

TECHNICAL UPDATE

BDO WELCOMES DRAFT RULING ON TRAVEL EXPENSES DEDUCTIBILITY BUT RECOMMENDS CLARIFICATION IN SUBMISSION

The Australian Tax Office's (ATO) tax treatment of travel expenses is now clearer since it revised and explained its view of the treatment of many common travel expenses. However, BDO has lodged a submission with the ATO, in which we identified some situations that still need further clarification.

When finalised, [draft tax ruling TR 2017/D6 \(TR 2017/D6\)](#), released on 28 June 2017, on travel expenses deductibility, will replace the now withdrawn guidance in MT 2030 which was more than 30 years old and included the 21 day rule of thumb distinction between travel and living away from home. This rule of thumb has been replaced with a less clear cut distinction between travel and living away from home but indicates this time limit is more like 2 to 3 months. In the BDO submission we have proposed a 6-month rule to determine living away from home as being more consistent with international counterparts' mobility industry standards around 'short term' and the general time limit for taxing employment income in Australia in most of Australia's double tax agreements.

The draft ruling also reflects the ATO's current view of taxation treatment of contemporary working and travel arrangements following the seminal John Holland case with the creation of a new 'special demands' travel category. TR 2017/D6 includes numerous new and interesting examples of both deductible and non-deductible travel expenses, BDO's submission requests clarity on timing and location issues as well as further guidance on how travel between such locations should be treated. In the final ruling we would like to see the ATO define 'remote work location' and include scenarios to address contemporary work practices.

NEW ATO DRAFT GUIDANCE ON TRAVEL EXPENSES DEDUCTIBILITY

TR 2017/D6 provides guidance on when travel expenses of an employee are or would otherwise be, deductible, including 18 worked examples that illustrate whether travel expenses for an employee are otherwise deductible or not deductible. The Draft ruling steers away from providing rules of thumb for determining whether travel expenses are deductible where the travel is undertaken in performing an employee's work activities and instead concludes that it will always be up to the facts of each situation as to whether an employees' travel costs will be deductible. The ruling also separates the treatment of transport costs and costs of accommodation and meals, recognising that differing factors may determine the tax treatment of the transport and accommodation / meals for the same trip.

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The Appendix to this update summarises all of the examples and this update focuses on BDO's analysis of some of the more interesting ones as well as those that have created some uncertainty for taxpayers, which we outlined in our [BDO submission](#) on 11 August 2017.

The main factors that are identified in the ruling for determining deductibility of transport costs are summarised in the table below:

Deductible travel	Non-Deductible travel
Special demands travel (i.e. travel to remote work locations)	Ordinary home-to-work travel
Requirement to move continuously between changing work locations	Relocation travel
Requirement to work away from home for extended period (e.g. temporary alternative work locations)	
Travel between co-existing work locations	

SPECIAL DEMANDS TRAVEL CATEGORY WELCOME BUT DEFINITION OF 'REMOTE WORK LOCATION' REQUIRED

One of the most interesting new concepts introduced in the draft ruling is that of 'special demands travel' which considers the remoteness of the work location of an employee or the requirement to move continuously between changing work locations. This is in response to *John Holland Group Pty Ltd v FCT [2014] FCA 1332 (John Holland)*, which found employees engaged on a project on a fly-in-fly-out (FIFO) basis would have been able to claim a personal tax deduction for the flight costs for travel between the project location and the home location airport had they incurred those costs directly.

BDO supports the introduction of the new concept of 'special demands travel' but notes that there is no definition of what constitutes 'remote' in TR 2017/D6. The examples in the draft ruling indicate that 'remoteness of work locations' refers to any location that is not near another location, either another workplace or place of residence. This is distinct from the concept of 'remote area' pursuant to s58ZC FBT Act 1986, which deals with identifying areas remote from any reasonable sized urban areas. We therefore recommend the final ruling confirms the concept of remote work locations is the same as we infer from the examples.

TR 2017/D6 does provide some good examples of travel to remote work locations including regular travel between states and also concludes that in some circumstances involving fairly long term ongoing travel between remote locations, where costs of an apartment and meals whilst in a second state are deductible. Example 14 has an ongoing travel situation that lasts for 4 months, which concludes that the travel costs are deductible where the employee is under the direction and control of the employer during the weekly travel to and from the remote work location but if they were not under the direction and control of the employer while undertaking the trips, the cost of the travel would not be deductible. A similar distinction is made between examples 3 and 4 where both are similar to the John Holland fly-in-fly-out situation except where the employee is under the direction and control of the employer (example 4) the air fare is deductible) but where they are not under the employer's direction and control (example 3) the air fare is not deductible.

However, the ruling does not have examples of an employee who has a longer term arrangement where they live in one state and work in another state using employer provided accommodation in the work location, commuting weekly between the two. Whilst at first glance this appears to be travel to and from work, would it be deductible travel if the employee was under the direction and control of the employer during the travel? What if it was a requirement for them to travel for their work, or they were paid while undertaking the travel to the 'remote work location' in the other state? The facts do not appear to distinguish such scenarios from John Holland and on that basis, it appears that it should be seen as travel during the course of undertaking work activities and therefore deductible. BDO recommends that the ATO confirms what its view of the deductibility of these type of travel costs would be in the final ruling.

There are a number of other examples in TR 2017/D6 that rely on the employee, being or not being, subject to the 'direction and control' of the employer during the travel. However, there is very little description of what it means for an employee to be under the direction and control of the employer while travelling, therefore BDO seeks guidance from the ATO on how the definition of 'direction and control' applies to wage-earning employees and salary earners while traveling and how it would or would not be seen as being a contrived employment arrangement.

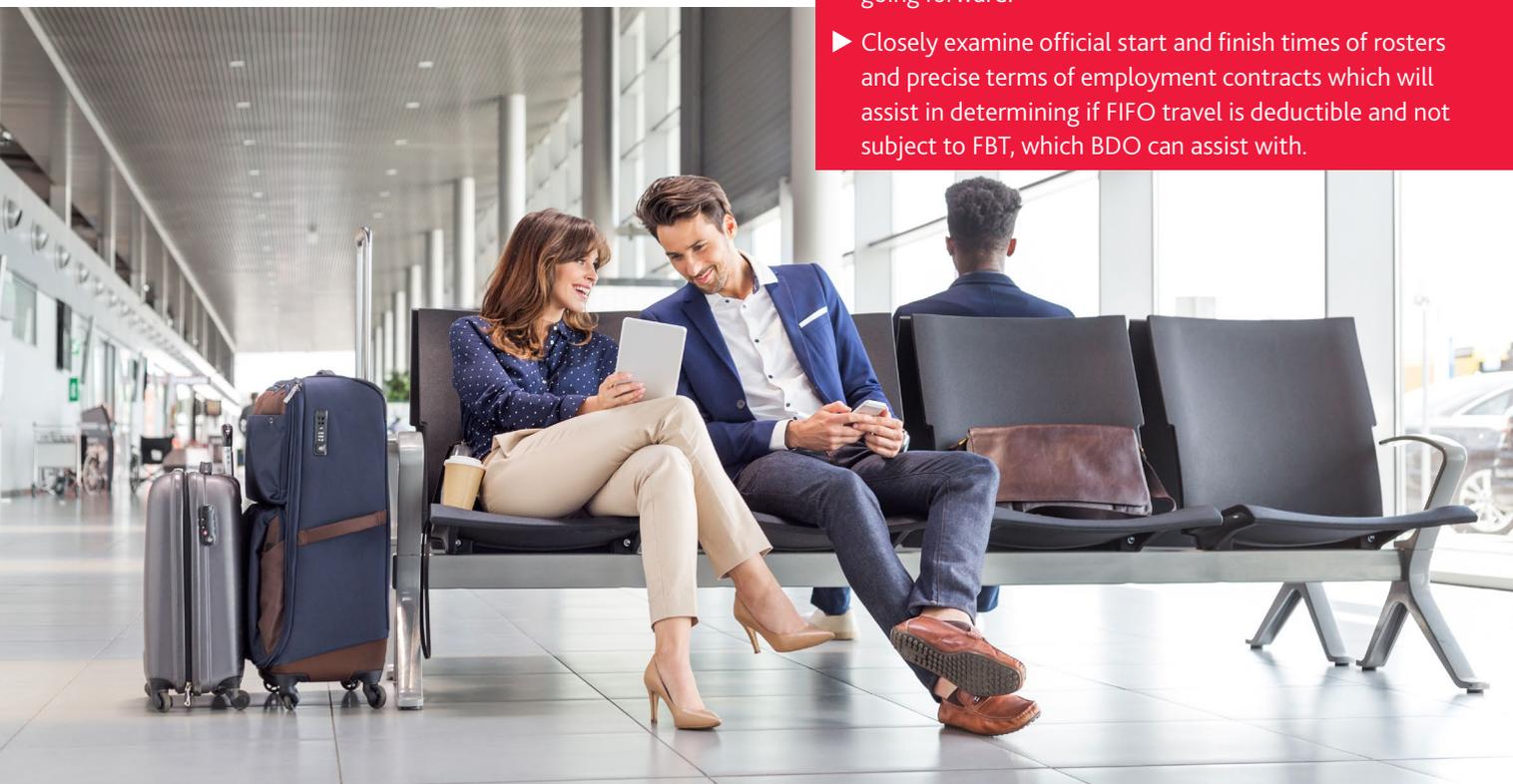
LIVING AWAY FROM HOME / TRAVEL DISTINCTION, BDO SUGGEST 6 MONTHS

Based on the examples in the draft ruling, it also appears the ATO is tentatively suggesting time away from home of less than three months may be deductible. The final ruling needs a more conclusive time period to determine deductibility as well as more examples with different fact scenarios and time periods. BDO has recommended a 6 month or 183-day rule, before mobility travel for business becomes a living away from home arrangement (LAFHA), consistent with industry standards around 'short term' and more in line with tax jurisdictions overseas, with qualitative factors to safeguard against abuse.

Once finalised TR 2017/D6 will replace the 30-year-old Miscellaneous Taxation Ruling MT 2030 on the LAFHA which was withdrawn on 12 July 2017 and contained the practical guideline commonly referred to as the 21-day test. This makes it imperative that the finalisation of the ruling is not delayed whilst ensuring that it address outstanding issues and only apply retrospectively where the new treatment is concessional to the taxpayer.

ACTION REQUIRED FOR EMPLOYERS AND HOW BDO CAN ASSIST

- ▶ Consider how TR 2017/D6 will impact the FBT treatment of any travel and LAFHA benefits to be provided in the current FBT year ending 31 March 2018 and contact BDO for assistance with reassessing if employees are travelling for work or are living away from home.
- ▶ Reassess whether your employees are travelling for work or relocating / living away from home and contact BDO to prepare a Private Binding Ruling request if you want certainty.
- ▶ Ensure employees maintain work related travel records, as taxpayers must apportion travel expenses if there are a combination of work related and private costs, which will not be deductible to the extent they are private or domestic in nature.
- ▶ Consider how travel and LAFHA benefits have historically been treated and contact BDO for assistance with identifying any opportunities to obtain tax refunds from prior years, subject to whether the ruling applies retrospectively and restructure for optimum tax efficiency going forward.
- ▶ Closely examine official start and finish times of rosters and precise terms of employment contracts which will assist in determining if FIFO travel is deductible and not subject to FBT, which BDO can assist with.



APPENDIX

Table – Examples in TR 2017/D6

Example	Deductible	Not deductible
1. Travel between home and a regular work location		Ordinary home-to-work travel
2. Travel by car between home and an alternative but regular work location		Travel between home and an alternative but regular work location
3. Travel between home and remote location as a fly-in fly-out employee	Work-related accommodation	Ordinary home to work travel
4. Fly-in fly-out employee – travel in the performance of work activities from point of hire – <i>NEW Special demands travel</i>	Work-related accommodation and travel	
5. Working at new locations every few weeks and staying away from home – <i>NEW Special demands travel</i>	Work-related accommodation and travel	
6. Day trip to alternative work location	Co-existing work locations travel	
7. Short-term 7 days travel to a temporary alternative work location for training course including 2 days private component thus requiring apportionment	Co-existing work locations travel (fully deductible) Work-related accommodation	Non-work related accommodation
8. Short-term travel to a temporary alternative work location (4 days) with private component thus requiring apportionment	Co-existing work locations travel (fully deductible) Work-related accommodation	Non-work related accommodation
9. Longer-term travel to temporary work location for a 6 week training course	Co-existing work locations travel Work-related accommodation	
10. Ongoing travel in a car to an alternative work location	Co-existing work locations travel Work-related accommodation	
11. Ongoing travel to an alternative work location that is leased by the employer	Co-existing work locations travel Work-related accommodation	
12. Ongoing travel to an alternative work location where employee rents accommodation away from home from spouse	Co-existing work locations travel Work-related accommodation	
13. Ongoing travel to an alternative work location where employees purchase the property they stay in	Co-existing work locations travel Property financing expenses Work-related accommodation (partially deductible to extent of reasonable travel accommodation costs)	Property financing costs not deductible to extent it exceeds reasonable travel accommodation costs
14. Short-term travel to a temporary, alternative work location of 3 weeks – <i>NEW Special demands travel</i>	Special demands travel Co-existing work locations travel Work-related accommodation	
15. Working at a different location for an extended period of 2 months and travelling back and forth every week – <i>NEW Special demands travel</i>	Special demands travel Co-existing work locations travel Work-related accommodation	
16. Working at a different location for an extended period of 4 months and travelling back and forth every week – <i>NEW Special demands travel</i>	Special demands travel Co-existing work locations travel	Living away from home accommodation and meals
17. Secondment to Australia between 90 and 120 days		Relocation travel* Living away from home accommodation and meals
18. Working away from home and staying in rudimentary accommodation		Living away from home accommodation and meals

* Relocation travel is not income tax deductible but it may be FBT exempt.

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