

Contractor travel expenses

Travelling expenses can be split into two categories. The first and more straightforward is travel 'in the performance of the duties of the employment.' The obvious example is the travelling salesman who spends most of his working day on the road, but this also applies to the contractor who, in the course of the working day, travels '**on-site**' or between workplaces.

Revenue's welcome rule change of 1998

Until 1998, it was not possible to claim for travel to and from work but modern working practices had rendered the existing travel expense rules unworkable. Various attempts had been made to reach pragmatic solutions but then, following criticism in the courts, it was decided to rewrite the legislation and as from April 6th 1998, it has been possible, under certain circumstances and subject to certain limitations, to claim travel to and from work.

It's all about the workplace

In order to determine whether the expense is allowable it is necessary to assess the status of the workplace. If the workplace satisfies the definition of 'temporary' travel to and from is likely to be allowable, but if the workplace is classed as 'permanent' the journey will not qualify for relief.

So what is a 'temporary' workplace?

A "temporary" workplace is one which is attended to perform a task of limited duration or for some other temporary purpose after which the employee will, within the same employment, move onto another workplace. It is important to note at this point that if a person has a temporary job and will work at the same location throughout, it is the job that is temporary and **not** the workplace. If the workplace will not change throughout the course of the employment the workplace is permanent. **It is the status of the workplace, within the employment, that is the deciding factor** and if the workplace will not change then it is permanent and journeys will not qualify for relief. If, however, the workplace will change or it is expected that the workplace will change then the workplace is **capable** of being 'temporary.'

The 24-month rule

A workplace cannot remain 'temporary' indefinitely. There is an overriding time limit of 24 months but that does **not** mean that the first 24 months is always allowable. If a person is in an employment which consists of a series

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of temporary assignments, there will be no relief if the assignment exceeds 24 months, though relief will cease to be available once it is known that the 24 month limit will be exceeded. That could very well be from day one.

It follows, therefore, that if a person is sent to perform a task of limited duration and the task will take five years to complete, the workplace will be permanent from day one. If, however, the person is sent to perform a task of limited duration that is expected to last 18 months but after 15 months the contract is extended by 12 months it is, at that point, that the 24 month rule is broken and it is at that point that tax relief ceases to be available.

Anti-avoidance

Those writing the legislation identified a possible tax avoidance scheme whereby if an employer had a number of workplaces in a relatively small area, the employer could rotate the staff and circumvent the 24-month rule. So if there is a change of workplace, but the journey is substantially the same, then the change of workplace will be ignored and time spent at the different workplaces will be aggregated for the purpose of the 24-month rule.

Another aspect of concern to the tax authority was the case of the employee who returns to the **same workplace after a spell of time away**. It is not possible to reset the 24-month clock by simply attending another workplace. The 24-month rule will still apply if the employee spends a 'significant' amount of time at the workplace. HMRC regard 'significant' as being 'more than 40%.' It follows, therefore, that where an employee first attends a workplace it is necessary to look at the previous 24 months to check whether there has been attendance at that workplace (or workplaces close by - see previously) and whether the new period of attendance will equate to an excess of 40% of working time in 24 months.

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Further information for IT Contractors:

IR35
Agency workers directive
IT Contract Guides
IT contracting forum
IT contract jobs

Guides to S660/Income Shifting
Limited Company Guides
Umbrella Company Guides
Contractor Expenses
First Timers Guides

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