3	There is an incorrect reference within paragraph 3 of the draft Ruling. It refers to Taxation Ruling TR 2020/7 *Income tax: when are deductions allowed for employees'* transport *expenses?* which provides guidance on when an employee can deduct transport expenses under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997), which should be a reference to TR 2021/1.	The reference to TR 2020/7 in paragraph 3 of the final Ruling has been changed to TR 2021/1.
4	The draft Ruling outlines that 'travelling on work' does not include any travel that does not require an employee to sleep away from their usual residence. As such, any food and drink expenses incurred on day trips will not fall within the deductibility net, solely because the employee did not stay overnight at that location. This leads to inequitable outcomes for taxpayers. There seems to be no conceptual difference between Example 1 and Example 4. In each case, the need to incur expenditure is triggered by the demands of their respective employment, which answers the positive test posed under section 8-1 of the ITAA 1997. The reasons of Hill J in *The Roads and Traffic Authority of New South Wales v Commissioner of Taxation* [1993] FCA 445 (*Roads and Traffic*) appear to be the principal authority for the sleeping away from home requirement. The question of whether the otherwise deductible rule could apply to days when the workers returned home from their camp (that is, when there was no overnight stay) was not specifically addressed in the decision. Accordingly, his Honour's observations that an employee is taken to be travelling for work on a day that involves an overnight stay at the camp, should not be interpreted as meaning that such an employee might not, in the right circumstances, also be regarded as travelling on work where he or she is engaged in same day travel. This is potentially out of date and not reflective of modern-day working arrangements. The decision of *Commissioner of Taxation v. Cooper, R. J.* [1991] FCA 190 (*Cooper*) is of limited assistance aside from confirming the unremarkable proposition that expenditure on food and drink is	Amendments have been made to paragraphs 11 and 13 and paragraph 12 has been inserted into the final Ruling to address this issue. In *Cooper's case*, Hill J stated: > Food and drink are ordinarily private matters, and the essential character of expenditure on food and drink will ordinarily be private rather than having the character of a working or business expense. However, the occasion of the outgoing may operate to give to expenditure on food and drink the essential character of a working expense in cases such as those illustrated of work related entertainment or expenditure incurred while away from home. No such circumstance, however, intervenes here. In *Roads and Traffic Authority*, Hill J stated: > … Where a taxpayer is required by his employer, and for the purposes of his employer, to reside, for periods at a time, away from home and at the work site, and that employee incurs expenditure for the cost of sustenance, or indeed other necessary expenditure which, if the taxpayer had been living at home, would clearly be private expenditure, the circumstance in which the expenditure is incurred, that is to say, the occasion of the outgoing operates to stamp that outgoing as having a business or employment related character. The camping allowance considered in *Roads and Traffic* was paid to compensate employees for the disadvantageous conditions of living in a camp and the additional costs of food beyond the cost of living in their own homes and perhaps other expenses caused to them by camping. It followed that the camping allowance would be a

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	generally of a private or domestic nature. The Administrative Appeals Tribunal decision of *Fardell and Commissioner of Taxation* [2011] AATA 725 (*Fardell*) quotes Hill J in *Roads and Traffic* but adds nothing that is of precedential value. The ATO should consider updating the draft Ruling to only exclude day travel where it is 'reasonably expected' that an employee will return on the same day. This qualification preserves the jurisprudence with respect of overnight travel, whilst not applying this as a threshold requirement leading to inequitable outcomes.	living-away-from-home allowance (LAFHA) benefit unless the additional costs of food would, if incurred by the employees, have been deductible expenses. Accordingly, while the deductibility of food and drink while the employees were away from their home overnight was considered and based on the passage quoted from *Roads and Traffic* above, it was found to be otherwise deductible. As such, the camping allowance was not a LAFHA benefit. It is clear that, based on the quotes above from *Cooper* and *Roads and Traffic*, the issue that was being considered was the deductibility of food and drink while an employee was away from their home overnight and in those circumstances, the cost of food and drink was found to be deductible. In relying on these leading cases, the decision in *Fardell* picks up on the point that it is only in circumstances where an employee is away from home overnight that expenditure on food and drink can be deductible. Accordingly, there is precedent which indicates that food and drink is only deductible when an employee is away from their home overnight. Conversely, there is no authority for the proposition that an employee who travels for work and is not 'reasonably expected' to return home on the same day but does return home would be entitled to a deduction for the cost of meals and accommodation. The term 'reasonably expected' is not defined and the use of that term would simply raise additional questions about when it is 'reasonably expected' that an employee would return home on the same day. Further, in *QT90/148 and Commissioner of Taxation* [1991] AATA 346 and *Carlaw and Commissioner of Taxation* 95 ATC 2166 the term 'reasonableness' with regard to the deductibility of meals was discussed and rejected. In *QT90/148 and Commissioner of Taxation*, Deputy President Gerber rejected a claim for a deduction for the cost of meals by a police officer on duties away from home for up to 18 hours at a time. He stated: "Reasonableness" has not yet, as far as I am aware, been used as a litmus test to determine "the extent to which (expenditures) are

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		incurred in gaining or producing assessable income" or were of a private or domestic nature.
5	The draft Ruling references a concept not previously addressed in case law dealing with travel expenses, being the concept of a 'regular place of work'. While the commentary in the draft Ruling on this aspect seems clear on paper, we believe there will be a practical issue in terms of how this is proven and documented. While many employees do have a regular place of work, an increasing number will have multiple places of work, or will have changing place of work. There should be some practical guidance on how to document and demonstrate an individual's regular place of work.	'Regular place of work' has been used in some of our older rulings, for example, Taxation Rulings TR 95/34 *Income tax: employees'* carrying *out itinerant work – deduction allowances and reimbursements of transport expenses* and TR 95/15 *Income tax: nursing industry employees – allowances, reimbursements and work-related deductions*. As such, it is not a new concept. More recently, it has been used in TR 2021/1. where it is acknowledged that employees can have more than one regular place of work. The term is simply a way of referring to the usual or normal place an employee starts and finishes their work duties. Footnote 44 of the final Ruling provides this explanation and refers to paragraph 26 of TR 2021/1 which provides further information about the concept.
6	One of the biggest practical difficulties faced by employers in the context of the matters discussed in the draft Ruling is determining the length of time that will be accepted by the ATO as being a relatively short period of time and therefore business travel having a sufficiently close connection to the performance of employment duties (refer to paragraphs 15 and 18 of the draft Ruling). Some of the examples included in the draft Ruling could better reflect the relevant principles as indicated in paragraph 41 of the draft Ruling, as well as the ATO's historical practices in relation to the private binding rulings which have been issued in recent years.	It is a question of fact as to whether an employee is travelling on work or living at a location. Accordingly, it is not possible to say what a relatively short period of time will be in every case. Practical Compliance Guideline PCG 2021/3 *Determining if allowances or benefits provided to an employee relate to travelling on work or living at a location – ATO compliance approach* has been developed for the purpose of assisting employers in determining whether the allowance they pay their employees is for travelling on work or for living at a location. If the Guideline can be and is followed, employers will not have to determine what a relatively short period of time is. Private binding rulings can only be relied on by the taxpayer who applied for the ruling as the decision is based on their individual circumstances.
7	The draft Ruling provides four factors that support a characterisation that an employee is 'living at a location', with paragraph 43 outlining that no single factor is decisive and the weight of each factor will vary depending on the individual circumstances.	Paragraph 44 of the final Ruling has been amended to explain that the factors should be looked at in light of an employee's individual circumstances and is not a mathematical process.

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	However, each of the 'living at a location' examples do not clarify how the weighting has been applied. For example, based on our reading, it appears that Example 5 of the draft Ruling places greater emphasis on the extended period away from home, as well as the fact that the apartment is big enough to accommodate the family should they visit, however this is unclear. It would be beneficial to expand the 'living at a location' examples to signpost which factors are deemed of greater importance and why. We also request that the final Ruling provides commentary on how to assess deductibility, specifically in a Fringe benefits tax (FBT) context, where the factors are unknown.	
8	The impact of COVID-19 on working arrangements will likely not be limited to this short-term change to the way employees work. It is somewhat inconsistent with this change for there to be a single, documented 'regular place of work'. The ATO should consider providing comments on these types of changed working arrangements or incorporate examples into the final Ruling.	A change in the regular place of work is just one factor to consider when determining whether an employee is living at a location away from their usual residence. Specific web content was developed last year (Quarantine expenses when travelling on work) to address the deductibility of accommodation, food and drink where travel has been affected by COVID-19.
9	All national system employers (as defined in the *Fair Work Act 2009*) in the live performance industry are legally bound to abide by the terms and provisions of the Award when employing employees. Where any employee is required to travel away from their place of residence (usually on touring productions), the provisions of clause 14.3 Expense-related travel allowances are required to be implemented. Under clause 14.3 of the Award, travel allowances do not apply to employees who are engaged to work in a single location away from their place of residence (the place where the employee ordinarily resides) for a specific period of 12 months or more and there are safeguards to ensure travel allowances are paid to employees who are required to travel away from their place of residence. We appreciate the draft Ruling is written for general application across all industries, but the emphasis given to the duration an employee is away from their place of residence is a concern.	The name given to an allowance in an Award or Agreement does not mean that the allowance will be treated as that type of allowance for taxation purposes. The terms 'travel allowance' and 'living-away-from-home allowance' have a particular meaning for taxation law purposes. Unless the allowances paid under the Award or Agreement meet those definitions, they will not be treated in that way. The length of the overall period the employee will be away from their usual residence is just one factor to be considered. The other factors at paragraph 42 must also be considered. Paragraph 51 of the final Ruling refers to employment that requires ongoing travel to multiple locations and prior to its withdrawal in 2017, paragraph 39 of MT 2030 referred to travelling being a regular incident of the occupation. We do not consider these statements to be very different or that the wording in MT 2030

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	Paragraph 50 of the draft Ruling seeks to provide limited assurance that employees who are away from their place of residence for an extended period may not be regarded as 'living' at such a location, but rather travelling on work. However, paragraph 10 of draft PCG 2021/D1 does not reflect the limited assurance provided in paragraph 50 of the draft Ruling. It would be beneficial to the live performance industry if paragraph 39 of MT 2030 *Fringe benefits tax: living-away-from-home allowances* (or words to the same effect/intent) could be incorporated into the draft Ruling and draft Guideline. The use of the words 'where travelling is a regular incident of the occupation' provides more certainty than the words presently used in paragraph 50 of the draft Ruling.	provided more certainty to employees in the live performance industry.
10	We suggest that Example 5 be amended so that the employee is not living away from home and that it be consistent with Example 3 in TR 2021/1. This could simply be achieved by changing the period Yumi is assigned to the Townsville office for five months. This change is consistent with ATO practice over a number of years in relation to private binding rulings issued on the topic and no changes in case law have occurred that warrant diversion by the ATO from its previously accepted view.	To reach the outcome in Example 5 of the final Ruling, the factors set out at paragraph 42 have been considered. We do not consider the outcome in Example 5 of the final Ruling to be incorrect. Private binding rulings are based on the individual circumstances of the applicant and, for that reason, can only be relied on by that taxpayer.
11	We question the relevance of the factor that the accommodation Yumi is put up in in Townsville could accommodate her family, when in fact her family does not accompany her. We do not consider this to be a relevant factor in determining whether the expenses are 'living expenses'. The relevant factor should be whether her family did accompany her. This would also make compliance for employers easier.	Paragraph 61 of the final Ruling explains the relevance of this factor.
12	It is suggested that the outcome in Example 7 is not consistent with the principles in paragraph 41 of the draft Ruling. In this respect, we note that in the *Roads and Traffic* case, it was considered that employees who were in the same camp for up to 125 days and who were required by their employer as an incident of their employment to live close to their work site, were not living away from home but were on business travel for relatively short periods of time.	We do not consider the outcome in Example 7 to be incorrect. The factors in paragraph 42 have been considered and based on those factors, the employees are living at the location. Private binding rulings are based on the individual circumstances of the applicant and, for that reason, can only be relied on by that taxpayer.

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	Similarly, we suggest that the employees in this example have not changed their regular place of work or been away for a sufficiently lengthy period of time for the relevant costs to become living expenses. Also, we suggest that the reliance of living in apartment-style accommodation is over emphasised. Generally, such individuals on these types of employer-required work arrangements will be placed in serviced apartments, which in other parts of the draft Ruling is accepted as short-term style accommodation. Further, apartment-style accommodation is accepted as short-term accommodation in Example 10. Finally, there is no element of choice for the employees in this example. They are at all times travelling to work locations as required by their employer. We suggest the conclusion in Example 7 be changed to the relevant expenses being deductible travel expenses on the basis that the employees have not changed their regular place of work and they have not been away for a sufficient period of time for the relevant costs to become living costs. This change is consistent with ATO practice over a number of years in relation to private binding rulings issued on the topic and no changes in case law have occurred that warrant diversion by the ATO from its previously accepted view.	
13	Example 7 of the draft Ruling (paragraphs 68 to 70) lists an example that is relevant to the live entertainment industry. In the example the individual is identified as living in Australia. However, under tax residency rules they would not be an Australian tax resident. This example is misleading because under the double tax treaties, these individuals are (generally speaking) exempt from Australian tax and FBT (depending on the nature of the engagement) either under Article 7 Business Profits or Article 14 Dependent Personal Services in the OECD Model Double Tax Agreement. The ATO has issued Legislative Instrument F2019L00407 clarifying tax exemption for 'support crew' in film entertainment.	Whether a taxpayer is a resident of Australia for income tax purposes is a different issue to whether their accommodation, food and drink expenses are deductible. Section 8-1 of the ITAA 1997 does not distinguish between residents and non-residents; it applies in the same way to all taxpayers. Footnote 49 has been inserted and provides that Australia's double tax agreements may have application depending on the circumstances.

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14	There are multiple examples in the draft Ruling in which circumstances are considered to be non-deductible accommodation and food expenses on the basis they are living away from home. This includes Example 5 (a period of four months) and Example 7 (a period of 90-120 days), but few that come to the alternative conclusion. In our view, changing these examples would better balance the draft Ruling and provide taxpayers with greater practical benefit.	Refer to our response to Issue 1 of this Compendium. Consideration will be given to whether additional examples should be incorporated into changes being made to web content and *Fringe benefits tax – a guide for employers*.
15	From a practical point of view, the last four factors in paragraph 72 are not terribly useful to apply and are at the employee's choice rather than indicators of what the employment arrangement actually is. Whether the employee is accompanied by their belongings needs elaboration as a factor. Does this assume all of some of the belongings and does that make a difference? Again, this is largely a matter of choice for the employee. Whether the appointment is permanent or indefinite would suggest a relocation. Where the appointment is for a defined period, what is intended to occur after that period from an employment perspective should be an important factor. For example, if an employee is appointed to a position away from their usual place of residence (and usual place of work) for one year only, with no position on offer at their original location would generally be relocated in our view. However, if the employer is assigned to a position away for one year, after which their employer requires them to return to work at their original location, would generally be regarded as living away from home in our view.	Paragraph 80 in the final Ruling has been amended and footnote 50, paragraph 81 and Example 10 have been inserted in the final Ruling to provide additional guidance. Whether an employee has relocated is a question of fact. The factors at paragraph 80 are examples of the factors which may indicate that an employee has relocated and have been included in the final Ruling to assist employees to determine whether they have relocated. Consideration will be given to whether further information or examples should be included in updates to web content.
16	What is the period of time of an 'extended period' outlined in paragraph 72 of the draft Ruling?	Refer to our response to Issue 15 of this Compendium.
17	The various fly-in fly-out examples in the draft Ruling contain specific detail in respect of the time frames which, in our view, are not always consistent with what occurs in practice for employers. In Example 10	No change will be made to Example 12 of the final Ruling. The example is to illustrate when expenses related to an additional property that is used when travelling on work are deductible. The

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	of the draft Ruling the period of time for the overall project is nine months, with the individual being on site twice a month for two nights. In practice, projects will run for multiple years and individuals will be on site on rosters which require them there longer than three nights at a time, for example, for multiple weeks at a time is quite common.	employee in Example 12 is not a fly-in fly-out employee as he does not meet the definition of one. As per 11.9 of Chapter 11 in *Fringe benefits tax – a guide for employers*, an employee is considered to be working on a fly-in fly-out or drive-in drive out (or equivalent) basis when all of the following apply: • on a regular and rotational basis, the employee works for a number of days and has a number of days off which are not the same days in consecutive weeks (that is, following one week after another without interruption), such as a standard five-day working week and weekend • the employee returns to the employee's normal residence during the days off • it is customary in the industry in which the employee works for employees performing similar duties to work on a rotational basis and return home during days off – for example, miners – and the work duties continue to be undertaken by other employees on a rotational basis while any particular employee is on their days off • it is unreasonable to expect the employee to travel to and from work and the normal residence on a daily basis, given the locations of the employment and their home, and • it is reasonable to expect that the employee will resume living at the normal residence when the employment duties no longer require them to live away from home. As the employee in Example 12 of the final Ruling works five days a week every week apart from the four weeks a year he takes annual leave, he does not meet the definition of a fly-in fly out employee.
18	Guidance and/or a further example that covers the impact of changing circumstances when looking at the difference between living away from home and travelling on business would be helpful. For example, a scenario where the employee is travelling on business that is initially intended to be for 80 days (with appropriate other supporting factors to support this) that is extended by a further	Paragraphs 52 and 53 in the final Ruling provide some guidance on this issue. However, Example 8 has been inserted in the final Ruling to provide further guidance on the consequences for an employee who is travelling on work and is then unexpectedly required to continue working at the location away from the usual residence for an extended period of time.

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	30 days due to an unexpected need to extend the project. In our view, if the time extension is the only factor that changes we would consider the employee to continue to be travelling on business. That is, it would not make sense for the employee to all of a sudden be considered to be living away from home. Similarly, it would not make sense for the employee to all of a sudden be considered to be living away from home from the beginning. Possibly the original time period and the extended time period could be viewed as two separate trips, or a better approach is to reassess the travel type on a prospective basis whenever facts change. Employers currently face some uncertainty in relation to these types of scenarios, such as whether to continue to treat an allowance as a travel allowance or whether to start treating it as a LAFHA from a certain point in time. Employers with large numbers of such employees need a practical way to interpret the rules.	Footnote 46 has also been inserted in paragraph 52 to signpost reference to Example 8. While it is acknowledged that changed circumstances provide some issues for employers, PCG 2021/3 can also be used as a way for employers to deal with this issue.
19	The draft Ruling seems to also seek to set timeframe limits into examples (Example 12) which are akin to the *John Holland Group Pty Ltd v Commissioner of Taxation* [2015] FCAFC 82 (*John Holland)* scenarios. In our view, there was no commentary in *John Holland* that would support imposing limited timeframes or project lengths relevant in terms of determining the ultimate outcome of LAFHA or deductible business travel. In our view, there is no justification to add in a timeframe to a scenario virtually identical to *John Holland* as this is not consistent with the *John Holland* principles which were established, and any time reframe should not change the outcome. In our view, Example 12 should not have a fixed timeframe nor do the timeframes assist with the determinations in the examples.	The issue considered by the Full Federal Court in *John Holland* was whether the travel from Perth Airport to the project site in Geraldton would be otherwise deductible under section 52 of the *Fringe Benefits Assessment Act 1986*. *John Holland* does not consider whether the employees received a LAFHA or a travel allowance. Accordingly, whether the timeframe in Example 14 is similar to *John Holland* is not relevant.
20	The ATO concludes in Example 12 of the draft Ruling that the employee is living away from home, without commenting on the travel circumstances. Is it the ATO's view that this decision is independent of, and can exist concurrently with, a deductible travel scenario like in *John Holland* (such that the employee is undertaking deductible travel to a destination, but accommodation, food and drink	Example 14 is based on *Hancox v Commissioner of Taxation* [2013] FCA 735 (*Hancox*). In that case, the taxpayer chose to live a long way from his regular place of work rather than relocate. Accordingly, the transport expenses in Example 14 of the final Ruling would not be deductible.

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	expenses incurred are non-deductible personal living expenses?). Alternatively, is the view that the transport expenses in the Example 12-type scenario also non-deductible? We suggest that both outcomes are inconsistent with the principles outlined in *John Holland*. However, if the ATO believes this is the appropriate outcome, this requires clarification and clear practical examples to illustrate the view that the outcomes for transport and food/accommodation expenses are different.	
21	The reference at paragraph 133 in the draft Ruling that employers can rely on the compliance approach in the PCG 2021/D1 is potentially misleading and could be misconstrued. Paragraph 7 of PCG 2021/D1 excludes fly-in fly-out and drive-in drive-out arrangements.	Paragraph 140 of the final Ruling has been amended to exclude the reference to Rowan in Example 14 of the Ruling. The reference to Roy in Example 13 has not been removed as Roy is not a fly-in fly-out employee.
22	This iteration of the draft Ruling does not address any of the following scenarios which we consider to arise commonly in practice: • Drive-in drive-out travel scenarios, including consideration as to whether the reimbursement of actual expenses and/or a cents per kilometre reimbursement are deductible. • Scenarios under which a domestic employee is requested by their employer to take a secondment to another role with a different group entity on a part-time basis (being two weeks per month) with travel required interstate. • Scenarios where a traveller is based outside Australia and undertakes work both inside Australia and outside Australia in different roles within the same group of entities.	Refer to our response to Issue 1 of this Compendium. Consideration will be given to whether these issues should be addressed in the updated web content and changes to Chapter 11 of *Fringe benefits tax – a guide for employers*.
23	We request the ATO includes an example similar to Example 5 from draft Taxation Ruling TR 2017/D6 *Income tax* and *fringe benefits tax: when are deductions allowed for employee's travel expenses?* where it is the employee's choice to stay overnight and it is specified that there is no employer instruction.	Apart from Examples 8 and 10, no further examples will be added to the final Ruling. Example 5 from TR 2017/D6 will not be replicated in the final Ruling because it demonstrates the principle of 'special demands' travel. This concept is not used in the final Ruling. Refer to our response to Issue 28 of this Compendium. Accommodation and food and drink expenses will only be deductible where the occasion of the outgoing is the income-producing activity.

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		If the duties of employment require an employee to stay away overnight from their home, then the expenses will be deductible.
24	We request the ATO includes an example similar to Example 11 from TR 2017/D6 where an employee is required to split their time between two different ongoing work locations which is not due to personal circumstances.	Example 11 from TR 2017/D6 has been replicated in both TR 2021/1 (refer to Example 8) and in the final Ruling (refer to Example 3). Changes were made to the example because it demonstrated the principle of 'co-existing work locations travel'. This concept is not used in the final Ruling. Refer to our response to Issue 28 of this Compendium.
25	We request that the ATO includes an example similar to Example 13 from TR 2017/D6 where the employee is away for 120 nights however deductibility is retained to illustrate that PCG 2021/D1 does not apply as a set threshold but rather is a practical measure.	Paragraph 54 of the final Ruling states the following: > There is no requirement to follow the guidance in PCG 2021/3 but if it is not followed, then as per paragraph 44 of this Ruling, all the factors outlined in paragraph 42 of this Ruling must be considered and applied to the facts of an employee's individual circumstances to determine whether they are travelling on work or living at a location. Paragraph 140 of the final Ruling also indicates that Roy's employer may choose to apply the compliance approach in PCG 2021/3 instead of working out whether the allowance paid is for travelling or living away from home. It is not considered necessary to include an example to demonstrate the point that PCG 2021/3 does not apply as a set threshold. As such, Example 13 from TR 2017/D6 or something similar will not be replicated in the final Ruling. It was included as Example 7 in TR 2021/1.
26	It is expected that the ATO would be reviewing its rulings and guidance materials to contemplate the deductibility of accommodation, food and drink costs for fly-in fly-out and drive-in drive-out employees following the decision in *John Holland*. No guidance exists to assist employers as to how they should be treating fly-in fly-out and drive-in drive-out arrangements in the draft Ruling with the exception of one example (which more closely resembles the fact pattern of *Hancox* rather than that of *John Holland*). Given the ATO has specifically chosen not to address fly-in	The final Ruling applies to all employees including fly-in fly-out and drive-in drive-out employees. Guidance on fly-in fly-out and drive-in drive-out arrangements is also provided in *Fringe benefits tax – a guide for employers* which is an ATO-view document. The issue considered in *John Holland* was whether the cost of flights (transport expenses) from Perth Airport to Geraldton was otherwise deductible for fly-in fly-out and drive-in drive-out employees engaged under very specific terms of employment. The Commissioner's view on the decision in *John Holland* is set out in the Decision Impact Statement on *John Holland Group Pty Ltd &*

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	fly-out and drive-in drive-out arrangements, the deductibility treatment of such costs remains ambiguous for employers.	*Anor v Commissioner of Taxation* [2015] FCAFC 82, which relevantly states under the ATO view of decision: This was a case of well settled law being applied to a new factual situation. Such matters can involve questions of fact and degree and different facts may result in different conclusions as to deductibility. The ATO will continue to approach travel deduction cases by weighing all the relevant facts and circumstances and applying the relevant tax law and authorities to those facts. Where similar factual situations to the John Holland case arise, the decision of the Court would obviously apply. It also states that the decision has no impact for ATO precedential documents or Law Administration Practice Statements.
27	The interpretation in its current format is detrimental to the Australian film and entertainment industry. Both Federal and State Governments support the film industry with various tax incentives and grants. This policy would actively discourage international film makers from bringing large scale projects to Australia.	It is unclear how this draft Ruling is detrimental to the Australian film and entertainment industry. Paragraph 51 of the final Ruling makes it clear that employees who are away from their usual residence for extended periods will not always be living at a location. It also refers to employment requiring ongoing travel to multiple locations and uses performing artists as an example. The law applies to all employees equally so employees in certain industries cannot be treated differently.
28	TR 2017/D6 introduced concepts of 'special demands travel' and 'co-existing work locations travel' which do not seem to have been carried across to the draft Ruling. It would be useful if the draft Ruling included additional examples covering these circumstances and the treatment of the associated food and drink, accommodation and allowances provided by employers.	TR 2017/D6 has now been withdrawn. Any principles in TR 2017/D6 that have not been incorporated in the draft Ruling are not considered to be relevant in determining whether accommodation, food and drink expenses are deductible. Accordingly, no information or examples regarding these concepts will be included in the final Ruling.
29	The ATO should include an example where an employee is required to work at a location for three months (similar to Example 3 in paragraph 38 of TR 2021/1) but this time the employee is required to stay overnight for the duration of the three months.	Apart from Examples 8 and 10 in the final Ruling, no further examples will be added. Consideration will be given to whether additional examples should be included in updates to web content or other public advice and guidance.
30	Examples should be included where the allowance paid to an employee amounts to a 'travel allowance' and where the employee is away for longer than 90 days where the allowance amounts to a	Refer to our response to Issue 29 of this Compendium.

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	LAFHA. These examples should include other factors that also contribute to the characterisation of the allowance as a travel allowance or a LAFHA and not just rely on the duration of the stay to determine the outcome.	