



Operational Statement

ED0217

Employer-provided travel from home to a distant workplace – income tax (PAYE) and fringe benefit tax

Introduction

Operational statements set out the Commissioner of Inland Revenue's view of the law in respect of the matter discussed and deal with practical issues arising out of the administration of the Inland Revenue Acts.

This Statement addresses whether employer-provided travel¹ from an employee's home to a distant workplace is subject to income tax, so PAYE must be deducted, or to fringe benefit tax (FBT).

All legislative references in this Statement are to the Income Tax Act 2007, unless specified otherwise.

In this Statement:

- employer-provided travel means:
 - travel an employer organises;
 - travel that an employee organises but an employer pays for;
 - travel that an employer reimburses an employee for; or
 - an allowance paid to an employee by their employer that is paid to cover the cost of travel to a distant workplace;
- home means a dwelling you use as a residence;
- hometown means the city or town where your home is located; and
- a distant workplace is a workplace that is not within reasonable daily travelling distance of the employee's home.²

When an employer physically provides the travel or pays for it directly, then that travel may be subject to FBT, which the employer must pay.

If the employee is provided with an allowance or is reimbursed in relation to the cost of the travel, then the employer may have to deduct and pay PAYE in relation to that payment.

We are aware that employers and employees are uncertain about when employer-provided travel to a distant workplace is subject to tax. Indeed, some employers

1 Travel can be, for example, by car, taxi, plane, bus or train.

2 See also "Guidance on 'Reasonable Daily Travelling Distance'", *Tax Information Bulletin* Vol 21, No 9 (December 2009): 3.

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have been treating all employer-provided travel to a distant workplace as not taxable.

This Statement addresses that uncertainty by setting out the Commissioner's approach to determining whether employer-provided travel from home to a distant workplace is subject to either income tax or FBT or not taxed.

Summary of approach

Payments made by an employer in relation to a private expense of an employee are usually subject to tax. The cost of home-to-work travel is generally private expenditure as it is incurred so an employee can get to work. As this expenditure is usually private, if the employer provides³ the employee's travel from home to work the starting point is that it is taxable.

Inland Revenue's approach

Employer-provided travel from home to a distant workplace will be taxable (and subject to FBT or income tax) unless one of the following applies:

- the travel is one-off or very occasional (*de minimis* applies);
- the travel relates to a temporary posting or secondment (up to two years);
- the employee also genuinely works at a hometown workplace;
- the employee works from home on specified days (home being their place of work on those days, and the travel relates to one of those days).

However, the courts have recognised that some travel from home to work is not **taxable because the expenditure relates to travel that is "on work"**.

This means not all employer-provided **travel from an employee's home to work** is taxable, and an employer who provides travel from home to a distant workplace must consider whether that travel is subject to tax.

Where an employer physically makes available or directly pays for an employee's travel from home to a distant workplace, the travel may be subject to FBT, which the employer must pay.

If the employee is provided with an allowance or is reimbursed in relation to the travel, that amount may be subject to income tax. If an allowance or reimbursement is taxable for income tax purposes, then the employer must deduct and pay PAYE in relation to that payment. This is because the allowance or **reimbursing payment would be "salary or wages" under the PAYE rules.**

It does not matter whether you are considering whether employer-provided travel from home to a distant workplace is subject to FBT or income tax, the test is still effectively the same.

We recognise that it can be difficult to determine whether travel provided to employees to enable them to travel to a distant workplace is subject to tax. The

³ In the context of this Statement, "provides" includes pays for directly or indirectly, including by way of a reimbursement or allowance.

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following paragraphs set out the Commissioner’s approach to determining whether employer-provided travel from an employee’s home to a distant workplace is subject to tax.

Application of the Statement

The approach outlined in this Statement applies from the date it is signed. Given the uncertainty that has existed, taxpayers do not need to revisit tax positions taken before publication of this Statement.

The approach outlined in this Statement does not apply where the travel arrangements have been entered into with a purpose of avoiding tax.

Discussion

1. **As noted above, if the employer provides the employee’s travel from home to work, the starting point is that it is taxable as either:**
 - income to the employee, so subject to PAYE (see from [2]);
 - a fringe benefit subject to FBT (see from [13]).

PAYE

2. Payments made by an employer to reimburse an employee for that **employee’s private expenditure are generally taxable as income of the employee.** This is because these payments reduce the need for the employee to incur those costs themselves.
3. When a reimbursement or allowance is taxable it is included as salary or wages for the purposes of the PAYE rules (s RD 5(8)). This means PAYE must be deducted and paid by the employer to Inland Revenue for that reimbursement or allowance.
4. When a reimbursement or allowance is paid to cover costs for which the employee would be allowed a deduction if the employment limitation on deductions did not exist, then it is not subject to income tax (s CW 17). This means the employer would not have to pay PAYE to Inland Revenue in respect of that reimbursement or allowance.
5. Therefore, the issue is whether the cost of the particular travel from the **employee’s home to a distant** workplace would be deductible to the employee (if employees could claim deductions).
6. A deduction is allowable for expenditure incurred in deriving income or necessarily incurred in the course of carrying on a business for that purpose (s DA 1). But expenditure that is of a private or domestic nature is not an allowable deduction (s DA 2(2)).
7. The general rule is that home-to-work travel is private expenditure as it is **expenditure to get to work and reflects the employee’s personal choice** as to their home location.⁴ The two main reasons for this rule are that the:

⁴ See, for example, *Ricketts v Colquhoun* [1926] AC 1.

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- cost of home-to-work travel is predominantly determined by the private choices of the employee (where to live, how to get to work);
 - expense of commencing work is distinguished from expenses **while “on work”, and employees are expected to bear the cost of commencing work.**
8. This means the starting point is that employer-provided travel from home to work is private expenditure and would not be deductible to the employee (if employees could claim deductions). This is the case even if the **employee’s travel is funded by the employer or the employee’s attendance** at the workplace is required by the employer.
9. The courts have recognised exceptions to this general rule.⁵ The cases relating to deductibility of travel expenditure between home and work have identified four broad factual situations where travel between home and work is regarded as business or work-related travel. These situations are where:
- a vehicle is essential for transporting goods or equipment necessary for the performance of employment duties at the home and elsewhere;
 - **the taxpayer carries on an “itinerant occupation” (that is, the taxpayer does not work from a fixed work place, and the home is the taxpayer’s base of operations);**
 - the taxpayer is required to be accessible at their home for employment duties and is required to undertake travel in response to emergency calls; and
 - **the travel is “on work” travel between two workplaces, one of which is also the taxpayer’s home.**
10. It can be seen from the cases that for home-to-work travel to be deductible, the employee must actually undertake work at home.
11. It is not sufficient to establish that the home is or can be a workplace. For expenditure to be deductible, the need for the work to be performed at the home, and, therefore, the need for the travel, must arise from the nature of the work and not from the personal choice or personal circumstances of the taxpayer.
12. In addition, the actual travel must be travel undertaken in the course of **performing work (that is, the travel is “on work”)**. **If that is the case, then** the cost of that travel is not private expenditure of the employee; rather, it is expenditure that would be deductible if employees were not otherwise prevented from claiming deductions. This means the employer does not

⁵ See *Taylor v Provan* [1975] AC 194; *Garrett v FCT* 82 ATC 4,060; *FCT v Genys* 87 ATC 4,875; *Case F72* (1984) 6 NZTC 59,924; *Miners v Atkinson* [1995] STC 58; *Kirkwood v Evans* [2002] STC 231.

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have to deduct PAYE in respect of the reimbursement or allowance, and the employee is not liable for income tax on the payments.^{6,7}

Fringe benefit tax

13. **Where an employer provides travel from a person's home to their workplace (other than by way of a motor vehicle), the position is that this "benefit" amounts to a "fringe benefit" as it is an "unclassified benefit".⁸**
14. This travel will be subject to FBT unless one of the exclusions applies.
15. The Commissioner considers that the only exclusions that might apply in respect of employer-provided travel from home to a distant workplace are:
 - benefits provided instead of exempt allowances (s CX 19); and
 - benefits provided to enable the performance of duties (s CX 20).
16. Benefits are not fringe benefits to the extent that they replace the need to pay certain exempt allowances (s CX 19(1)).
17. Travel provided by the employer will not be a fringe benefit where that travel is necessary for an employee to undertake their employment duties (s CX 20).
18. It could be argued that travel from home to work is travel that is necessary for an employee to undertake their employment duties. However, s CX 20 **implicitly adopts the distinction between travel "on work" and travel "to work", with s CX 20 relating to circumstances where an employee is travelling "on work". The purpose behind the original predecessor to s CX 20 was to exclude from FBT incidental benefits arising to an employee as a result of travelling in the course of their employment and was not intended to exclude home-to-work travel from the coverage of FBT.**
19. The Commissioner considers that whether these exemptions apply to employer-provided travel is determined by applying the same test as the one used for determining whether employer-provided travel is subject to income tax, and, therefore, salary and wages for PAYE purposes.
20. This means employer-provided travel from home to a distant workplace will be subject to FBT unless the:
 - need for the work to be performed partly at the home (and, therefore, the need for the travel itself) arises from the nature of the work; and
 - **travel itself is actually "on work".**

⁶ To the extent that the payments are a reimbursement of actual costs or an allowance paid to cover the costs of the travel when the employee incurs the costs themselves. If amounts in excess are received by the employee, the excess amount is taxable.

⁷ See *Travel by Motor Vehicle between Home and Work: Deductibility of expenditure and FBT implications* (Interpretation Statement IS3448, Inland Revenue, 2004), which discusses the question of determining deductibility of home-to-work travel generally.

⁸ Travel by employer-provided motor vehicle is discussed from [21].

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Motor vehicles

21. A fringe benefit arises in relation to a motor vehicle made available to an employee for private use (s CX 6).
22. Determining whether travel in such an employer-provided motor vehicle from home to a distant work location is private use can be relevant in determining whether a motor vehicle was available for private use.
23. Using an employer-provided motor vehicle for travel between home and work will not be private use of that motor vehicle for FBT purposes if the:
 - need for the work to be performed partly at the home (and, therefore, the need for the travel itself) arises from the nature of the work; and
 - **travel itself is actually “on work”.**⁹
24. Therefore, the Commissioner considers that the approach in this Statement can be used in determining whether using an employer-provided motor vehicle (for example, a rental car) to travel from home to a distant workplace is work-related travel.
25. Note that even if travel between home and work is work-related travel (so that the use of a motor vehicle for that purpose is not private use), the employer must establish that the vehicle is not available for any private use.

When employer-provided travel from home to a distant workplace is not subject to tax

26. We acknowledge that in the modern working environment employees have more flexibility around where they can live and work than in earlier times. As a result, it can be difficult and costly to determine whether employer-**provided travel from an employee’s home to a distant workplace is subject to tax.**
27. Bearing that in mind and taking into account the legislation, the case law **and the Commissioner’s care and management duties under ss 6 and 6A** of the Tax Administration Act 1994, the Commissioner has developed an approach to make it easier to determine whether employer-provided travel **from an employee’s home to a distant workplace is taxable.**
28. In arriving at this approach, the Commissioner considered it appropriate to treat temporary travel to a distant workplace as different from more long-term travel arrangements. This is because we recognise that where the requirement for the travel is a temporary one, the cost of the travel is less likely to have been predominantly determined by the private choices of the employee (where to live, how to get to work). Where the travel is temporary, an employee is less likely to have the ability to mitigate the costs arising from the requirement to work at a distant location (by relocating).

⁹ Using an employer-provided motor vehicle to travel between home and work is discussed in more detail in *Travel by Motor Vehicle between Home and Work: Deductibility of expenditure and FBT Implications* (Interpretation Statement IS3448, Inland Revenue, 2004).

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29. In relation to determining whether accommodation is subject to tax, Parliament introduced clear rules that treat an arrangement where accommodation is provided for two years or less as temporary. While similar rules have not been enacted in relation to travel, how these rules apply to accommodation at a distant workplace does provide a useful indication of what Parliament considered was an appropriate line to draw between temporary and more permanent arrangements in relation to working at a distant workplace.

Summary of approach

30. **In summary, the Commissioner’s approach is that travel from home to a distant workplace that is provided by the employer will be taxable (and subject to FBT or income tax) unless one of the following applies:**
- the travel is one-off or very occasional (*de minimis*);
 - the travel relates to a temporary posting or secondment (up to two years);
 - the employee also genuinely works at a local workplace (meaning they have two workplaces);
 - the employee works from home on specified days and the travel relates to one of those days.

One-off or very occasional travel

31. Inland Revenue considers that one-off or very occasional travel from home to a distant location for work (when required by the employer) can be treated as not taxable on an incidental or *de minimis* basis. For example, attendance at a two-day conference at a distant location.
32. This approach will apply to employees who work at an office of their employer located in their hometown as well as employees who work all the time from their home.

Temporary travel

33. More frequent or ongoing employer-provided travel from home to a distant workplace (when the employer requires the travel) can be treated as non-taxable where the requirement for travel is a temporary requirement (which means for a period of two years or less). An example might be a posting or **secondment to another office or a client’s premises for a 12-month term** (see Example 1).

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Example 1: Temporary travel

Robyn lives in Auckland but is seconded to a job in Wellington for 12 months. **Robyn's employer** agrees to meet the costs of Robyn flying between Auckland and Wellington (and back) every week as well as taxis to and from the airport.

As the secondment is for two years or less (in this case, 12 months) any employer-provided travel from home to the distant location can be treated as non-taxable.

Ongoing travel from home to a distant workplace

34. Ongoing employer-**provided travel from an employee's home to a distant** workplace will be taxable when the travel is for more than two years. This is because if the travel is ongoing for more than two years, the cost of the travel is more likely to have been predominantly determined by the private choices of the employee (where to live, how to get to work). (See Example 2.)

Example 2: Ongoing travel from home to a distant workplace

Rudolf is a senior manager in a multinational company with its head office in Auckland. Rather than move his family to Auckland, Rudolf negotiated an arrangement whereby his employer provided him with an apartment in Auckland and flies him to Auckland on Monday morning and flies him to Wellington on Friday afternoon. As well as the cost of flights, his employer also covers the cost of his taxi travel to Auckland and Wellington airports.

The arrangement is for more than two years, so this employer-provided travel is taxable.

The outcome would be the same if Rudolf were seconded to the job in Auckland for a period greater than two years (rather than permanently appointed).

35. This approach applies except where the employee has at least two workplaces.

Travel between multiple workplaces

36. As noted above, the courts have recognised that travel between two workplaces is not private expenditure when the employer requires that travel. Therefore, where an employee has two (or more) workplaces that they work from, one in their hometown and one distant, the Commissioner **considers that the travel from the employee's home to the distant workplace can be treated as work-related travel (being travel between multiple workplaces) and not taxable (the "multiple workplace approach").**
37. The Commissioner does not require an employee to be travelling from their workplace in their hometown to the distant workplace before treating the travel as being between multiple workplaces. This means the multiple workplace approach can apply when an employee instead travels directly

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from their home to a distant workplace. the Commissioner has taken this approach to recognise the travel between the multiple workplaces and, at the same time, minimise taxpayer compliance costs.

38. **An employer's workplace** in their hometown can still be a workplace of that **employee for the purposes of this approach, even if most of the employee's** working week is spent at a distant workplace. (See Examples 3 and 4.)

Example 3: Travel between multiple workplaces

Jim is employed as a specialist to provide ongoing advice to senior managers. The job was advertised as being based in Wellington, but Jim was not interested in working full time in Wellington because his family lives in Auckland.

Jim and the employer agree that Jim can work two days a week in Auckland at the Auckland office and three days a week in Wellington. The employer provides Jim with the travel between his home and the Wellington office.

Jim's travel from home to the Wellington office and back will be travel between two workplaces and not subject to tax.

Example 4: Travel between multiple workplaces

Charlotte is a manager based in Nelson. She has staff based throughout the country that she visits regularly. She is often required to be in Wellington for meetings. The travel in question is the travel from her home in Nelson to the distant location(s) and back again.

Charlotte's travel to the distant workplaces will be travel between two (multiple) workplaces and not subject to tax.

If Charlotte were to use an employer-provided car (such as a rental) to travel between home and a distant workplace, that travel would not be private use for the purposes of determining whether the car was available for private use.

[Whether home is a workplace for the purposes of the multiple workplaces approach](#)

39. If an employee does not have a workplace that is local to their home, then the travel to a distant workplace can still be travel between workplaces, but only if their home can be considered to be a workplace.
40. Under the approach outlined in this Statement, the Commissioner will accept that in relation to travel, home can be a workplace for the purposes of the multiple workplace approach. But whether home is actually a workplace depends on the arrangement entered into between the parties, and an employee does not have multiple workplaces just because they can choose to work at home from time to time.
41. The Commissioner notes that by accepting that home could be a workplace in the travel context, it is taking a more concessionary approach than Parliament has taken in relation to the question of multiple workplaces and accommodation. Accommodation that an employer provides or pays for

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can be exempt where the employee has multiple workplaces (section CW 16F). However, where the employee has only two workplaces and one of them is a home office, this approach cannot apply.

42. **While home may be a workplace, it is also the employee's home, so it is** easy for the line between home-to-work travel and "on-work" travel to become blurred. This raises the question as to what extent does working from home convert that home to being a workplace for the purposes of the multiple workplace approach.
43. In considering whether a person is travelling between two workplaces when they travel from home to a work location, the courts have said it is not enough that a person can work at home. The courts tend to treat the place where you live as private and require an explicit and demonstrable distinction to exist before treating where you live as anything other than your home.
44. The Commissioner also requires such an explicit and demonstrated connection with home as a workplace on any particular day. If this were **otherwise, then a "tainting" issue** would arise as to what portion of time working at home in a week would be sufficient for home to be treated as a workplace for the whole week. There is no legal basis for the selection of any particular proportion, and the Commissioner does not believe that the courts would support such an outcome.
45. **Accordingly, the Commissioner's position is that, for the purposes of this** Statement, home should be regarded as a workplace in this context only in relation to the days where home is contractually and actually the **employee's usual place of work.**
46. For an employee whose arrangement requires that they work at home on every working day, home is clearly a workplace.
47. **Where an employee's employment arrangement requires that their home is** their formal workplace where they are expected to work on specified days (such as every Monday and Tuesday), their home will be their workplace on those days for the purposes of the multiple workplace approach. However, their home is still home on the other days, and travel from home to a distant workplace in relation to the other days is travel from home to work and is taxable.
48. For a home to be a workplace on any day, the arrangement with the employer must provide that it is a specified day where the employee is required to work at home, rather than the employee simply having the potential to work at home on that day.
49. **Where travel from the home to the distant workplace relates to a "working from home day" (being a day when home is a workplace), this travel will be** treated as travel between multiple workplaces.
50. On other days, home is still regarded as home, so the travel from home to another workplace will generally still be taxed on the basis that it is home to work travel.
51. The Commissioner recognises that this approach could be seen as a **constraint on the parties' contracting arrangements or as a compliance**

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cost. However, she considers it a necessary part of the approach being taken, which is itself an attempt to minimise compliance costs. (See Examples 5–8.)

Examples: Multiple workplace approach

Example 5: Whether home is a workplace when person is contracted to work from home full time

Under **Adele's** employment arrangement, she is contracted to work at home on a full-time basis. This means home is usually her sole place of work. Therefore, it can be considered to be her workplace on every work day.

As any employer-**provided travel from Adele's home to a distant workplace** (for example, for a specific meeting or purpose) is very occasional or could be considered to be one-off, it is not subject to tax.

Example 6: Whether person has multiple workplaces

Ruby lives in Auckland and works for a government agency. She has a permanent working arrangement where she works Monday and Tuesday at home. **On Wednesday, Thursday and Friday, Ruby works at the agency's** Auckland office. Ruby is seconded to work on a 26-month project that requires her to work in Wellington on Thursday and Friday.

As the project is for more than two years, the key question is whether Ruby has at least two workplaces so that the multiple workplace approach applies. As Ruby normally works in the Auckland office on Wednesday, Thursday and Friday, any employer-**provided travel from Ruby's home to** Wellington in relation to her work in Wellington would be treated as travel between multiple workplaces (the Auckland office and the Wellington workplace).

Therefore, the multiple workplaces approach would apply in relation to this particular employer-provided travel and it would not be subject to tax.

Example 7: Whether home is a workplace when a person is permitted to work at home

Leo lives in Tauranga but the company he works for is based in Auckland. Under his employment contract Leo can work up to two days a week at home in Tauranga. The days that Leo works at home can vary depending on personal and business convenience. **Leo's employer provides him with** travel between his home in Tauranga and the Auckland office in the form of plane flights and connecting taxis.

This is an ongoing arrangement, so the main question is whether Leo has at least two workplaces so that the multiple workplace approach applies.

It is important to determine **whether Leo's home is a workplace**. Leo does not have specified days where he works at home, which means the

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Commissioner will not accept that his home is a workplace for any particular day, for the purposes of the multiple workplaces approach.

Therefore, as Leo only has one workplace (the Auckland office) the multiple workplace approach does not apply in relation to this employer-provided travel, which is subject to tax.

(If Leo and his employer had a different arrangement where Leo had specified days where he was required to work from home (for example, **Monday and Tuesday**), then home would be accepted to be Leo's workplace on those days.)

Example 8: Whether home is a workplace when person required to work at specified places on different days

Phil is contracted on an ongoing basis to work Monday, Tuesday and Wednesday at his home and Thursday and Friday at a distant workplace. This ongoing arrangement is expected to last for more than two years. Therefore, the key question is whether Phil has at least two workplaces (the possibilities are home and the distant workplace) so that the multiple workplace approach applies.

It is important to determine whether home is a workplace. In this circumstance, home is clearly a workplace on Monday, Tuesday and Wednesday, and employer-provided travel to the distant workplace relating to those days will not be taxable. An example of this would be attendance at a conference or meeting on one or more of those days.

But on Thursday and Friday Phil does not work from his home, so home is still his home for these purposes on those days. Consequently, employer-provided travel from home to the distant workplace will be travel from home to work (and taxable) when it is undertaken for the purpose of getting Phil to that distant location, so he can work there on Thursday and/or Friday.

This means employer-provided travel from his home to a distant workplace on Monday, Tuesday or Wednesday will be taxable, if the travel is undertaken so Phil can undertake his work on Thursday and Friday.

52. If you are unsure how this Statement applies to you, seek guidance from a tax professional.

This Statement was signed on ...

Rob Wells
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