



**Irish Tax
Institute**

Leaders in Tax

Mr Anthony Buckley
Assistant Secretary
Office of the Revenue Commissioners
South West Region
Revenue House
Blackpool
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Revenue position on reimbursement of travel and subsistence expenses

Dear Mr. Buckley

We are writing in connection with Revenue's *Tax Briefing No. 03/13: Reimbursement of Travel and Subsistence Expenses by Intermediaries*, and its relevance for Revenue's ongoing national project on contractors, and beyond.

We have a number of concerns arising from Revenue's illustration of its position on this issue, as set out in the Tax Briefing, and those concerns are detailed in this letter.

Summary of Tax Briefing No. 03/13

The Tax Briefing sets out Revenue's view on the tax-free reimbursement of travel and subsistence expenses where services are provided through an intermediary, such as a company. It states that, in most cases, the normal place of work of an employee/director of an intermediary will be the premises of the intermediary's client.

Examples are provided to illustrate Revenue's position, and the only inference we can draw from them is that there are no circumstances involving intermediaries where Revenue accept that a person's home office is their normal place of work. This is regardless of the extent of work done there or the proportion of time that person spends carrying out their work from their home office.

Home-to-office travel expenses

The Tax Briefing states that "[t]ravel expenses incurred by a director/employee on the journey from his/her home to his/her normal place of work (and vice versa) do not

qualify for a statutory deduction under Schedule E and may not be reimbursed free of tax”.

This approach is understandable where a person’s home is simply that, i.e. their home. However, there are situations where a person’s home is their main place of work, and that is not negated by the fact that the building also functions as the person’s home. In the modern working environment, there are many cases in which a person’s home is their main place of work.

The position in the Tax Briefing does not recognise the changes in working patterns which modern technology has facilitated in recent years. This is despite the fact that those changes are being actively encouraged by Government policy in other areas. The Government has committed to providing broadband coverage to every home and business in the State. This is partly because it is recognised that there is a fundamental link between broadband availability and entrepreneurship and job creation. Entrepreneurs should be supported in building new businesses, and technology now allows entrepreneurs in certain sectors to do a lot of their work from a home office.

Where that is the case, and the person carries out the majority of their work from their home office, their normal place of work cannot logically be anywhere other than their home office. It necessarily follows that travel from their home office to their client’s premises is travel from their normal place of work to a temporary work location.

The alternative and rigid interpretation set out in the Tax Briefing can give rise to some extreme results. If the approach of the Tax Briefing were to be followed, then the following tax treatment would result in the scenarios below:

Scenario 1

Alice is a director of a start-up company which provides architectural services. She has a purpose-built office at the end of her garden, in which she carries out the vast majority of her design work. She has secured a contract to provide architectural services to AB Ltd. She attends the premises of AB Ltd for 2 hours every Friday to provide work updates and discuss the project. Any other time away from her home office is spent meeting potential clients to develop her business further.

Is it Revenue’s view that the premises of AB Ltd, where she spends 2 hours per week (5% of her time), is her normal place of work?

Scenario 2

Brendan is a director of a company with a contract to provide services to CD Ltd and EF Ltd. He previously had an office in the nearby town, in which he carried on the vast majority of his duties, with one or two visits per month to the premises of CD Ltd and EF Ltd. Due to the economic downturn, he was forced to give up the lease on his office and he transferred his office equipment and activity to a home office.

It seems to be Revenue's view that the premises of CD Ltd and EF Ltd have now become Brendan's normal place of work. This is despite the fact that his office in town would previously have been considered his normal place of work, and he is carrying on the same duties from his home office as he previously did from his office in town.

Scenario 3

We understand from follow-up correspondence with Revenue, your view is that the same principles apply regardless of whether the expenses of travel and subsistence are incurred on a return journey to a location inside or outside the State. This gives rise to the following scenario:

David is a director of a company with a number of contracts to provide services to A Ltd (located in Cork), B Ltd (located in Limerick), C Ltd (located in Brussels) and D Ltd (located in Paris). His home office is based in Dublin. Under these contracts, Kevin is required to work two days per month at the premises of each of A Ltd, B Ltd, C Ltd and D Ltd.

Is it Revenue's view that the premises of D Ltd in Paris is considered to be his normal place of work for the two days of the month which he spends there? If so, is it the case that he is then not entitled to tax-free reimbursement of the cost of his flights to and overnight accommodation in Paris?

This would be clearly a different interpretation to that contained in IT54:

*“Where an individual employed in the State is obliged to **travel to a foreign location** to temporarily perform the duties of his/her employment there, both the outward and the return journey home may be regarded as a business journey (see Appendix 2 for subsistence rates that may be paid tax free)”* [emphasis added].

*“Where an employee performs the duties of his/her employment whilst temporarily away from his/her normal place of work **or is working abroad on a foreign assignment**, allowable subsistence expenses can be reimbursed tax free...”* [emphasis added].

We are also unclear as to whether the position would be different in relation to expenses incurred in visiting the premises, of, say D Ltd, if D Ltd was a potential client of David, rather than a current client. In these circumstances, the premises of D Ltd could not be David's normal place of work. Non-deductibility of travel and subsistence expenses in these circumstances would be a serious impediment to those seeking to expand their businesses abroad.

Subsistence expenses

We are particularly concerned at the interpretation outlined in Example 9 in the Tax Briefing. The analysis here concludes that this taxpayer's "*expenses of living away from home may not be reimbursed free of tax*". We would like to know whether this interpretation is intended to apply only to taxpayers providing services through intermediaries or whether it extends to all taxpayers.

Under IT54, "*Where an employee performs the duties of his/her employment whilst temporarily away from his/her normal place of work...allowable subsistence expenses can be reimbursed tax free...*" in accordance with Civil Service rates or by reference to actual costs incurred.

Revenue has also entered into an agreement to allow travel and subsistence expenses of employees in the construction industry to be reimbursed free of tax, i.e. "country money" payments.

It appears, therefore, that expenses of living away from home are to be denied where an employee provides services through an intermediary but allowed in other circumstances. We would question the equity of this treatment. There is no difference in law between the travel and subsistence of one type of individual taxpayer – one who provides services to an end user through intermediary - and any other type of individual taxpayer, either in the private sector or incurring travel and subsistence expenses in a public sector role.

Broader policy issues

The Tax Briefing states that, in *most* cases, the normal place of work of an employee/director of an intermediary will be the premises of the intermediary's client. However, the examples given would indicate that there are no circumstances in which the normal place of work is anywhere other than premises of the client. We believe that this approach is worthy of review in the context of broader policy priorities.

In Budget 2012, a Special Assignee Relief Programme (SARP) was introduced to "*allow multinational and indigenous companies to attract key people to Ireland so as to create more jobs and to facilitate the development and expansion of businesses in Ireland*".

That Budget also saw the introduction of the Foreign Earnings Deduction (FED) "*to further support our export drive by aiding companies seeking to expand into emerging markets*".

Both of these initiatives recognise the reality that employees are frequently required to travel in the performance of their duties. These are measures which acknowledge that the tax code should facilitate such business-related travel in a way that supports the broader policy priorities of driving economic activity and job creation.

While not specifically related to the intermediaries issue, we are also getting feedback, and it has been raised at TALC, that non-executive directors are being deemed to have their normal place of work in Ireland when they make as few as one or two visits to Ireland each year. This cannot be a practical or sustainable approach given the number of Irish companies that, in accordance with best corporate governance practices, seek to add foreign expertise to their boards.

Summary

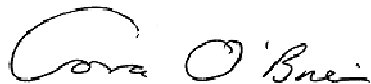
The Institute would like to see a practical and workable approach adopted with regard to travel and subsistence where an individual's main work base is their home. In recognition of the variety of modern working situations that can arise, UK HMRC has developed detailed guidance on the treatment of travel and subsistence expenses. A degree of flexibility is afforded in HMRC *Guide 490 - Employee Travel – a tax and NIC guide*, which also applies to intermediaries and allows for deductibility of expenses in specific circumstances.

We believe that the approach outlined in the Tax Briefing gives rise to difficulties from a number of perspectives:

1. It fails to take account of genuine situations where an individual's work operations are based at their home and the majority of their work takes place at home, rather than at any other premises.
2. It is different to other accepted practices which exist at the moment, such as "country money" arrangements, allowable subsistence for foreign travel as set out in IT54, and other tax-free arrangements for travel and subsistence expenses.
3. It is contrary to audit settlements that have been made when intermediaries in these situations were effectively given a "clean bill of health" after a detailed audit of their records.

We would ask that these issues be put on the agenda for the next Main TALC meeting.

Yours truly



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Director
Irish Tax Institute

c.c. Mr. Gerry Smyth, Assistant Secretary, Revenue Legislation Services