



Irish Tax
Institute

Leaders in Tax

Public Consultation on the Tax Treatment of Expenses of Travel and Subsistence for Employees and Office Holders

IRISH TAX INSTITUTE SUBMISSION
September 2015



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Executive Summary

The publication of this consultation paper on the “Tax Treatment of Expenses of Travel and Subsistence for Employees and Office Holders” is welcomed by the Irish Tax Institute because this is an issue that has impacted thousands of businesses across Ireland for the past three years.

The working patterns of people have changed hugely in the modern world and technology has had a profound impact on the mobility of employees. As a result, our relevant tax law on travel and subsistence expenses has become completely out of date. This is giving rise to widespread uncertainty and cost for taxpayers and all types of business are affected - from the smallest micro businesses to the very largest Irish and multinational companies.

- The SME sector is at the heart of business in Ireland and accounts for 68% of private sector employment.¹ Many SMEs have to compete with larger employers for skilled employees so they must adopt similar flexible working practices to meet their business needs as well as their employee expectations. These are the businesses which are least able to deal with the current uncertainty of the expenses regime but are most affected by it. They need a tax regime that is clear and simple to comply with, thereby enabling them to focus on their business and on job creation.
- Specialist freelance workers are increasingly in demand globally and this is also reflected in the Irish workplace. The nature of their role often means they are required to travel and work at multiple locations. It is essential that these key individuals can understand our tax regime as it applies to them and that tax policy or administration does not act as a barrier to growth in this important sector which supports the Innovation Economy.
- The participation of non-executive directors (NEDs) has increasingly become a feature of Irish Boards. These NEDs provide an essential balance of experience and expertise and important stakeholders such as shareholders and regulators often require their participation on Boards to strengthen corporate governance and improve independent oversight. In a post BEPS world, multi-national companies must also be able to demonstrate their business substance in Ireland and an experienced Board with senior decision makers will have an important role to play in this. Having NEDs on a Board is also important to high growth start-ups and SMEs, particularly where growth opportunities lie in markets outside Ireland. Ireland itself is small and therefore companies often have to resource this expertise from outside the country, meaning that travel expenses will be incurred by these NEDs travelling into (and in some cases out of) Ireland for Board and related meetings. The tax treatment of travel expenses for NEDs appears to have changed in

¹ CSO, Business in Ireland 2012 Report published in 2014

recent years and many of these key global business leaders are now liable for large tax bills on their expenses for the first time. This is out of line with their experience in other jurisdictions where they work on Boards and conflicts with general Government policy on promoting economic growth.

Such is the extent of the problem and the impact on taxpayers that the Institute has been inundated with feedback, calls and interaction from our members over the past three years. This level of feedback was emphasised in a recent survey we carried out on the issue to which over ten per cent of our membership responded with comments and concerns.

Over the three year period, we have made a number of submissions to Revenue and issued ten separate bulletins to members dealing with the difficulties currently being experienced. Such is the level of correspondence and other material that we have also had to set up a dedicated web page on the topic.

<http://taxinstitute.ie/TaxPolicyandPractice/RevenuePracticeandRepresentations/RevenueContractorsProject.aspx>

Ireland is not unique in having to deal with the challenges that current working patterns pose for our tax policy and practice on travel and subsistence expenses. However, our rules are becoming increasingly out of line with our competitors. To assist with this consultation, and for comparative purposes, we have outlined at Appendix 2 some highlights from a range of policies adopted in other countries from the US to Australia and from several European countries.

Institute Recommendations

There are three key problems with our current legislation and guidance on travel and subsistence expenses.

1. The case law principles determining whether an employee/director is travelling “on business” or merely travelling “to work” are out of date and give rise to erroneous results.
2. There is very limited recognition that a person’s home can genuinely be their place of work; and
3. Differing practices have arisen over the years for some defined groups of individuals, resulting in uncertainty and lack of consistency across the taxpayer base.

The changes we recommend to address these problems are outlined below.

Amendments required to Section 114 Taxes Consolidation Act 1997

Section 114 Taxes Consolidation Act 1997 sets out the general rule for tax deductibility of travel expenses.

*“Where the holder of an office or employment of profit is **necessarily obliged** to incur and defray out of the emoluments of the office or employment of profit expenses of travelling **in the performance of the duties** of that 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.”*

In our view, this section needs to be re-drafted so that expenses incurred for business purposes which do not provide a personal benefit to the employee, can be reimbursed without deduction of tax. In particular:

- i) The phrases highlighted in red above are so restrictive in the way they currently apply to the modern working environment, that they are creating unreasonable restrictions in the deductibility of travel expenses. We suggest that an alternative approach is adopted which allows expenses to be reimbursed without deduction of tax when incurred by an employee/director, while representing the interest of their employer and where the expense is incurred wholly and exclusively for the purpose of the business.

This mirrors the rule for deduction of expenses incurred for the purposes of a trade i.e. the wholly and exclusively test. It is a longstanding rule which:

- is widely understood;
 - can be applied to a business of any size and in any sector; and
 - is capable of continued application even as the working practices of employees continue to evolve.
- ii) Section 114 as re-drafted, should specify that travel from a home-based office is not precluded from qualifying as an allowable expense simply because an employee or director's place of work also happens to be their home.
- iii) Finally, Section 114 should reflect the fact that travel expenses to a temporary work location are allowable provided the period of continuous work at the temporary work location does not, or is not likely to, exceed 24 months. We believe that the term "continuous work" should reasonably be determined by reference to whether the employee spends 40% or more of their time there. This is the position adopted in the UK (see Appendix 2).

Legislating for the unique position of NEDs – similar to Section 195A Taxes Consolidation Act 1997

Section 195A already accommodates particular working patterns where travel expenses are incurred for attending board, committee or council meetings in the non-commercial and not for profit sectors. In these circumstances, payments for travel and subsistence are not liable to income tax under the standard rules above, reflecting the unique duties and conditions of such roles.

The role and duties of NEDs are similarly unique. They perform these duties on an ongoing basis as and where required and in most cases travel is inherent to the role. To address the unique position of NEDs, we recommend that a legislative provision similar to S195A is introduced to allow actual expenses of travel for attendance at board meetings and other relevant meetings which they attend for the purpose of the business, to be reimbursed to NEDs without deduction of tax. This would copper-fasten their unique situation and reflect their critical role and contribution on Irish Boards.

Limiting travel expenses to the cost of public transport

The Consultation Paper asks whether there is merit in limiting the costs that can be reimbursed tax-free to the costs of public transport for a journey. While there is merit in encouraging greater use of public transport, we have had considerable feedback from members that this would be inappropriate, given the limited public transport infrastructure outside of the main urban areas in Ireland. Such a policy would also be out of line with the treatment of travel expenses in most other comparable tax jurisdictions.

Administrative supports for the new regime

Once the required legislative amendments have been passed in Finance Act 2015, a nationwide Revenue information campaign is essential to explain the future tax treatment of travel and subsistence expenses. This would provide important certainty for every business in Ireland and ensure the consistent application of the regime for all taxpayers. In particular:

- i) A single comprehensive Guide to the new regime is needed to replace the existing range of eBriefs and Revenue practice notes on this subject. The Guide would explain in simple terms the travel and subsistence expenses that are allowable and those that are not. The Guide should also incorporate the rules on the Civil Service Travel and Subsistence regime as they apply in their totality, without exclusion or exception, so that the regime available to private sector businesses fully reflects the terms available to public servants. It should be developed with input from business and taxpayers and enriched with illustrative examples so as to capture as many as possible examples of common working practices.
- ii) A dedicated Revenue team is also required to deal with business queries on the transition to the new regime and to identify areas of difficulty.
- iii) Taxpayers have been dealing with great uncertainty over the tax treatment of travel expenses during the past three years as different interpretations of the rules have unfolded. In line with best practice principles internationally, it is essential that any new policy introduced for a travel expense regime is clearly explained as above and applied for the future, rather than seeking to make adjustments for the past. Given the level of uncertainty and confusion that businesses are currently experiencing, the Institute is also seeking a postponement of any Revenue compliance campaigns targeted at the travel expenses regime.

The world of work today

The world of work has evolved enormously in the last 10 – 20 years. The global marketplace and technological advancement has fundamentally changed the way people work on a day-to-day basis and the evolution of technology means that work can be carried out “anywhere, anytime”. Many SMEs also have to compete with larger employers for skilled employees so they must adopt similar flexible working practices to meet their business needs as well as their employee expectations.

These are largely trends that have developed in the global workplace but clearly impact work practices in Ireland.

a) Greater mobility and an increase in home-based work

The technological evolution means that employees can generally work from any location. Mobility has increased enormously and employees are often seconded domestically and internationally or work across a number of offices.

Dedicated office spaces are often not required by the employees of small businesses in order to perform their duties. There are a number of factors driving this:

- Cost management, which is particularly essential for start-ups. During the downturn, many small businesses had to relinquish their separate offices and premises in local towns and cities and work from home for financial reasons. Having operated effectively in this way for some years, they now have no reason to move from their home office. Most small businesses and start-ups take advantage of technology to reduce overheads associated with setting up a commercial office until the scale of the business outgrows the business facilities that can be provided at the home base.
- Access to technology, as supported by the Government’s National Digital Strategy.
- Positive government policy encouraging the growth of entrepreneurship, including the corporation tax exemption for start-up companies and the relaunch of Start Your Own Business (SURE).

b) The proliferation of freelance work

Businesses in the innovation sector in particular (such as IT, pharmaceuticals and engineering businesses) are increasingly using professional contractors who often operate through companies.

Contractors are a key resource enabling businesses to access specialist skills for project-based tasks which are not available in-house. They can be deployed quickly and efficiently to complete specialist tasks within a tight deadline and they work as and where required. In fact contractors can be days, weeks or months working on short-term multiple projects on multiple sites in Ireland and overseas.

Professional contractors are output focussed and their pay is dependent on their level of skill, their expertise and their reputation for delivering on expectations. A contractor's next piece of work will usually depend on past performance and on being at the leading edge of developments in their marketplace.

c) The growing importance of independent and global expertise on boards

The important role of NEDs has particularly come to the fore in recent years as good corporate governance principles have evolved. The very nature of a NED's profile is unique and they provide a balance of unique experience and expertise to the Board. Although NEDs bear a duty of care and responsibility to the Board which is equal to that of other directors, they are not employees and they have no involvement in the company's day-to-day management so they bring a level of objectivity, independence and wider business perspective to that Board. They are essential strategists and are expected to scrutinise management performance closely and challenge the status quo where necessary.

Most large Irish companies and Irish headquartered groups now have substantial operations across the world. Therefore, it is critical that the NEDs serving on their boards have a breadth and depth of global expertise and an appropriate understanding of the international markets where the groups have substantial activities and generate much of their profits. This expertise and invaluable insight is often only capable of being acquired by recruiting a "person of standing" internationally, as there may be a limited pool of expertise in Ireland. Most NEDs are professional directors who serve on a number of boards and there is intense international competition to secure NEDs with the right skills and depth of business experience. These NEDs will assist Irish companies and Irish headquartered groups in accessing the larger international markets and we should do all we can to encourage their involvement with Irish companies or headquartered groups.

It is also important that Irish resident NEDs of Irish companies or Irish Headquartered groups are treated in the same way as international NEDs. For business reasons it is often the case that such companies will hold board meetings or information meetings in strategically important markets or centres of operation. In addition to attending the board meeting the NEDs may also visit local operational or manufacturing sites in order to gain a deeper understanding of the group. Irish resident NEDs should be entitled to attend these genuine business meetings without attracting tax on the travel expenses.

NEDs are also critical in embedding good corporate governance. Many regulatory bodies require or encourage the inclusion of NEDs on boards. For example, NEDs must be appointed to the boards of listed companies.² In the case of regulated financial services companies, Regulatory Authorities often require a minimum representation of NEDs on their Boards and the Central Bank has challenged all regulated entities within its remit to review the make-up of on their Boards and use NEDs in accordance with best practice principles.

The duties of a NED can be very demanding and may require a substantial time commitment in attending board meetings, committee meetings, site visits to key operations globally and helping with the development of investor relations. Their duties are performed on an ongoing basis in various locations as required and travel is an inherent part of the role.

However, recent changes in policy mean that travel expenses incurred by NEDs are now being charged to tax notwithstanding that:

- These expenses are solely for business purposes and there is no element of personal benefit to the NED, and
- Revenue have confirmed in many cases that where substantive preparatory activities were performed in advance of the meeting at another location, travel expenses for Board meetings could be reimbursed without deduction of tax.

The involvement of leading and experienced international NEDs on Irish Boards is also becoming increasingly vital to support the location of substantive business activity and decision-making in Ireland as required under international tax principles. This is a critical consideration, given that the new framework for international tax which will determine the balance of the taxing rights of jurisdictions over the profits of companies is focussed on the alignment of the taxation of profits with substantial activities. In order that Ireland can hope to compete as a location to attract and retain mobile business, Irish based businesses must attract and retain key decision makers to drive future investment and employment.

² Irish Corporate Governance Annex, SEC rules etc.

Specific Limitations in the Current Regime and Institute Recommendations

A fresh approach to the legislation on travel expenses and its interpretation is needed. We include below our specific recommendations in this regard on Section 114 and 195A TCA 1997, as well as our views on the administrative approach required.

Section 114 TCA 1997

The current general legislative framework governing whether travel expenses are allowable as a tax deduction is nearly 50 years old. Section 114 TCA 1997 stipulates that:

*“Where the holder of an office or employment of profit is **necessarily obliged** to incur and defray out of the emoluments of the office or employment of profit expenses of travelling **in the performance of the duties** of that 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.”*

This section was based on a similar UK provision and UK case law is being applied in Ireland to interpret whether the “tests” outlined above are met. A summary of the key UK cases is outlined at Appendix 1. However, much of this case law dates back to the early 20th century, when the working world was very different and the widespread reliance on genuine home-based offices could not have been foreseen.

One of the key principles that has developed from this jurisprudence is the concept of a person’s “normal place of work”. Only travel on business from this “normal place of work” which is performed “necessarily in the performance of duties” is an allowable expense.

Again, the UK jurisprudence has determined that home will generally not be considered as the normal place of work even in situations where some work is carried out at home. In the relevant cases, the carrying out of work at home was considered to be done out of personal choice and not from business necessity.

Clearly the principles developed in UK case law do not align with modern working patterns and the cases can in fact be contradictory in some instances. In our business environment, it can be difficult to specify where a person’s “normal place of work” is located or even whether they have a “normal place of work” at all - particularly in the case of highly mobile workers or secondees.

The specific requirements of Section 114 highlighted in red above and the out-of-date and contradictory precedents set by UK case law based on this section mean that it is now almost impossible for many people across a wide range of work patterns to obtain a tax deduction or be reimbursed for their travel expenses without deduction of tax.

Institute Recommendations

(i) The phrases highlighted in red above are so restrictive in the way they currently apply to the modern working environment, that they are creating unreasonable restrictions in the deductibility of travel expenses. We suggest that an alternative approach is adopted which allows expenses to be reimbursed without deduction of tax when incurred by an employee/director, while representing the interests of their employer and where the expense is incurred wholly and exclusively for the purpose of the business.

This mirrors the rule for deduction of expenses incurred for the purposes of a trade i.e. the wholly and exclusively test. It is a longstanding rule which:

- is widely understood;
- can be applied to a business of any size and in any sector; and
- is capable of continued application even as the working practices of employees continue to evolve.

(ii) Section 114 as re-drafted, should specify that travel from a home-based office is not precluded from qualifying as an allowable expense simply because an employee or director's place of work also happens to be their home.

(iii) Finally, Section 114 should reflect the fact that travel expenses to a temporary work location are allowable provided the period of continuous work at the temporary work location does not, or is not likely to, exceed 24 months. We believe that the term "continuous work" should reasonably be determined by reference to whether the employee spends 40% or more of their time there.

Section 195A TCA 1997

Section 195A TCA 1997 provides that expenses reimbursed to board, committee or council members of bodies in the non-commercial/not-for profit sector may be reimbursed without deduction of tax, in certain circumstances. This is in recognition of the specific circumstances that apply to these individuals in fulfilling these roles.

Section 195A is a good example of a legislative provision which recognises that travel expenses should not be liable to tax under standard rules just because an individual has a particular work and travel pattern due to their unique role. It recognises that the general regime can create a difficulty for such individuals and it provides a reasonable alternative approach for them.

NEDs have an equally unique role and work pattern which requires specific consideration. They discharge the duties of their directorship on an ongoing basis at various locations including at their home office, at board and committee meetings, at meetings with stakeholders including shareholders and regulators, at site visits to business operations in Ireland and overseas etc.

Institute Recommendations

We believe a new provision should be introduced to allow travel and subsistence expenses to be reimbursed to NEDs for attendance at board, committee and other meetings held for the purposes of the business, without deduction of tax. This would appropriately reflect the purpose of their role and the circumstances in which their duties as directors are discharged. Section 195A is a good example of a legislative precedent for the recognition of unique circumstances.

Consistency in practice

Over the years, differing administrative practices have developed across the Irish tax regime in relation to travel and subsistence expenses. These practices can result in certain groups of taxpayers being treated differently from others who have similar working patterns.

1. “Country money”

By its nature, work in the construction sector can be particularly transient. To reflect this fact, some expenses can be paid without deduction of tax to certain workers for travelling to and working at various building sites located a certain distance from the employer’s head office (or from the GPO in the case of Dublin based workers). The regime is only available to certain employees in the construction and electrical sector, even though employees working in different sectors may have similar working patterns to those who can avail of “country money”.

2. Civil Service travel and subsistence regime

The payment of travel expenses free of tax to civil servants at the Civil Service Schedule of Rates is governed by the terms of Department of Finance Circular 11/82. This regime sets out the rules and rates that apply in paying expenses for business travel in the public sector. The rates and rules of the scheme change from time to time.

Whilst private sector companies can reimburse employees for travel and subsistence on the basis of receipted expenditure, they can opt instead to base their payments on the limits outlined in the Civil Service regime. Many businesses choose to do this as it is simpler and easier to administer. It is accepted practice and Revenue includes information on the regime in its published guidance.

However, changes in the regime rules are not always fully reflected in Revenue guidance. For example, the rules of the regime were amended from 1 July 2015 so that an individual seeking to avail of a tax-free “overnight allowance” must now be at least 100km from their home or place of work overnight in order to qualify. We understand that the Civil Service Scheme rules allow for an overnight allowance to be payable for absences within 50km of home or headquarters in “exceptional circumstances” - it may cost significantly less or reduce the loss of official time if an individual stays overnight at the location rather than returning to headquarters or to home, or where a meeting an official is attending does not finish until 8pm and they could not be expected to return home.

It would be quite routine in the private sector for an employee to work at a client’s premises for a number of consecutive days. Client expectations often mean that the employee has to be on site for normal business hours from before 9am to 5pm or later. It is not practical or cost-effective for the employer to reimburse travel to and from the client premises each day.

As such, the practical approach adopted in the regime rules whereby “exceptional circumstances” are recognised is particularly relevant to the private sector.

However, the “exceptional circumstances” are not reflected in Revenue guidance. This means that employees in the private sector will not receive a tax-free overnight allowance in circumstances where a civil servant would receive this allowance.

It should be the case that all who avail of the regime are subject to the same rules and are fully aware of these rules.

3. Revenue Guidance

There is now a considerable amount of Revenue guidance on our travel and subsistence expense regime and this guidance is contained in a range of different documents.

- Revenue Leaflet IT 51 – Employees’ Motor/Bicycle Expenses
- Revenue Leaflet IT 54 – Employees’ Subsistence Expenses
- Statement of Practice SP IT/02/2007 – Tax treatment of the reimbursement of Expenses of Travel and Subsistence to Office Holders and Employees
- Revenue eBrief 30/2013 – Reimbursement of travel and subsistence by intermediaries
- Revenue eBrief 48/2013 – Revenue’s Contractors’ Project
- Revenue eBrief 61/2014 – Expenses of Travel of non-executive directors attending board meetings.

As you will note above, three separate eBriefs have been published in the last three years alone to deal with the areas of uncertainty that have arisen on the ground.

In some cases the guidance is actually conflicting and contradictory which clearly makes it very difficult for businesses and advisers to understand the rules. Compliance costs arising from the complexity and inconsistency fall most heavily on smaller businesses.

Institute Recommendations

It is important that any new legislative regime is applied consistently and that individuals with the same fact patterns are subject to the same tax treatment.

Revenue guidance and supports underpinning the new regime are also critical. We recommend:

1. That one clear and comprehensive Revenue guide on travel and subsistence expenses is published providing practical examples of cases where expenses are and are not allowable. HMRC Guide 490 on Employee Travel is a good example of a practical guide which covers a range of day-to-day scenarios in one comprehensive text. The Guide should be developed with input from businesses and taxpayers and enriched with illustrative examples so as to capture as many as possible examples of common working patterns. Best practice suggests that the Guide should be a “living document” which can be amended to clarify and provide guidance as issues emerge.
2. A specialist Revenue team is also needed to deal with internal Revenue and taxpayer queries on the new regime. This team would help to identify areas of practical difficulty as they arise and would be responsible for ensuring that a consistent approach to expenses is adopted across the country.
3. It is essential that Revenue runs a public information campaign on travel and subsistence expenses to ensure that businesses are aware of the rules.
4. In terms of managing taxpayer compliance with the travel/subsistence expense regime, it is very important that any new rules are explained properly to taxpayers and are applied by Revenue on a going forward basis in line with best international practice. Given the level of uncertainty and confusion that businesses are currently experiencing, the Institute is also seeking a postponement of any Revenue compliance campaigns targeted at the travel expenses regime.

The risks of not developing a regime that is “fit for purpose”

The impact on FDI and large indigenous businesses

Ireland is a small market place and there is a need to resource expertise from overseas. This inherently means that travel expenses will be part of the mix of any payments to NEDs. Important stakeholders including shareholders and regulators **require** NED participation on Boards. NEDs are also critical to high growth SMEs to help them grow, particularly where growth opportunity lies in overseas markets.

Members have also raised with us a range of consequences for the FDI sector and for large public companies that have already unfolded because of the current interpretation of legislation on travel and subsistence expenses.

There are concerns about the impact of tax changes on the ability of both Irish and overseas head-quartered multi-nationals to source the calibre of globally experienced NEDs needed to drive business growth in international markets, due to the resultant increasing costs. There is a distortion between the perceived and actual costs of payments to NEDs in Ireland due to the “grossing-up” of these expenses in the directors remuneration note in the financial statements to take account of the tax due, leading to Ireland being at a disadvantage in recruiting expertise in comparison with our competitors.

There is a real risk that NEDs will decide not to physically attend board meetings if they are going to be taxed on their genuine business expenses. They are also concerned about the administration involved and the impact on tax returned in their home country. In particular, there is concern about NEDs who are taxed in the US on their worldwide income about the impact of the Irish tax treatment.

Investor and stakeholder queries are also arising as to why directors’ remuneration disclosed in the financial statements has increased solely due to the treatment of travel expenses.³ This is a particular pressure point in the regulated sector where remuneration levels may be capped. Furthermore, corporate governance rating firms, such as Institutional Shareholder Services Inc. (ISS), track fees paid to public company directors and make recommendations in voting on director elections. Variations in these fees are noted and where such fees are disproportionately high, negative consequences can influence firms’ recommendations as to voting. This is a real concern to companies that have material head-quarter activities in Ireland or are considering moving material head-quarter activities to Ireland.

³ Remuneration disclosed in financial statements and communications with the market include reimbursed travel and subsistence expenses where they are taxable

The impact on SMEs and start-ups

There are also serious consequences for SMEs if the problems with the current regime are not addressed.

As noted above, SMEs bear the brunt of additional compliance costs arising from uncertainty and are particularly vulnerable to uncertainty in the start-up phase. If employers are unclear about the tax rules for travel expenses, they may choose not to reimburse them. This puts pressure on wage inflation to compensate employees for travel undertaken or worse still employees will not travel for work (with the resultant impact on the business).

Businesses over the past three years have faced significant costs in Revenue audit settlements (including tax, interest and penalties). In many cases Revenue's interpretation of the rules differed from that of the taxpayer and the cost of taking the matter to appeal was prohibitive for an SME company. If the regime is not amended and taxpayers educated accordingly, these preventable costs will continue.

Difficulties are also arising in the freelance market, where tax regimes in competitor jurisdictions are simpler to understand and less onerous. The result is that some firms are finding it harder to source specialist contractor skills here.

Appendix 1

UK case law

The UK case law applied in Ireland in interpreting whether the “tests” in Section 114 are met can be contradictory and in many cases it relies on a highly legalistic interpretation of the single phrase “in the performance of duties”. This phrase has now become almost meaningless in the current world of work practices.

Ricketts v Colquhoun (1925) 19 TC 118

A barrister living and practicing in London took a part-time position as the Recorder of Portsmouth. The deduction of costs of travel to Portsmouth was disallowed as it was considered to be for the purpose of getting to the location where he performed his work. Every holder of the office would not have to incur the same expenses. He could not show that he had to live away from Portsmouth to perform the role, or that there was no one who could have been appointed who could have lived in Portsmouth.

Newsom v Robertson (1952) 33 TC 452

Mr Newson was a barrister who worked in chambers but also worked from a well-equipped home-office where he performed a significant amount of work. The judges considered while he worked at home he could only have a single base, which was his chambers and the location of his home was a personal choice.

Pook v Owen (1969) 45 TC 571

A doctor held a part-time appointment with a nearby hospital and was required to be on call for emergency duties. On receiving a call from the hospital, he would usually instruct the hospital staff over the phone and then drive to the hospital. It was held that his work started once he answered the telephone. In addition, it was considered every person holding the job would incur travelling expenses because the persons eligible for the job were a limited class. Therefore, his travel expense could be reimbursed without deduction of tax.

Horton v Young (1972) 1 Ch 157

Mr Horton was a self-employed bricklayer who operated from home and worked at a number of sites. His trade was considered itinerant, he had no place he could call a place of business. His house was considered “*the locus quo of the trade from which it radiated as a centre*” where he kept his tools and was contactable etc.

Taylor v Provan (1975) 49TC579

Mr Taylor was an expert in brewery amalgamations living in Canada who was appointed a director of an English company to negotiate brewery amalgamations. It was held the office was created specifically for him because of his special qualification for the role –nobody else

could have been appointed to carry out this special work, as such his travel expenses were allowable

Miners v Atkinson (1997) 68 TC 629

Mr Miners was a computer consultant who provided his services through his own company. Much of his duties were carried out at client sites, he did some work at home. The Court held that the duties carried out at home were not the substantive duties of his employment. The Court also considered whether there was an objective required that the duties had to be carried on at his home address and concluded that it was not necessary for the work be done *“at that precise address. It could have been done anywhere.”*

Kirk v Evans (2002) 74 TC 481

Mr Evans was a civil servant who lived in King’s Lynn and worked in Leeds. His employer introduced a voluntary homeworking scheme under which Mr Evans was permitted to work at home and travel to Leeds one day a week. The High Court rejected his claim for travel expenses to the office in Leeds on the basis that the necessity of travelling to Leeds was dictated by his choice of the place where he lives and *“not by the nature and terms of the job itself.”*

Appendix 2

Spotlight on our competitors

U.S.

A person is deemed to have a “tax base” for Federal Tax purposes and this is generally the metropolitan area where they work. Travel primarily on business from the area in which they are based is allowable as a deductible expense.

NEDs are treated as self-employed individuals, and their business expenses are deductible in their tax return.

UK

UK legislation contains definitions of a “permanent place of work” and a “temporary place of work”. Travel on business between a “permanent place of work” and a “temporary place of work” can be reimbursed without deduction of tax. A 24 month rule applies in determining whether a location is a temporary place of work. Where time at a temporary work location exceeds 24 months, relief will still be available once an employee spends no more than 40% of their time working at that location.

Travel by a NED to board meetings may be reimbursed tax-free if the location of the meeting is considered to be a temporary place of work. This depends on the facts. For example, where there is no regular geographic location for the board meetings and the meetings are held at various locations around the country the expenses will be allowable.

Where a non-domiciled individual performs the duties of a NED, no tax is due on reimbursed travel expenses - a 5 year limit applies to this treatment.

The Office of Tax Simplification has been reviewing the overall travel expenses regime in the UK for the past two years to identify ways to further simplify the UK regime.

Australia

The Australian tax regime allows for tax-free payment of travel and subsistence expenses where an employee commences the duties of employment at home, but has to travel to his/her workplace to complete their work.

The Netherlands

Travel expenses for business purposes are exempt from tax. A flat-rate per mile can be paid for “ordinary commuting”.

Canada

Travel from a permanent place of work to a temporary place of work is allowable based on “reasonable costs”. Reasonable board and lodgings may be paid if an employee is working at a remote location or work site and due to the distance involved, could not be expected to commute to the location on a daily basis.

Germany

Tax-free allowances up to a certain limit can be paid based on the number of hours which the employee must be away from home.

If an employee must work away from home at a secondary work location and must therefore maintain a second property a “double housing allowance” may be available.

Switzerland

Rules can vary depending on the Canton. As a general rule, public transport (which is excellent) should be used and these costs qualify for relief. Costs incurred for private cars/taxis may only be reimbursed if their use results in substantial savings in time or cost to the company or if it would be unreasonable to expect the individual concerned to use public transport.

Actual travel and subsistence expenses incurred by NEDs may be reimbursed without deduction of tax, provided they are incurred for business purposes. Where a non-resident board member travels solely to attend a board meeting, actual travel and overnight costs can be reimbursed.