Appendix A

Long distance truck driver succeeds in large claim for meals

What you need to know

A long distance truck driver contesting the disallowance of his claim for meal expenses was probably lucky to convince the ART that an amount in excess of $30,000 had been incurred during the 2020-21 year in gaining or producing his assessable income. Having cleared that hurdle, the Tribunal held that the substantiation exception in s900-50 *ITAA 1997* applied to relieve him of the normal requirement to produce written evidence covering his entire claim.

These cases come up more often than they should, and the Commissioner should perhaps consider changing his approach to administering the law in relation to these sorts of claims.

Facts

The Applicant, Mr Shaw, is an employee truck driver based in Perth. His truck runs cover long distances across sparsely populated areas.

He received a travel allowance from his employer which he declared, and in the year ended 30 June 2021 he was away from home for 310 nights. Relying on advice from his accountant, he multiplied that number by the Commissioner's reasonable travel allowance amounts set out in TD 2020/5 ($105.75 per day allocated across three meals), resulting in a claim of $32,782.50. The amount of the claim was in excess of the travel allowance received.

Mr Shaw and his accountant then fell into the common trap of thinking that he was not obliged to provide receipts or other documentary evidence to back up his claim because it fell within the limits set in TD 2020/5.

They were wrong about that. The limits set out in TD 2020/5 are an administrative safe harbour but they do not represent an automatic statutory deduction. Perhaps they should.

On audit, the ATO disallowed Mr Shaw's $32,782.50 claim in its entirety. On objection, the Commissioner was prepared to accept that he would have spent a somewhat stingy $19 per day on meals, being $5 for each of breakfast and lunch, plus $9 for dinner.

There is nothing in the Reasons for Decision that explains where those very low numbers came from, but they are probably better than nothing. Multiplied by Mr Shaw's 310 nights away from home, it results in an allowable deduction of $5,890, leaving $26,892.50 in dispute.

Mr Shaw sought to have the objection decision reviewed by the Tribunal.

What the law says

The law is kind of clear about what is required, although you have to read it carefully. Meal expenses are a work expense deductible under s8-1 *ITAA 1997*, so the place to start is s900-15 (all references are to the *ITAA 1997):*

> *"(1) to deduct a work expense:*
>
> *(a) It must qualify as a deduction under some provision of the Act outside this division.*
>
> *and*
>
> *(b) You need to substantiate it by getting written evidence"*

The term “written evidence” is defined in s900-115 as a document that sets out the name of the supplier, the amount of the expense, a description of what was supplied and the date of the supply. Absent any other provision, the substantiation rules would require truck drivers to maintain written evidence for each and every meal they buy while traveling - quite a burdensome task.

But the law cuts a bit of slack for those who are in receipt of a travel allowance:

> *“**900-50 Exception for domestic travel allowance expenses***
> *(1) You can deduct a travel allowance expense for travel within Australia without getting written evidence or keeping travel records if the Commissioner considers reasonable the total of the losses or outgoings you claim for travel covered by the allowance”*

At face value, that seems to be saying that you don’t need to produce any written evidence where you are in receipt of a travel allowance and your claim for meal expenses does not exceed the reasonable limits published each year by the Commissioner. But remember, in order to qualify for a deduction in respect of a work expense it firstly has to be a deductible amount, in this case under s8-1. And in order to be deductible under s8-1, an amount has to be incurred.

So, in order to get to the provision that relieves you from having to keep written evidence about your meal expenses, you first have to run the gauntlet of s8-1, which requires you to prove that you have incurred the relevant amount, for which you need some form of written evidence. How Kafkaesque.

And if that’s how the substantiation rules work, what is the use of even having the substantiation exception? Little wonder that taxpayers and even some of their advisers sometimes get confused.

What the Commissioner says

The Commissioner has said in his guidance material (TR 2004/6) that in the context of the substantiation exception, the requirement to show that an amount has been incurred involves a lower bar than that involving the need for “written evidence”. But quite how much lower isn’t made as clear as it could be, as what counts as satisfactory evidence for a claim *“will vary according to individual circumstances and the nature of the claim.”* at [para 15]

Thankfully, the ATO’s guidance is a lot clearer in example 3 of para 28, TD 2023/3, which considers the situation involving Glenn, a truck driver traveling between Melbourne and Adelaide. As well as having his work diary, Glenn would need to show that he received an allowance for meals on each travel day and demonstrate his typical spending pattern on meals. This could be achieved by way of diary entries, bank records and receipts kept for a representative sample of trips.

Mr Shaw’s evidence

The Applicant was unable to provide evidence about his expenditure on specific meals, but he was accepted as being a witness of truth by the Tribunal. He explained that because he traveled to a lot of remote locations, including driving up to the Pilbara and across the Nullarbor, it was often necessary to sleep in his cab in locations where there were no food outlets. He therefore had a freezer and a hotplate in his cab which he would use to prepare his meals.

Mr Shaw’s evidence was that he would regularly transfer money to his partner’s bank account on a Monday so that she could undertake a big shop for the provisions he would need on his travels for the coming week. On cross examination he conceded that on occasion his partner might use some of those funds to also buy groceries for the family, although he indicated these private purchases were infrequent and involved only small amounts.

Mr Shaw provided bank statements for the period from April 2020 to April 2021 which illustrated the money transfers made to his partner. He also estimated that when he did purchase food on the road,

he would typically spend about $122 per day, which was in excess of the Commissioner's guidelines. However, he was happy to forego the additional claim if it simplified his substantiation obligations.

Consideration by Tribunal

In reaching its decision, the Tribunal was critical of both parties for the way they had approached the case.

It will come as no great surprise that the Tribunal was unimpressed with the unrealistically low spending levels the Commissioner was prepared to concede in allowing the objection in part:

> *"the objection decision allowed $19 per day for Mr Shaw's meals while on the road. This is, in the Tribunal's assessment, an absurdly inadequate amount."* at [30]

And:

> *"The Tribunal is not sure how the Commissioner thinks anyone would fund three meals a day for $19 in the Relevant Year, let alone for an individual of Mr Shaw's stature."* at [31]

At the same time, the taxpayer's representative was rebuked for wrongly thinking that the substantiation exception in s900-50 amounts to a statutory deduction where the claims are within the Commissioner's published reasonable expenditure guidelines:

> *"If a tax agent in Australia takes a similar approach to Mr Shaw's tax agent in the context of TD 2020/5, they should change their practice as that is not supportable at law."* at [35]

Practitioners with truck driver clients would do well to heed this advice. Otherwise they could themselves be at risk if their clients have their claims adjusted and penalties are applied.

The Tribunal helpfully puts Mr Shaw's representative straight by referring to the need to keep proper records for a short period to establish the amounts incurred for the full year of income. This advice is consistent with the Commissioner's guidelines in TR 2004/6, TD 2023/3 and TD 2020/5:

> *"From a practical perspective, a well-advised truck driver claiming the maximum reasonable daily amount (or in fact any amount) would maintain full substantiation of meal expenses for a short period in each year when relying upon TD 2020/5. That is what is said in TD 2020/5."* at [39]

While Mr Shaw was not able to provide full substantiation for even a short representative period, the Tribunal was prepared to accept an arbitrary basis for apportioning the grocery shopping as between purchasing provisions for his on the road meals and private purchases. In doing so, the Tribunal pointed out there is publicly available information about grocery shopping spending patterns the Commissioner could have relied on. The Tribunal also accepted the bank statements provided and took account of Mr Shaw's evidence about his eating and spending habits in deciding that, on balance, he had incurred the relevant expenditure on meals.

That conclusion triggered off the substantiation exception in s900-50.

Importantly, the Tribunal further held that, in any event, s900-200 would also apply to allow a deduction for the amount claimed. That section provides that a right to deduct an outgoing is not affected by a failure to follow the rules in Division 900 where the taxpayer had a "reasonable expectation" that they would not need to do so in order to claim the deduction.

Comment

This is not the first time s900-200 has been applied in support of a truck driver's claim for meal expenses. In *Gleeson v C of T* [2013] AATA 920 (20 December 2013), Senior Member G Lazanas,

having already ruled that the meals expenditure claimed had been incurred for s8-1 purposes, also held that the s900-200 exception applied in any event – at [61-63].

In that case, the Tribunal member was satisfied, on the basis of advice given to Mr Gleeson by his tax agent, as well as ATO guidance material that could easily be misinterpreted, that he had a reasonable expectation that he would not have to follow the substantiation rules in order to get his deduction for meal expenses. That same line of reasoning could easily be applied to most long distance drivers caught short on their written evidence.

All things considered, Mr Shaw was probably a little lucky to strike a Tribunal member who was prepared to adopt a practical approach on what he needed to prove to establish how much had been incurred in meal expenses.

However, the Commissioner may wish to consider changing the way he administers the law in relation to long distance truck drivers. The reasonable travel allowance caps that are published every year don't seem excessive and most drivers seem happy to keep their claims within those limits.

The caps can result in claims of up to around $30,000, and while the Commissioner might not welcome such large claims, meals purchased while traveling overnight for employment reasons have always been a legitimate tax deduction.

It is surely not unreasonable for the Commissioner to accept claims based on fatigue management records which establish the number of nights away from home that are applied to the Commissioner's reasonable travel allowance caps. Such an approach would operate much like a statutory cap which, although not part of the law, would be well within the Commissioner's power of general administration.

Also, it doesn't look as if the Commissioner gave much thought to the potential application of s900-200 by trying to establish whether Mr Shaw had a reasonable expectation that he could safely claim any daily amount that falls within the Commissioner's published guidelines. This is an important part of the substantiation rules and it should not have been left to the Tribunal to rectify that oversight.

The reasonable expectation rule in s900-200 is a further reason for the Commissioner to accept, under a fair and practical approach to tax administration, that drivers restricting their claims for meal expenditure to the annual caps published by the ATO are taken to have incurred that level of expenditure for s8-1 purposes.

Anything less risks perpetuating an unwarranted "gotcha" approach to tax compliance that does not reflect well on the ATO.

Unless and until the ATO's approach to claims for meal expenses is changed, drivers and advisers need to be aware of the requirement to maintain proper written evidence of meal expenditure for at least a two-week representative period each year in order to demonstrate how much has been incurred for the full year of income. The s900-50 exception to the requirement to maintain written evidence can then be applied to the balance of the claim.

Shaw v C of T [2025] ARTA 224 (19 March 2025), General Member J. Dunne

END