

[05-02-19] **Expenses of travel - Non-executive directors attending board meetings**

Reviewed March 2016

1. Introduction

The purpose of this manual is to set out the position in relation to the tax treatment of expenses of travel incurred by non-executive directors, who are resident in the State, in attending board meetings.

The tax treatment of expenses of travel and subsistence incurred by non-executive directors, who are **not** resident in the State, is set out in Manual 07-01-36.

2. Statutory position

The statutory position in relation to the tax treatment of expenses, including expenses of travel, paid or reimbursed by a company to a director (including a resident non-executive director) and expenses incurred by a company on behalf of a director, is that all such payments and reimbursements which are not otherwise chargeable to income tax as income are

- treated as a perquisite of the office or employment by virtue of the provisions of section 117 of the Taxes Consolidation Act 1997, and
- within the scope of the PAYE/USC system of deduction at source.

However, a director is entitled to make a claim under the provisions of section 114 of the Taxes Consolidation Act 1997 in respect of expenses of travelling in the performance of the duties of the office of director which he or she is necessarily obliged to incur, as well as in respect of other expenses wholly, exclusively and necessarily incurred in the performance of those duties.

The rule in section 114, and the equivalent rule in the UK, has been the subject of much judicial consideration over many years. The rule has been found to be extremely narrow. In particular, it has been decided that the necessity to incur travel expenses must be imposed

- by the duties of the office or employment itself rather than the personal circumstances of the office holder or employee, and
- on every person holding that office or employment regardless of

the holder's personal circumstances or where he or she lives.

It follows that, generally speaking, the cost of travel by a non-executive director from home to board meetings will not qualify for a deduction under section 114. This is not to say that there are no circumstances in which a non-executive director's expenses of travel in respect of attendance at board meetings would qualify for a tax deduction under that provision.

For example, in the (UK) case of *Taylor v Provan* (1974 STC 168), it was accepted that the office held by the taxpayer was specifically created for him and relief was allowed. However, even assuming that the rationale in the case was to be adopted by the Irish courts, the circumstances of the case were so unusual that the decision does not affect the general principles to be applied in relation to claims under section 114.

3. Revenue Guidance

Revenue has issued extensive guidance over the years in relation to the circumstances in which the expenses of travel and subsistence may be paid or reimbursed free of tax. This guidance is set out in detail in Statement of Practice [SP IT/2/07](#) and Revenue Leaflets [IT 51](#) and [IT 54](#). The purpose of the guidance is to avoid the necessity for all employees and office holders to submit travel expense claims annually in respect of travel expense payments or reimbursement of such expenses which had been taxed at source under the PAYE/USC system.

The circumstances in which expenses of travel may be paid or reimbursed free of tax, as outlined in guidance, broadly reflect the statutory conditions under which relief may be granted.

This guidance does not alter the fact that, before expenses of travel qualify for a tax deduction, such expenses must meet the requirements of section 114.

4. Non-executive directors travelling to board meetings

An individual resident in the State, in his or her capacity as a non-executive director with no executive role within a company, will generally perform some level of preparatory work before attending board meetings. In some instances, this preparatory work will be carried out in the director's home and, in other instances, it will be carried out at another location, generally of the director's choosing.

Having regard to the statutory position outlined above, the fact that some work is carried out outside the board meeting does not mean that the expenses incurred by resident non-executive directors travelling to and from those

meetings qualify for a tax deduction under section 114. Furthermore, where such expenses are paid or reimbursed by the company to or on behalf of a resident non-executive director, they are taxable and within the scope of the PAYE/USC system of deduction at source. Nothing in the guidance referred to in paragraph 3 should be taken as altering that position.

As stated above, it is open to any resident non-executive director to submit a claim under the provisions of section 114 in respect of expenses of travelling in the performance of the duties of the office of director which he or she is necessarily obliged to incur. Where he or she is aggrieved by the determination of such a claim, the determination may be appealed to the Appeal Commissioners in the normal way.