

## Tax Treatment of Expenses of Travel and Subsistence for Employees and Office Holders

A submission to the Department of  
Finance





Deloitte  
Deloitte & Touche  
House  
Earlsfort Terrace  
Dublin 2

Tel: +353 (0)1 417  
2200  
Fax: +353 (0)1 417  
2300  
[www.deloitte.com/ie](http://www.deloitte.com/ie)

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Tax Treatment of Expenses of Travel and  
Subsistence for Employees and  
Office Holders Consultation  
Department of Finance  
14-16 Upper Merrion Street  
Dublin 2

**Via Email: [taxpolicy@finance.gov.ie](mailto:taxpolicy@finance.gov.ie)**

Dear Sir/Madam

We are pleased to submit comments on behalf of Deloitte in response to your call for input on the Tax Treatment of Expenses of Travel and Subsistence for Employees and Office Holders Consultation. We appreciate this opportunity to share our views and trust that you will find our comments valuable to the discussion.

We look forward to continued collaboration with the Department of Finance on this and other tax initiatives and are available to discuss anything in this document, as needed. In the meantime, if you have any queries please do not hesitate to contact me (01) 4172992 or Tom Maguire (01) 4172469.

Yours sincerely

**Lorraine Griffin**  
**Head of Tax & Legal**

Enclosure

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# Key Recommendations and Message

We are delighted to submit our comments on this public consultation on the Tax Treatment of Expenses of Travel and Subsistence for Employees and Office Holders. In formulating our thoughts and recommendations on the various important issues dealt with in this public consultation we have sought, where possible, to draw a comparison with other jurisdictions, particularly the UK, and to highlight how those other jurisdictions treat such expenses.

The tax treatment of expenses of travel and subsistence is of significant importance as it sets out the circumstances in which an employee or office holder may receive expenses incurred in relation to their duties of employment tax free. It is important that such a prescribed approach is in line with modern commercial reality, and is also adaptable and equitable. In addition, it is necessary that the correct balance is achieved between simplifying our tax system in respect of such expenses and also the cost to the Irish exchequer in doing so. Employees and office holders who genuinely incur expenses of travel and subsistence in connection with duties of their employment should not be out of pocket as a result.

As we noted in our recent submission to the Tax and Entrepreneurship Review Consultation, Ireland is facing a very competitive landscape, from a global perspective, in attracting domestic and foreign direct investment. As such, we believe that the framework in place for the tax treatment of travel and subsistence expenditure should be aligned with modern business operations and trends. It is essential that the taxation of such expenses in the hands of the employees and office holders reflects the necessity to preserve our highly skilled domestic talent pool, while at the same time attracting individuals with the necessary skillsets to maintain and, indeed, enhance sustainable growth in our domestic economy.

Accordingly, we provide the following recommendations:

- An employee's normal place of work should be determined based on the facts. The normal place of work should be the place where the employee or office holders performs most of the duties of their employment or office irrespective of whether that is their home or an employer's office/workspace. This should be applied to all employees and office holders irrespective of whether the employment or directorship is with a third party entity or with a company owned by the employee or director.
- In line with the determination of the normal place of work based on the facts, an individual acting as a non-executive director should, if supported by the facts, be recognised as having a normal place of work at their home. Where an individual is traveling from their normal place of work, be it their home or other location, to board meetings on which they are serving as a non-executive director, such expenses of travel should be reimbursed tax free. This should equally apply to both resident and non-resident non-executive directors.
- A workplace should be recognised as a temporary workplace for up to 2 years absence from the normal place of work.

We hope that solutions such as these may be reflected in Finance Act 2015 with a view to providing a modernised tax expense system for employees and office holders and enhancing Ireland's competitive position vis-à-vis our competitors.

# Responses to Consultation Questions

## 1.0 Question 1

*The tax treatment of expenses of travel by employees or office holders on the return journey from home to work*

### 1.1 Current Irish position

S.114 TCA 1997 covers the relief for expenses incurred wholly, exclusively and necessarily in the performance of the duties of the employment and provides as follows:

*“Where the holder of an office or employment of profit is necessarily obliged to incur and defray out of the emoluments of the office or employment of profit expenses of travelling in the performance of the duties of that office or employment, or otherwise to expend money wholly, exclusively and necessarily in the performance of those duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed.”*

Revenue Guidance SP – IT/2/07 further expands on the position in relation to travel from home to work and provides as follows:

*“.....expenses of travelling from home to work and work to home are expenses of travelling which are NOT necessarily incurred by the office holder or employee in the performance of the duties of his/her office or employment. If an office holder or employee receives expense payments in respect of travelling to and from work, such expense payments are taxable and subject to PAYE deductions.”*

### 1.2 International analysis

The above-mentioned Irish position is likewise followed in other jurisdictions such as the UK, United States, Australia and Canada, and therefore it seems to be a settled matter that expenses of travel by employees or office holders on the return journey from home to work are taxable.

As Lord Wilberforce stated in *Taylor v Provan*<sup>1</sup> (at p. 215): “To do any job, it is necessary to get there: but it is settled law that expenses of travelling to work cannot be deducted against the emoluments of the employment...”.

### 1.3 Deloitte recommendation

In the normal course of events, we do not believe that the above general position should be changed or altered. We appreciate the fact that an employee or office holder travelling to and from work may be merely putting the individual in a position to perform their duties of employment as opposed to being actually in the performance of their duties. Therefore, as a general rule we concur with the current

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<sup>1</sup> *Taylor v Provan* [1975] AC 194

position in this regard in that such an expense is a private expense in the hands of the employee and office holder and thus should not be reimbursed tax free.

We note that there are special exceptions to the general rule, specifically in instances where employees are recalled to their place of work to deal with emergencies and in respect of taxi fares home in certain special situations. These exceptions are most welcomed and are in line with the aims of good social policy with regard to issues of public health and safety.

## 2.0 Question 2

*The tax treatment of expenses of travel by non-executive directors on the return journey from home to attend board meetings*

### 2.1 Current Irish position

As per Revenue's guidance in Revenue Operational Manual [05-02-19], expenses of travel for non-executive directors attending board meetings, and travel expenses on the return journey from home to attend board meetings, are generally subject to tax. This is despite the fact that the individual concerned may undertake some level of preparatory work at his/her home or another work location before attending board meetings.

Due to the necessity of non-executive directors (NEDs) to serve on the boards of funds and fund management companies, Revenue are willing to accept the tax-free reimbursement of travel expenses only in the instance where: a non-executive director is non-resident and is an employee of the investment manager/fund promoter who is based abroad, and the cost of attendance at board meetings in Ireland is paid by the investment manager/fund promoter. This appears to be the only instance in which Revenue are willing to depart from their general position on this matter.

### 2.2 International analysis

#### **UK**

There appears to be a similar uncertainty in the UK in determining the normal place of work for non-executive directors. Notwithstanding this, the UK allows for the tax-free reimbursement of travel costs and subsistence expenses incurred en route for non-domiciled individuals in the following circumstances<sup>2</sup>:

- The non-domiciled employee travels from a country outside the UK in which the employee normally lives to any place in the UK where the employment duties are performed and
- Returning there after performing his or her duties in the UK such that the individual is not UK resident for tax purposes.

### 2.3 Deloitte recommendation

Given the vital function that NEDs serve on the boards of Irish companies in respect of enhancing and maintaining good corporate governance and regulation, it is important that our tax code does not deter such individuals from assuming these critical corporate positions.

For Irish companies to demonstrate that they are implementing the best-in-class standards of corporate governance and regulation, the composition of NEDs who sit on Irish corporate boards must also be aligned to this concept of 'best-in-class'. In addition, the global expertise brings additional commercial benefits for the relevant company such as an increased focus on export led growth. Therefore, our tax

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<sup>2</sup> EIM35030 - Travelling expenses: employees working but not domiciled in the United Kingdom: travel between the home country and the United Kingdom

system should recognise this essential function and not deter highly skilled and knowledgeable individuals from sitting on boards.

We note that our tax system currently recognises that business travel is a common aspect of modern commercial operations through the introduction of Foreign Earnings Deduction (FED), which was introduced “to further support our export drive by aiding companies to expand into emerging markets”<sup>3</sup>.

Therefore, given that our tax law recognises human mobility is essential in order to drive domestic economic growth and job creation, the taxation of travel expenses incurred by NEDs should not contradict existing tax policy.

We do not concur with Revenue’s view, per their guidance, which dismisses the importance of this preparatory work. Revenue provide as follows:

*“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 non-executive directors travelling to and from those meetings qualify for a tax deduction under section 114.”*

We recommend that in instances where an individual is traveling from their normal place of work, be it their home or other office building, to board meetings in which they are serving as NEDs, such expenses of travel should be reimbursed tax free. Many NEDs spend a significant amount of time working from their normal place of work reviewing briefing documentation, keeping abreast of news/developments relevant to their non-executive directorship and informing themselves around board activity in advance of such board meetings. Given the modern concept of normal place of work which we have alluded to in question 5 below, we believe that in many instances the NEDs’ normal place of work may be their home for the purposes of undertaking this required preparatory work and thus in such instances there should be a tax-free reimbursement of such travel and subsistence expenses.

We propose in situations where a NED undertakes necessary preparatory work in advance of board meetings in his/her normal place of work, the NED’s reimbursement of travel expenses be treated as tax free.

Please see Appendix 1 below for our proposed legislative change.

The basis for exempting the above travel expenses is that NEDs are required to carry out preparatory work in order to fulfil their duties of the non-executive directorship and NEDs are required to travel to the board meeting in order to execute such duties.

A number of safeguards would have to be provided such that the level of preparatory work performed by the NED is not minimal. In order to substantiate that a satisfactory level of preparatory activities is undertaken by NEDs, their preparatory roles and duties should be prescribed in their contract of non-executive directorship together with the related administrative requirements.

We are of the view that both resident and non-resident NEDs should be treated equally in respect of the tax treatment of travel expenses as NEDs, regardless of their residency, play an integral role in the commercial development of an enterprise and in the operation of sound and effective corporate governance and regulation.

Finally, Ireland prides itself in aligning our corporate tax residency rules with commercial activity and reality. Thus, imposing a tax cost on NEDs who genuinely incur business travel expenses in traveling from their normal place of work to board meetings to execute their duties of non-executive directorship and ensure compliance with the above rules can actually serve to frustrate this objective. To impose such a tax charge on these individuals acts as a deterrent to attend such board meetings where the key business decisions are made and company strategies decided.

We would, therefore, encourage Government and Revenue to broaden the tax-free treatment of travel expenses for both resident and non-resident NEDs who meet the criteria set out in Appendix 1. We recognise that there needs to be a level of control in relation to the expenses that can be claimed tax

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<sup>3</sup> Minister for Finance speech, Budget 2012

free and suggest, therefore, (as outlined in Appendix 1) that the expenses permitted be reasonable and vouched. Specific limitations or restrictions could, if required, be imposed to meet carefully targeted outcomes.

### 3.0 Question 3

*The tax treatment of expenses of travel by directors (generally of small companies) on the return journey from home to workplace where most of the work is carried out at the workplace but an office is maintained in the director's home where some administrative work (e.g. issuing company invoices, preparing VAT returns) is carried out*

#### 3.1 Current Irish position

This situation is dealt with in Revenue Tax Briefing No. 03/13. Revenue clearly set out that such expenses would not be reimbursed tax free. Revenue use the following example to demonstrate this position:

*“Emma is a director of a company with a contract to provide computer programming services to A Ltd which runs a payroll service for its clients. Her normal place of work is located at A Ltd’s headquarters. From time to time she brings work home with her rather than staying late at A Ltd’s premises. The expenses of travel and subsistence incurred on the return journey between Emma’s normal place of work and home may not be reimbursed free of tax even on the occasions when she brings work home with her.”*

Furthermore, Revenue note, in Revenue IT/54, by providing that even “where an employee has to do some work at home or to keep some equipment at home, the place where he/she resides is a matter of personal choice and it would not be regarded as a place of work.”

#### 3.2 International analysis

##### **UK**

In the UK, HMRC have a similar stance to Irish Revenue in respect of the above position. As outlined in HMRC 490 *Employee travel – A tax and NICS guide for employers*<sup>4</sup>, HMRC use the following example to demonstrate this:

*“Gretel’s duties are such that she often has to work late into the evenings. At such times, she has no access to her employer’s premises (her permanent workplace) so she takes work home with her. It is still a matter of personal choice where the work is done (there is no objective requirement that it is completed at Gretel’s home rather than elsewhere). So any travel to or from her home cannot be said to be in the performance of her duties and no relief is available for any costs.”*

#### 3.3 Deloitte recommendation

We believe the above position taken by Irish Revenue in such a situation should remain the same and expenses of travel and subsistence in such situations should not be provided tax free. We concur that instances such as the above where the individual’s “normal place of work” is his/her workplace and where it is at the discretion of the office holder or employee to perform such duties of his/her employment outside of the workplace, expenses of travel and subsistence should be taxable. If the contrary were to apply, it would allow the abuse of tax policy whereby office holders and employees could make the personal decision to undertake a small proportion of work at home in order to recoup the cost of travelling to and from work.

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<sup>4</sup> 490 Employee travel - A tax and NICS guide for employers, p20

We would argue, however, that in instances where, under a contract of employment or office an individual is required to work from home and travel to another work place in order to execute their duties, expenses of travel and subsistence related to specific journeys to that work place should be re-imbursed tax-free. We make specific reference to the situation in an Australian case, *FC of T v Collings*<sup>5</sup>. In this case, the taxpayer was a highly trained computer consultant whose employment required her to be on call 24 hours a day. She was involved in supervising a major conversion of the computer facilities that her employer provided to its clients.

This individual regularly received telephone calls at home and gave advice to workers at the office any time a problem arose. In such instances where the individual concerned was unable to resolve the problem over the telephone or through the portable computer, the computer consultant would return to the office in order to get the computer working. The taxpayer in this case was allowed to receive their expenses of travel and subsistence tax free.

In the above-mentioned case, Rath J<sup>6</sup> provided:

*“I am not concerned with those normal daily journeys that have their sole relation to a person's choice of his place of residence; I am concerned with journeys which begin as a result of performance of the duties of the employment at the taxpayer's home. The journey from home to the office is undertaken, not to commence duty, but to complete an aspect of the employment already under way before the journey commences.”*

We recommend that Revenue should allow the taxpayer to receive expenses of travel and subsistence in instances similar to the above Australian case. This would affect individuals concerned with IT support-type scenarios and other emergency response-type situations where an individual has to travel to their workplace in order to execute his/her duties which they commenced at their home. Revenue guidance does not appear to take account of such situations, which are foreseeable in Ireland and, no doubt, already occur here as well. Nevertheless, and as already outlined above, expenses of travel and subsistence of the employee or office holder regarding return expenses from home to work where administrative tasks that are undertaken at the employee's discretion should continue to be taxed subject to exceptions mentioned at paragraph 1.3 above regarding good social policy and issues of public health and safety.

## 4.0 Question 4

*The tax treatment of expenses of travel by employees or directors on the return journey from home to a workplace where most of the work is carried out at the workplace but some of the work is carried out in the home*

### 4.1 Current Irish position

Based on the facts of the case as presented in the question at hand, a similar position as set out in question 3.1 above would appear to also apply here (i.e. return expenses of travel and subsistence from the employee's home to work, which we assume is the employee's normal place of work, shall be subject to tax).

### 4.2 International analysis

Similar analysis per question 3.2 above also applies here.

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<sup>5</sup> *FC of T v. Collings* 76 ATC 4254; (1976) 6 ATR 476

<sup>6</sup> (ATC at 4262; ATR at 484)

### 4.3 Deloitte recommendation

Our response per question 3.3 also applies here. Provided the workplace in this instance is the individual's normal place of work (as defined per Appendix 1), any expense of travel and subsistence on return journeys from home to work should be taxable in the hands of the employee or office holder, despite the employee's undertaking some of their work duties at home. As already pointed out above, discretionary work undertaken by an employee in their home should not be reimbursed tax free as such a situation could open the floodgates to demands for tax-free expenses may encourage an abuse of our tax system.

As pointed out above, in instances where, under a contract of employment, an employee is required to commence duties of their employment at home, but execute same in their place of work, expenses of travel and subsistence should be reimbursed tax free in such instances.

It is a matter of fact and degree in order to establish the normal place of work for an employee or office holder and we discuss this point further in Question 5 below. In circumstances where the home is the normal place of work, expenses of travel incurred in travelling to an employer's premises should be reimbursed tax free.

## 5.0 Question 5

*The tax treatment of expenses of travel by employees or directors on the return journey from home to a workplace where a small proportion of the work is carried out at the workplace (e.g. reporting to manager on performance, targets, etc.) but most of the work is carried out in the home. In some scenarios, the individual may opt to carry out the work at home while, in other cases, no workplace is provided by the employer.*

### 5.1 Current Irish position

Revenue appear to recognise an employee or office holder's home as a normal place of work only in exceptional circumstances and thus expenses of travel and subsistence on return journeys from the individual's home to workplace may not be reimbursed tax free. Revenue state in IT54:

*"An employee's home would not be regarded as the normal place of work unless there is an objective requirement that the duties of the office or employment must be performed at home. It is not sufficient for an employee merely to carry out some of the duties at home.*

*Usually, the employer will provide the facilities necessary for the work to be performed at the business premises. Even where an employee has to do some work at home or to keep some equipment at home, the place where he/she resides is a matter of personal choice and it would not be regarded as a place of work."*

Revenue state in IT69 *e-working and Tax*: "In relation to e-Workers, the determination of the individual's work base may cause an element of difficulty. In practice, if the employee works part-time in the office and part-time at home, the work base is the office". IT69 states that e-Working includes:

- Working at home on a full-time or part-time basis
- Working some of the time at home and the remainder in the office
- Working while on the move, with infrequent or occasional visits to the office.

This Revenue commentary suggests that even where an 'e-worker' works predominately from home, the office will be regarded as the work base.

Revenue *Tax Briefing No.03/13, Reimbursement of Travel and Subsistence Expenses by Intermediaries*, further expands on this area from the perspective of the payment of expenses by intermediaries. In this context, Revenue are referring to the provision of services of an individual to an end user through an intermediary, usually through a company. The examples below from this tax briefing best demonstrate the position.

*“Example 5*

*“Deirdre is a director of a company with a contract to provide advertising services to GH Ltd. Up to 22 December 2012, she worked at the premises of GH Ltd but GH Ltd now allows her to work from home and she attends the premises of GH Ltd every Friday to provide work updates and discuss projects. The expenses of travel and subsistence incurred on the return journey each Friday between Deirdre’s home and the premises of GH Ltd may not be reimbursed free of tax.”*

*“Example 8*

*“Alison is a director of a company with three engineering contracts. On most days she works from home by choice. Once a month she takes a day out to attend the premises of the three clients to discuss issues arising on the engineering contracts.*

*“The travel and subsistence expenses incurred by Alison on the journey from her home to the first call and from the call to her home may not be reimbursed free of tax. They are not expenses which are necessarily incurred in “in the performance of the duties” of the office or employment. However, the travel and subsistence expenses necessarily incurred by Alison in travelling between clients’ premises may be reimbursed free of tax.”*

Although the above examples apply specifically to intermediary companies, the general position taken by Revenue is clear in that expenses of travel and subsistence incurred on return journeys from an employee’s home to workplace are typically taxable in the hands of the employee regardless of the degree of work undertaken or time spent in the employee’s or office holder’s home.

## 5.2 International analysis

### **UK**

The HMRC also appear to take a narrow stance on this matter similar to Irish Revenue. Per guide 490 *Employee travel – A tax and NICS guide for employers*<sup>7</sup>, HMRC set out their position by stating that even “...in circumstances where we accept that it is necessary for the employee to work at home, any journey between home and a permanent workplace will be “ordinary commuting” and not qualify for relief.” Please see the comments below, however, regarding the UK Office of Tax Simplification’s (OTS) comments regarding the UK position.

### **Australia**

The Australian Tax Office only allows for tax-free expenses of travel and subsistence in situations where an employee commences his/her duties of employment in their home place, but has to travel to his/her work place in order to execute same. This situation has already being alluded to above in Question 3.

### **United States**

In the United States, from a federal tax perspective, the principle place of business (which is the United States’ equivalent of our normal place of work principle) is determined on a facts and circumstances basis. Ultimately, it will be where the office holder or employee executes the majority of his/her employment duties subject to certain restrictions if the home and a workplace are in the same metropolitan area. From a U.S. federal tax perspective, where a self-employed individual operates his/her business from their home, given that they have dedicated a room of their house to operate their business certain costs can be deducted such as a percentage of mortgage and light and heat. In addition travel expenses incurred in traveling from their home, being their principal place of business, to a temporary location in another metropolitan may be re-imbursed tax free. The same applies from a federal tax perspective where an employee spends the majority of their working time from home in one

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<sup>7</sup> 490 Employee travel - A tax and NICS guide for employers, p20

metropolitan area but is required to travel to their employer's office in another metropolitan area in order to execute their duties of employment. The below example best illustrates this point.

### *United States' home office example*

Adam is an employee of ABC Ltd who is based in Chicago. Adam's spouse, Chelsea, was recently transferred by her employer to work in St. Louis. ABC Ltd permitted Adam to change his working arrangements such that he can perform the majority of his employment duties from his home in St. Louis but is required to travel to his employer's office in Chicago once a week on average to attend client meetings. In such a situation from a United States' federal tax position, Adam would be reimbursed tax free for his travel expenses in commuting to Chicago from St. Louis.

Please note the above is from a U.S. federal tax perspective, and a different position may apply from a U.S. state tax perspective as some States apply different rules.

## 5.3 Deloitte recommendation

We believe that Revenue's position in respect to an individual who uses his/her home as their normal place of work, as outlined above in question 5.1 is not in line with modern business demands and trends. It is important that Ireland operates a tax system on travel and subsistence payments that is in line with 21<sup>st</sup> century business dynamics.

In the UK, the Office of Tax Simplification (OTS), in their second report on Review of employee benefits and expenses, is highly critical of the current HMRC approach. They argue that the "current legislation and guidance regarding the definition of a permanent workplace is seen as complex and unclear, and often does not reflect modern working life for employees who may attend more than one workplace." This OTS second report has brought about the UK consultation on travel and subsistence review, which is currently open to response until 30 September 2015. As already mentioned above in question 5.2, the UK has a similar position to Ireland in this regard.

We believe a simple and transparent test should be used to determine an individual's normal place of work regardless of whether or not it is at the individual's home. Ideally employees' with a single employment whether with an unconnected employer or with a company owned by the individual would have one normal place of work. That place would be the place where the employee spends the greatest part of their working time which would be based on fact. If the location where the employee spends most of their working time is their home, this would be their normal place of work. Such a suggestion would remove the unnecessary complexity around this area and would realign the tax treatment of expenses of travel and subsistence with modern commercial reality.

We also recommend that in situations where an employee or office holder has a number of workplaces due to the nature of their employment and it is unclear as to where their normal place of work is situated, such an individual or office holder should be allowed to elect the location of their normal place of work. This would provide certainty to the taxpayer in respect of their tax position and would also provide Revenue with visibility over the legitimacy of the taxpayer's claim.

The above recommendation reflects 21<sup>st</sup> century working practices and is in line with our domestic economic needs. Such an approach would benefit a broad spectrum of individuals as can be seen from the below examples. Our recommended approach is also simple and effective in operation both from the Revenue's and taxpayer's perspective. The following groups of employees and office holders would benefit from our recommended simplified approach:

**Employees of companies that do not have a physical presence in Ireland:** Tim is a software engineer. He recently got a job with a US start-up company that does not yet have a physical presence in Ireland. Tim has a wife and kids and due to Tim's personal circumstances he lives and works in Ireland from his home. Tim is required to travel once a month to his employer's headquarters in the US for employee briefings and training. Under Revenue's existing approach, Tim may be deemed to be traveling from home to work and thus would be taxable on his reimbursed expenses of travel and subsistence to the US.

This does not seem equitable to individuals such as Tim who are served with an additional tax cost for merely fulfilling their employment duties. It is clear that Tim's normal place of work is his home and he

is incurring expenditure in the performance of his duties to travel away from his normal place of work. Tim and similar individuals to Tim should be in the same position as other employees and office holders who necessarily travel outside their normal place of work in the performance of their duties of employment. To impose a tax cost in situations such as the above would serve as a disincentive for foreign companies to tap into our highly skilled domestic workforce. In addition, it inhibits our domestic skilled workforce from availing of job opportunities that may not be available in their local economies and thus may be forced to engage in less lucrative employment that is not commensurate with their skillset.

**Allowing employer's to attract individuals with specialised skills:** Premier Films Ltd is an Irish film and TV production company, based in Dublin that is concerned with making films, TV dramas, animation and creative documentaries. The company was incentivised to base its operations in Ireland due to the Irish film and TV tax credit that is available for qualifying production companies. Premier Films Ltd are currently shooting a number of productions that are expected to be award winning. Given such expectations attached to their future productions, they are seeking to employ a specialist sound and movie track producer. Premier Films Ltd has identified a professional music producer, Siobhan who lives and works from her home studio in Co. Clare. Premier Films Ltd believe Siobhan is the best suited candidate for the job in question. As Siobhan is caring for her elderly mother, she is not willing to relocate to Dublin for work purposes. Therefore Premier Films Ltd allow Siobhan to work from her home studio in Co. Clare but is required to travel to Dublin once a week for meetings with executive producers and company directors.

In this situation, based on Revenue's current position, Siobhan may be taxed on the reimbursement of her travel and subsistence expenses to Dublin as Revenue may consider her as merely traveling from home to work. It is clear from the above situation that her normal place of work is her home studio and that she is traveling outside her normal place of work when travelling to Dublin. In such situations, the employee and office holder should be reimbursed tax free for such expenditure. Should the reimbursement of travel and subsistence expenditure be taxable in the hands of the office holder or employee, it would prevent both domestic and foreign companies based in Ireland from attracting our skilled domestic force.

Irish based companies need the required talent pool to develop and grow their business. Such business growth has the obvious impact of creating future employment across the island of Ireland, increasing the payroll tax take and generating a monetary ripple effect into the domestic economy. To deny a company the ability to attract and retain specialised individuals as needed would prevent our domestic economy from capitalising on such aforementioned opportunities to the detriment of the public good.

**Supporting our SMEs and entrepreneurial landscape:** The reality is that many employees and office holders of companies, especially in the SME sector carry out their duties of employment at home for a variety of reasons such as high rental property prices, e-commerce, and improved technologies etc. Furthermore, Government policy with respect to making broadband available across the country is geared at driving entrepreneurship and job creation. Therefore, it is important that Government and Revenue appreciate that due to modern technologies certain individuals are able and are required to carry out their business operations from their home space. The SME sector of society should not be disadvantaged and it is vital that Ireland is seen to be supporting such individuals in their business endeavours.

Revenue's position with regard to intermediary companies should be altered to reflect modern commercial reality and encourage entrepreneurship. Given the number of tax initiatives in place, such as the Start-up Company Tax Exemption and SURE relief, individuals are encouraged by Government to operate through a company with the aim of driving domestic growth, job creation and increase the tax take on employment taxes. Therefore, single member or small business operations that are run through an intermediary company and that operate their business from an individual's home should be treated in the same way as an individual who runs their business in a commercial office space. This discrepancy in determining an individual's normal place of work is no longer justifiable in modern business.

The below examples illustrate the inequitable treatment pertaining to SMEs where the entrepreneur may be required to work from home:

### *Example 1*

Jim is a director of his new start-up IT security consulting company which provides IT security solutions to local businesses in his area. Jim made a SURE relief investment. Jim works four days of a five-day work week from home and has specially converted a space in his home to allow him to operate his business. Although he did consider renting a local office space, given increasing rental prices in his locality and his limited capital budget, he decided to initially operate the business from his home, which would provide him with significant cash savings to further invest and grow his business. Jim was fortunate that broadband has been installed in his locality as this is a vital resource for his business as the IT technologies and systems he uses to run his business operate from the broadband connection. Every Friday, Jim visits clients' sites to carry out necessary routine checks on their IT security systems. This also allows Jim to engage personally with his clients and build up a strong rapport with them. In sum, Jim carries out all of the critical elements of his work from home and spends 80 per cent of his working week in his home office.

The above example is similar in principle to Revenue's example 5 mentioned above. Therefore, expenses of travel and subsistence in the hands of Jim in respect of travelling from his home to client sites are taxable as the clients' sites would be considered, following Revenue's guidance, as his "normal place of work". It is clear from a commercial perspective that Jim's home is his normal place of work. The position of Revenue imposes an additional unfair expense on Jim and is a mismatch with the commercial reality and the Government's overall objective of supporting small business. Government and Revenue should encourage and reward individuals for availing of any tax reliefs that are geared at growing and enhancing our domestic economy, such as SURE relief which was used by Jim above. Government and Revenue should consider the mobility and fluidity of modern business operations through the use of e-commerce and continuous enhancement of technologies. Otherwise, the entrepreneurial drive and spirit may be severely damaged in Ireland, which would be detrimental to critical foreign and domestic direct investment.

### *Example 2*

Lorraine is a director of her new start-up company which makes specialised hand-made jewellery unique to the West of Ireland and sells it worldwide over the internet. Lorraine decided to operate her business through a company and was incentivised to do so by the Start-up Company Tax Exemption available to certain new start-ups. Lorraine decided to convert her garage at home into a workshop and operate her business at home. Due to the growing popularity of her products, she has won a number of contracts to provide her jewellery to three department stores in Ireland (one in each of Dublin, Galway and Cork) and one department store in London. She is required to visit each department store for a few hours two days each month in order to discuss product range and pricing. Lorraine spends the rest of her time designing and creating her jewellery from her home workshop. In this instance, following current Revenue guidance, Revenue could argue that the department store in London is one of Lorraine's normal places of work and thus expenses of travel and subsistence from her home to London would be taxable. This does not reflect the commercial reality of Lorraine's business operations and, yet again, provides an inequitable personal tax treatment. Lorraine's home is clearly her normal place of work and to determine otherwise would be to create a contrived situation that does not reflect the business operations of the situation at hand.

Our above recommendation regarding the normal place of work concept supports SMEs and assists them in growing their business which is in line with Ireland's goal of being a leading entrepreneurial hub and also strengthens Ireland Inc's position. In addition, this approach would remove the unnecessary complexity around this area and realign the tax treatment of expenses of travel and subsistence with modern reality.

Notwithstanding the above targeted benefits to our domestic economy of recognising the home as a normal place of work, there are further micro and macro benefits<sup>8</sup> associated with same as outlined below;

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<sup>8</sup> [www.globalworkplaceanalytics.com](http://www.globalworkplaceanalytics.com)

- Provides new employment opportunities for the un-employed and under-employed
- Allows employer's to tap into our domestic talent pool across the country
- Enables individuals to return to work due to flexibility on location
- Facilitating disabled workers
- Reduces traffic congestion
- Promotes environmental friendly policies by reducing carbon emissions and global warming
- Enhanced quality of life
- Alleviate the increasing rental price and housing shortage problem in our cities as people could chose to live and work in rural and less urbanized areas.

We appreciate that there also may be obstacles naturally associated with individuals working from home but with the necessary safeguards in place, such issues may be overcome so that the benefits attached to homeworkers may be realised where possible.

Overall, Government and Revenue need to realise that the current position regarding the normal place of work is out of sync and needs to be harmonised with 21<sup>st</sup> century business operations.

Please see Appendix 2 for our proposed legislation which sets out to reflect the above.

## 6.0 Question 6

*Expenses of travel incurred on a temporary absence from the normal place of work to attend a temporary workplace may, in certain circumstances, be reimbursed free of tax. However, when does a temporary workplace become a normal place of work?*

### 6.1 Current Irish position

Revenue provide for the instances in which an award of travel expenses incurred on a temporary absence from the normal place of work in SP – IT/2/07, as follows:

*“The conditions under which the reimbursement to office holders and employees of the expenses of travel and subsistence may be made without deduction of tax are as follows:*

- Firstly, the office holder or employee must be temporarily away from his/her normal place of work in the performance of the duties of his/her office or employment;*
- Secondly, the travel expenses must be necessarily incurred in the performance of the duties of the office or employment; and*
- Thirdly, arising from a long accepted position supported by tax case law, the expenses of subsistence must attach to travelling necessarily incurred in the performance of the duties of the office or employment.”*

*“Revenue further provide in its guidance in situations pertaining to an office holder or employee commencing a business journey from home or ending a business journey at home that “expenses of travel and subsistence that may be reimbursed without deduction of tax are the lesser of those incurred on the journey between –*

- Home and the temporary work location; or*
- The normal place of work and the temporary work location.”*

Temporary work location is not defined in Revenue guidance but it may be reasonable to infer that it is a location, other than an employee or office holder's normal place of work, where the employee performs duties of the employment. Normal place of work is defined in Revenue guidance as “the place where the individual normally performs the duties of his/her office or employment.

Revenue are more prescriptive in respect of the meaning they attach to a temporary workplace when dealing with the tax-free treatment of travel and subsistence expenses relating to temporary assignees from abroad working in the State. Revenue in their guidance provide as follows:

*“With effect from 1 January 2007, the Revenue Commissioners are prepared to accept that, subject to Paragraphs 4.8.2 to 4.8.4 hereunder, tax-free subsistence may be paid or reimbursed for the first twelve months of a temporary assignment provided that the period of assignment in the State does not exceed 24 months.....”*

In respect of travel expenses only, the 12-month period mentioned above does not apply where the “...vouched cost of one return trip per year to the home location may also be paid or reimbursed free of tax...” during the 24-month period.

## 6.2 International analysis

### **UK**

In the UK, HMRC are prescriptive as to the meaning attached to the concept of temporary workplace. HMRC provide in guide 490, *Employee travel - A tax and NICs guide for employers*, that “A place is a temporary workplace if an employee goes there only to perform a task of limited duration or for a temporary purpose. So even where an employee attends a workplace regularly, it will be a temporary workplace, and therefore, not a permanent workplace if the employee attends for the purpose of performing a task of limited duration or other temporary purpose”. Relief is available in the UK for the cost of travel to a temporary workplace.

Under the UK guidance, as set out in guide 490, a workplace cannot be a temporary workplace where an employee attends it in the course of a period of continuous work which lasts, or is likely to last, more than 24 months. The intention is therefore considered in determining if a workplace will be a temporary workplace. For example, if an individual is sent to perform his duties at a temporary workplace by his employer for a period of 18 months, but after 10 months this posting is extended to 28 months, then relief would be available for travel to that temporary workplace during the first 10 months only. If the posting had been for 28 months at the outset, no relief would be available as the attendance is expected to exceed 24 months.

In looking at this rule, a period of continuous work is a period throughout which the duties of the employment are performed to a significant extent at that place. Under this rule, duties will be regarded as performed to a significant extent at any workplace if the employee spends 40 per cent or more of their working time at that place. The test is whether the employee has spent, or is likely to spend, 40 per cent or more of their working time at that particular workplace over a period of more than 24 months. Where this is the case, the workplace will be regarded as a permanent workplace (normal place of work in an Irish context), so travel between the home and that workplace will not be permitted to be reimbursed or paid tax free.

HMRC also provide practical guidance in order to justify the meaning attached to the above definitions.

### **United States**

The United States provide for a similar approach to the UK, but apply a period of 12 months as opposed to 24 months in determining a temporary place of work. IRS guidance provides as follows<sup>9</sup>:

*“If you have one or more regular work locations away from your home and you commute to a temporary work location in the same trade or business, you can deduct the expenses of the daily round-trip transportation between your home and the temporary location, regardless of distance.*

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<sup>9</sup> IRS guidance on transportation

*“If your employment at a work location is realistically expected to last (and does in fact last) for 1 year or less, the employment is temporary unless there are facts and circumstances that would indicate otherwise.*

*“If your employment at a work location is realistically expected to last for more than 1 year or if there is no realistic expectation that the employment will last for 1 year or less, the employment is not temporary, regardless of whether it actually lasts for more than 1 year.*

*“If employment at a work location initially is realistically expected to last for 1 year or less, but at some later date the employment is realistically expected to last more than 1 year, that employment will be treated as temporary (unless there are facts and circumstances that would indicate otherwise) until your expectation changes. It will not be treated as temporary after the date you determine it will last more than 1 year.”*

## **Canada**

The Canada Revenue Agency (CRA) apply a two-year test similar to the UK, but base their test on the actual duration an employee spends in a workplace as opposed to the intended duration.

CRA provide the following guidance in this regard<sup>10</sup>:

### *“Duties of a temporary nature*

*“The expression “duties performed by the taxpayer were of a temporary nature” as used in subparagraph 6(6)(a)(i) (see 4(a) above) refers to the duration of the duties performed by the individual employee, not the expected duration of the project as a whole. For example, a project might take ten years to complete but the individual's duties at that project might take only a few months.*

*“The term “temporary” is not defined in the Income Tax Act. However, as a general rule, duties will be considered to be of a temporary nature if it can reasonably be expected that they will not provide continuous employment beyond a period of two years. The determination of the expected duration of employment must be made on the basis of the facts known at its commencement. In this regard, particular consideration should be given to the following factors:*

- *the nature of the duties to be performed by the employee (certain types of work are, by their nature, short term engagements, such as repair work or trades which are involved only during a certain phase of a project);*
- *the overall time estimated for a project, or a particular phase of a project, on which the employee is engaged to perform duties; and*
- *the agreed period of time for which the employee was engaged according to the employment contract or other terms of the engagement.*

*“Should these factors change after employment commences, it may be necessary to re-determine whether the duties undertaken by the employee are considered to be of a temporary nature for the purposes of the special work site exclusion.”*

## **6.3 Deloitte recommendation**

In determining when a place of work is deemed to be a temporary place of work, we recommend that an approach similar to the UK, where an employee spends less than 24 months working at a particular workplace, should be followed. This provides a clear, transparent and simple clarification of the meaning attached to a temporary workplace. Furthermore, it is in line with the modern commercial reality of temporary assignments as the nature of such assignments would generally be for a period of less than 24 months.

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<sup>10</sup> CRA guidance on Employment at Special Work Sites or Remote Work Locations

Unlike the UK, we suggest that the period of 24 months should be based on the actual time incurred as opposed to the expected time incurred. This recommendation is in line with the approach adopted in Canada as mentioned above. Interestingly, when examining the UK's temporary workplace 24-month rule the Office of Tax Simplification (OTS)<sup>11</sup> suggested that the taxpayer receive "a deduction for the first 24 months regardless of the intended length of the assignment." This approach would remove the intention test basis and implement an actual test basis. The reason for this suggestion is that with the intention test basis, circumstances may change such that one moment the deduction may be available and subsequent to a recent development, the same deduction may not be available. Thus, it does not capture the reality of the situation. This is best demonstrated by the following example used in the above-mentioned UK report.

*"An employee goes on secondment from their normal office in Manchester to the company's London office to assist with a project for 20 months. After 12 months, the employee's manager informs them that the assignment will run for a further 13 months... after 12 months (when the employee is advised that the assignment will ultimately exceed 24 months), any payment in relation to travel/subsistence in travelling to or staying in London would be liable to tax/NICs..."*

A deduction for the first 24 months regardless of the intended length of the assignment should be respected as it provides certainty and also captures the reality of the situation at hand.

Implementing a 24-month rule in respect of temporary assignments would allow for the alignment of both tax-free travel and subsistence expenses with other foreign jurisdictions. Currently in Ireland, the tax-free subsistence element only pertains to the first 12 months out of the 24-month assignment. This would enhance Ireland's position in respect of foreign direct investment on the global stage and thus continue our domestic economic growth by helping to attract the necessary foreign skilled workforce. Please see Appendix 3 below for the proposed legislation in this regard.

## 7.0 Question 7

*Should employers be allowed to reimburse free of tax the reasonable vouched cost of travel incurred by an employee who works in the State but lives outside the State?*

Our response to this question is based on the definition relating to the "normal place of work" as discussed in Question 5 and "temporary place of work" as established in question 6 above.

In situations where an individual whose normal place of work is in the State lives outside the State, reasonable vouched costs of travel and subsistence should not be rewarded tax free as the individual is merely travelling from home to work and vice versa. Notwithstanding this, if the individual's home is their normal place of work and they travel to the State for a temporary work purpose, then in such instances the employee should be reimbursed tax free for the cost of their travel.

In situations specific to an individual where the State is their temporary place of work or where the individual is a non-resident non-executive director (for the reasons set out in question 2 above), reasonable vouched costs of travel should be rewarded free from tax.

This approach is commensurate with our respective comments and recommendations as set out in Questions 3, 5 and 6.

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<sup>11</sup> Office of Tax Simplification, Review of employee benefits and expenses: second report, p. 58.

## 8.0 Question 8

*Should employers be allowed to reimburse free of tax the reasonable vouched cost of travel incurred by an employee who works outside the State but lives in the State?*

Our response to this question is in line with our response to Question 7 above.

As already mentioned, our response to this question is based on the definition relating to the “normal place of work” as discussed in Question 5 and “temporary place of work” as established in Question 6 above.

In situations where an individual whose normal place of work is outside the State and lives in the State due to their personal discretion, reasonable vouched costs of travel should not be reimbursed tax free as the individual is merely travelling from home to work and vice versa.

In situations specific to an individual where their temporary place of work is outside the State but they live in the State and having their normal place of work in the State, reasonable vouched costs of travel should be rewarded free from tax. Normal place of work should include home offices as already mentioned.

This approach is commensurate with our respective comments and recommendations as set out in Questions 5 and 6.

## 9.0 Question 9

*Is there a continued justification for the payment tax free of “country money”, as permitted in paragraph 4.6 of Statement of Practice SP IT/02/2007, and what tax free expenses should employers be authorised to pay or reimburse free of tax to site-based employees who go to work abroad?*

The tax-free payment of “country money” relates to site-based employees who do not have a fixed base and who perform substantive duties on behalf of their employer at different locations (generally for periods longer than one day). This has been applicable typically to employees in the building industry. As set out in guidance produced by the Office of the Revenue Commissioners, this payment “...was designed to compensate employees for expenses incurred travelling varying distances to and from building sites and to cover subsistence expenses”.

Given the recent upturn in the construction industry<sup>12</sup>, we believe there is a justification for this particular payment as it serves to compensate individuals in the construction industry who otherwise would not be compensated for travel and subsistence expenses in relation to their employment. Given that the payment of “country money” originates from an agreement reached in 1976 between the Construction Industry Federation and the Construction and Electrical Workers Unions, and also the importance of the construction and electrical industry in providing employment and re-employment to individuals concerned, it is important that such tax-free payment remains. In the absence of this relief, employers in the construction industry could struggle to source suitably qualified employees as employees could not, without this subsistence, afford in many cases to take up site-based jobs.

It is duly noted that “country money” rate payments have not changed for the Construction Industry since July 2008 and for the Electrical Contractors Association since 2007. A review of these rates should be undertaken to reflect the current cost of living and inflation.

There appears to be a dissimilar treatment between applicable contractors based in Dublin and the country regions. We recommend that a similar treatment between Dublin-based contractors and

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<sup>12</sup> [https://www.scsi.ie/documents/get\\_lob?id=538&field=file](https://www.scsi.ie/documents/get_lob?id=538&field=file)

country-based contractors should be applied specifically in relation to the distance from the employer's base. In addition, using the distance from the GPO as a metric from the employer's base should be removed and should be in line with the treatment for the country-based contractors. In essence, a modernisation of the criteria for the payment of country money must be undertaken.

Alternatively, if the rules around a temporary workplace were enhanced in line with our proposal per Question 6 above, site-based employees could, if the employer base was deemed to be their normal place of work, receive equal treatment to non-site-based workers and a special provision, such as country money, would not be needed.

We believe employers should be authorised to pay or reimburse free of tax to site-based employees who go to work abroad the following expenses:

- Travel
- Accommodation
- Meals
- Incidental expenditure such as laundry, mobile phone charges, internet fees, etc.

Site-based employees who travel abroad should not be subject to tax on the reimbursement of expenses they incur in order to carry out the duties of their employment. Our tax system should not put employees in an out-of-pocket position due to their employment. In 21<sup>st</sup> century business, travel abroad is regularly required for all sizes of business operations in order to meet foreign clients and pursue potential foreign business development opportunities. Ireland has a strong reliance on foreign direct investment and on exports to foreign countries in order to accelerate our recovering economy and thus tax measures should not be put in place which may stifle our continued growth in this area.

## 10.0 Question 10

*What tax treatment should apply to travel expenses incurred in attending work related training courses?*

### 10.1 Current Irish position

In respect of work-related courses or exam fees, Revenue clearly set out on its website<sup>13</sup> that such expenses paid on behalf of the employees are not a taxable benefit in the hands of the employee "where the course undertaken is relevant to the business of the employer." A course is regarded as relevant to the business of the employer where it leads to the acquisition of knowledge or skills which are:

- Necessary for the duties of the employment or
- Directly related to increasing the effectiveness of the performance of the director's or employee's present or prospective duties in the office or employment.

Revenue in their guidance appear to be silent as to whether travel expenses incurred in attending work-related training courses are a taxable benefit in the hands of the employee or office holder. However, where the employer sends an employee to a work-related training course, as defined in the above guidance, the employee is working away from the normal place of work and necessarily incurs the travel costs in the performance of the duties of the employment as attendance at the course forms part of the employment duties where it is work related. On this basis, relief should be available for travel expenses incurred in attending work-related courses.

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<sup>13</sup> [www.revenue.ie](http://www.revenue.ie)

## 10.2 International analysis

### **UK**

The UK provide a similar approach to Ireland regarding the cost of course fees; but, unlike Ireland, UK HMRC<sup>14</sup> specifically include other related expenses that are connected with attending work related courses, such as:

- Travel and subsistence expenses, to the same extent as if they were undertaken in the performance of employment duties while training
- Other incidental costs, such as additional childcare expenses directly related to the employee undertaking the training in question
- Costs which relate to examinations and registration of qualifications and
- Costs of multi-media and distance-learning aids, practical course materials and books.

The UK provide a safeguard for claiming such tax-free expenses by taxing expenses of training, or training-related travel and subsistence, which are provided as entertainment, recreation, reward or inducement.

### **Australia**

The Australian Tax Office provide for a similar position to the UK and allow a tax deduction in the hands of the employee for such travel costs<sup>15</sup>.

### **United States and Canada**

The United States also allow a deduction for travel costs incurred in respect of work-related course expenses<sup>16</sup>. A similar position is followed in Canada<sup>17</sup>.

## 10.3 Deloitte recommendation

We recommend that Irish Revenue should continue to allow the tax-free treatment of travel expenses incurred in attending work-related training courses. However, we recommend that specific guidance on this be provided by Irish Revenue and that the scope of tax-free expenses in connection with attending such work-related training courses is extended similar to the approach taken in the UK. Provided there is an appropriate nexus between the expenses incurred and the attendance at a work-related course that is necessary to an individual's duties of employment, which are geared at increasing the effectiveness of the performance of the employee's present or prospective duties, then such expenses, whether travel or otherwise, should be tax free in the hands of the employee. Furthermore, in order to prevent an opportunity for abuse of these expanded provisions, we recommend that a similar safeguard to that in force in the UK be implemented here.

Tax policy should not deter an employee or office holder from gaining new skills and undertaking further work-related training courses, as it is imperative for any commercial entity to be equipped with a highly skilled workforce to drive the business forward. This upside also has an impact on Ireland's domestic economy, as growth in local domestic business creates a positive multiplier effect.

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<sup>14</sup>[HMRC Guidance HS207 Non-taxable payments or benefits for employees \(2015\)](#)

<sup>15</sup> ATO D4 Work-related self-education expenses 2015

<sup>16</sup> IRS Tax Benefits for Work-Related Education

<sup>17</sup>CRA Expenses of Training

## 11.0 Question 11

*Should expenses of travel which are quantified by reference to a mileage rate for a business journey be restricted to the cost of public transport for the same journey?*

We appreciate the necessity to have a suitable metric in place by which travel expenses are quantified in order to prevent the abuse of tax-free expense claims.

In saying that, we believe that the above-proposed method of quantification for expenses of travel is not a viable option. Such an approach would be neither practical nor equitable given the current position of Ireland's transport services and infrastructure.

There are different public transport services available across the country with a range of different offerings (including prices) depending on location, distance, time and mode of transport. Some areas have poor transport links while others will have a wide range of alternatives, and costs may be lower or higher depending on economies of scale available and/or costs in each region (e.g. labour costs). Therefore, such a proposal would make it very difficult to calculate the cost of public transport for the numerous areas in the country which do not have direct access to public transport or have no public transport at all or to establish one benchmark for the whole country.

The example below illustrates this the difficulties faced.

Alan lives and works in Westport, Co. Mayo. Alan is due to attend a business meeting in Dublin early Monday morning at 10.00a.m. Alan can get a return adult train ticket for €43 to travel on Monday. A bus ticket would be significantly less expensive but would not get Alan to his meeting on time given the bus timetables in place for his area. In contrast, Chris living and working in Galway city can avail of the national bus service in order to attend the meeting in Dublin. In this instance, would Alan living in Westport get more of a tax-free travel expense compared to Chris living in Galway due to the fact that Alan cannot avail of his local bus service or should Alan only be entitled to receive the value of the return bus ticket even though this is not a feasible option for him?

The above is only one simple example of the perplexities that could arise should expenses of travel quantified by reference to a mileage rate for a business journey be restricted to the cost of public transport for the same journey. As can be clearly seen, a travel expense conundrum would arise. Further complexities would arise in seeking to determine the public transport cost for journeys where no clear public transport links are available such as travel from Lucan to Swords, Blackrock to Finglas or Roscommon to Cork, It would be inequitable to seek to impose a restriction to the cost of public transport when options for public transport may either be unavailable or impractical from a work perspective.

The reimbursement and system for tax free travel expenses should be simple, transparent, equitable and user friendly. The suggestion to restrict the cost to the public transport cost of a journey does not hold such characteristics.

Currently, where employees use their private cars, motorcycles or bicycles for business purposes, reimbursement in respect of such costs of business can be made tax free by the employer by reference to either<sup>18</sup>:

- A flat-rate kilometric allowance based on current civil servant rates or
- Actual costs incurred.

We believe the current position as outlined within IT51 is more practical and operates more effectively than the proposal to restrict the expense to the public transport cost for the same journey.

Therefore, we recommend the current practice should be maintained.

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<sup>18</sup> Employees' Motoring/Bicycle Expenses - IT51

## 12.0 Question 12

*Should circumstances be identified where employers would be permitted to reimburse only vouched expenses of travel?*

### 12.1 Current Irish position

In respect of the reimbursement of travel expenses, Revenue set out the following per IT51<sup>19</sup>:

*“Where employees use their private cars, motorcycles or bicycles for business purposes, and the employees incur the total cost of such usage (e.g. insurance, tax, running costs, etc.), then the reimbursement in respect of the cost of business use can be made free of tax by the employer by reference to either -*

- *Flat-rate kilometric allowances **or***
- *Actual costs incurred.”*

In both instances above, the amount of the expense that may be received is based on prevailing Civil Servant rates and also a record of such expenses must be maintained.

In relation to the payment or reimbursement of subsistence, Revenue set out the following per IT 54:

*“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 on the basis of either -*

- *acceptable flat-rate allowances; **or***
- *actual expenses which have been vouched with receipts.”*

As regards the reimbursement of expenses based on an acceptable flat rate allowance, the employer must retain a record of all of the following:

- The name and address of the employee
- The date of the journey
- The reason for the journey
- The distance (km) involved
- The starting point, destination and finishing point of the journey and
- The basis for the reimbursement of the travel expenses (e.g. temporary absence from an individual's normal place of work).

As regards the reimbursement of actual expenses vouched by receipts, the employer must retain such receipts, together with details of the travel and subsistence.

### 12.2 International analysis

A similar approach to Ireland appears to be applied in the UK<sup>20</sup> and in the United States<sup>21</sup>.

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<sup>19</sup> Employees' Motoring/Bicycle Expenses - IT51

<sup>20</sup> HMRC 490 Employee travel – A tax and NICS guide for employers, p52

<sup>21</sup> Topic 511 - Business Travel Expenses

In Australia, the ATO appear to operate a number of options in calculating an employee's tax-free travel expenses<sup>22</sup>. Nevertheless, such methods are not focused on a vouched basis.

### 12.3 Deloitte recommendation

We appreciate the need to have the necessary safeguards in place to ensure that there is no abuse of travel expense claims. In Ireland and other foreign jurisdictions, regardless of the chosen method to determine an employee's tax-free travel expenditure, it is necessary that a record and account are kept of such expenditure to justify same. Therefore, once such expenditure can be verified there is no particular need for employers only to reimburse tax-free vouched expenses of travel. Adopting the proposed approach for specific circumstances could lead to inequity and could raise significant challenges where adequate public transport is not available, meaning the employee has to use their personal car, motorcycle or bicycle for business travel.

Arising from Revenue's Contractors Project with regard to intermediary companies, vouched expenses of travel may be required for one-person service companies, expenses of travel by a controlling director/shareholder or where there is no one employed by the company who can check the expenses reimbursed. This is similar to the position followed in the UK<sup>23</sup>. Such an approach would ensure that employees and office holders in such circumstances may receive expenses of travel in genuine circumstances and prevent a risk of falsified claims.



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<sup>22</sup> ATO Motor Vehicle expenses

<sup>23</sup> EIM30059 - Dispersations: checking and authorisation of expenses payments

# Appendix 1

Proposed amendment to our current legislation as follows in order to provide for the tax free reimbursement of travel and subsistence expenditure incurred by NEDs:

“

(1) In this section –

“company” is any body corporate [including] a trustee savings bank within the meaning of the Trustee Savings Banks Act 1989”, but not including the Health Service Executive, a grouping within the meaning of TCA 1997, s 1014(1) (a European Economic Interest Grouping (EEIG)), a vocational educational committee established under the Vocational Education Act 1930, a committee of agriculture established under the Agriculture Act 1931, a local authority within the meaning of the Local Government Act 2001 (as amended by the Local Government Reform Act 2014) and includes a body established under the Local Government Services (Corporate Bodies) Act 1971.

“director” in relation to a company, for the purposes of this provision, means any non-executive director of the company.

“normal place of work” is the place where a director spends the greatest part of their working time as a director.

(2) In instances where a director is required to undertake preparatory work under his contract of directorship with a company and such work is performed in his normal place of work, then reasonable expenses of travel and subsistence on a vouched basis shall be disregarded for the purposes of the Income Tax Acts and Social Welfare Acts where that individual incurs such expenditure in connection with attending a meeting in the State of the board, or a subcommittee thereof, of that company, or of an associated company (within the meaning of S432 TCA 1997) of that company”

# Appendix 2

Proposed amendment to our current legislation as follows in order to provide for the tax free reimbursement of travel and subsistence expenditure incurred by directors and employees who travel outside of their normal place of work and also where they wish to elect their normal place of work in cases of uncertainty:

(1) In this section –

“another work location” shall be a location other than a normal place of work which is connected with the trade or profession of the qualifying company.

“appropriate election” as determined by the Office of the Revenue Commissioners.

“company” is any body corporate [including] a trustee savings bank within the meaning of the Trustee Savings Banks Act 1989”, but not including the Health Service Executive, a grouping within the meaning of TCA 1997, s 1014(1) (a European Economic Interest Grouping (EEIG)), a vocational educational committee established under the Vocational Education Act 1930, a committee of agriculture established under the Agriculture Act 1931, a local authority within the meaning of the Local Government Act 2001 (as amended by the Local Government Reform Act 2014) and includes a body established under the Local Government Services (Corporate Bodies) Act 1971.

“director” and “employee” in relation to a company, includes an officer of the company, any director of the company and any other person taking part in the management of the affairs of the company, and in relation to any employer, includes a person who is to be or has been an employee.

“normal place of work” is the place where a director or employee is generally required to spend the greatest part of their working time, and may include the director or employee’s principal private residence should the director or employee spend the greatest part of their working time there.

(2) In instances where a director or employee of a company is required to travel from their normal place of work to another work location, reasonable expenses of travel and subsistence on a vouched basis shall be disregarded for all purposes of the Income Tax Acts and Social Welfare Acts where the director or employee incurs such expenditure wholly and exclusively for the purposes of the trade or profession of the qualifying company.”

(3) Where the normal place of work could be more than one location, the taxpayer may make an appropriate election to the Office of the Revenue Commissioners in order to determine their normal place of work.

# Contacts

For more details please contact:

Dublin  
Deloitte  
Deloitte & Touche House  
Earlsfort Terrace  
Dublin 2  
T: +353 1 417 2200  
F: +353 1 417 2300

Cork  
Deloitte  
No.6 Lapp's Quay  
Cork  
T: +353 21 490 7000  
F: +353 21 490 7001

Limerick  
Deloitte  
Deloitte & Touche House  
Charlotte Quay  
Limerick  
T: +353 61 435500  
F: +353 61 418310

[www.deloitte.com/ie](http://www.deloitte.com/ie)

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