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## Travel and subsistence expenses for the self-employed and employees

Travelling and subsistence expenditure incurred by the self-employed or by employees can give rise to many problems. This briefing highlights the main areas to consider in deciding whether tax relief is available on these expenses.

### Self-employed

The general rule is that in calculating the taxable profits for a self-employed person no deduction is allowed for any expenses that have not been incurred wholly and exclusively for the purposes of the trade or profession. However, a deduction can be made for any identifiable proportion or part of an expense which is incurred wholly and exclusively for the purposes of the trade or profession. In this situation, where travel expenditure is partly for business and partly for private purposes, an appropriate amount relating to the private portion would be disallowed in determining taxable income.

It is essential to keep a record of business mileage and all expenses incurred so that any claim for tax relief is adequately supported when completing the end of year accounts and/or tax return.

### Travel between home and work

If a self-employed person has a base of operations that is separate to their home, then the cost of travelling between home and that base will be treated as ordinary commuting and therefore is not tax deductible.

However, where a person's base of operations is at their home then the cost of travelling between their home and where work is carried out should be allowable. Difficulties can arise in determining whether there is a specific 'base of operations' and where this is. Claims for relief which are later challenged by HMRC could prove costly. It would certainly appear that HMRC are paying more attention to this area as a number of disputes between them

and self-employed persons have been presented over the last 6 months at the First Tier Tax Tribunal. Therefore the crucial point is to establish precisely where the base of operations is. Each case will clearly depend on its own merits but in recent cases the fact that business records were kept and written up at home, that tools of the trade and equipment were kept at home and that new work was sourced from home were all contributing factors taken into account in determining where the base of operations was.

### Simplified claim

HMRC allow some self-employed persons to use fixed mileage rates to calculate their business travel costs as an easier option rather than having to keep records of all expenditure incurred. This option is available to persons whose annual turnover is less than the VAT registration threshold at the time the vehicle is first used for the business.

The fixed mileage rate is based on the statutory rates which, until 5 April 2011, was set at 40p per business mile for cars and vans for the first 10,000 business miles pa with any additional mileage claimed at 25p. The first statutory rate has increased to 45p from 6 April 2011 and it is assumed that this increase will also apply for this self-employed option but no confirmation of this has yet been published. These rates cover typical running costs such as fuel, maintenance, road tax and insurance etc and include an element of depreciation (capital allowances) in respect of

the cost of the vehicle. The only additional expenses that can generally be claimed would be the business element of any interest charged on a loan used to purchase the vehicle, parking charges, motorway toll fees and congestion charges.

This basis has to be applied consistently from year to year so that any change to claiming expenses on an actual basis takes place only when one vehicle is replaced with another.

The option can be extended to business mileage incurred on motorcycles and cycles but at lower rates.

### Subsistence and accommodation expenses

HMRC's view is that the cost of meals taken away from the place of business is not in general an allowable business expense as everyone must eat in order to live. Note that this is different to the treatment of employees (see below).

However, they do accept that extra allowable costs may be incurred where a business is by its nature itinerant (eg commercial travellers) or where occasional business journeys outside the normal pattern are made.

Where a business trip requires a stay away from home the hotel accommodation and reasonable overnight subsistence costs will be allowable.

Where the base of operations is away from home, and overnight accommodation and subsistence is incurred to allow the person to be at or close to the base of operations, then the expenditure will not be allowable.



## Employees and permanent workplace

Many employees have a place of work which they regularly attend and make occasional trips out of the normal workplace to a temporary workplace. Often an employee will travel directly from home to a temporary workplace.

An employee can claim full tax relief on business journeys made.

A business journey is one which either involves travel:

- from one place of work to another or
- from home to a temporary workplace or vice versa.

However, journeys between an employee's home and a place of work which he or she regularly attends are not business journeys. These journeys are 'ordinary commuting' and the place of work is often referred to as a permanent workplace. This means that the travel costs have to be borne by the employee. This applies even where the employee has to attend a permanent workplace outside normal working hours such as at the weekend!

The term 'temporary workplace' means that the employee attends the place for a limited duration or temporary purpose. However, some travel between a temporary workplace and home may not qualify for relief if the trip made is 'substantially similar' to the trip made to or from the permanent workplace.

'Substantially similar' is interpreted by HMRC as a trip using the same roads or the same train or bus for most of the journey.

### Example 1

Nilesh usually commutes by car between home in York and a normal place of work in Leeds. This is a daily round trip of 48 miles. On a particular day, Nilesh instead drives from home in York to a temporary place of work in Nottingham. A total round trip of 174 miles.

A tax deduction for any costs incurred by Nilesh and not reimbursed by his employer would be deductible. Alternatively, if borne by his employer this would not be taxable earnings if provided within the statutory limits where a mileage allowance system operates.

It is feasible that an employee can have more than one permanent workplace.

### Example 2

Matt is employed by a chain of sports shops and his duties require him to attend 2 different stores for 2.5 days each. Whilst travel between the locations is an allowable cost – both home to work journeys are ordinary commuting.

## Point to watch

Attendance at a place is not regarded as of limited duration or temporary purpose if it represents the whole (or virtually the whole) of the period of employment.

### Example 3

Norman is employed on a 12 month contract. No relief is available for travel to this workplace as the fixed term employment does not qualify as a temporary workplace.

## Temporary postings

Where an employee is sent away from his permanent workplace for many months, the new workplace may still be regarded as a temporary workplace if the posting is either:

- expected to be for less than 24 months or
- if it is expected to be for more than 24 months, the employee is expected to spend less than 40% of his working time at the new workplace.

The employee must still retain his permanent workplace.

### Example 4

Edward works in New Brighton. His employer sends him to Wrexham for 1.5 days a week for 28 months.

Edward will be entitled to relief. Any posting over 24 months will generally still qualify provided that the 40% rule is not breached.

## Employees with no permanent workplace

Some employees do not have a permanent/normal place of work but work at a succession of places for several days, weeks or months. These are often referred to as site based employees. Examples of such employees include construction workers, safety inspectors, computer consultants and relief workers.

A site based employee's travel and subsistence can be reimbursed tax free if the period spent at the site is expected to be, and actually is, less than two years. There are rules to prevent manipulation of this facility through recurring temporary appointments.

## Travelling appointments

For some employees, travelling is an integral part of their job. For example, a travelling salesman who does not have a base at which he works, or where he is regularly required to report. Travelling and subsistence expenses incurred by such an employee are mainly deductible.

## Home based employees

Some employees work at home occasionally, or even regularly. This does not necessarily mean that their home can be regarded as a place of work. There must be an objective requirement for the work to be performed at home rather than elsewhere, in which case trips between home and any other workplace for the same employment will be allowable.

If the objective requirement is not met then this may mean that another place is determined as a permanent workplace for example, an office where the employee 'regularly reports'. Therefore any commuting cost between home and the office would not be an allowable expense, but trips between home and temporary workplaces will be allowed.

## Subsistence payments

Subsistence includes accommodation and food and drink costs whilst an employee is away from the permanent workplace. Subsistence expenditure is specifically treated as a product of business travel and is therefore treated as part of the cost of that travel.

In 2009 HMRC introduced an advisory system of benchmark scale rates which employers can use to make day subsistence payments to employees, who incur allowable business subsistence expenses, free of tax and national insurance contributions (NICs). These rates are as follows:

Breakfast rate (irregular early starters only) – a rate of up to £5 can be paid where the employee leaves home earlier than usual and before 6am.

One meal rate (five hour rate) – a rate of up to £5 can be paid where the employee has been away from home/normal place of work for a period of at least 5 hours.

Two meal rate (ten hour rate) – a rate of up to £10 can be paid where the employee has been away from home/normal place of work for a period of at least 10 hours.

Late evening meal rate (irregular late finishers only) – a rate of up to £15 can be paid where the employee has to work later than usual, finishes work after 8pm having worked their normal working day and has to buy a meal which they would usually have at home. In all scenarios the employee must actually incur a cost on subsistence to qualify.

Employers need to apply to HMRC for a dispensation if they want to pay these scale rates to their employees. This in effect is an agreement between HMRC and the employer which allows the employer to pay an agreed rate for allowable expenses without the need to report the expenses to HMRC. Receipted evidence of costs incurred is not required. Employers can pay in excess of these benchmark rates but would need to agree a tailored scale with HMRC.

Where an employer does not hold a dispensation, the payment of this type of expense allowance without supporting evidence would result in tax and NIC liabilities.

## In summary

If travelling and subsistence expenses are incorrectly claimed it may be some years before HMRC review your tax returns. An overclaim could therefore lead to additional tax, interest and possible penalties.

As a self-employed person we can help you decide what you can legitimately claim against your taxable profits.

As an employer/employee we can help you decide which expense payments are covered by tax relief and do not result in a taxable benefit. Additionally as an employer, be aware that if you do make payments for which tax relief is not available, there may be PAYE compliance problems if the payments are made without the correct PAYE/NIC deductions. We can also help and advise you about applying to HMRC for a dispensation which may reduce this exposure.