

# Work and travel deductions – Whoops!

September 2018

## 1. An \$7.3 billion a year problem...

### Individuals tax gap of \$8.7 billion highlights need for action

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Today the Australian Taxation Office (ATO) has published the income tax gap for individuals not in business. The gap is an estimate of the difference between the tax the ATO collects and the amount that would have been collected if every one of these taxpayers was fully compliant with the law.

Do you know those evil multinational and large companies with all their high paid tax agents incorrectly avoid about \$2.5 billion a year in tax? How evil are they, huh? Picking on the little, hard-working guy, huh?

Let's just end that argument now as the Commissioner, the same guy who gave us the \$2.5 billion figure, has now worked out what those little, hard-working guys are either not declaring as income, or just making up deductions for. And their dodgy claims, with a lot of help from tax agents, means they don't pay \$8.7 billion every year.

And to make it worse, this figure excludes individuals classified as high-wealth who control a net wealth of \$5 million or more – this is just your average individual tax returns.

Of this \$8.7 billion, only \$1.4 billion relates to unreported income, which is normally due to the client not telling the agent about the income. But the rest of this lost tax (\$7.3 billion) are incorrectly claimed deductions. And most of these are work related deductions.

From the Commissioner's review of the tax gap for individuals not in business he found the following:

**Comparison of the incidence of adjustment in the 2013–14 and 2014–15 REPs**

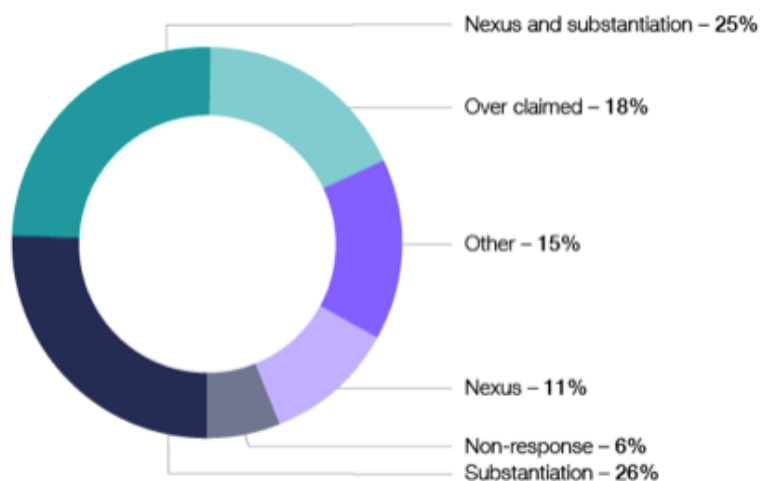
	Full sample no.	Full sample %	Agent-prepared sample no.	Agent-prepared sample %	Self-prepared sample no.	Self-prepared sample %
All cases	858	100%	614	72%	244	28%
Cases with adjustments	615	72%	476	78%	139	57%

Tax agents get it wrong 78% of the time and self preparers only 57% of the time. By the way, the results show that when tax agents get it wrong, they get it “more wrong”... 85% of the value of mistakes are in tax agent prepared returns...

Range of adjustments	Self-prepared % of all adjustments	Self-prepared % of values adjusted	Agent-prepared % of all adjustments	Agent-prepared % of values adjusted
\$0–\$150	9%	<1%	28%	1%
\$151–\$300	4%	1%	12%	2%
\$301–\$500	2%	<1%	9%	3%
\$501–\$1,000	3%	2%	10%	7%
More than \$1,000	5%	12%	20%	71%
Total	22%	15%	78%	85%

But what I find most interesting is why these mistakes were made. Have a look at this chart:

**Reasons for work-related expense adjustments**



51% of all the adjustments were due to, at least in part, substantiation issues.

This means, I think, tax agents may not be explaining the substantiation issues that come with claiming work related deduction... So, let's look at them...

2. "Tax myths busted!", Commissioner of Taxation, [www.ato.gov.au](http://www.ato.gov.au), 30 June 2018  
<https://www.ato.gov.au/Media-centre/Media-releases/Tax-myths-busted!/>

The Commissioner has identified the top 10 tax myths and misunderstandings that are those involved in preparing individual tax returns have, including tax agents prepared and self-prepared returns. And generally, they relate to substantiation of work related deductions.

***MYTH #1: Claim \$150 for clothing and laundry, 5,000 kilometres at 66 cents for car related expenses, or \$300 for work-related expenses***

The first and main myth the Commissioner identifies is that everyone can automatically claim \$150 for clothing and laundry, 5,000 kilometres at 66 cents for car related expenses, or \$300 for work-related expenses, even if they didn't spend the money.

The Commissioner states that these are just record-keeping exemptions that provide relief from the need to keep receipts in certain circumstances.

However, they are not an automatic entitlement or a "standard deduction" for everyone.

While you don't need receipts for claims under \$300 for work related expenses, \$150 for laundry and 5,000 kilometres, you still must have spent the money, it must be related to earning your income, and you must be able to explain how you calculated your claim.

But let's look at where these myths come from...

***\$300 standard deduction???***

The rules regarding the required substantiation for work related deductions are found in Division 900 (and Division 28) of the ITAA97.

Division 900 covers substantiation requirements for work expenses (Subdivision 900-B), car expenses (Subdivision 900-C) and business travel expenses (Subdivision 900-D).

These substantiation rules only apply to individuals (section 900-5), and only applies to employees or those who have similar withholding as employees (see list in section 900-12).

**Section 900-15 states that even if a "work expense" meets the conditions for a deduction (for example section 8-1), there will be no deduction unless the individual substantiates it "by getting written evidence."**

Under section 900-30, a work expense is a loss or outgoing you incur in producing your salary or wages and includes travel and meal allowance expenses, Division 40 deductions and section 25-60, 25-65 and 25-100 deductions.

The written evidence must be retained for 5 years from the due day for lodging an income tax return or when the return is lodged, whichever is later (section 900-25).

There is a “small total of expenses” exception. Subsection 900-35(1) ITAA97 states:

*If the total of all the \*work expenses (including \*laundry expenses, but excluding \*travel allowance expenses and \*meal allowance expenses) that you want to deduct is \$300 or less, you can deduct them without getting written evidence or keeping travel records.*

To be clear, the \$300 rule is just a relief of having to have written evidence of a certain type, which are explained in Myth #3 below.

One more time... While you don't need receipts for claims under \$300 for work related expenses, \$150 for laundry and 5,000 kilometres, you still must have spent the money, it must be related to earning your income, **and you must be able to explain how you calculated your claim.**

So, document why you came to the amount you did, including what they purchased.

***MYTH #2: It's the tax agent's problem because he let me have the deduction***

Another myth that the Commissioner keeps finding is that taxpayers believe that if they use a tax agent, the tax agent will take responsibility for any deductions claimed.

The Commissioner states that even if an individual uses a tax agent, they are ultimately responsible for ensuring the information in the return, including the deductions claimed, is correct.

Do your clients know what they are signing?

***MYTH #3: "I don't need a receipt, I can just use my bank or credit card statement".***

The Commissioner states this is only the case if the statement meets the written evidence requirements in Division 900.

What is written evidence is covered in Subdivision 900-E. It states that written evidence can be a document from the supplier of the goods or services the expense is for. The document must set out:

- The name or business name of the supplier; and
- The amount of the expense, expressed in the currency in which it was incurred; and
- The nature of the goods or services (if the document the supplier gave you does not specify the nature of the goods or services, you may write in the missing details yourself); and
- The day the expense was incurred (if the document does not show the day the expense was incurred, you may use a bank statement or other reasonable, independent evidence that shows when it was paid); and
- The day it is made out.

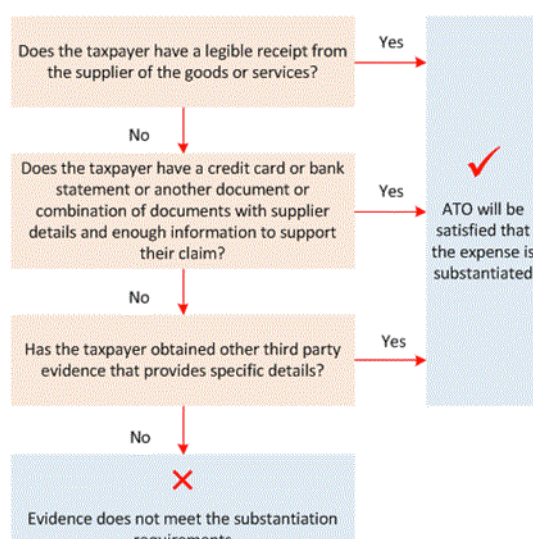
So, if the credit card statement or bank statement does not cover this information then there is no deduction.

In Practice Statement Law Administration PSLA 2005/7 (as updated to July 2015), the Commissioner states:

*Where the above documents are insufficient, we accept the following documents (or combinations of documents) as acceptable evidence of expenses:*

- *bank statements*
- *credit card statements*
- *BPAY reference numbers, combined with bank statements, or*
- *BPAY reference numbers, combined with tax invoices.*

The Practice Statement has the following diagram:



Subdivision 900-E states that “written evidence” must be “a document from the supplier of the goods or services the expense is for” (see subsection 900-115(2)). However, the second square in the document above shows that the Commissioner may accept merely a credit card or a bank statement. Further, subsection 900-115(3) states that if the written evidence from the supplier does not contain all the information required an individual can either use a “bank statement” or write the information themselves.

#### ***MYTH #4: "I can claim all of my capped phone costs and my internet costs"***

This is what the Commissioner thinks of this myth...

<https://www.ato.gov.au/Individuals/Income-and-deductions/Deductions-you-can-claim/Other-deductions/Claiming-mobile-phone,-internet-and-home-phone-expenses/>

If a taxpayer uses their phones or internet for both work and private use, they will need to work out the percentage that reasonably relates to your work use.

They need to keep records for a four-week representative period in each income year to claim a deduction of more than \$50. These records may include diary entries, including electronic records, and bills. Evidence that their employer expects them to work at home or make some work-related calls will also help you demonstrate that they are entitled to a deduction.

But there are situations when employees can't claim a deduction for their phone.

Casual employees are not 'at call' employees and do not derive assessable income until they commence performing their duties at their place of employment. If the taxpayer is a casual employee, they cannot claim a deduction for telephone rental expenses as there is no connection to employment.

If the employer provides a phone for work use and is billed for the usage or reimburses the employee then there is no deduction.

If work use is incidental and the taxpayer is not claiming a deduction of more than \$50 in total, they may make a claim based on the following, without having to analyse bills:

- \$0.25 for work calls made from your landline
- \$0.75 for work calls made from your mobile
- \$0.10 for text messages sent from your mobile.

If the phone plan provides an itemised bill, they need to determine a percentage of work use over a four-week representative period which can then be applied to the full year.

If the phone plan does not provide an itemised bill, the taxpayer must keep a record of all calls over a four-week representative period and then calculate a claim using a reasonable basis.

\$50 or a four week register...

***MYTH #5: "I can claim all my travel expenses if I add a conference or a few days' work to my holiday".***

An apportionment of the costs will be required in this case. This has been clearly wrong for many decades...



Australian  
Taxation  
Office

Taxation Ruling

**TR 98/9**

FOI status: may be released

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**Taxation Ruling**

Income tax: deductibility of self-education expenses incurred by an employee or a person in business

Taxation Ruling TR 98/9 states...

*“17. An expense is deductible under section 8-1 when it has the essential character of an income-producing expense. The essential character is to be determined by an objective analysis of all the surrounding circumstances. There are circumstances where apportionment under section 8-1 is required.*

*For example, if a study tour or attendance at a work-related conference or seminar is undertaken for income-earning purposes and for private purposes, it is appropriate to apportion the expenses between the purposes. If the income-earning purpose is merely incidental to the main private purpose, only the expenses which relate directly to the former purpose are allowable. However, if the private purpose is merely incidental to the main income-earning purpose, apportionment is not appropriate.”*

There are three possibilities:

- If the income-earning purpose is merely incidental to the main private purpose, only the expenses which relate directly to the former purpose are allowable.
- If the private purpose is merely incidental to the main income-earning purpose, apportionment is not appropriate.
- Otherwise apportion on a reasonable basis.

**MYTH #6: "I can claim my work clothes because my boss told me to wear a certain colour".**

The Commissioner states that this will only be the case if the clothing is a uniform that is unique and distinct to your employer, or protective or occupation-specific clothing that you were required to wear to earn your income. And he is concerned about this myth specifically:

## Clothing claims put through the wringer this Tax Time

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“Just to be clear, the \$150 limit is there to reduce the record-keeping burden, but it is not an automatic entitlement for everyone. While you don't need written evidence for claims under \$150, you must have spent the money, it must have been for uniform, protective or occupation-specific clothing that you were required to wear to earn your income, and you must be able to show us how you calculated your claim.”

Ms Anderson said the ATO also has conventional clothing in its sights this year. “Many taxpayers do wear uniforms, occupation-specific or protective clothing and have legitimate claims. However, far too many are claiming for normal clothing, such as a suit or black pants. Some people think they can claim normal clothes because their boss told them to wear a certain colour, or items from the latest fashion clothing line. Others think they can claim normal clothes because they bought them just to wear to work.

So how do we calculate a laundry claim? If you are claiming \$150 or less for clothing and laundry (and less than \$300 for work-related expenses in total)

- Make sure your claim is for eligible clothing (occupation-specific, protective or uniform).
- Remember, you can't claim for plain or conventional clothing, even if your employer requires you to wear it and even if you only wear it to work.

Then, calculate your claim for washing, drying and ironing at:

- \$1 per load if the load is made up only of work-related clothing
- 50c per load if you include other laundry items

You may be asked to demonstrate how often you wore your eligible clothing (eg. evidence that you worked three shifts a week for 48 weeks in a year).

But what happens if I get it wrong?

Example...

A car detailer claimed work related laundry expenses of over \$20,000 per year over two years.

When questioned, the taxpayer told us he worked out the laundry expense at the rate of \$227 per hour, as he valued his personal time. He then made a voluntary disclosure that his claim was excessively high and in no way a reasonable amount to claim.

Example...

A lab technician claimed \$2500 for the cost of purchasing protective boots and laundering his work uniform.

He advised he had a very dirty job and mostly washed his clothes at the laundromat for around \$9 a wash and \$3 for drying. Unfortunately he did not keep any receipts, so we could not verify his claim.

We reduced his claim for laundering his work uniform to \$144, using the ATO's reasonable basis.

**MYTH #7: "I can claim home-to-work travel because I need to get to work to earn my income".**

The Commissioner states *"for most of us, home to work travel is private since your boss doesn't pay you until you get to work. There are limited circumstances where someone who has to transport bulky equipment can make a claim."*



What is “bulky equipment”? The ATO has a video -

<https://www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Deductions-for-specific-industries-and-occupations/Building-and-construction-employees--work-related-expenses/?page=2> that concludes there are some simple rules that apply such as:

- you need to use your bulky tools to do your job
- your employer expects you to transport this equipment and the Commissioner calls to check when he audits.
- there is no secure area to store the equipment at work.

## Transporting bulky tools and equipment

For an overview on what you can claim and records to keep, watch our YouTube video *Transporting bulky tools and equipment*.



Duration 0:50. A transcript of [Transporting bulky tools and equipment](#) is also available.

But what records do we need? Just like work related expenses, section 900-80 states:

*To deduct a \*business travel expense:*

*(a) it must qualify as a deduction under some provision of this Act outside this Division; and*

*(b) you need to substantiate it by getting written evidence.*

So without the correct written evidence we cannot make a claim for travel.

And there are special rules if your expense is for travel that involves you being away from your ordinary residence for 6 or more nights in a row. When this occurs, you must record an activity by specifying in a diary or similar document:

- the nature of the activity;
- the day and approximate time when it began;
- how long it lasted;
- where you engaged in it.

***We can't leave this travel myth without discussing the myths that surround the Commissioner's reasonable amount.***

Each year the Commissioner releases these but what are they for?



Australian Government  
Australian Taxation Office

Taxation Determination

**TD 2018/11**

Page status: **legally binding**

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## Taxation Determination

Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2018–19 income year?

To understand these amounts you need to look at section 900-50:

*(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.*

So if you get an allowance and you want to claim travel deductions less than these amounts, you don't need written receipts.

2. The approach outlined can only be used where you receive an allowance to cover the particular expenses you are claiming – for example, you received an accommodation allowance and are claiming accommodation expenses. This Determination is not relevant to you where you do not receive an allowance to cover your expenses.

But you still need some records...

3. The reasonable amounts only provide the maximum amount you can claim without being required to substantiate your expenditure (refer to paragraph 33 of TR 2004/6). If you rely on the reasonable amounts and the ATO checks your income tax return, you will still be required to show:

- you spent the money in performing your work duties (for example, in travelling away from home overnight on a work trip)
- how you worked out your claim (for example, you kept a diary)
- you spent the money yourself (for example, using your credit card statement or other banking records) and were not reimbursed (for example, a letter from your employer), and
- you correctly declared your allowance as income in your tax return.

These are not standard deductions... They are record keeping exemptions for employees who get a travel allowance ONLY.

***MYTH #8: "I can claim makeup that contains sunscreen if I work outside".***

This is only the case if the primary purpose of the product is sunscreen, the cosmetic component is incidental, and the taxpayer works outdoors in the sun.

***MYTH #9: "I can claim my gym membership because I need to be fit for work".***

This is only the case if the taxpayer is required to maintaining a very high level of fitness, for which they are regularly tested.

***MYTH #10: "I can claim my whole Netflix or Foxtel subscription because I need to keep up to date for work".***

If there is any private use the taxpayer will have to apportion the cost. And yes... no matter what they say there has been private use...