

Ms Ruth Geary
Australian Taxation Office
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22 November 2016

Dear Ms Geary

**Substantiation exception for reasonable travel allowance expenses:
Submission to the Australian Taxation Office (ATO)**

Further to your teleconference on 13 October 2016 with our technical personnel, Tax & Superannuation Australia, on behalf of its members, welcome the opportunity to submit feedback and comments in relation to the ATO's discussion paper (the discussion paper – QC 50217) on the ways it could improve its guidance and administrative practices in relation to the substantiation exception for reasonable travel allowance expenses (the substantiation exception).

A summary about our organisation is contained in **Appendix 1**.

Our members, who are mostly registered tax agents, have over an extended period voiced concerns with us about the difficulties of correctly applying the substantiation exception to their clients' circumstances and the deductibility of travel claims in general.

This submission provides us with the opportunity to outline their observations, feedback and concerns in relation to the currently available guidance and their attempts in complying with the exception. The submission also contains recommendations on how the ATO could improve its guidance and practices.

Scope of our submission

As part of our submission process, we surveyed our membership on the salient issues which they encounter in obtaining the necessary guidance and how they approach the application of the substantiation exception.

Our recommendations have been driven by the priorities, concerns and ideas of our members, while being premised on an overarching objective of achieving a suitable balance of fairness, efficiency and simplicity in the administration of the taxation system.

We acknowledge that the ATO paper contains 30 discussion questions – however, rather than address each single question, we have broadly commented on select issues based on our understanding of our stakeholder concerns. Our comments in this submission will directly address some specific questions as contained in the discussion paper, while other comments will broadly cover several questions.

Recommendations

Based on our survey results and feedback from our members, we outline below our recommendations on how the ATO can improve the application and administration of the substantiation exception. A detailed analysis of our survey results and our analysis leading to these recommendations are contained in **Appendix 2**.

Table 1. List of recommendations

Recommendation 1:	That the full text of both TR 2004/6 and TD 2016/13 be either amalgamated into one single document or housed in one place on ato.gov.au – with the objective that the guidance documents in one spot for accessibility and readily available to be read in conjunction.
Recommendation 2:	That TR 2004/6 and/or TD 2016/13 contain more practical examples of how the substantial exception should be applied.
Recommendation 3:	That the ATO release a comprehensive annual reference guide that deals with the deductibility of work-related travel expenses, travel allowances, PAYG withholding for employers and the application of the substantiation exception.
Recommendation 4:	That all work-related travel allowances is subject to PAYG withholding and included in the taxpayer’s assessable income regardless of the quantum.
Recommendation 5:	That the substantiation exception continues to be available to help taxpayers claim their work-related travel expenditure at this juncture with the view to introducing a singular safe harbour amount (in lieu of the reasonable amounts). The ultimate objective is for taxpayers to substantiate for all their travel claims using technology such as <i>myDeductions</i> .
Recommendation 6:	That the substantiation for accommodation be removed given the ease to obtain, store and retrieve receipts electronically in respect of such expenditure.
Recommendation 7:	That the reasonable amounts for meals are simplified by removing the salary factors only (with location factors retained).
Recommendation 8:	That the ATO explore the merits of a representative diary for meal expenditure in order to ease the compliance burden on taxpayers.

We trust that the analysis and views contained in our submission are of value and that it will assist the ATO in reducing the compliance burden for the tax agent and Australian taxpayer community.

On behalf of our members, we would be pleased to assist you if further opportunities arise for us to consult on this issue.

Should you have any further questions or require any clarification, please contact Andy Nguyen, Tax Technical Services Manager on (03) 8851 4510 or via email at: anguyen@taxandsuperaustralia.com.au.

Yours Sincerely



Moti Kshirsagar
Chief Executive Officer
Tax & Superannuation Australia

APPENDIX 1:

About Tax & Super Australia

Taxpayers Australia Limited trading as **Tax & Super Australia** is a not-for-profit organisation committed to a fairer and more transparent taxation system for every Australian taxpayer.

Our aim is to provide taxation practitioners, superannuation professionals, small businesses and individuals with up-to-date, informative and above all understandable information about Australian taxation.

As a community benefit organisation, Tax & Super Australia is independent and unaffiliated with any political or commercial groups, advertising or sponsoring organisations. We are a member-based organisation, and our loyalty is dedicated to our members.

Tax & Super Australia has been a trusted source of tax knowledge and expertise since 1919 – we are one of the original, if not the first, of such associations in the world.

Our membership and subscriber base comprises tax and superannuation professionals as well as individuals and small businesses. Our plain English approach means that information is not obscured by confusing jargon or heavy technical and overly academic language, while still ensuring that tax issues are comprehensively clarified.

APPENDIX 2:

Detailed analysis of survey outcomes, observations and recommendations

We, at Tax & Superannuation Australia, invited our members to participate in our online survey which identifies some of the questions raised by the ATO in its discussion paper on the substantiation exception.

The outcomes and comments arising from the survey, in addition to our general discussions with members and other anecdotal evidence, have helped inform us in the preparation of the analysis and recommendations contained in this submission.

1. Profile of our respondents and their clients

Tax & Super Australia's membership base principally comprises of registered tax agents and advisers.

Of those who responded to our survey, 85.7% indicated that they are registered tax agents, 10.4% own or managed a small business while 3.9% fell within the "other" category. These percentages are representative of our membership base.

The issues in relation to claiming travel expenses has been concerning our members -particularly in light of recent ATO compliance action which at times has resulted in unjust and/or adverse outcomes for our members' clients. In fact, our survey results show that one in five respondents have had their client reviewed or audited by the ATO in relation to the substantiation exception during the last three years.

The substantiation exception covers a broad cross-section of taxpayers working in various professions and industries. From our survey results, the top five industries/professions that clients of our survey respondents work in and who rely on the substantiation exception include:

1. Road transport (eg. long distance truck drivers): 51.3%
2. Sales people: 47.4%
3. Building and construction: 46.1%
4. Fly-in, fly-out, drive-in, drive-out workers: 27.6%
5. Academia: 21.1%

2. Application and scope of the substantiation exception

i. Confusion and uncertainty in relation to guidance

As observed in the ATO discussion paper, the substantiation exception is not widely understood. We agree with this general observation. In our view, there is misunderstanding and confusion as to how the reasonable amounts for the purposes of the substantiation exception should be applied by taxpayers and practitioners.

For example, some survey respondents did not know that in order for the substantiation exception to apply, the individual must first, in addition to other things, be in receipt of a bona fide travel allowance which sufficiently covers for the individual's work-related travel expenses. Another example

is whether travel allowances should be subject to PAYG withholding and whether they should be disclosed on the payment summaries issued (see below for discussion).

We consider the knowledge gap is ultimately attributed to the following:

- All necessary information on claiming overnight work-related travel, PAYG withholding and the substantiation exception are not being contained in one place for ease of access on the ATO website;
- The available ATO guidance on the substantiation exception is ambiguous, unclear and written in technical language. As a consequence this has led to:
 - Taxpayers and practitioners attempting to claim travel expenditure by solely relying on the reasonable amounts prescribed by the Commissioner of Taxation without, among other things, regard to whether the expenditure is deductible under s8-1 of the *Income Tax Assessment Act 1997* (ITAA97), that it is incurred, or that the taxpayer is in receipt of an allowance; and
 - The changing nature of work – such as, long distance truck drivers who are owner-drivers, increased number of fly-in, fly-out workers, and changes to industrial awards – which have resulted in taxpayers being uncertain as to the appropriate income tax treatment of certain travel expenditure.

ii. Sources of available information on the substantiation exception

Of those surveyed, there was great reliance placed by respondents on the ATO's primary resources on the substantiation exception, namely; Taxation Ruling TR 2004/6 and Tax Determination TD 2016/13 (for reasonable amounts relating to the 2016-17 year).

In fact, 50.6% of survey respondents indicated that they refer to TR 2004/6 while 74% referred to TD 2016/13 as their primary sources of information.

Less emphasis was placed by respondents on obtaining other information from the ATO website. Nonetheless, 27.3% of respondents said that they sourced their information from the ATO legal database, 19.5% from the online tax return instructions and 22.1% from the general ATO website.

As to non-ATO sources of information, 71% of respondents rely on Tax & Superannuation Australia's *Tax Summary* publication, which contains the ATO's reasonable amounts and some general information on the substantiation exception.

iii. Quality of ATO information

Respondents were also asked about the ease of accessing information on the substantiation exception on the ATO website, whether it was understandable and clear, its comprehensiveness and whether there were enough practical examples. Respondents were asked to rate each category between 1 to 5 (with 1 being for "not at all" and 5 being for "no need for improvement").

Of the areas which required improvement, respondents indicated that the available information from the ATO needed to be more comprehensive¹ and that there need to be more relevant practical examples².

1 40.8% of respondents in the survey rated the comprehensiveness of the information at either "1" or "2"

2 40.8% of respondents in the survey rated on the availability of relevant practical examples at either "1" or "2"

iv. Improvements to TR 2004/6, TD 2016/13 and other guidance

Based on our survey responses, our feedback on how TR 2004/6 and TD 2016/13 could be improved are outlined below.

Single place to access information

TD 2016/13, which outlines the Commissioner of Taxation's various reasonable travel and overtime meal allowance expenses for the 2016-17 income year, notes that the TD must be read together with TR 2004/6. Paragraph 3 of the TD outlines some general points from the ruling in relation to the exception.

From the survey outcomes, it would not be unreasonable to conclude that some users rely on the TD for the relevant reasonable amounts but may not necessarily refer to the ruling to gain a better understanding or to clarify the operation of the substantiation exception. For example, a practitioner who uses TD 2016/13 will need to refer to TR 2004/6 if they wanted to determine whether the allowance received was 'bona fide'. Currently, it would be necessary for the user to search separately to find each document on the ATO legal database.

Recommendation 1

We recommend that the full text of both TR 2004/6 and TD 2016/13 be either amalgamated into one single document or housed in one place on ato.gov.au – with the objective that the guidance documents in one spot for accessibility and readily available to be read in conjunction.

More practical worked examples

Our survey respondents are correct in observing that the ATO's online guidance do not contain ample worked examples on commonly encountered situations. The same applies to the number of examples contained in TR 2004/6 and TD 2016/13.

For example, members occasionally raise with us a situation where an individual receives a bona fide travel allowance from their employer for meals and the allowance received is below the reasonable amount prescribed by the Commissioner.

For such circumstances, TR 2004/6 does not adequately address whether the individual can rely on the substantiation exception to claim for expenses incurred up to the Commissioner of Taxation's reasonable amount or whether the claim is limited to the amount of the allowance received. Private binding ruling 1011819917517 appears to suggest the possibility of being able to claim up to the Commissioner's reasonable amounts in these circumstances.

Recommendation 2

In light of the survey results and in order to reduce any misunderstanding or confusion, Tax & Superannuation Australia recommends that TR 2004/6 and/or TD 2016/13 contain more practical examples wherever possible as to how the substantial exception should be applied.

Comprehensive ATO guide on travel claims

Apart from information not being available from one place, we have also observed that there is a lack of ATO guidance which is easy to read and understand and that is contained as a single reference.

Recommendation 3

Other than changes to the TR 2004/6 and TD 2016/13, Tax & Superannuation Australia recommends that the ATO release a comprehensive annual reference guide that deals with the deductibility of work-related travel expenses, travel allowances, PAYG withholding for employers and how the substantiation exception should be correctly applied.

We consider the introduction of such a resource would be highly valued by tax agents, taxpayers and employers.

In our view, the threshold question of whether work-related travel expenses incurred should be deductible to individuals under s8-1 of the ITAA97 is one that can be applied poorly. In some cases, we have seen taxpayers apply the reasonable amounts without addressing this threshold question. Therefore, we consider that a greater emphasis should be given by the ATO to creating centralised materials which assist taxpayers across a range of different professions/industries in determining whether their work-related travel is deductible in the first place.

In this regard, we would envisage the guide to cover most aspects of travel claims including but not limited to:

- Circumstances where individuals may claim a deduction for work-related and overnight travel expenses under s8-1 of the ITAA97 – including examples from a cross-section of different professions (eg. itinerant workers, academics on sabbatical, airline employees)
- Distinguishing between a travel allowances and living-away-from-home allowances and its impact on deductibility of travel expenses
- The maintenance of travel diaries for substantiation purposes
- The application of the substantiation exception including all reasonable amounts for the year, and
- PAYG withholding requirements for employers where allowances are paid (if relevant).

The guide must be written in plain English and contain practical worked examples. Current ATO guides of the type we have described include *Rental Properties 2016* (NAT 1729) and *Advanced guide to capital gains tax concessions for small business 2013-14* (NAT 3359).

v. *All allowances should be disclosed on employee's PAYG payment summary*

We note that there is an approved PAYG withholding variation which allows for certain allowances paid not to be subject to PAYG withholding **and** not shown in an employee's payment summary (*PAYG Bulletin No. 1 – Taxing of allowances for the 2000/01 and future years*). One of the assumptions for the variation is that the deductions claimed would at least equate to the amount of the allowance.

As noted in the ATO discussion paper, the PAYG Bulletin can pose taxpayers difficulties where the individual seeks to claim deductions and attempts to include an amount of allowance that is not on their payment summary.

This has prompted us to ask as to whether our members make inquiries from their clients about any allowances paid where the allowance itself is not required to be disclosed in the payment summary but there is an intention to claim travel expenses.

On a scale ranging from "frequently" to "never", 69.7% of respondents said that they "frequently" made such inquiries, with 22.4% saying "sometimes", 0% saying "rarely" and 7.9% saying "never".

Further to this, we also queried whether all travel-related allowance should be subject to PAYG withholding and treated as assessable income, with the employee claiming any allowable deductions under s8-1 of the ITAA97 (regardless of whether the allowance is greater than the reasonable amount).

Interestingly, 57.1% of respondents affirmed this view while 42.9% answered in the negative – that is, things should be kept the way they are.

Recommendation 4

Tax & Super Australia support the view of the majority and recommends that all work-related travel allowances is subject to some form of PAYG withholding, included in the taxpayer's payment summary and as such, assessable income regardless of the quantum. The amount of tax withheld with respect to the allowance should also be disclosed.

Our view aligns with a comment made by one respondent who observed that it was difficult to determine whether their client is entitled to claim for work-related travel deductions if the allowance is not shown on the payment summary. As a consequence, this required the respondent to make further enquiries in firstly, determining from the employee whether an allowance had been paid and then secondly, contacting the relevant employer to confirm its quantum and whether it constituted an allowance for work-related travel.

We consider that disclosure of a travel allowance in the payment summary would alleviate the compliance burden on practitioners in determining whether there are any deductions to be claimed against it (regardless of whether it exceeds the reasonable amount).

One alternative approach would be for an employer to not withhold on the payment of the allowance but still require the disclosure of the allowance in the payment summary. This approach would allow the individual to benefit from being able to commit the entire value of the allowance towards their outlay. However, a disadvantage is that it places a similar burden on employers as with the status quo in that they must be able to appropriately classify the allowance as a “travel allowance” for the purposes of determining whether withholding should be applied.

Lastly, we note that if there are changes to the withholding requirements, it would be of critical importance for the ATO to consider this in light of the recently enacted Single Touch Payroll provisions. One implication of the new regime is that payment summaries are no longer required to be issued to employees unless requested.

vi. Use of apps and other technology for substantiation purposes

A question posed in the ATO discussion paper was whether the substantiation of travel expenses is no longer onerous with record keeping apps such as the ATO’s *myDeductions* app and similar technologies being available (Question 2).

When this question was put to survey respondents, 29.9% believed that such technology would alleviate the compliance burden. However, 70.1% of respondents were either in disagreement (24.7%) or unsure/neutral (45.5%).

In our view, while the availability of such apps undoubtedly makes record keeping easier for taxpayers and should be encouraged, the mixed responses from respondents to our survey indicates that there is still some time to go before there is general acceptance and a social shift by the taxpayer and tax agent community of using such substantiation tools as the norm.

By way of example, some respondents commented that they themselves or their clients have not used the ATO’s app, while others have indicated that it would require a high level of discipline by affected taxpayers to record all their documentary evidence – particularly for taxpayers where travel is an inherent part of their duties (eg. long distance truck drivers).

It would therefore be incumbent on the ATO to conduct further campaigns to educate the tax agent and taxpayer community as to the benefits of using the app for substantiation purposes, which may include such things as the ability to claim travel deductions which exceed the reasonable amount.

Recommendation 5

Tax & Superannuation Australia recommends that the substantiation exception continues to be available to help taxpayers claim their work-related travel expenditure at this juncture with the view to introducing a singular safe harbour amount (in lieu of the reasonable amounts). This should be introduced with the ultimate objective of encouraging taxpayers to use technology as their primary basis for substantiating travel claims. The safe harbour could be phased-in as use of these substantiation tools become more mainstream in the community.

3. Accommodation

Removal of the substantiation exception for accommodation expenses

Given that accommodation allowance rates are set out in awards or determined by the employer as being reasonable and appropriate following enquiries made, a question posed in the ATO discussion paper was whether it would be necessary for there to be a substantiation exception for accommodation expenses.

Put to our survey respondents, 54.5% were in favour of removing the substantiation for accommodation while 45.5% wanted it kept as is.

Recommendation 6

Tax & Superannuation Australia agrees with the view favoured by the majority of respondents and recommends that the substantiation for accommodation be removed. We consider that a reasonable amount for accommodation expenses would not be necessary given the ease to obtain, store and retrieve receipts electronically in respect of such expenditure incurred.

Removing the exception for accommodation would be akin to the approach adopted under the fringe benefits tax provisions where employees are required to keep records for the “exempt accommodation component” when in receipt of a living-away-from-home allowance.

As one respondent rightfully observed, in many cases, accommodation expenses are usually paid for by the employer or the amount is reimbursed by the employer. Any allowance paid is usually to cover for variable costs including meals and incidentals. In the absence of a reasonable amount for accommodation, the availability of a singular safe harbour could be valuable for those taxpayers who are not able to maintain the requisite records.

4. Meals

i. Use of singular 'daily' reasonable amount for meals

We asked our members whether a singular daily rate for meal expenditure should be introduced regardless of the employee's salary and location. For example, that singular rate could be an amount equal to the higher of: (i) a 'flat rate' amount determined by the Commissioner of Taxation, and (ii) the amount paid under the taxpayer's industrial award, where relevant. This question is similar to that contained in the discussion paper (at Question 13).

Our survey showed that 57.1% of respondents preferred a singular daily rate, while 42.9% indicated that the current approach be retained.

While salary levels were not an issue, those who were against a singular daily rate expressed concern that a flat rate may disadvantage those who are travelling in high cost country centres and certain overseas locations; that is, the costs can vary significantly from one location to another. Further, if a singular daily rate were to be used, it would be necessary for the taxpayer to take into account and to apportion for any meals not consumed during that day.

Recommendation 7

Based on above feedback, Tax & Superannuation Australia recommends that the reasonable amounts for meals are simplified by only removing the salary factors rather than the location factors due to their variability between different locations.

While the current reasonable amounts provide higher amounts for higher income earners, we consider that it is incumbent on these taxpayers to substantiate their claims if their expenditure for meals exceeds the reasonable amount prescribed for the relevant location.

ii. Use of a representative diary for meals

The discussion paper (at Question 22) put forward the idea that a four week representative diary could be used for the purposes of establishing an average daily expense for the cost of meals incurred by the taxpayer and that rate applied for the remainder of the year. Such a diary would apply to claims that were between a safe harbour and the reasonable amount.

Our survey put to respondents a broader question of whether such a representative diary would be valuable in substantiating meal expenditure for work-related travel (either in lieu of the substantiation exception or as an additional option to it).

The survey results showed that 16.9% of respondents consider a representative diary to be the better option to the substantiation exception while 42.9% of respondents considered the substantiation exception to be better. Interestingly, 40.3% of respondents supported having both options available and to allow for a choice to be made for each income year.

In our view, the survey results indicate that respondents are open to the idea of having some form of representative diary. We anticipate such a diary being of value to those taxpayers who continuously travel in the course of their duties (eg. long distance truck drivers or sales people).

Recommendation 8

We recommend that the ATO explore the merits of a representative diary for meal expenditure in order to ease the compliance burden on taxpayers. Further consultation should be sought on the form of the diary and the relevant requirements on how it should be maintained (for example, that expenses incurred during the period in which the diary is maintained must be representative of the entire income year).