




# Notes For Completing Travel Records

## **Claiming A Vehicle:**

You are entitled to a deduction if one of the following applies to you:

-  You are itinerant
-  Carrying bulky equipment or
-  You are a contractor whose home is the base of your operations.

A classic case that covers all three of these points is a shearer's case called **S29 85 ATC 276**. This case is so relevant that the conclusions drawn by two of the judges are reproduced in full at the end of this booklet. In summary, a self employed shearer was allowed a deduction for car travel from his home to the various sheds where he was engaged from time to time. The shearer's home could be classed as his base of operations because he organised his shearing engagements from home and maintained his shearing equipment there. The judge stated that this was only possible because the shearer was self employed i.e. independently contracted to many different farmers. But there are cases where an employee's home was considered a base of operations. For example *FCT v Collings* 76 ATC 454 a computer consultant first tried to fix the problem from home via the telephone line but ended up having to travel to the main computer.

In S29 85 ATC 276 much weight was also given to the fact that the shearer had to carry shearing equipment, in his car, weighing more than 18kg and the fact that his work was itinerant.

In light of this decision, the commissioner ruled, in IT2273, that expenses incurred by shearers in travelling between home and places where they exercise their trade, or between home and place of assembly for a shearing tour and on return travel to home are deductible. IT2273 has since been replaced by TR95/34.

If you are working for wages i.e. not self employed like the shearer was, you are more likely to succeed with your claim on the basis you are required to carry bulky equipment or the itinerant nature of your employment.

## **Bulky Equipment:**

Equipment is considered bulky if it is heavy or large. To be classified as heavy the equipment needs to be at least 18kg. The equipment does not need to weigh 18kg (S29 85 ATC 276) to be considered large it just has to be awkward to transport any other way than by the vehicle. Each of these three examples would be considered bulky equipment in their own right, a ladder, drum kit and boxes of books and papers that would be too much to carry in one trip on public transport (*F.C. of T. v. Wiener* 78 ATC 4006).

You must have a good reason for carrying the equipment. If there is no safe storage at work for your equipment you can justify taking it to and from work each day. In Case 43/94 94 ATC 387 a flight sergeant was not permitted to claim for transporting his tools to and from work because his employer provided him with his own personal locker where they could have been left. On the other hand a container on a building site to which all the workers had a key was not considered safe storage so carrying equipment to and from the site could be justified. Fruit pickers and shearers would have no trouble claiming for carrying bulky equipment to the next farm but if they don't camp on the farm that they are working on, they may have trouble claiming transportation for the tools from the local caravan park to the farm each day if the farmer provides lockers.

**Note:** The equipment must be relevant to the work you are doing.

## **Itinerant:**

The question here is, are you itinerant, therefore travelling for work rather than travelling to and from work. Fruit pickers and shearers who maintain a home but travel to more than one farm before returning to that home could argue they have a Web of Workplaces and are therefore itinerant workers. If it is not suitable to maintain your current home you could consider moving your personal effects to a room at your parents or children's home and use that as your home base. To have a web of workplaces you need to have another job to go to before you leave the current one. You cannot claim itinerancy if you are travelling around on spec looking for work. TR95/34 is the bible in this regard; it is available from the ATO Web Site. Some of the relevant paragraphs are reproduced below.

TR95/34 states, at paragraph 43:

*“Example: Valerie is a fruit picker. She does not have a regular circuit, but organises her next job before completing the work at the current farm. Valerie normally works and lives at many properties before returning home, remaining at each farm for two to three weeks. Valerie is engaged in itinerant employment because:*

*(a) Her employment has a web of work places; and*

*(b) There is continual travel from one farm to another before returning to her normal place of residence.”*

But TR95/34 at paragraph 49 states:

*“Example: Hai is a fruit picker who travels around with the view of finding work. When he finds work, he will stay in that location until the work is completed and then move on in search of other jobs in the industry. Hai is not engaged in itinerant employment and his travelling and transport costs are not an allowable deduction because the expenses are incurred too early to be regarded as being in the course of carrying out the duties of his employment.”*

TR95/34 states at paragraph 55:

*“Example: Ian is a shearer who has agreements with various property owners and therefore travels on a circuit to the same farms each year returning home only periodically. When he finishes work at a property, he travels directly to the next property on his circuit. Although there is no uncertainty in Ian’s employment pattern, his work is considered itinerant.*

*This is because:*

- (a) Travel is a fundamental part of his work;*
- (b) His work structure displays a “web” of workplaces; and*
- (c) He continually moves from one place of work to another before returning home.”*

But TR95/34 at paragraph 42 states:

*“Example: Ryan is a shearer who works at various farms. Ryan is usually contacted at short notice and advised which property he is required to attend. The farms are located at varying distances from his residence. Each day Ryan travels to a single farm and returns to his normal place of residence each night. Ryan is not engaged in itinerant employment because:*

- (a) Travel is not a fundamental part of his duties; and*
- (b) There is no continual movement between farms. He merely travels to work and returns home each day.”*

## ***Claiming Meals and Accommodation:***

### ***When are Meals and Accommodation Tax Deductible?***

MT2029 considers IT2273 which originated from S29 85 ATC 276, the shearer’s case referred to above, and extracts from which are quoted in references below. MT2029 at paragraph 2 states:

*“Where a taxpayer’s base of operations is his home ...or ... the activities by which assessable income is produced are of an itinerant nature, travelling expenses to and from home necessary to carry out the activities will also qualify as an allowable income tax deduction.”*

Then in paragraph 5 MT2029 states:

*“Allied to the principles referred to in para. 2 is a further long established principle of income tax law that, where the activities by which assessable income is produced involve travelling and staying away from home so that the travelling expenses are an allowable income tax deduction, the expenses of travelling include the cost of accommodation and meals away from home. This means that shearers travelling between home and places where they exercise their trade or between home and place of assembly for a shearing tour would be entitled to deductions under subsection 51(1) of ITAA 1936 for the cost of accommodation and meals associated with that travel and while engaged in shearing work”.*

Interestingly, while the judge in S29 85 ATC 276 placed a lot of emphasis on the fact the shearer was self employed, MT2029 is a ruling in relation to fringe benefits tax, so it is only applicable to employees. It should then be safe to assume that the ATO accepts Shearer’s travelling expenses are tax deductible whether they are employees or self employed, because it is the nature of their activities i.e. itinerancy that makes it tax deductible.

The object, of fruit pickers should be to align themselves as much as possible with the routine of shearers as discussed in S29 85 ATC 276 below. As employee shearers are sometimes employees of each farm they go to it should not matter that a fruit picker enters into a new employment relationship each time they travel from farm to farm. Nevertheless an ABN and bulky tools can help.

### ***When are you Travelling and not Living Away from Home?***

The cost of establishing another home close to your place of work is not tax deductible (Case X4) so it is important that you are considered to be travelling for work, not living away from home. If you stay at the same farm for more than 21 days you are starting to cross that line. It may be worth packing up and at least moving to a farm on the other end of town. Don't forget to organise your new farm before you leave the old.

MT2030 is a ruling on FBT and living-away-from-home allowance but makes the following interesting statement:

*Paragraph 41: There will be circumstances, however, when an employee is away from his or her home base for a brief period in which it may be difficult to conclude whether the employee is living away from home or travelling. As a practical general rule, where the period away does not exceed 21 days the allowance will be treated as a travelling allowance rather than a living-away-from-home allowance. For longer periods, it will be necessary to determine the nature of the allowance with guidance provided by this Ruling.*

TR98/9 is a ruling on self education expenses. At paragraph 93 the key points to determining whether a new home has been established are listed as follows - note none are conclusive on their own.

*The total duration of the travel:*

*Whether the taxpayer stays in one place or moves frequently from place to place;*

*The nature of the accommodation, e.g. hotel, motel, long term accommodation;*

*Whether the taxpayer is accompanied by his or her family;*

*Whether the taxpayer is maintaining a home at the previous location while away.*

The first two examples look at how long you are in the one spot without returning home. Moving onto the next place of work breaks the pattern of establishing a new home as much as returning home.

Example 6 states:

*Don travels to London to undertake a 3 week course of study to maintain and improve knowledge relevant to his income-earning activities. He stays in hotel accommodation until the end of the 3 week period when he decides he should extend his stay and complete a more extensive 6 month course of study. He rents an apartment and arranges for his family to join him in London. Expenditure on accommodation and meals during the initial 3 week period is deductible as Don is away from home. However, depending on all the relevant facts, Don may be considered to have established a new home for the period of his stay in the apartment with his family.*

Again the 21 day line is drawn though if the nature of your accommodation is more temporary than an apartment you would be able to stay longer and still be considered travelling. Based on example 6 above I would not like to push this past 6 months without first getting an ATO ruling.

All the above is based on the assumption that you still have a home to return to. It does not matter that someone else is living there and taking care of it for you. However, to have it commercially rented may jeopardise your claim. If this is the case it may be advisable to move your personal effects into a room at your parents' or adult children's home and make that your home base.

### ***Substantiation:***

The ATO may see the above as considerable risk to revenue or as they call it opening the floodgates. So they will be looking for every opportunity to deny deductions. Accordingly, it is imperative that all your records and facts are beyond reproach. The substantiation rules are listed below. You will meet these if you follow the instructions in the Travel Record Schedule.

### ***Claiming A Vehicle:***

If you intend to claim for more than 5,000km per owner of the car a log book will need to be maintained. The speedo readings at the start and end of each financial year will have to be recorded and written evidence for all expenses relating to the vehicle kept.

If claiming less than 5,000km per owner of the vehicle you need to keep a detailed reasonable estimate of the kilometres travelled to which you apply the ATO set rate. Note each owner can claim only up to 5,000km in their individual returns and should be the one driving for those 5,000km. For further details on motor vehicle substantiation, refer to our booklet on that subject which is available from our Web Site [www.bantacs.com.au](http://www.bantacs.com.au). That booklet will also help you decide whether you would get a better claim by reducing your claim to 5,000km per driver compared to log book method.

### ***Claiming Meals and Accommodation:***

The following is based on the assumption you are not paid a travel allowance by your employer. Written evidence must be kept for all accommodation unless it would be unreasonable for the ATO to expect a receipt - for example, electricity in a caravan park paid for by putting coins in a meter that did not issue a receipt. In these cases a diary entry should be made. Please keep a diary just to record your daily out of pockets. This includes money put into washing machines at Laundromats. Written evidence (or diary entries if receipts are impossible) must be kept for all meals - don't forget snacks or drinks. You can even claim for a glass of wine, etc with your meal. The diary entry should include all the details required, to be in written evidence as follows.

Written evidence must be a document from the supplier and include the name of the supplier, the amount of the expense, a description of the goods or services, the date of incurring the expenses and the date of the document (if different). If a description of the goods or the name of the supplier are not on the receipt you may write them on.

Because you will be away from home for more than 5 nights you must keep a travel diary. ATO compliant diaries are available from most stationery shops. The diary must include particulars of each income earning activity undertaken during the relevant travel. Entries must be made before the activity ends or as soon as possible afterwards. Setting out the nature of the activity, the day and approximate time it began, how long it lasted and where the activity took place. This is to determine how much of your travel is a private expense. It should not be a problem claiming your weekend accommodation when you have worked a full week either side.