

Travel expenses

Produced by Tolley in partnership
with Philip Rutherford

Tolley[®]

Tax intelligence
from LexisNexis[®]

Travel expenses

Produced by Tolley in partnership with Philip Rutherford

Introduction

Travel expenses have specific tests which must be satisfied in order for an employee to gain a deduction. These rules are different from the general rule for deductibility of expenses in that they do not need to be incurred 'wholly and exclusively'. This is because with any business travel there are likely to be elements of mixed or private purpose, eg meals taken on a trip, or overnight accommodation because the employee needs sleep. Meals and overnight accommodation come under the heading 'subsistence' and expenses on subsistence follow the rules on business travel. See the Subsistence expenses guidance note for more information. ITEPA 2003, ss 337 - 339

Travel expenses

In order for a travel expense to be allowable, it must satisfy one of two tests. Either:

- > it is 'necessarily incurred in the performance of duties' (ITEPA 2003, s 337)
- > the travel is 'for necessary attendance' (ITEPA 2003, s 338)

In addition to satisfying one of these tests, the employee must be 'obliged to incur and pay them as the holder of the employment' under ITEPA 2003, ss 337(1)(a) and 338(1)(a). The test is common to both provisions. Commentary and examples on both elements of this test, that it be 'incurred and paid' and 'obliged as holder of the employment', can be found in the Business expenses - general rule guidance note.

More about 'in the performance of duties' and 'necessary attendance'

The employee should have incurred the travel costs either because it was part of his duties to do so or because he had to be somewhere other than his normal workplace because of his employment.

Before considering whether or not the expense satisfies these tests it must have been incurred necessarily. Just because an employee decides that it might be better to work in a place which is different to the one assigned to him by his employer does not mean it is necessary. Any travel expense to that location is disallowed.

When are travel expenses not allowable?

Ordinary commuting

Travel from home to a permanent place of work is not allowable for tax purposes unless it meets one of the specific exceptions (see EIM32055). If an employee is on secondment,

then his travel costs may be allowable (see the Expenses during secondments guidance note). But as long as an individual has chosen where he works ie not on a secondment or posting, and can choose where he lives, there is no tax relief for the cost of his travel to and from work.

The key concepts

Permanent workplace

A permanent workplace is a place that an employee attends on a regular basis in the performance of their duties. The facts of an employee's circumstances usually indicate if some particular location is considered a permanent workplace, such as the fact that it is their sole place of work, their contract of employment states that is where they carry out their duties or the expectation that they attend one site each and every day.

The legislation also defines a permanent workplace as somewhere which is not a temporary workplace. ITEPA 2003, s 339

Temporary workplace

A temporary workplace is one attended for a limited duration or for a temporary purpose. But even if the workplace falls within this description, the facts should still be looked at to see if the temporary workplace should be considered a permanent workplace.

If the employee attends, or intends to attend a workplace for more than 24 months of continuous employment, it is not deemed a temporary workplace. ITEPA 2003, s 339(5)

A continuous period of employment is deemed by HMRC (EIM32080) as being 40% or more of the working time.

Therefore if an employee attends one location for two days a week for 24 months, it is not a temporary place of work as it is not for a limited duration. The 24 month rule is considered in more detail in the Expenses during secondments guidance note.

These two tests are quite subjective. HMRC looks at the facts available to see if a workplace is temporary before considering whether it is really a permanent workplace.

Permanent or temporary workplace - considerations

When considering a permanent workplace, look all of the facts available. Someone could work in a place on a limited number of days a week and it could be a permanent place of work. For example, a regional sales manager comes into HQ every week for a couple of days to do his administration and have meetings. He has his own office. This could be considered a permanent place of work as he spends 40% of his working time

there. It may trigger an enquiry into the employer's tax affairs if the employer reimburses the manager's travel expenses to HQ, or an enquiry into the manager's claim if he submits either a tax return or form P87 for those expenses.

Simply trying to adjust the facts to suit the employee does not make the amount allowable. The following are examples of changes that are ineffective:

- > having to start work earlier, later or work different times
- > trying to change a permanent place of work into temporary place of work by working at home several days a week
- > putting in customer / supplier visits on the normal commuting trip

HMRC manuals (EIM32300 onwards) provide some useful examples of when HMRC is likely to challenge a journey as being ordinary commuting. Some of the main examples to look out for are:

- > HMRC will not challenge a journey which is more than 10 miles longer than the normal commuting trip even where there is a similar route. If the journey is in a very different direction or route, HMRC are unlikely to see it as ordinary commuting.
- > doing the same or similar journey by a different means, eg by train instead of car, does not make the cost allowable
- > if a temporary workplace is very near a permanent one, it is not allowable if the journey starts from the employee's usual commuting start place. This is because there is no substantial effect of the employee's journey or his costs of travel and is caught by ITEPA 2003, s 339(7).

What travel expenses are allowable?

Travel to a temporary workplace

Where the employee is required to be somewhere infrequently, irregularly or for short periods of time, the costs of travel to that temporary workplace are allowable.

As outlined in the section on permanent workplaces above, a temporary workplace, as defined by ITEPA 2003, s 339, can also be somewhere where an employee is required to attend for less than 24 months or is somewhere which is not be where the employee spends most of his time of employment.

For example, if a shop manager is asked to work one day a week for 6 months in another store, the travel costs associated with his travel to this other store are allowable. The other store constitutes a temporary workplace and the work is for a limited duration.

There are a huge number of issues and permutations regarding temporary places of work. If an employee goes somewhere regularly for an extended period of time (HMRC's consideration of what this means is more than a 40% of time for a period of, or expected period of, 24 months) it is likely not

to be a temporary place of work.

If there is doubt about whether a workplace is temporary, it may be worth looking at HMRC's guidance at EIM32075, HMRC Note 490 - Employee travel or even approaching HMRC for an agreement. If you are considering approaching HMRC for an agreement you should be aware of a number of issues. HMRC are not obliged to give an agreement in these circumstances, there is no statutory requirement for it to do so. If HMRC is willing to agree to something then it would be on the specific facts brought to them and any departure from those facts will render the agreement invalid. Therefore an approach to HMRC should only be considered where there is a steady state of facts and the taxpayer or the employer wants certainty.

In practice, you should obtain all of the information about the employee's circumstances that are to be presented to HMRC and ensure all of the issues covered in this guidance note are addressed.

The employer should open a dialogue either with the Customer Relationship Manager (for large companies who have one appointed) or the employer's PAYE office to ask whether they are amenable to agreeing the treatment of particular employees. If they are, ask how they would like the information to be presented in order to facilitate an agreement.

One off visits

If the employee has to go to a certain location because of his employment, the travel costs are allowable.

For example, an engineer has to visit a customer of the company to check some equipment. The travel costs are allowable.

Employees may be required to visit customers / suppliers, attend training events, meetings or undertake other typical visits that are expected of an employee. Travel costs incurred for such purposes are allowable.

Travel obligations

For employees who are required to travel from one place to another as part of their employment, the travel costs are allowable.

For example, an employee installs boilers for a gas company and the journeys to customer's houses are in the performance of his duties. The travel costs are allowable.

Area employees

If an employee is responsible for an area over which he performs his duties, the travel expenses within that area are allowable.

For example, an employee is a supermarket regional manager responsible for the South West. His travelling expenses for travel within the South West area are allowable. Note, in this case if the individual chose to live well outside of his area, eg London, the expense of travelling from his home to the area would not be allowable.

Travel between group employments

It may be that if the employer is a company that it is in a group of companies (holding company and 51% subsidiaries), the directors or other employees may be employed by more than one company in the group and have to travel between locations to carry out the duties of those different employments. Such employees are entitled to deductions for the cost of travelling to the other group companies for that purpose. The definition of holding companies and subsidiaries are covered in the Associated companies - prior to 1 April 2015 guidance note. In short, if one company can control another, it is likely to be a 51% subsidiary and fall within these rules. This can be quite a technical area and reading through the above guidance note is highly recommended if there is any doubt.

Expenses of elected representatives

FA 2013, s 10 introduced a new exemption from tax for the expenses of Elected Representatives of the Welsh, Northern Irish and Scottish devolved Assemblies and Parliaments. All travel expenses relating to the representatives UK travel on behalf of the Assembly / Parliament are exempt from tax.

Travel expenses which may or may not be allowable

Site based employees

By far the most difficult class of travel to consider is that of the site-based employee. This class of employees carry out their duties at a succession of sites and their places of work do not readily fit into the definition of what is not a temporary workplace in ITEPA 2003, s 339(5). For example, construction workers may have particular difficulty in understanding whether or not costs are entitled to a deduction.

Consider the facts of each individual separately. It is possible that an individual could have more than one permanent place of employment at any one time. It is also conceivable that an individual could have several permanent places of employment in one tax year.

Consider each site, examine the facts and determine if it is a temporary or permanent site. If it is temporary then the associated travel costs are allowable. If it is permanent then the travel expenses associated with that site are not allowable. If the employee works at a site for more than 24 months then it

is be a permanent workplace (see the 24 month rule outlined above). However it is also possible that an employee might be assigned to one site for all of a period of employment of less than 24 months. For example, an employee could be brought in to do one specific project on site. In this instance any expenses would not be allowable as they have spent substantially all of their employment in one place, falling within ITEPA 2003, s 339(5). EIM32132

Travel cards

The underlying requirement of the expenditure must be considered. If an employee buys a rail season ticket for their normal commuting then simply visiting a customer on the same season ticket does not make any part of the season ticket cost allowable.

If the employee is required to incur a higher level of expenditure above his ordinary commute then the additional amount is allowable.

HMRC's guidance is at EIM16066 onwards.

Accompanying spouses

If an employee's spouse accompanies him then those amounts are generally not allowed, unless the spouse's travel meets the requirements of being necessarily incurred for the purposes of the employment or is incidental. These circumstances are quite rare and the more typical reasons for spouse's travel, such as a requirement to attend a particular function with the employee are not enough. If an employee is travelling overseas then the accompanying spouse's additional costs may be allowable (see EIM31985).

Travel expenses which are not allowable

There has been some useful case law demonstrating when HMRC will seek to disallow travel expenses because they do not qualify as business related.

The director of a farming company was refused a deduction for travel expenses to America to review farming techniques. Despite the fact that the director believed that this had led to improvements in domestic farming techniques, the amount was held not to be deductible because it was not necessary for him to travel to America as part of the duties of a director of the company. *Thomson v White* 43 T C 256

This precedent aligns with the case of a surveyor who attended a conference of his own volition and not because it was imposed upon him as a duty of his employment. The costs of the travel and subsistence associated with the conference were held to be non-deductible. The fact that the conference was in Tokyo may have raised HMRC's concerns. *Owen v Burden* 47 T C 476

Level of reimbursement

If an employee is excessively reimbursed for his expenses it will give rise to one of two issues:

- > if an employer reimburses expenses above the level of expenditure incurred by the employee, then the excess should be treated as earnings and included in payroll
- > if an employer reimburses for particularly extravagant or lavish travelling arrangements, this may give rise to a benefit charge on the employee

However if an employee has to incur extra expense which is not reimbursed by the employer then the employee can claim relief.

For example, if the employee is reimbursed £100 towards a £150 train fare, the employee can claim tax relief on the excess £50. This can either be done through the employee's tax return on the supplemental employment page (form SA102) under the title employment expenses. Or if the employee is not required to complete a tax return he can claim relief on excess expenses on form P87.