

# General Rule as to Deduction of Expenses in Employment

## Part 05-02-20

This document should be read in conjunction with section 114 of the Taxes Consolidation Act 1997

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## 1 Introduction

This manual sets out the principles, based on case law, for determining the tax deductibility of general expenses, as they arise in respect of money expended in the performance of the duties of the employment.

In addition to expenses of travel, section 114 Taxes Consolidation Act 1997 (TCA) provides for a tax deduction in respect of expenses incurred “wholly, exclusively and necessarily in the performance of the duties” of an individual’s office or employment. The section provides that **“where the holder of an office or employment .... or otherwise to expend money wholly, exclusively and necessarily in the performance of those duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed.”**

Any expenses incurred must be paid by the employee to be deductible as an expense of the employment. The Safety, Health and Welfare at Work (General Application) Regulations 2007 provide for the obligations of employers in relation to the provision of personal protective clothing and equipment (PPE) and should be borne in mind when considering whether an expense is incurred wholly, exclusively and necessarily in the performance of the duties of the employment. It can be inferred from the provisions of the regulations that if PPE is required for the performance of the duties then the employer will provide the PPE.

A separate Tax and Duty Manual (TDM) [Part 05-01-06](#) Tax treatment of the reimbursement of Expenses of Travel and Subsistence to Office Holders and Employees, is available in relation to travel expenses incurred and defrayed, which also covers subsistence expenses and Employees’ Motoring / Bicycle expenses. Employers often reimburse employees for expenses incurred wholly, exclusively and necessarily in the performance of the duties of their employment and if the expense is paid by the employer, a deduction is not allowable to the employee.

## 2 Principles

The central test of deductibility when considering general expenses (and flat-rate expenses operated administratively by Revenue) is whether the expense has been expended wholly, exclusively and necessarily in the performance of the duties of the employment/office. Despite the importance of this test, it has not often come before the Irish courts and, therefore, there is little guidance from Irish case law as to how this phrase should be interpreted.

The UK legislation contains a similar phrase which has come before the UK Courts on many occasions, sometimes on the general meaning of “wholly, exclusively” and on other occasions in relation to the phrase “necessarily in the performance of the duties of the employment/office”. The findings in these cases can be both persuasive and instructive in an Irish context. There is case law that relates specifically to continuous professional development and to club memberships and education. The “wholly, exclusively and necessarily in the performance of the duties of the employment test” is strictly applied.

The narrow application of section 114 means that expenses must be incurred wholly, exclusively and necessarily in the performance of the duties of the office/employment. Each and every part of the provision must be strictly conformed to. Duality of purpose, in the context of employment expenses, has been considered on numerous occasions and it has been found that expenditure which is not incurred in the actual performance of the taxpayer's duties, but merely in order to put the employee in a position to perform his or her duties, is not deductible. To quote from Henderson J. in **Revenue & Customs Commissioners v Banerjee [2011] 1 All ER 985**: **“any duality of purpose is fatal: that is the force of the word ‘exclusively’”**.

The strict application of the rule in section 114 TCA 1997 is further displayed in the words of Vaisey J. in *Lomax v Newton*, 34 TC 558, where Vaisey, J. stated:

“The provisions of this rule are notoriously rigid, narrow and restricted in their operation. In order to satisfy the terms of the Rule, it must be shown that the expenditure incurred was not only necessarily, but wholly and exclusively incurred in the performance of the relevant official duties. As it is certainly not enough merely to assert that a particular payment satisfies the requirements of the Rule, without specifying the detailed facts upon which the finding is based. An expenditure may be necessary for the holder of an office without being necessary to him in the performance of the duties of that office, it may be necessary in the performance of those duties without being exclusively referable to those duties; it may perhaps be both necessarily and exclusively, but still not wholly so referable. The words are indeed stringent and exacting; in compliance with each and every one of them is obligatory if the benefit of the Rules is to be claimed successfully.”

## 2.1 Wholly and Exclusively

The taxpayer's sole purpose for incurring the expense must have been for the purposes of the performance of the duties of the employment. Where a non-employment purpose is identified, then the expenditure is not allowable. The taxpayer's purpose includes his or her conscious as well as subconscious purpose.

The **wholly and exclusively** provision rules out circumstances where an expense is incurred, and that expense serves a dual purpose.

- In *Mallalieu v Drummond (Inspector of Taxes) [1983] STC 665*, the taxpayer, a barrister, purchased dark clothes to comply with Bar Council rules for court appearances. This expense was found to have a dual purpose of preserving warmth and decency as well as satisfying the Bar Council rules and so the cost was not tax deductible.

In *Sargent (Inspector of Taxes) v Barnes [1978] 33 TC 491*, the principle of exclusivity was also examined. A dentist made a detour on his journey home from his practice each day to visit a laboratory to order/collect dentures. The work done was exclusively referable to the practice and the journey between the laboratory and the practice was necessary. However, the cost of travelling between the laboratory and the practice was part of the journey made and to and from his home and his place of business. Therefore, the expense was not incurred wholly and exclusively for the purpose of the business.

## 2.2 Necessarily incurred in the performance of the duties

Necessarily means that the duties of the office or employment could not be performed without incurring the expense. "In the performance of the duties" means in the actual performance or carrying out of the duties of the employment. Any expenditure incurred before or after performing the duties of the office or employment would be ruled out. Expenditure incurred by an employee/office holder which merely puts the employee in a position to exercise the employment would not be incurred in the performance of the duties of the office or employment.

The objective test of necessity requires that the expense is incurred. However, it must be considered whether the duties could be performed without incurring the expense. The expense should not arise because of the personal circumstances or preference of the taxpayer. For the expense to be allowable, it must be incurred in the actual performance of the duties of the office or employment or as a direct consequence of those duties.

It is the duties of the office or employment which must impose the test of necessity, not the employer.

- In *Brown v Bullock* (40TC1) a bank manager was required by his employer to join a club and the employer paid the annual subscription. The taxpayer was also a member of another club which was thought by the employer to derive some benefit to his role, so the employer paid half the annual subscription. The amount paid was treated as emoluments and the taxpayer felt it should be allowed as an expense deduction. It was held that the expense was not incurred in the performance of the duties as bank manager. Although the employer imposed the necessity to incur the expense, the duties of the employment could be performed without incurring the expense.
- *Nolder (H.M. Inspector of Taxes v Walters)* [1930] 15 TC 380 which concerned an airline pilot who often had to drive to the airport on the receipt of a phone call to fly a plane to various destinations. It was held that the pilot's travel expenses were not allowable as they were incurred in putting the pilot in a position to carry out his duties and not incurred in the actual performance of those duties.

## 3 Flat-Rate Expenses

For ease of administration, where a large number of employees incur broadly identical qualifying expenses which are not reimbursed by their employer, Revenue has over the years provided a facility whereby a flat-rate expense allowance may be claimed. The flat-rate regime is appropriate where a specific commonality of expenditure exists. The expense should apply to all employees in that category and not be discretionary. The amount of the deduction is agreed between Revenue and representatives (usually trade union officials but not always) of groups or classes of employees. All employees of the class or group in question can then, where appropriate, claim the agreed deduction as part of their own annual tax credits.

Flat-rate expenses are those that are incurred in the performance of the duties of an employment and cover the cost of equipment an employee needs for work. This equipment may include tools or uniforms. It may also cover a statutory registration fee. It should be borne in mind that employers have obligations under the Safety, Health and Welfare at Work (General Application) Regulations 2007<sup>1</sup> to provide protective clothing and equipment to employees. As mentioned earlier, it can be inferred that an expense of personal protective equipment “necessarily” required will be covered by an employer in order to fulfil obligations under the regulations.

Details of agreed flat-rate expenses are available on the [flat rate expenses list](#). Flat-rate expense allowances for individual claimants can be claimed via PAYE Services in [myAccount](#).

Outside of the flat-rate regime, employees retain their right to claim a deduction under section 114 TCA 1997, in respect of actual vouched expenses incurred wholly, exclusively and necessarily in the performance of the duties of their employment, but the test is to be strictly applied.

#### 4 Membership fees paid to a professional body

Circumstances in which professional fees are incurred wholly, exclusively and necessarily in the performance of the duties of an office or employment include situations where it is a statutory requirement to be a registered member of a designated professional body, association, society, council, etc., in order to exercise a particular profession and an individual is employed in that capacity. In addition to membership of a professional body, association, council, etc., an employee may also be statutorily required to hold a current practising certificate before he or she can carry out the duties of his or her employment.

Other instances may arise where, while there is no statutory requirement for membership of a professional body, certain statutory provisions may restrict the ability of an individual to fulfil the full duties of an office or employment unless he or she is a member of a relevant professional body. TDM [Part 05-02-18](#) includes a number of examples demonstrating the circumstances where a deduction may apply.

#### 5 Continuous Professional Development (CPD)

It is an accepted principle in tax law that expenditure which merely enables an individual to perform his/her duties, or to perform the duties more efficiently, is not expenditure in the performance of the duties and, consequently, no deduction is due in respect of such expenditure. As such, costs associated with the Continuous Professional Development are outside the scope of the relief.

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<sup>1</sup> <http://www.irishstatutebook.ie/eli/2007/si/299/made/en/print>

The cost of, and costs associated with, courses attended during office hours and extra-curricular courses have featured in many tax cases over the years. It was generally found that the costs were either not necessarily incurred (individuals undertaking voluntary courses after office hours) or not incurred in the performance of the duties of the office or employment. Generally, a distinction is made between expenditure incurred in the performance of duties (which is deductible) and expenditure incurred to put the taxpayer in a position to perform the duties (which is not), *Snowdon v Charnock* [2001] STC (SCD) 152 refers.

- In the case of *Humbles v Brooks* 40 TC 500, a headmaster at a primary school was required to teach history and attended a series of history classes at weekends for the purposes of improving his skills. It was held that no deduction was due as the expenses were not necessarily incurred in the performance of duties of the employment.
- In the case of *Blackwell v Mills* 26 TC 468, a student assistant in the research laboratory was required by his employer, in addition to performing his laboratory duties, to attend classes in preparation for a university degree. It was held that the expenses associated with the course were not incurred in the performance of the duties of the employment and no deduction was due.
- The requirement that expenditure be incurred in the performance of the duties also denied a claim for the cost of journals by a medical officer who had to keep up to date with developments in his specialisation (*Simpson v Tate* 9 TC 314).

In the circumstances where an employer pays or refunds the cost of continuing professional development which is wholly and exclusively for the purposes of the trade or profession, Revenue accepts that such payment or refund comes within the scope of their published practice. Courses relevant to the business of an employer are not regarded as a taxable benefit. The Revenue published practice on the payment or reimbursement by an employer of course or exam fees is detailed in TDM [Part 05-01-01j](#).

## 6 Deductibility of typical expenses that may be incurred by an employee

**Laundry** - normal laundry of clothing or uniforms does not meet the wholly, exclusively and necessarily in the performance of the duties of employment test. It is possible that specialist cleaning of a uniform may meet the test.

**Uniforms** – vocational uniforms which staff are obliged to supply and wear generally meet the criteria for deduction.

**Clothing** – it is unlikely that clothing outside of a distinct uniform which an employee is obliged to wear daily under their contract will meet the test. Any clothing expense outside of a uniform which an employee is obliged to wear will likely fail the duality of purpose test. For a uniform to qualify the employee must bear the cost. For example, the purchase of black trousers and a white shirt for work would not be

allowable.

**Statutory/regulatory requirements** – a registration fee where there is a statutory obligation to be a member of a particular body to carry out the duties of the employment (e.g. Irish Medical Council for doctors) is an allowable deduction and will likely be included in a flat-rate expense where one exists for the particular profession.

**Professional membership fees** – will not generally meet the test unless it is a statutory obligation, an indispensable condition of the terms of the employment and the employee works in those duties. If it is a requirement of the employment, it is likely the employer will cover the cost. TDM [Part 05-02-18](#) covers this matter in more detail.

**Purchase of a computer** – it is unlikely that an employee would be required to purchase a computer from their own resources to fulfil the duties of the employment. The wholly, exclusively and necessarily in the performance of the duties of the employment test would not be met. There is a Benefit in Kind (BIK) exemption under section 118(5D) for an employer to provide computer equipment where certain conditions are met. TDM [Part 05-02-13](#) refers to remote working where arrangements may allow an employer to provide computer equipment without a deduction of tax.

**Continuous Professional Development (CPD)** – if an employee was required to pay for necessary CPD, the question would have to be asked could the employee carry out the duties of the employment without such CPD. Case law dictates that CPD does not generally meet the criteria for deduction – see section 5 of this TDM.

**Personal protective equipment (PPE)/safety equipment** – it would be unusual for an employee to be expected to supply their own PPE. If such equipment was required to carry out the duties of the employment, the employer would supply the equipment, in accordance with the provisions of the Safety, Health and Welfare at work (General Application) Regulations 2007. The equipment in question would be items such as hard hats, high vis jackets, safety boots, etc and not personal security assets as described in section 118A.

**Tools** – if an employee is required to supply his/her own tools, it would likely meet the wholly, exclusively and necessary test if those tools were used exclusively in the performance of the duties of the employment.

**Trade Union membership** – does not meet the test of wholly, exclusively and necessarily incurred in the performance of the duties of the employment.



**Table of associated Tax and Duty Manuals:**

<a href="#">Part 05-01-06</a>	Tax treatment of the reimbursement of Expenses of Travel and Subsistence to Office Holders and Employees
<a href="#">Part 05-02-18</a>	Deduction for expenses in respect of annual membership fees paid to a professional body
<a href="#">Part 05-01-01j</a>	The provision of staff awards
<a href="#">Part 05-02-13</a>	Remote Working Relief
<a href="#">Part 05-02-03</a>	Removal and Relocation Expenses