

TD 94/71 - Income tax: where a person provides 'consultancy services' as an employee of an interposed entity (such as a non-arm's length company, trust or partnership which has its base of practice at the employee's place of residence), are travel expenses incurred by the person in travelling between his or her place of residence and a place where the person performs the services deductible?

 This cover sheet is provided for information only. It does not form part of *TD 94/71 - Income tax: where a person provides 'consultancy services' as an employee of an interposed entity (such as a non-arm's length company, trust or partnership which has its base of practice at the employee's place of residence), are travel expenses incurred by the person in travelling between his or her place of residence and a place where the person performs the services deductible?*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: where a person provides 'consultancy services' as an employee of an interposed entity (such as a non-arm's length company, trust or partnership which has its base of practice at the employee's place of residence), are travel expenses incurred by the person in travelling between his or her place of residence and a place where the person performs the services deductible?

1. Generally no. The same principles that apply to the deductibility of travel expenses of other employees also apply to such 'consultants'. The travel expenditure is of a private nature and not deductible except in those limited circumstances outlined in Taxation Ruling IT 2543 or where the person is carrying on a business at his or her residence.
2. Where a computer consultant has, for example, contracted through an interposed entity with a client to provide services for a period (irrespective of its length) at the client's premises, the consultant is commuting to a place of work as distinct from travelling on his or her work. The expenditure is of a private nature irrespective of whether the taxpayer is an employee of an interposed entity, is in partnership or is a self employed sole proprietor.
3. The question of whether the interposed entity is carrying on a business at the employee's residence is, in general, a question of fact. The nature of the activities conducted by contract consultants in providing professional services will not generally constitute the consultant's home as being a place of business (refer further to Taxation Ruling TR 93/30). In cases where the contract consultant carries out administrative functions or even some contractual work at home, that use of the residence may, at best, constitute a home office. Accordingly, a deduction for motor vehicle expenses would not be allowable.
4. In *FC of T v. Collings* 76 ATC 4254 at 4266; 6 ATR 476 at 488, Rath J quoted with approval the judgment of Lord Wilberforce in *Taylor v. Provan* [1975] AC 194 in which he said:

'It is only if the job requires the man to travel that his expenses of that travel can be deducted, i.e. if he is travelling on his work, as distinct from travelling to his work.'

Lord Wilberforce went on to say that for travel expenses to be regarded as being **on work** rather than **to work**, the taxpayer:

'...must be required by the nature of the job itself to do the work of the job in two places: the mere fact that he may choose to do part of it in a place separate from that where the job is objectively located is not enough.'

5. Rath J (ATC at 4266, ATR at 489) also referred to the views expressed by Lord Simon in that case that 'what is required is proof "in a real sense" that the taxpayer had two places of work' and that:

'...the double work-location must not be merely colourable, but also that the two places of work were a necessary obligation arising from the very nature of the office or the employment itself and not from the circumstances of the particular person appointed or employed.'

6. The fact that a taxpayer may be required to undertake incidental employment duties (such as collecting newspapers, mail or conducting banking) between home and the place of employment would not qualify such travel as being of a business nature. Further reference in this regard should also be made to paragraph 34 of Taxation Ruling MT 2027.

Commissioner of Taxation

4/8/94

FOI INDEX DETAIL: Reference No. I 1217733

Previously issued as Draft TD 94/D57

Related Determinations:

Related Rulings: IT 2543, TR 93/30; MT 2027

Subject Ref: travel expenses; consultants

Legislative Ref: ITAA 51(1)

Case Ref: Taylor v. Provan [1975] AC 194; FC of T v. Collings 76 ATC 4254, 6 ATR 476

ATO Ref: AC 752pt19

ISSN 1038 - 8982