



## ATO Loses on Draconian Record Keeping Requirements

This was an appeal by the ATO to the Federal Court when they lost an ARTA case called Shaw's Case. Where an employee long haul truck driver who was paid an allowance for travel expenses was found to have genuinely incurred travel expenses, ie he had to eat! The truck driver was relying on the reasonable allowance concession:

**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.

The ATO was arguing that they wanted detailed receipts and records. The ARTA said the ATO had to be realistic and found in favour of the truck driver. More detail here

<https://www.bantacs.com.au/Jblog/a-win-for-employee-truck-driver/#more-1777>

So the ATO took the matter to a higher court but still lost! In summary the Federal Court found:

- You need to be able to convince the court you have incurred the expense but not up to the standard of individual substantiation. You just have to be credible. Taxpayers have a burden of proof but it is on the balance of probabilities no higher bar than that. In our opinion this starts with the mere fact a person has to eat!
- **The ATO cannot insist on receipts and detailed logs when the amount claimed is under the reasonable amount. Nor can the ATO require detailed apportionment of expense transactions.**

Just remember this only applies to employees who are paid a travel allowance, required to sleep away from home and claim up to the reasonable amount as calculated by the ATO each year. Do not think that you are entitled to an automatic deduction up to the reasonable amount. You have to be able to show that expenses have been incurred (ie a representative sample and bank statements), not reimbursed by your employer (ie a letter from your employer) and that you were required to sleep away from home (ie a diary). It is just the ridiculous requirement to prove every expense that sunk the ATO.

This blog gives you much more detailed of how the reasonable travel allowance concessions work and ideas of what you can do to show that expenses have been incurred.

<https://www.bantacs.com.au/Jblog/travel-allowance-substantiation-concession-more-work-than-substantiating/#more-1888>

Please have a read and definitely do not think that a deduction is automatic because your claim is under the reasonable amount and your employer paid you an allowance.

It is important to note that way back at the original audit the ATO adjusted Mr Shaw's tax return to reduce the meals deduction to zero. That is a very aggressive position basically suggesting that Mr Shaw did not eat while he travelled for weeks on end. Mr Shaw had to fight every step of the way and it would have been costly for him, though the ATO did cover his costs in the Federal Court. It is recommended that you try and meet as much of the substantiation requirements as possible to avoid the conflict. At best receipts for everything but at least a record of the number of nights you slept away from home and ideally purchase all items on a card that will allow you to produce a statement. In the ARTA Shaw's case it was recommended to keep receipts for one month as a representative sample.

Taxpayers still have a requirement to convince the ATO or the courts that they did incur the expenses it is just the strict substantiation rules that do not apply if they receive a travel allowance from their employer. Also note that the ATO can appeal Shaw's case further to the full bench of the high court.

#### **Further Reading:**

Record keeping for Truck Drivers: <https://www.bantacs.com.au/Jblog/tax-deductions-and-record-keeping-for-truck-drivers/#more-1361>

Persuade your employer not to record the reasonable allowance on your PAYG summary  
<https://www.bantacs.com.au/Jblog/allowances-on-payg-summaries/#more-321>

For your amusement a bit of a rant about what the ATO has been doing: <https://www.bantacs.com.au/Jblog/reasonable-allowance-concessions-effectively-abolished-by-the-ato/>