Travel Expenses: When are they wholly & exclusively for the purposes of the trade?

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1. Introduction

When arriving at business profits assessable to tax under Case I (trade) or Case II (profession), a taxpayer must first look to section 81 Taxes Consolidation Act 1997, as amended, to determine what expenses may or may not be deductible. While there are a number of expenses specifically disallowed by section 81, such as rent of private accommodation[1], the central test of deductibility when computing assessable Case I or II profits is whether or not the expense has been "wholly and exclusively laid out or expended for the purposes of the trade or profession"[2].

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 and exclusively for the purposes of the trade and on other occasions specifically in relation to determining whether travel expenses are deductible. The findings in those cases can be both persuasive and instructive in an Irish context.

In many cases, for convenience, sole traders will include all of their travel expenses in their business accounts and then 'add-back' a portion to remove the cost of personal usage from the computation of assessable profits[3]. When determining the appropriate percentage add-back for an individual taxpayer regard should be had to the principles set out below.

Employers often reimburse employees for expenses incurred wholly, exclusively and necessarily in the performance of the duties of their employment in accordance with the approved civil service rates. The reimbursement of employees in line with the civil services rates (in accordance with IT51[4] or IT54[5]) will be accepted by Revenue as an expense incurred wholly & exclusively for the purposes of the employer's trade.

It is important to note that Revenue will not accept deductions for travel or subsistence expenses of sole traders based on the civil service rates.

Some of the cases discussed below were decided many years ago, but they describe work practices and travel patterns that have probably become less common in the

[1] Section 81(2)(c) Tax Consolidation Act 1997 ("TCA 1997")
[2] Section 81(2)(a) TCA 1997
[3] The practice of apportioning expenses, such as those of a car which is sometimes used for business purposes and sometimes used for private purposes, was approved in Caillebotte (Inspector of Taxes) v Quinn [1975] STC 265
[4] http://www.revenue.ie/en/tax/it/leaflets/it51.html
[5] http://www.revenue.ie/en/tax/it/leaflets/it54.html

intervening years. The principles from that case law are still relevant to current work practices[6].

2. Principles

- There is no requirement that the expense is necessarily incurred, for the purpose of the trade or otherwise. The necessity is irrelevant once the expense is incurred in furtherance of the trade[7].
- One must look at the purpose of the expense (whether stated or subconscious) and not just its effects[8].
- As a general rule, travel between home and work, even if some work is carried on at home, always carries the purpose of getting home – it facilitates living away from work[9]. The duality of purpose renders the expense non-deductible.
- So-called 'itinerant' traders are an exception to the general rule that travel between home and work is incurred by the decision to live away from work. Home, for such traders, is the only place new customers can contact them, where they store their tools etc. Therefore, they go home to look for new work[10]. In these instances, getting home is an effect and not a purpose of the journey.
- It is not necessary to determine where a trade is carried on, or to establish a 'base of operations'. Travel between a home office and a main 'base of operation' will not necessarily be deductible. One must look solely to the statutory test, the main focus of which is the purpose for which the expenditure was incurred[11].
- There is a distinction between "travelling in the course of a business and travelling to get to the place where the business is carried on"[12].

[6] The UK's First Tier Tribunal (the equivalent of our Appeal Commissioners) has examined a number of travel and subsistence cases in recent years. While some of them are helpful in determining how the principles apply to modern work practices, those cases are not of persuasive authority in the UK or Ireland and they do not overturn established precedents from the superior courts. Where the findings of the FTT appear at odds with an established precedent, officers should follow the principles, based on decisions of the superior courts, set out in this manual.
[7] Bentley, Stokes and Lowless v Beeson [1952] 33 TC 491, confirmed in Mallalieu v Drummond [1983] STC 665
[8] Bentleys, Stokes & Lowless v Beeson 1952, confirmed in Mallalieu v Drummond 1983
[9] Newsom v Robertson [1953] Ch 7, Jackman v Powell [2004] STC 645
[10] Horton v Young [1972] CH 157, Jackman v Powell 2004

3. Case Law

MacAonghusa (Inspector of Taxes) v Ringmahon Company Ltd [1999] IEHC 48

This is a leading Irish case that has examined the issue of whether expenses have been wholly and exclusively incurred for the purposes of the trade. While it was looking at specific elements of deductibility, there are some aspects of the ruling worth noting when looking at whether expenses are "wholly and exclusively laid out or expended for the purposes of the trade or profession".

Budd J, in the High Court, cited with approval Millett L.J's summary of the principles involved from Vodafone Cellular Limited and Ors v Shaw (Inspector of Taxes) [1997] STC 734:

> *"The leading modern cases on the application of the exclusively test are Mallalieu v Drummond... and MacKinlay (Inspector of Taxes) v Arthur Young McClelland Moores & Co [1989] STC 898 From these cases the following propositions may be derived.*
>
> 1. *The words for the purposes of the trade mean to serve the purposes of the trade. They do not mean for the purposes of the taxpayer but for the purposes of the trade, which is a different concept. A fortiori they do not mean for the benefit of the taxpayer.*
>
> 2. *To ascertain whether the payment was made for the purposes of the taxpayer's trade it is necessary to discover his object in making the payment. Save in obvious cases which speak for themselves, this involves an inquiry into the taxpayer's subjective intentions at the time of the payment.*
>
> 3. *The object of the taxpayer in making the payment must be distinguished from the effect of the payment. A payment may be made exclusively for the purposes of the trade even though it also secures a private benefit. This will be the case if the securing of the private benefit was not the object of the payment but merely a consequential and incidental effect of the payment.*
>
> 4. *Although the taxpayer's subjective intentions are determinative, these are not limited to the conscious motives which were in his mind at the time of the payment. Some consequences are so inevitably and inextricably involved in the payment that unless merely incidental*

[11] Samadian v HMRC [2014] UKUT 0013 (TCC), Sargent v Barnes [1978] 33 TC 491, Jackman v Powell 2004

[12] Samadian v HMRC 2014

> *they must be taken to be a purpose for which the payment was made."*

Geoghegan J, in the Supreme Court, noted that Budd J had given an accurate and exhaustive review of the relevant UK judgments.

The Irish Courts' approval of these principles is relevant when considering the findings of the UK courts, a chronological analysis of the most relevant of which follows.

Newsom v Robertson (Inspector of Taxes) [1953]Ch 7

This case considered the situation of a barrister, Mr Newsom, whose chambers were in London but who lived in Whipsnade, which is some distance from London. Mr Newsom had a fully stocked library in his home and during the vacation period, even though his London chambers remained open, he had papers sent to him at his home. It was not disputed that he worked from his home. The issue was whether or not the expense of journeys from his home to London, either to attend court or his chambers, was wholly and exclusively for the purposes of his profession.

The High Court held that Mr Newsom:

"… had chosen to live at Whipsnade because he liked living in the country and wished to enjoy its amenities. On any view, therefore, travelling between Whipsnade and [his chambers] was due partly to the calls of his profession and partly to the requirements of his existence as a person with a wife and family and a home. It followed that the expenses of that travelling were not incurred wholly and exclusively for the purposes of his profession."

The Court of Appeal decided:

"Mr Newsom's purpose in making the journeys was to get home in the evenings or at weekends. The fact that he intended to do professional work when he got there, and did so, does not makes this even a subsidiary 'purpose'…" Sommervell LJ

The Court further held that:

> *"… it cannot be said even of the morning journey to work that it is undertaken in order to enable the traveller to exercise his profession; it is undertaken for the purpose of neutralizing the effect of his departure from his place of business, for private purposes, on the previous evening. In other words, the object of both journeys, both morning and evening, is not to enable a man to do his work but to live away from it"* Romer LJ.

It was found that Mr Newsom carried out his profession in his chambers in London. The fact that he had a law library in his home, for which he was entitled to claim tax

deductions, did not change the purpose of his journeys between London and Whipsnade.

> "*Even busy barristers occasionally have an evening free from legal labour, and I feel sure that if Mr Newsom were lucky enough to have one he would not remain in London on the ground that there was no work to take him to Whipsnade."* Romer LJ.

This is an important case in illustrating that the mere fact that some work is carried on from home does not mean that the journeys to that location are undertaken wholly and exclusively for the purposes of the trade or profession.

Horton v Young (Inspector of Taxes) [1972] CH 157

This case considered the situation of a self-employed bricklayer, Mr Horton, who was the leader of a bricklaying team of three men with no yard or other business premises. He worked at a number of different sites during the year in question, at distances of between 5 and 55 miles from his home. The main contractor for whom he worked would visit Mr Horton at his home to agree the details of each job – the site and the rate of pay.

It was found in the High Court that:

> "*Where a person had no fixed place at which he carried on his trade, but moved continually from one place of work to another so that his trade was of an itinerant nature, the travelling expenses of that person between his home and the places where from time to time he happened to be exercising his trade would normally be 'wholly and exclusively laid out or expended for the purposes of [his] trade' ... for where a peripatetic occupation was concerned it could not normally be said that such travel expenses were, as in the case of a self employed person who travelled from his home to the base from which he carried on his trade, incurred for the purposes of living away from his wor*k."

In distinguishing these facts from those in Newsom, Denning LJ in the Court of Appeal said:

> *"On the finding of the Commissioners there is only one reasonable inference to draw from the primary facts. It is that Mr Horton's house at Eastbourne was the locus in quo of the trade, from which it radiated as a centre. He went from it to the surrounding sites according as his work demanded."*

In recognising the difficulty in distinguishing between 'itinerant' traders and persons such as Mr Newsom it was noted by Stamp LJ that each case had to be examined on its own facts and decided by reference to the statutory criteria.

The principle was clarified by Brightman J, in the High Court, when addressing an argument put forward in the case:

> *"The example given in argument was a commercial traveller who has a home in London but whose operational area is confined to Cornwall. I can quite see that in such a case the cost of travelling between London and the borders of the Duchy would not be money wholly and exclusively laid out or expended for the purposes of that commercial traveller's business."*

The general proposition that the place or places at which a man carries out the work he has contracted for must necessarily be his place or places of business was rejected.

Sargent (inspector of Taxes) v Barnes [1978] 33 TC 491

This case considered the situation of a dentist who made a slight detour on the journey from his home to his surgery each day to visit a laboratory to order / collect dentures. There was no argument as to the fact that the laboratory was a proper adjunct of the practice, that the work done there was exclusively referable to the practice, nor was there any argument as to the necessity of the journey between the laboratory and the practice. The issue was whether or not the cost of travelling between the laboratory and the surgery was incurred wholly and exclusively for the purposes of the profession.

Oliver J noted that an important issue here was whether the dentist carried on his profession in his surgery or also in the laboratory. The key issue here was where the day's work began. He gave the example of a barrister whose

> *"...day's work may begin in the early morning when he gets up very early to read papers for an urgent conference, or when he prepares a case on the train journey to London. But that does not enable him to claim his railway ticket as a deductible expense."*

He concluded that Mr Barnes' profession was not being carried on in two places and therefore no travel expense in getting from Mr Barnes' home to his practice, even if there was a pause for a business purpose, were wholly and exclusively incurred for the purposes of the trade.

Oliver J found that:

> *"What the Court is concerned with is not simply why he took a particular route... but why the taxpayer incurred the expense of the petrol, oil, wear and*

tear and depreciation in relation to this particular journey… The fact that the journey served a purpose of enabling him to stop at an intermediate point to carry out there an activity exclusively referable to the business cannot, I think, convert a dual purpose into a single purpose."

Mallalieu v Drummond (Inspector of Taxes) [1983] STC 665

This case considered whether a barrister who went to Marks & Spencer and bought clothes specifically to wear in court, given her wardrobe did not contain appropriate garments, was entitled to expenses associated with cleaning and renewing the clothes. Ms Mallalieu wore the clothes to and from work and also on occasions remained in them after her work was completed. The issue was whether expenditure on the clothing was wholly and exclusively for the purposes of the trade.

It was found that while it may have been necessary for her to incur the expenditure, and while her conscious motive may have been to put her in a position to practise her profession, she also had the sub-conscious object of wearing clothes for the preservation of warmth and decency. Lord Brightman rejected the notion that "the object of the taxpayer should be limited to the particular conscious motive in mind at the moment of expenditure".

Jackman (Inspector of Taxes) v Powell [2004] STC 645

This case considered the situation of a self-employed13 milkman. Mr Powell travelled from his home to a dairy depot 26 miles away each day. While the dairy sent invoices to Mr Powell's home address and Mr Powell issued invoices to his customers in his home address, there were significant links with the dairy depot. These links were such that in essence Mr Powell operated from the depot.

In distinguishing this from the case of Mr Horton, Lewison J identified the fact that Mr Horton would be actually laying bricks at numerous and various building sites, the location of which was unpredictable, as of importance. Mr Horton travelled 'according as his work demanded' whereas Mr Powell had an element of predictability in his travel. Lewison J also stressed that it is not necessary under law to identify a base of trading operations when determining whether such travel expenses are wholly and exclusively laid out for the purposes of the trade – instead, one must look at the facts of each case and it must turn on its own facts.

"…in deriving the principle that it is necessary to define the base of the trading operation … the Special Commissioner did err in law. It is not in all cases necessary to do that, and it was only Denning LJ who elevated that

[13] Consideration was not given as to whether the individual was self employed or an employee.

into a test. The test remains the statutory test and, as Oliver J pointed out in Sargent… [14]:

> *'the statute here lays down a test in express terms, and although analogies and examples may be useful guides the propounding of general propositions which involve the use of analogous, but not precisely equivalent, terms can lead to confusion. In the ultimate analysis, the court has simply to look at the facts of the case before it and apply to those facts the statutory formula.'"*

Lewison J further noted that this case was analogous to that of the fictional commercial traveller discussed by Brightman J when looking at the case of Mr Horton. The principle being applied was that travel between Mr Powell's home and the depot facilitated him living away from work regardless of the fact that certain aspects of his work were carried on in his home.

Dr Samad Samadian v HMRC [2014] UKUT 0013 (TCC)

This case concerned a doctor who had both an employment with the NHS and a private practice. Dr Samadian's employment was split between two public hospitals while his private practice was carried out in two private hospitals and at the homes of certain private patients. In addition, he had a home office where he managed the files of his private patients, amongst other things.

Dr Samadian, applying the ratio of Horton on the basis that his home was the main base of operations for his private practice, claimed deductions for expenses of travel:

- between the private hospitals (accepted by HMRC)
- between his home / private hospitals and patients homes (accepted by HMRC)
- between his home and the private hospitals15

As a matter of fact, the First Tier Tribunal determined that Dr Samadian had "a place of business at his home, where he carried out part of the professional work necessary to his overall professional practice as well as the majority of the administration work related to it". However, Sales J, in the Upper Tribunal, distinguished this case from that of Mr Horton on the basis that:

[14] Sargent (inspector of Taxes) v Barnes [1978] STC 322

[15] Dr Samadian also sought a deduction for expenses of travel between the public hospitals where he carried out his employment and the private hospitals. This was disallowed on the basis that such expenditure was incurred for the purpose of enabling Dr Samadian to keep up his employment alongside his private practice.

> *"Unlike Mr Horton, [Dr Samadian] has had a pattern of regular and predictable attendance at specific locations other than his home in order to perform significant professional functions as a clinician. He has negotiated an entitlement to avail himself of the facilities at those locations on a regular basis for the purposes of his business. His presence at [the private hospitals] was undoubtedly 'temporary and transient' in the sense that he has only occupied consulting rooms or attended on ward rounds for comparatively short periods of time and without having any permanent base – he has never had a permanent office at either hospital with his 'name on the door', so to speak. However his attendance at both locations has involved significant performance of professional functions of his clinical work (consulting with and treating patients) and has followed a pattern which, although it has changed from time to time, has been generally fixed and predictable. It is this pattern of regular and predictable attendance to carry out significant professional functions as more than just a visitor which, in our view, constitutes both [private hospitals] as 'places of business' from which he has been carrying on his profession throughout and accordingly negates any suggestion that his profession is 'itinerant' (or entirely "home based") within the ratio of Horton as properly understood."*

Dr Samadian's case was closer to that of Mr Newsom, who had two places of business, one of which was in his home. However, as with Mr Newsom, the fact that Dr Samadian was travelling between two places of business:

> *"does not necessarily mean that his travel expenses to and from his home are deductible. The fact remains that the statutory test, when interpreted in line with Mallalieu, sets a very high bar for deductibility of travel involving a taxpayer's home. The only reported case of the higher courts in which this bar has been cleared is Horton, and we consider the present case falls short of Horton…"*

Therefore, in general, any journey back to Dr Samadian's home would have a non-business motive. However, Sales J noted that if Dr Samadian was carrying out his profession in one of the private hospitals when he realised that he needed to return to his home office to retrieve a patient's file, then that journey would be wholly and exclusively for the purposes of his profession.