

- 4.3 The 'necessary' attendance rule
- 4.6 Changes to a workplace
- 4.10 Journeys treated as ordinary commuting or private travel

- 4.1 This chapter explains the safeguards written into the legislation to prevent relief being obtained in circumstances where it is not properly due.
- 4.2 There are three aspects to this:
- relief is available only where an employee **has to** attend at a workplace, in the performance of the duties of their employment, on a particular occasion, see paragraphs 4.3 to 4.5,
 - changing workplaces will not necessarily affect an employee's entitlement to relief for travel, see paragraphs 4.6 to 4.9, and
 - journeys which for practical purposes are ordinary commuting or private travel are treated as ordinary commuting or private travel, see paragraphs 4.10 to 4.13.

The 'necessary' attendance rule

- 4.3 Relief is available only where travel is in the actual performance of the employee's duties or where it is necessary – in a real sense – for the employee to attend the particular place on that occasion to perform the duties of their employment. Usually the position will be straightforward and the requirements of the duties and the requirements of the employer will be identical. But it is important to keep in mind that the strict test for relief is that the travel is dictated by the duties of the employment.

Relief is available only where travel or attendance is an objective requirement of those duties. The personal convenience of the employee cannot be the factor that determines relief.

Example

John is employed as a technical writer. He normally works at his employer's head office. However, to enable him to look after an aunt who is unwell, John's employer tells him to work at his aunt's home for a few weeks. John is not entitled to relief for travel to or from his aunt's home. Although John carries out the duties of his employment there, his attendance is not an objective requirement of those duties.

- 4.4 It is important to remember that relief is available only where an employee **has to** attend a temporary workplace on a particular occasion in order to carry out the duties of the employment.

Example

Josephine works for a firm of estate agents which has branches across the West Midlands. Josephine lives in Wolverhampton and works at the branch in Coventry. She has a number of business phone calls to make which can be made at any time during the day. Josephine's employer tells her to stop off at the Birmingham branch on the way to her permanent workplace in Coventry in order to make some of the phone calls. Josephine is not entitled to relief for the cost of her journey from Wolverhampton to Birmingham. She and her employer cannot treat her ordinary commuting journey as a business journey by arranging the stop-off at the Birmingham branch. Her attendance at that branch is not an objective requirement of the duties of her employment. For the same reasons Josephine is not entitled to relief for the cost of her journey from Birmingham to Coventry, again because that journey is not an objective requirement of the duties of her employment.

- 4.5 It is recognised that there will be cases where the position is not clear cut. But we will look particularly closely at any case where an employee appears to have been sent by their employer to a temporary workplace just to get relief for travel expenses. Where that has happened we will consider the scope of taking action against employers to recover PAYE or, if appropriate, recovering tax, interest and penalties from the employee. Employers and employees should be aware that it is a serious offence to make a false statement or claim to us.

Changes to a workplace

- 4.6 An employee's workplace may change without significantly affecting their journey to work. Where an employee moves offices from Cardiff to Edinburgh there is clearly a change of workplace affecting the employee's journey to work. But the position is different if an employee moves to a new office in the next door building. In these circumstances there is no significant effect on the employee's journey to work and under the tax rules there is no change of workplace.
- 4.7 Sometimes it may be difficult to decide whether a change of workplace affects an employee's entitlement to relief.

The basic principle is that a change in the location or boundaries of a workplace will give rise to a new workplace where the change has a significant effect on:

- the journey an employee has to make to get to work, and in particular
- the cost of that journey.

Example

Josh is employed on a construction site. His employer buys an adjacent plot to extend the site. Josh moves to work on the new plot but his journey to work (and in particular its cost) does not change significantly. That means there has been no change of workplace for tax purposes.

Example

Julie works for an employer who has several offices close to each other in London. Her employer rotates staff around the offices every 18 months. Julie works at one office and is then moved to another. She travels to work using the Underground and, although she now gets off ten stops further on than previously, her journey is largely unaltered and the price of her ticket does not change. Her workplace is not considered to have changed.

- 4.8 Where a change in location has a significant effect on:
- the journey an employee has to make to get to work, and in particular
 - the cost of the journey to work
- the new location is a new workplace even if it is close to the old workplace.

Example

Justin is employed on a major bridge construction project. To begin with he works on the North shore but he is then transferred to work on the South shore. Crossing the river is inconvenient (which is why a new bridge is needed), and it takes Justin longer to travel to the South shore and costs much more than it did to travel to the North shore. The North and South shores could be described as a single construction site and, as the crow flies, they are not far apart. However, Justin's move from the North to the South shore has had a significant effect on his journey to work (and, in particular, the cost of that journey) so his workplace has changed for tax purposes.

- 4.9 Generally, there should be little difficulty in applying this rule which may have the effect of denying relief for travel over longer distances in metropolitan areas than in rural areas. A change of location from Queensway to Bank could involve ten stops on the Central line of the London Underground at no extra cost. In these circumstances the modification rule comes into play. But ten stops to the North on a train from Preston gets into Scotland, and ten stops to the South could involve a journey beyond London, both at considerable extra cost. There would be no question of applying the modification rule in these circumstances.

Example

Karolyn lives near Ludlow. Each day she used to drive 25 miles north to her workplace in Shrewsbury. Karolyn's job is moved. Now each day she drives 25 miles south to her new workplace in Hereford.

The mode of transport is the same, the time taken is the same, but the journey is in an entirely different direction. The fact that the costs of travelling to and from work do not change is a chance consequence of where she lives. Had Karolyn lived elsewhere, the change in workplace would have had a significant effect on the cost of her commuting. On that basis, this would be regarded as a fundamental change to the place where her duties are carried out, rather than a modification. The new location is regarded as a new and quite separate workplace.

Journeys treated as ordinary commuting or private travel

- 4.10 Sometimes an employee may travel to a temporary workplace without that journey being significantly different from their ordinary commuting journey. Where that happens the tax rules deny relief in circumstances where, for practical purposes, a journey is very similar to the employee's ordinary commuting journey.

Example

Keith is a health and safety inspector who lives in Leicester. His office in Nottingham is 500 yards away from a bean processing plant. When he travels direct from home to the processing plant he is going to a temporary workplace but his journey is substantially the same as his ordinary commuting journey so he is not entitled to any relief.

Example

Kim lives in Pudsey. She travels five miles to work in Leeds where she is a reprographics manager. One day she is asked to go to Ilkley to stand in for a colleague who is sick and so travels an extra 12 miles. Her journey to Ilkley is clearly different from the journey she makes daily to Leeds so she is entitled to relief.

- 4.11 This is intended to be a common sense rule which applies where the journey to or from a temporary workplace is broadly the same journey as the employee's ordinary commuting journey. In particular, it will deny relief where employers or employees seek to turn an ordinary commuting journey into a business journey for the purposes of obtaining tax relief. The application of this rule will depend on the particular circumstances of any case but we will not normally seek to argue that a journey to or from a temporary workplace is substantially ordinary commuting where the extra distance involved is ten miles or more each way.
- 4.12 The same rule denies relief for journeys which are substantially private travel. This means journeys where the business purpose of a journey is merely incidental to some private purpose or the journey is made substantially for private purposes rather than for business purposes.

Example

Lew is harbour master at Larne. One day he travels to Belfast to visit his elderly mother but while there calls in at a colleague's office to deliver some new charts of the Irish Sea. His purpose in going to Belfast was private so he is denied relief because his journey was substantially private travel.

Example

Lucille works in a dry cleaners in Carlisle. Her employer sends her to the Darlington branch to repair a machine which has been damaging clothes. While there she visits her ex-husband to discuss maintenance arrangements. She spends a lot longer dealing with her private affairs than in fixing the machine. She is entitled to relief for her travel from home to Darlington because her primary purpose in going there was business. The discussion with her ex-husband, although time consuming, was merely incidental to her business travel.

Example

Luke lives in Banbury and is employed as a systems analyst at an office in Aylesbury. Luke has a three week holiday in Italy. At the end of the holiday he flies back from Venice to Heathrow. Instead of going home Luke drives direct from Heathrow to visit a client who needs to see him urgently in Warwick. The total cost of Luke's journey from Venice to Warwick is £1,500.

Luke is not entitled to relief for the cost of this journey. While he had to visit the client the reason for the greatest part of his journey, and its cost, was private – his return from holiday. His journey was, therefore, substantially private travel.

We will not use this rule to deny relief where comparatively small sums and short distances are involved.

Example

Mandy lives in Cannock and has a permanent workplace in West Bromwich. One weekend she goes to visit her grandmother in Lichfield. On Monday morning she drives from Lichfield direct to visit a client she has to see in Stafford.

Mandy is entitled to relief for her journey from Lichfield to Stafford. While she started out in Lichfield for personal reasons, and her journey is six miles longer than it would have been if she had travelled from her home in Cannock, the journey is substantially for business purposes. It is not, therefore, substantially private travel.

4.13 The rule which denies relief for journeys that are substantially ordinary commuting is relatively easy to apply because there will generally be an ordinary commuting journey as a point of comparison. That is not so for journeys where relief may not be available because a journey is substantially private travel. Exceptionally, the application of the 'substantially private travel' rule may involve enquiries about the purpose of a journey. We do not expect employers to make searching enquiries of their employees to determine whether tax relief is due. Enquiries which we need to make will be handled sensitively.