

5 December 2022

Kim Hall  
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Australian Taxation Office

By email: [kim.hall@ato.gov.au](mailto:kim.hall@ato.gov.au)

Dear Ms Hall

**Draft Practical Compliance Guideline PCG 2022/D4 Claiming a deduction for additional running expenses incurred while working from home – ATO compliance approach**

The Tax Institute welcomes the opportunity to make a submission to the Australian Taxation Office (**ATO**) in relation to Draft Practical Compliance Guideline *PCG 2022/D4 Claiming a deduction for additional running expenses incurred while working from home – ATO compliance approach (the draft PCG)*.

In the development of this submission, we have closely consulted with our National Taxation of Individuals Technical Committee to prepare a considered response that represents the views of the broader membership of The Tax Institute.

The Tax Institute supports the ATO's recognition of contemporary working from home (**WFH**) arrangements and the difficulties that taxpayers may encounter in ascertaining their WFH claims. We welcome the removal of the dedicated workspace requirement as it will cater for contemporary living arrangements, modern house designs, and enable more taxpayers to access a simplified methodology for calculating their WFH claims that the 80 cents shortcut method provided. However, we have significant concerns that the ATO's requirement for taxpayers to incur additional expenses is beyond the legislative requirements contained in section 8-1 of the *Income Tax Assessment Act 1997 (ITAA 1997)*.

The purpose of the draft PCG is to provide an administrative concession for taxpayers who have incurred losses or outgoings when WFH. Taxpayers can incur losses and outgoings when WFH that satisfy the requirements of section 8-1 of the ITAA 1997, however this does not always mean that the taxpayer will incur additional expenditure as a result of WFH. The draft PCG appears to impose an extra prerequisite for the taxpayer to incur additional expenses. This is beyond the remit of a Practical Compliance Guideline (**PCG**) and is not consistent with the law as it currently stands. We therefore recommend that the draft PCG exclude any additional obligations beyond the legislative requirements and instead uses the wording contained in section 8-1 of the ITAA 1997.

It is paramount that the new administrative approach is well understood by taxpayers and tax practitioners before it comes into effect. If the finalisation of the draft PCG is close to the holiday period surrounding Christmas and the New Year, a wide section of the public may not become aware of the change in requirements until a later point in time. Any delays will increase the risk that taxpayers may inadvertently forgo claiming genuinely incurred expenses as they were not provided with sufficient time to ensure their record keeping processes were fit for purpose. We recommend that if the draft PCG is not finalised within a month of the application of the new rules, the concessional substantiation requirements should be extended. This will allow taxpayers and tax practitioners to understand and correctly apply these requirements.

Our detailed response is contained in **Appendix A**. We would be pleased to work with the ATO to further discuss the development of the draft PCG to ensure that it provides taxpayers and tax practitioners with the most useful and accurate guidance.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix B** for more about The Tax Institute.

If you would like to discuss any of the above, please contact our Tax Counsel, Julie Abdalla, on (02) 8223 0058.

Yours faithfully,



**Scott Treatt**

General Manager,  
Tax Policy and Advocacy



**Jerome Tse**

President,

## APPENDIX A

We have set out below our detailed comments and observations for your consideration. All legislative references are to the ITAA 1997 unless stated otherwise. All paragraph and footnote references are to the draft PCG unless otherwise indicated.

### ‘Additional’ running expenses

The draft PCG provides taxpayers with an administrative concession in calculating and substantiating WFH claims that would have otherwise required the taxpayer to use the actual expenses method (**AEM**). The AEM is calculated pursuant to section 8-1 and provides that a taxpayer can claim a deduction where they incur a ‘loss’ or ‘outgoing’ in respect of gaining or producing assessable income, or in carrying on a business. Section 8-1 does not require that the ‘loss’ or ‘outgoing’ be an additional cost. Rather it focuses on the nexus between the expense and assessable income derived by the taxpayer.

In contrast, the second criterion of the draft PCG requires that additional running costs are incurred for a taxpayer to use the revised fixed rate method (**RFRM**) in making a WFH claim. We consider that the second criterion is outside the purview of section 8-1 and subjects taxpayers to stricter requirements for incurring outgoings if they rely on the RFRM for their WFH claim.

The term ‘additional expenditure’ requires the taxpayer to use a comparative starting point for expenses, demonstrating that there was an increase in the expenditure due to WFH. Without this comparative point, the second criterion cannot be satisfied, posing significant practical complications for taxpayers looking to substantiate their claim. A taxpayer may incur losses or outgoings in respect of WFH that can be evidenced by a bill, invoice or receipt. However, a bill or invoice at one point of time does not provide evidence that additional costs were incurred. Notwithstanding that the taxpayer may have comparative bills from earlier periods, this comparison may not demonstrate additional expenditure as result of WFH.

It is possible for any number of external and unrelated factors to increase or reduce the overall cost of a utility between comparative periods. This includes the installation or removal of major appliances or assets that drastically alter energy consumption. Alternatively, increased expenditure when a taxpayer starts WFH could also be due to other external factors, such as higher costs per unit, rather than directly related to the taxpayer commencing the WFH arrangement. In an audit context, it is difficult for taxpayers to demonstrate the cause of a change in price, potentially impacting their claim.

For example, the Reserve Bank of Australia reported in their Statement on Monetary Policy — August 2022, that wholesale electricity prices have significantly increased over the past six months. This increase in wholesale prices will eventually be passed onto households and businesses, along with any increases in the Consumer Price Index.<sup>1</sup> When this price increase is received by households, we would expect that any additional electricity expenses that a taxpayer incurs will not be solely due to increased hours WFH. Rather, part of that increase will be due to the price rise in unit costs. If asked, the taxpayers may not be able to demonstrate that the increase in costs was a result of their WFH.

In contrast, a taxpayer may install solar panels on the house and, although there may be no change to the WFH hours performed, the taxpayer may incur lower electricity costs as electricity generated from the solar panels is used to power the house. In this instance, the lower electricity costs do not mean that the taxpayer is not WFH or incurring expenditure in doing so. However, under the second criterion of the draft PCG, they would not be able to demonstrate that they have incurred additional expenditure as a result of WFH.

In some cases, taxpayers may not pay an expense in relation to energy costs. If the taxpayer receives a refund in respect of energy fed back to the grid, they will still incur an outgoing as they use energy for the purposes of WFH. This will show up as a reduced refund or credit in the taxpayer's bill, but still be subject to fluctuations in market pricing. Although this would satisfy the requirement under section 8-1, it may not satisfy the additional expenditure requirement in the draft PCG. It is important that the RFRM allows for these circumstances as taxpayers may genuinely incur losses or outgoings as a result of WFH that are not in the form of additional expenditure.

We recommend that the draft PCG removes the wording 'additional expenses' and replaces this with 'losses or outgoings'. This replacement will ensure that the meaning contained in section 8-1 is accurately reflected in the draft PCG and that taxpayers will not be subject to stricter requirements when using the RFRM than those imposed by the legislation.

## Timing of the release of the final PCG

The draft PCG was released close to the end of the year and is intended to be finalised as soon as possible which may be around Christmas or early in 2023. It would be unfair if taxpayers and tax practitioners are notified and required to implement the new record keeping requirements from 1 January 2023 without sufficient notice of what records they need to keep. We recommend that the release of the final PCG is accompanied by widespread communications across various channels to ensure the public is promptly informed. Further, we recommend that the concessional period from 1 July 2022 to 31 December 2022 is extended until 30 June 2023 to incorporate the final PCG's date of release and any holiday periods that may occur in the intervening period. This will provide taxpayers with a more reasonable period of time to understand and apply the changes.

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<sup>1</sup> Reserve Bank of Australia, '[Box A: Recent Developments in Energy Prices](#)' (Web Page, August 2022).

## Footnote 5

Footnote 5 currently includes a reference to 'cleaning costs, decline in value and the cost of repairs on items of office furniture'. However, the RFRM does not include these costs. We recommend that this footnote is corrected for the costs included in the RFRM, that is, energy expenses, internet and data costs, mobile and home phone expenses and stationery and computer consumables. If the footnote is in reference to previous ATO guidance regarding WFH running costs, we recommended that the wording clearly states this.

## Paragraph 6

The role of the draft PCG is to communicate how the ATO will allocate compliance resources in respect of the RFRM.<sup>2</sup> The rate detailed in the draft PCG is not prescribed by legislation. Rather, it is an administrative concession that the ATO has provided to taxpayers in respect of WFH claims. Paragraph 6 notes that the draft PCG cannot be relied on if a taxpayer lodges an objection in respect of WFH claims. Taxpayers should be made aware that if they object to the ATO's assessment of their WFH claim, they will only be able to use the AEM when recalculating their WFH claim. In this respect, we recommend that the limitation to taxpayer's objection rights when using the RFRM should be highlighted immediately after paragraph 7.

We consider that the new paragraph should:

- make reference to [TR 2011/5](#) *Income tax: Objections against income tax assessments*;
- explain taxpayers' objection rights;
- encourage taxpayers to resolve the matter prior to lodging an objection and indicate the ATO's willingness and preference for this pathway; and
- provide alternative pathways to resolve matters prior to the objection stage.

We consider that this will improve transparency on how objection rights apply to taxpayers when relying on PCGs. Furthermore, working with taxpayers to resolve disputes before they reach a formal objection may assist to preserve the relationship and potentially improve the rapport between taxpayers and the ATO. We also recommend that ATO auditors are provided with clear guidance on how to work with taxpayers to resolve disagreements or concerns in a pragmatic manner. This includes ensuring that a taxpayer's whole WFH claim is not denied and that concessions are otherwise provided where a taxpayer has made a genuine attempt to comply with the draft PCG.

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<sup>2</sup> The role of PCG's is set out in [PCG 2016/1](#) *Practical Compliance Guidelines: purpose, nature and role in ATO's public advice and guidance (PCG 2016/1)*.

## Paragraph 14

Paragraph 14 states that the RFRM helps to overcome difficulties with apportioning and calculating costs incurred in respect of WFH claims. We agree that certain WFH costs should not be included in the RFRM as the record keeping requirements for these costs are reasonably clear and straightforward to calculate. Such costs include cleaning costs, decline in value and the cost of repairs on items of office furniture, which were previously encompassed in the existing fixed-rate method (**EFRM**). Further, the removal of the dedicated workspace requirement means that many taxpayers may no longer incur these outgoings and therefore it may not be appropriate to incorporate those costs into a standard WFH rate.

However, we have concerns about including certain costs in the RFRM. We consider that these costs should be excluded from the RFRM and have provided our reasonings for their exclusion below.

### **Stationery and computer consumables**

Stationery and computer consumable costs are generally not difficult to substantiate, and the costs of these items may vary considerably depending on a taxpayer's occupation or work arrangement. Taxpayers who claim the actual costs of stationery and computer consumables will only be able to use the actual expenses method. These taxpayers will now only have the choice between more arduous record keeping requirements if using the AEM or the potential exclusion of the actual costs incurred if using the RFRM when determining their WFH claim. We consider that this outcome is unfair for taxpayers who have retained receipts of these costs on the basis that they are using the EFRM.

Accordingly, we recommend that the RFRM exclude stationery and computer consumables as these amounts are generally easy to substantiate but will also vary considerably across taxpayers.

### **Mobile telephone expenses**

The draft PCG includes mobile telephone costs as part of the WFH expenses. However, we consider that mobile telephone costs are not necessarily a cost of 'working from home'. Mobile telephones can and are usually used outside of the home. Paragraph 25 suggests that if a taxpayer uses their mobile telephone expenses in calculating and substantiating their WFH claim then no other deduction for mobile telephone expenses can be claimed. This is unfair to those taxpayers whose occupation or business relies on mobile data and access at locations that are not the taxpayer's home.

Further, it appears that there is an inconsistency between the work-related usage of the mobile telephone device and the hours calculated using the RFRM that could arise. That is, a mobile telephone could be used by a taxpayer for work-related purposes 80% of the time and the depreciation for the device may indicate this work-related percentage. However, as the taxpayer may be on the road frequently, they may only have a few hours per week WFH. The employee may also receive an allowance in respect of mobile telephone usage, but will not be able to offset the true cost of this expense if they use the RFRM. Accordingly, we consider that mobile telephone expenses should be excluded from the RFRM as the device is often used external to WFH and the inclusion of this cost could result in disadvantageous outcomes for taxpayers in certain occupations or working arrangements.

## Paragraph 18(a)

Paragraph 18(a) mentions that taxpayers can use the RFRM to calculate the WFH claim when carrying on a business and where the other necessary requirements are satisfied. Example 5 highlights how this may apply in respect of a business being conducted by a sole trader.

Contemporary working arrangements may result in business activities being conducted in a range of structures and arrangements. We consider that it is unclear whether taxpayers receiving business income from alternative arrangements or structures can use the RFRM for determining their WFH claim.

We recommend that the draft PCG explicitly state and provide examples to clarify how the RFRM would apply in the following scenarios:

- **partnerships** — where the partner carries on the business in a partnership, wholly or partly from their home, and receives business income via a partnership distribution;
- **trusts** — where the trustee or a director of the trustee company of a trust carries on the business through the trust, wholly or partly from their home, and receives business income via a trust distribution;
- **companies** — where the director of the company, carries on the business through the company wholly or partly from their home, and receives business income via a dividend from the company; and
- **attributed personal services income** — where a company or trust derives personal services income from a business that is carried on, wholly or partly from the individual's home, and is not conducting a personal services business.

## Paragraph 23

Paragraph 23 provides that the fixed-rate under the RFRM will be 67 cents per hour from 1 July 2022. Feedback from our members indicates that this rate (which encompasses energy, internet expenses, mobile and telephone expenses, stationery, and computer consumables) does not appear to be representative of the costs taxpayers actually incur for these expenses. This is particularly evident where taxpayers may have used the EFRM previously. The increase in rate (from 52 cents to 67 cents) does not appear to represent the internet expenses and mobile costs that taxpayers incur (this takes into consideration the excluded costs that were previously contained in the EFRM). It would be helpful if the draft PCG could include an explanation of how this rate was determined.

Noting the considerable impact of inflation in recent history, we also consider that the amount of the rate should be subject to an annual review with an explanation of how the rate will be indexed or adjusted for the impact of inflation over time. The inclusion of this information will provide certainty for taxpayers that the rate accurately reflects the true cost of expenses covered by the RFRM and will ensure transparency for any increases in the rate.



## Paragraph 56

The second point of paragraph 56 states that taxpayers are required to retain one invoice for every additional cost incurred. As outlined above, we recommend that references to the term 'additional' are removed. We recognise the premise behind the documentation requirement, however, note that not all expenses need to be incurred for taxpayers to use the RFRM (paragraph 49).

Where a taxpayer incurs all or many of the types of costs covered by the RFRM they will have a greater compliance burden compared to another taxpayer who only incurs some of these costs, irrespective of their WFH hours. This greater compliance burden exists because the taxpayer (who incurs all of the costs) is required by the draft PCG to retain more types of documents to evidence their WFH claim. They are also subject to greater risk that their claim may be disallowed if one of the documents substantiating their RFRM claim is considered insufficient in a potential review. We consider that this is an unfair outcome and the requirement disincentivises taxpayers from disclosing all their relevant expenses as there is greater risk to do so without any benefit to their WFH claim.

By way of illustration, for example, taxpayer A works from home for 20 hours per week out of 48 weeks per year in the 2023–24 income year. The taxpayer incurs all the following costs covered by the RFRM and is evidenced as below:

- electricity costs evidenced by one quarterly statement during the year;
- internet costs evidenced by a monthly statement;
- mobile costs evidenced by a monthly statement;
- stationery costs of \$50 for the whole year evidenced by one invoice; and
- printer toner of \$80 substantiated by an invoice.

Provided all of the criteria in paragraph 18 are satisfied and they have retained the necessary evidence, under the RFRM taxpayer A can claim \$643 (truncated). This requires the taxpayer to retain five documents and a record of the WFH hours for the full year. In comparison, if taxpayer B works the same hours but does not incur some of the same expenses such as any stationery and printer costs, they will be entitled to make the same claim (\$643), however will require fewer documents to substantiate their claim. Both taxpayers will have the same entitlement, however, the draft PCG requires taxpayer A to retain more documentation than taxpayer B and is subject to a greater risk if their claim is reviewed.

In order for a taxpayer to claim a loss or outgoing under ordinary principles the taxpayer is required to retain evidence showing that they actually incurred the loss or outgoing. The purpose of the draft PCG is to provide an administrative concession to all taxpayers who WFH to simplify this process, particularly where it is difficult to apportion certain expenses. Not all taxpayers will incur all of the types of expenses included in the RFRM, as is acknowledged in the draft PCG. Accordingly, we recommend that the requirement is reduced so taxpayers are only required to retain at least one form of documentation evidencing that they incurred a loss or outgoing of a kind covered by the draft PCG (such as a utility bill or invoice).



## Paragraph 58

We consider that the proposed diary requirement of both days and hours worked from home may be burdensome for taxpayers to maintain over the whole income year. We consider that the draft PCG should instead allow taxpayers to keep a diary of hours for a representative period, similar to the EFRM, and a record of the actual days the taxpayer worked from their home for the relevant income year. Alternatively, taxpayers should be allowed to use other evidence, such as declarations from employers, in the event that they fail to keep records of periods of time worked from home throughout the year. This will provide a more equitable outcome and encourage taxpayers to use the RFRM.

## Paragraph 59

Paragraph 59 advises that for the period 1 July 2022 to 31 December 2022, taxpayers may substantiate their WFH hours using 'a record which is representative of the total hours worked from home' if using the RFRM. The draft PCG does not define what a representative record is in the context of the RFRM. We consider that the draft PCG should provide details on what the ATO would accept as a representative record so taxpayers can substantiate their claims accordingly. By excluding this information, taxpayers may be disadvantaged if they have relied on the draft PCG when determining their WFH claim using the RFRM but do not meet the standards required to evidence this. We recommend the draft PCG include this information and is supported by each example referring to the specific substantiation relied on in determining the WFH hours (e.g. diary of actual hours over X weeks, etc.). This will enable taxpayers to determine the extent of evidence they are required to retain for the representative period.

## Paragraph 61

Paragraph 61 provides the substantiation requirements for when invoices and bills are in a different name to the taxpayer using the RFRM in determining their WFH claim. This paragraph provides examples of a lease agreement or a joint credit card statement being evidence that the taxpayer may have incurred the cost when the invoice or bill is not in their name. We consider that taxpayers would benefit from more examples of other documents that the ATO would accept as sufficient evidence that a taxpayer has incurred a cost that is billed to another person's name.

For example, providing details of the evidence the ATO would accept when adult children live in their parent's house. Paragraph 51 states that generally, paying board is considered a private arrangement. However, if an adult child is living in a house and contributing to the household costs, taxpayers would benefit from knowing what evidence would be sufficient to demonstrate the contribution. We recommend that where a taxpayer uses the RFRM and their WFH claim is, for example \$600 or less, the taxpayer is not required to retain more documentation than the invoices/bills of the costs and the WFH hours.

This issue is evident in many contemporary relationships where assets may be kept separately. Households may have one taxpayer's name on an account and that taxpayer may pay for all of the costs in respect of that account. The other taxpayer (which could include a married or de facto spouse) may pay wholly for other accounts. Overall, the taxpayers pool their money to pay for shared costs, however, they may not be able to evidence this sharing of costs by a lease agreement or joint credit card statement. We consider that where a house is owned together in both names, the title of the land could be sufficient to evidence that they share costs however this is not obvious in the draft PCG. We recognise that where the property title is held in one spouse's name but beneficially owned by both spouses, the land title will not evidence that the other spouse used the house on that land. In this case, both spouses may have contributed towards the WFH running costs associated with the house however will not be able to evidence this by the land title. The fact that a taxpayer is married or in a de facto relationship should be sufficient evidence that these taxpayers may share costs. We consider that they should not have to provide additional documentation, to evidence their relationship, when relying on the RFRM for calculating their WFH claim.

We recommend that further detail is provided in paragraph 61 about the documents that can be used to substantiate shared costs. Further we consider that taxpayers would benefit from an expansion of example 6 to include a scenario of what needs to be done to enable Sergei to claim a WFH deduction using the RFRM.

## Miscellaneous matters

We have set out below some minor matters in the draft PCG for your consideration:

- **Incurring all costs covered by rate** — Feedback from our members indicates that it is unclear whether all the costs covered by the RFRM must be incurred for the taxpayer to use this method in claiming their WFH deduction. We recommend that the sentence in paragraph 49, stating that taxpayers 'do not have to incur every running expense listed at paragraph 23' is inserted as a separate point after paragraph 19. This will clearly highlight to taxpayers that they do not need to incur all of the costs encompassed in the RFRM to use the draft PCG in working out their WFH claim.
- **Billing period** — Paragraph 61 requires that taxpayers retain one monthly or quarterly bill to substantiate energy, mobile and telephone expenses that are incurred by the taxpayer. Although many bills are issued for monthly or quarterly periods, this is not the case for all bills or invoices. Many taxpayers may choose for a bill to incorporate a shorter or longer period, depending on their cashflows. We consider that it would be beneficial to specifically allow for other such billing arrangements in the draft PCG, and for example require taxpayers to retain one consecutive month's worth of documentation or equivalent.
- **Footnote 17** — We recommend updating footnote 17 to refer to paragraphs 25 and 26 of the draft PCG, rather than paragraphs 24 and 25.

## APPENDIX B

### About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.