



**Irish Tax
Institute**

Leaders in Tax

Mr Paul Walsh
Principal Officer
Income and Capital Tax Division
Office of the Revenue Commissioners
Dublin Castle
Dublin 2

Registered Office
South Block
Longboat Quay
Grand Canal Harbour
Dublin 2

Tel.: +353 1 663 1700
Fax: +353 1 668 8387
E-mail: info@taxinstitute.ie
Web: www.taxinstitute.ie

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Dear Mr. Walsh

Re: Revenue Draft Manuals on Travel Expenses and Food and Subsistence Expenses

Thank you for the opportunity to review and comment on the Draft Operational Manuals:

- *[04.10.01] Travel Expenses: When are they wholly and exclusively for the purposes of the trade? (“The Travel Expenses Manual”)*
- *[04.10.02] Food & Accommodation Expenses: When are they wholly and exclusively for the purposes of the trade? (“The Food and Subsistence Expenses Manual”)*

Overview

Travel and subsistence expenses have been a key area of focus for Revenue over the past three years, most notably in the National Contractors’ Project. While the focus of the project was primarily on the Schedule E treatment of these expenses, it has given rise to concern and uncertainty about the treatment of travel and subsistence expenses overall.

Andrew Gallagher – *President*, Mark Barrett, Marie Bradley, Dermot Byrne, Colm Browne, Sandra Clarke, Ciaran Desmond, David Fennell, Karen Frawley, Ronan Furlong, Lorraine Griffin, Johnny Hanna, Mary Honohan, Jim Kelly, Aoife Lavan, Jackie Masterson, Tom McCarthy, Frank Mitchell, Martin Lambe (*Chief Executive*), Kieran Twomey. *Immediate Past President* – Helen O’ Sullivan.

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In light of this backdrop, it is important that any new Revenue Manuals reflect a practical approach to the types of issues and scenarios the Revenue Districts may come across in practice.

- **The Travel Expenses Manual**

We think it would be useful to include some practical “real-life” examples in this Manual on areas of possible uncertainty, in particular for home-based businesses and “itinerant traders”. We have outlined some suggestions below. We have also suggested a simplification measure in relation to travel expenses claims for the self-employed.

- **The Food and Subsistence Manual**

We think it would be useful to provide some practical examples of scenarios where the provision of food to clients does not constitute “client entertainment”. We have outlined some examples below. We have also suggested some additional case law that could be usefully included in this Manual.

The Travel Expenses Manual

We welcome the collation of case law in one Revenue Manual. This will be useful to Revenue and practitioners alike in determining the appropriate tax treatment.

Home-based businesses

It is important that this Manual addresses the distinct position of home-based businesses. A significant number of businesses, (especially small businesses), run their trade or business from home. Home is where they carry out the majority or the core aspects of their business activities and is their place of work. As such, travel expenses for business trips to clients, prospective clients, suppliers etc. are incurred wholly and exclusively for the purpose of their trade and should be deductible.

We would like to see the manual note that clearly the restriction for travel expenses from “home to work” does not apply to genuinely home-based businesses, where travel is for business purposes. We think it would be useful to include some illustrative examples of typical home-based businesses. We have suggested some examples below.

- Cottage industries. These operate across a range of sectors, e.g. in artisan foods, cosmetics, household furnishing, wedding stationary etc.
- Property-related business. In particular, outside of larger cities estate agents, letting agents etc. commonly operate from a home-based office.
- Professional practices. A number of professional practices would operate their business from home, for example, GPs, physiotherapists, accountants, architects etc.
- Small businesses in the IT sector. Small businesses which carry out activities such as computer repairs, web design, software design, sound engineering etc. may be home-based. The nature of the work means core business activities are carried out at their home-based office where their equipment is located.

“Itinerant traders” i.e. where there is no fixed base/regular place of work

The Manual refers to the exception to the general rule for travel between home and work for “itinerant traders”. This is on the basis that home is *“the only place new customers can contact them, where they store their tools etc. Therefore, they go home to look for work.”*

The advent of new technology means that increasingly a self-employed person may not, and may not need to, work from a fixed location. They can work and are contactable by customers wherever they are located. As the above principle is derived from case law from over 40 years ago, it can be difficult to relate it to modern work scenarios. It would be helpful if the Manual could reflect some modern examples and fact patterns where Revenue has accepted in practice that a person is an “itinerant worker”.

Some business activities where a self-employed person may be highly mobile and without a predictable work pattern would include sales, tradesmen e.g. electricians, plumbers etc. and those who provide advice to clients wherever they are located, e.g. mobile financial advisers, procurement consultants and IT trouble-shooters.

Simplification of the rules for the self-employed

At the moment, a self-employed person must retain their receipts for 4 years, in the event of a Revenue audit. We believe there is merit in allowing the self-employed elect to claim their travel and subsistence expenses by reference to the flat-rate Civil Service mileage and subsistence rates in Revenue leaflets IT51 (*Employees' Motoring/Bicycle Expenses*) and IT54 (*Employees' Subsistence Expenses*). Currently, these rates only apply to employees and directors. Allowing the self-employed to claim expenses based on these rates would reduce their tax administration and simplify the auditing of expenses by Revenue.

HMRC operate a simplified expenses regime for the self-employed for a number of categories of business expenses, including travel expenses. The sole trader is required to keep track of their business mileage and at the end of the year can compute their allowable expenses according to flat-rate allowances. An online "simplified expenses checker" tool enables them to work what best fits their business situation.

The Food and Subsistence Expenses Manual

Under general principles food and accommodation expenses will be allowable to the extent they are incurred "wholly and exclusively" for the purposes of the trade. As such, we welcome the clarifications provided that where the purpose of a journey is a business trip, the accommodation expenses are allowable. It is also a welcome clarification that there is no need to disaggregate a hotel bill for accommodation and food, where the amounts are reasonable.

Provision of food to clients otherwise than as "client entertainment"

It would be useful to distinguish in the Manual between situations where food is provided to clients in the context of "client entertainment" and disallowable, and where the provision of food is subordinate to a business purposes. For example:

- A business meeting in a self-employed person's office may overrun significantly and overlap with lunchtime and tea/coffee/food is provided to attendees. In line with the position

in *Bentleys Stokes and Lowless v Beeson* case¹ the provision of food is subordinate to the business purpose of the meeting, so as such it the expense should be deductible.

- A self-employed person may meet a client at a time convenient to the client, for example, at a breakfast business meeting or lunch business meeting. The purpose of the meeting is a business purpose; the location and timing of the meeting is determined by the clients' availability. As such, the provision of food is incidental to the business purpose of the meeting and the expense should be deductible.

Case law

The collation of case law in one Revenue Manual is helpful. The UK Upper Tribunal decision in *HMRC v Healy*² seems to provide a useful summary of the case law on whether and when food and accommodation expenses are deductible. As such, we think it would be helpful to include the relevant extract from the decision in that case in the Manual as a summary for reference. We have reproduced the extract in the appendix below.

The forthcoming Schedule E consultation on travel and subsistence expenses will take a fundamental look at our current rules and how well they fit with modern work practices. It may have significant implications for the Case I and Case II rules. Therefore, we think there is merit in revisiting these Manuals once the consultation has concluded.

Should you have any queries in relation to the above please contact Mary Healy (01 6631743).

Yours truly



Cora O' Brien
Director

¹ *Bentleys, Stokes and Lowless v Beeson* (Inspector of Taxes) [1952]

² *HMRC v Healy*, UT [2013] UKUT 367 (TCC)

Appendix – Extract from decision by Judge Herrington and Judge Clarke of the Upper Tier Tribunal

In our view the following principles can be derived from this analysis of the authorities:

- 1. The “exclusively” limb of the “wholly and exclusively test” entails examining whether the expenditure in question has a dual purpose. If the expenditure is not solely for a business purpose it will not be deductible (Bentleys, Stokes & Lowless, Mallalieu v Drummond);*
- 2. Expenditure on items that outside a business context simply meet ordinary needs can be regarded as having solely a business purpose such as food and drink in the context of business lunches (Bentleys, Stokes & Lowless), hotel accommodation in the context of business trips or conferences (Elwood v Utitz), accommodation for an itinerant trader (Sean Reed);*
- 3. Consequently, there is a distinction between effects which are aimed at (the purpose of the expenditure) and those which are incidental to that aim; the latter do not necessarily colour the former, even if they are inevitable (Elwood v Utitz and the third passage from Mallalieu v Drummond);*
- 4. However, expenditure will not be deductible unless there is a clear connection between the expenditure incurred and the trade or profession in question (Caillebotte v Quinn, MacKinley v Arthur Young, McClelland Moores), and a distinction must be drawn between living expenses and business expenses (Newsom v Robertson);*
- 5. There are some categories of expenditure which by their nature cannot be said to have been incurred for a business purpose, such as relocation expenses to help setting up a comfortable home (MacKinley v Arthur Young, McClelland Moores) or clothes which are necessary to maintain decency (Mallalieu v Drummond);*
- 6. In relation to accommodation costs it will often be the case that in that in the nature of things one of the purposes of the taxpayer in incurring the expenditure will be their ordinary needs for warmth and shelter (Mason v Tyson, Prior v Saunders) and this can be the case even if it is a contractual requirement of a trade that the taxpayer reside in a property at all times (McClaren v Mumford);*
- 7. Although the longer the period of time the accommodation in question is occupied the more likely it is that the private purpose will predominate (Hanlin) we have not identified any principle that rules out the deductibility of rental accommodation except in special circumstances;*

8. *The test concerns the subjective purpose of the taxpayer, which is a question of fact and determining whether the test is met will involve looking into the taxpayer's mind, save in obvious cases which speak for themselves (Mallalieu v Drummond); and*
9. *The fact that an item of expenditure may be necessary for an individual to conduct his trade does not mean that it passes the "wholly and exclusively" test (Newsom v Robertson).*