Food and accommodation expenses: when are they wholly and exclusively for the purposes of the trade?

Part 04-06-17

This document should be read in conjunction with section 81 of the Taxes Consolidation Act 1997.

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Introduction

This manual should be read in conjunction with manual Part 04-10-01 in relation to the relevant principles for determining whether or not travel expenses have been incurred wholly and exclusively for the purposes of the trade.

This manual sets out the principles, based on case law, for determining the deductibility of food and subsistence expenses in the context of a trade or profession. It supplements information published in an article in Tax Briefing 31, issued in April 1998 and reproduced in Appendix 1.

1. Principles

- One must look at the purpose of the expense (whether stated or subconscious) and not just its effects[1].
- Humans eat to live; they do not eat to work[2].
  - Therefore, expenditure incurred on food in the course of a trade or profession will nearly always have a duality of purpose in that the person has the ordinary physical human need of eating.
  - Where additional expenditure is incurred on food because the taxpayer must eat away from home, that expenditure still has a duality of purpose meaning it is not an allowable expense.
- Hotel accommodation incurred on a business trip – where there is no personal motive in the trip – is an allowable deduction.
- Where a hotel bill for a business trip includes reasonable amounts for both overnight accommodation and food, these two amounts should not be disaggregated. If the accommodation is allowable, then so too is the food[3].
- Where a person is on a business trip and the flights would be deductible, but it is more cost efficient to stay an extra night and return on a flight the following day, rather than return immediately, then, any incidental private element arising from that extra day does not stop the cost of the flights being deductible[4].

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[1] Bentley, Stokes and Lowless v Beeson [1952] 33 TC 491, confirmed in Mallalieu v Drummond [1983] STC 665.

[2] Caillebotte (Inspector of Taxes) v Quinn [1975] STC 265.

[3] Established practice confirmed as in line with the law and applicable to all trades / professions and not just travelling occupations in Watkis (Inspector of Taxes) v Ashford Sparkes & Harward (a firm) [1985] STC 451.

[4] Edwards v Warmsley Henshall & Co [1968] 1 All ER 1089.

2. Case law

Bentley, Stokes and Lowless v Beeson (Inspector of Taxes) [1952] 2 All ER 82

While this case involves the issue of whether or not a deduction can be taken for client lunches which is now specifically disallowed by section 840 TCA 1997, it is instructive in arriving at the principles of deductibility.

A firm of solicitors met with clients over lunch at which business was discussed. Fees were raised for this advice in the same manner as for advice given in the firm's offices and the client was not charged for the lunch. If the firm had insisted that all meetings take place at their offices, certain clients would have been lost as that would not have been convenient to them.

Romer LJ held that:

> **"… if, in truth, the sole object is business promotion, the expenditure is not disqualified because the nature of the activity necessarily involves some other result, or the attainment or furtherance of some other objective, since the latter result or objective is necessarily inherent in the act."**

He further noted that it would be absurd if the presence of an element of hospitality, in however small and subordinate a degree, was fatal to a claim.

Edwards (Inspector of Taxes) v Warmsley Henshall & Co [1968] 1 All ER 1089

A firm of accountants sent one of their partners – a chartered accountant – to an international accounting conference in New York. While there, the partner met with other accountants and discussed evolving methods of accounting. The flight taken by the partner gave him the shortest time in the US, but still resulted in his staying in America a number of days after the conference ended. The Crown argued that the partner had attended the US for both business and pleasure purposes, as he went sight-seeing while there.

On the basis that the partner would not have gone to New York, other than to attend this conference, regardless of the fact it had the subsidiary and accidental effect of also giving the partner a holiday in New York does not prevent the expense being allowable.

The flights and the hotel accommodation, while at the conference, were therefore deductible.

Caillebotte (Inspector of Taxes) v Quinn [1975] STC 265

Mr Quinn, a carpenter, incurred an average of 10p a day for his lunch when at home while he incurred on average 40p a day when working away from home. The taxpayer argued that there were two reasons for the additional expenditure on lunch: firstly, given the distance from home it was not expedient to travel home for lunch each day and secondly, when carrying out such physical work it was necessary to eat a more substantial meal. He argued that the additional 30p was therefore wholly and exclusively laid out for the purposes of his trade and was therefore deductible.

Templeman J noted that this taxpayer, like all others, must eat in order to live. Taxpayers do not eat in order to work. That the taxpayer was seeking a partial deduction discloses the duality of purpose of the expenditure, that is, the taxpayer in admitting that 10p a day was the personal element of the expenditure admits the expense was not wholly and exclusively for the purposes of his trade. He notes that there is no way to proportion an expense such as lunch between private and business purposes, unlike the expense of a motor car which is used for both personal and business mileage, or the expenses of running a home office.

In addition, Templeman J gave examples of occasions when the personal element of an expense would be incidental, rather than a purpose of the expenditure:

> **"The cost of tea consumed by an actor at the Mad Hatter's Tea Party is different, for in that case the quenching of a thirst is incidental to the playing of the part. The cost of protective clothing worn in the course of carrying on a trade will be deductible, because warmth and decency are incidental to the protection necessary to the carrying on of the trade."**

Mason v Tyson (Inspector of Taxes) [1980] STC 284

Mr Mason was a chartered surveyor who rented a flat over his office for use on nights where he worked late. He claimed the cost of repairing and furnishing the flat. At the age of 70 he found he would be too tired to produce quality work after the long journey home, so when overtime was required, he would sleep in the flat. He would stay in the flat 2 or 3 nights a fortnight. He did not carry out work in the flat, did not receive any visitors at the flat and did not use the flat for any other work purpose. The taxpayer argued that apart from the interests of his clients there was no conceivable reasons why he would choose to spend a night alone in a five-storey building instead of at home with his family.

Walton J, in finding against the taxpayer noted:

> **"But I do not think that anything which is laid out merely for the purpose of preserving the person who is carrying on the trade or business in health, strength and refreshment to enable him so to carry it on, can properly be said to be 'wholly and exclusively laid out or expended for the purposes of the… profession'. It must in part, of necessity, be laid out and expended on ordinary human physical needs."**

Watkis (Inspector of Taxes) v Ashford Sparkes & Harward (a firm) [1985] STC 451

The taxpayers – partners in a firm of solicitors – claimed a deduction for the following expenses:

(i) Lunch provided during local meetings which were held weekly or fortnightly during lunch hour;

(ii) Dinner provided after evening meetings, during which the discussions of the evening meetings continued; and

(iii) Overnight accommodation incurred for the partners at the annual conference, which attended by the partners and their families; and

(iv) Regional Solicitors' conference, attended by some partners, including dinner.

The High Court distinguished this case from that of Bentley, Stokes and Lowless[5] as, in the latter case, the clients could only meet with the solicitors over lunch whereas here, the partners choose to meet over lunch for their convenience. That is, in the Bentley case, the lunch was merely incidental to the business meeting whereas here, it was an entirely separate expense.

The test was whether the exclusive purpose of the expenditure was business, so that any private benefit to the taxpayers was purely incidental. Referring to the case of Mallalieu v Drummond[6], Nourse, J. said **"Just as Miss Mallalieu needed to wear clothes not only when she was in court but also when she was not, so did the taxpayers need food and drink irrespective of whether they were engaged on a business activity or not."** The expenses at (i) and (ii) were disallowed in full because the purpose of the expenditure was not exclusively business.

[5] [1952] 2 All ER 82.

[6] [1983] STC 66.

Nourse, J. accepted that the Commissioner, on the facts, was entitled to conclude that the purpose in incurring the cost of the accommodation at the annual conference was the exclusive business one and that the private benefit to the taxpayers was purely incidental. He noted that the well-established general practice by the Inland Revenue when looking at travelling occupations was to

> **"…not distinguish between the cost of travel and accommodation on the one hand and food and drink on the other. In other words, hotel bills, if reasonable in amount, are usually allowed in full. I have no reason to think that that practice does not correctly represent the law."**

In other words, in circumstances where travel and accommodation expenses were accepted as incurred wholly and exclusively for the purposes of the trade or profession, any personal benefit in relation to the food and drink elements of those expenses was merely incidental and therefore the expenses were allowable in full. On that basis, the expenses at (iii) were allowable in full. (It is worth noting that only the food and accommodation expenses of the partners were claimed. No claim was made in respect of the expenses of their wives and family members who attended the conference).

The cost of food and drink at the conference in (iv) was incurred at times when the solicitors would normally have eaten. So, on the same reasoning as for the expenses at (i) and (ii), there was not an exclusive business purpose, and it was not deductible.

Appendix 1

Extract from Tax Briefing Issue 31 (April 1998)

SCHEDULE D - CASE I & II –

Food and Subsistence Expenses

Introduction

This article concerns deductions allowable in computing profits for tax purposes in respect of food and subsistence expenses of self-employed individuals. The treatment of employees' (including directors') subsistence expenses is dealt with in Leaflet IT 54[7].

Cost of Meals

It is a long-established principle that the cost of meals taken at the place of business are not allowable expenses for tax purposes. In addition, expenses incurred on meals consumed away from the place of business are, in general, not wholly and exclusively laid out for the purposes of the trade or profession since everyone must eat in order to live. Where such costs are not allowable, they may not be apportioned to allow extra costs incurred from the necessity of eating away from home or from the place of business.

Costs of meals may be incurred wholly and exclusively for business purposes where a business by its nature involves travelling (for example, in the case of self-employed long-distance lorry drivers) or where occasional business journeys outside the normal pattern are made. A reasonable level of expenses incurred in these circumstances may be deducted from business profits.

Where a business trip necessitates one or more nights away from home, reasonable accommodation costs incurred while away from home may be deducted. The cost of meals taken in conjunction with overnight accommodation may also be deducted. Where self-employed long-distance lorry drivers spend the night in their cabs rather than taking overnight accommodation, the costs incurred on their meals may be deducted.

It is important to note that only expenses actually incurred and for which receipts are available may be claimed. Receipts must be retained for production in the course of a Revenue audit of the business.

[7] IT 54 has been superseded by Tax and Duty Manual 05-01-06 and the 'Employee Expenses' page on www.revenue.ie.