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Travel travails

Travel and subsistence costs are a major overhead of many businesses and an area where HMRC have increased their interest over recent years. There have been several Tribunal cases and some changes in law, although the government have recently decided not to rewrite the rules for employees. In light of all of these factors, it seems an appropriate time to review the rules on travel costs.

The self-employed

'Wholly and exclusively'

HMRC have enquired into a number of tax returns of self-employed taxpayers in recent years questioning the tax deductibility of travel costs. The issue really relates to businesses which are run, to some extent, from home but where there is regular travel to another place.

Such costs are allowable if they are 'wholly and exclusively incurred for the purposes of carrying on the trade' but exactly what does this mean? The key problem is the 'dual purpose' test and this is what causes practical problems for many taxpayers.

The main case, which HMRC won, was concluded after an enquiry lasting around seven years and four Tribunal hearings, and related to the travelling expenses of an NHS consultant doing private work.

The taxpayer specialised in the health care of elderly people and worked full-time for the NHS. The taxpayer also held weekly out-patient sessions at two private hospitals, St Anthony's in Cheam and Parkside in Wimbledon.

Typically, referral letters were sent to the taxpayer's office at his home. After receiving a referral, the taxpayer embarked on a fact-finding consultation at St Anthony's or Parkside, the patient's home or an alternative care location (e.g. a nursing home).

The taxpayer prepared a treatment plan in his home/office and continued to monitor and care for the patients. He reviewed patients' conditions during his ward rounds, six evenings a week, at St Anthony's. The taxpayer did not examine patients at home.

The taxpayer and HMRC agreed that the cost of travel from home or one of the private hospitals to see a private patient at their home or in an alternative care location was allowable.

The Upper Tribunal found that:

- the taxpayer had places of business at Parkside, St Anthony's and his home
- although the taxpayer's travel between his home and Parkside/St Anthony's was between places of business, **no deduction could be allowed in relation to that travel as there was a dual purpose to the costs, home being home as well as business premises**
- the taxpayer's travel between his places of employment with the NHS and Parkside/St Anthony's **was undertaken to get him to and from his place of business and not in the course of carrying on his business.**

The Tribunal stated that travel expenses for journeys between a person's home, even where the home is used as a place of business, and a place of business are non-deductible other than in very exceptional circumstances. If there is a pattern of regular and predictable attendance between home and somewhere else, the costs will not be allowable.

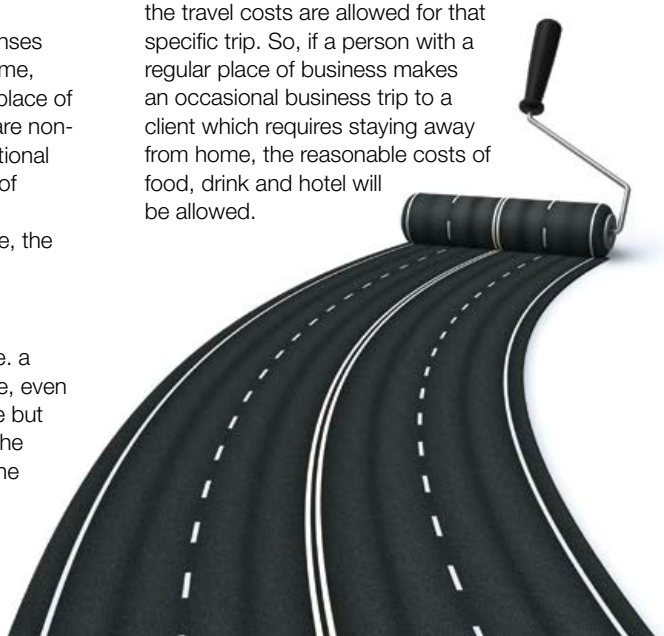
Travelling job

The travel costs of itinerant work (i.e. a travelling job) are generally allowable, even if the start and end-points are home but the rules are not straight-forward. The key case where the taxpayer won the argument on travel costs related to a builder who was based at home and lead a bricklaying team of three men. The taxpayer had no business premises and wrote up his books and kept his tools at home. During the year in question, the taxpayer worked at seven different sites, between five and 55 miles from his home. The Court held that his travel costs were allowable:

'…his trade or profession being .. of an itinerant nature, the travelling expenses of that person between his home and the places where from time to time he happens to be exercising his trade or profession will normally be… wholly and exclusively laid out or expended for the purposes of that trade or profession.'

Subsistence costs

How are related costs i.e. the costs of food, drink and accommodation treated? Food and drink costs are dealt with by specific statutory rules. Reasonable expenses for such items will be allowed if the travel costs are allowed for that specific trip. So, if a person with a regular place of business makes an occasional business trip to a client which requires staying away from home, the reasonable costs of food, drink and hotel will be allowed.



Employees and directors

In some respects the rules for employees are easier, as there is more law and more mechanical tests. There is also a lot of guidance from HMRC in Booklet 490, together with examples.

Many employees have a place of work which they regularly attend and make occasional trips out of the normal workplace to a temporary workplace. Often an employee will travel directly from home to a temporary workplace and vice versa. An employee can claim full tax relief on business journeys made.

A business journey is one which either involves travel:

- from one place of work to another
- from home to a temporary workplace, or
- to home from a temporary workplace.

Journeys between an employee's home and a place of work which they regularly attend are not business journeys. These journeys are 'ordinary commuting' and the costs of these have to be borne by the employee. The term 'permanent workplace' is defined as a place which the employee 'regularly' attends. It is used in order to fix one end of the journey for ordinary commuting. Home is the normal other end of the journey for ordinary commuting.

Example 1

An employee usually commutes by car between home in York and a normal place of work in Leeds. This is a daily round trip of 48 miles.

On a particular day, the employee instead drives from home in York to a temporary place of work in Nottingham. A round trip of 174 miles.

The cost here is the cost of the travel undertaken (174 miles). A tax deduction would be available for that amount.

Example 2

An employee who normally drives 40 miles in a northerly direction to work is required to make a 100 miles round trip south to a client's premises. His employer reimburses him for the cost of the 100 miles trip. A tax deduction would be available for that amount.

Anti-avoidance

Some travel between a temporary workplace and home may not qualify for relief if the trip made is 'substantially similar' to the trip made to or from the permanent workplace. 'Substantially similar' is interpreted by HMRC as a trip using the same roads or the same train or bus for most of the journey.

Temporary workplaces

Where an employee is sent away from their permanent workplace for many months, the new workplace will still be regarded as a temporary workplace if the posting is either:

- expected to be for less than 24 months, or
- if it is expected to be for more than 24 months, the employee is expected to spend less than 40% of their working time at the new workplace.

Example 3

Edward works in New Brighton. His employer sends him to Wrexham for 1.5 days a week for 28 months. Edward will be entitled to relief. Any posting over 24 months will still qualify provided that the 40% rule is not breached.

Site-based employees

Some employees do not have a normal place of work but work at a succession of places for several days, weeks or months. Examples of site-based employees include construction workers and IT consultants.

A site-based employee's travel and subsistence can be reimbursed tax free if the period spent at the site is expected to be, and actually is, less than two years.

There are anti-avoidance provisions to ensure that the employment is genuinely site-based if relief is to be given. For example, short term appointments may be excluded from relief where duties are performed at that workplace for all or almost all of that period of employment. This is aimed particularly at preventing manipulation of the 24 month limit through recurring short term appointments.

Travelling appointments

For some employees, travelling is an integral part of their job. For example, a travelling salesman who does not have a base at which they work or where they are regularly required to report. Travelling and subsistence expenses incurred by such an employee are deductible.

Home based employees

Some employees work at home occasionally, or even regularly. This does not necessarily mean that their home can be regarded as a place of work. There must be an objective requirement for the work to be performed at home rather than elsewhere. This may mean that another place is the permanent workplace for example, an office where the employee 'regularly reports'. Therefore, any commuting cost between home and the office would not be an allowable expense but trips between home and temporary workplaces will be allowed as business travel.

If there is no permanent workplace then the employee is treated as a site-based employee. Thus, all costs would be allowed as business travel including the occasional trip to the employer's office.

The home may still be treated as a workplace under the objective test above. If so, trips between home and any other workplace in respect of the same employment will be allowable.

Subsistence payments

Food, drink and accommodation expenditure will be allowed if the expenditure is incurred whilst on business travel or when staying away in order to perform the employment duties. The expenditure must be reasonable in amount. Employers who want to control the amount spent by their employees can use Benchmark rates. These are a set of maximum reimbursement rates for meals laid down in Regulations. Alternatively, bespoke rates can be used if specifically agreed with HMRC in writing.

Recent developments

From 6 April 2016 new legislation affects the travel expenses of certain employees who provide their services through an 'employment intermediary', such as a recruitment agency, umbrella company or personal service company.

Where a worker personally provides services to a client through an employment intermediary and the manner in which the worker provides the services is subject to (or to the right of) supervision, direction or control by any person, then each assignment is considered to be a separate employment. Consequently, travel costs related to those assignments will not qualify for tax relief.

For personal service companies, it is only contracts within the IR35 rules which are subject to the expenses restriction.

What to do

As can be seen, the rules can be complex but it is worth spending time looking at the costs you incur and whether you think that they are clearly allowable. If not, it will be worth you considering changing your policies. We are here to help and so please do get in touch with us to discuss anything arising from this Briefing.