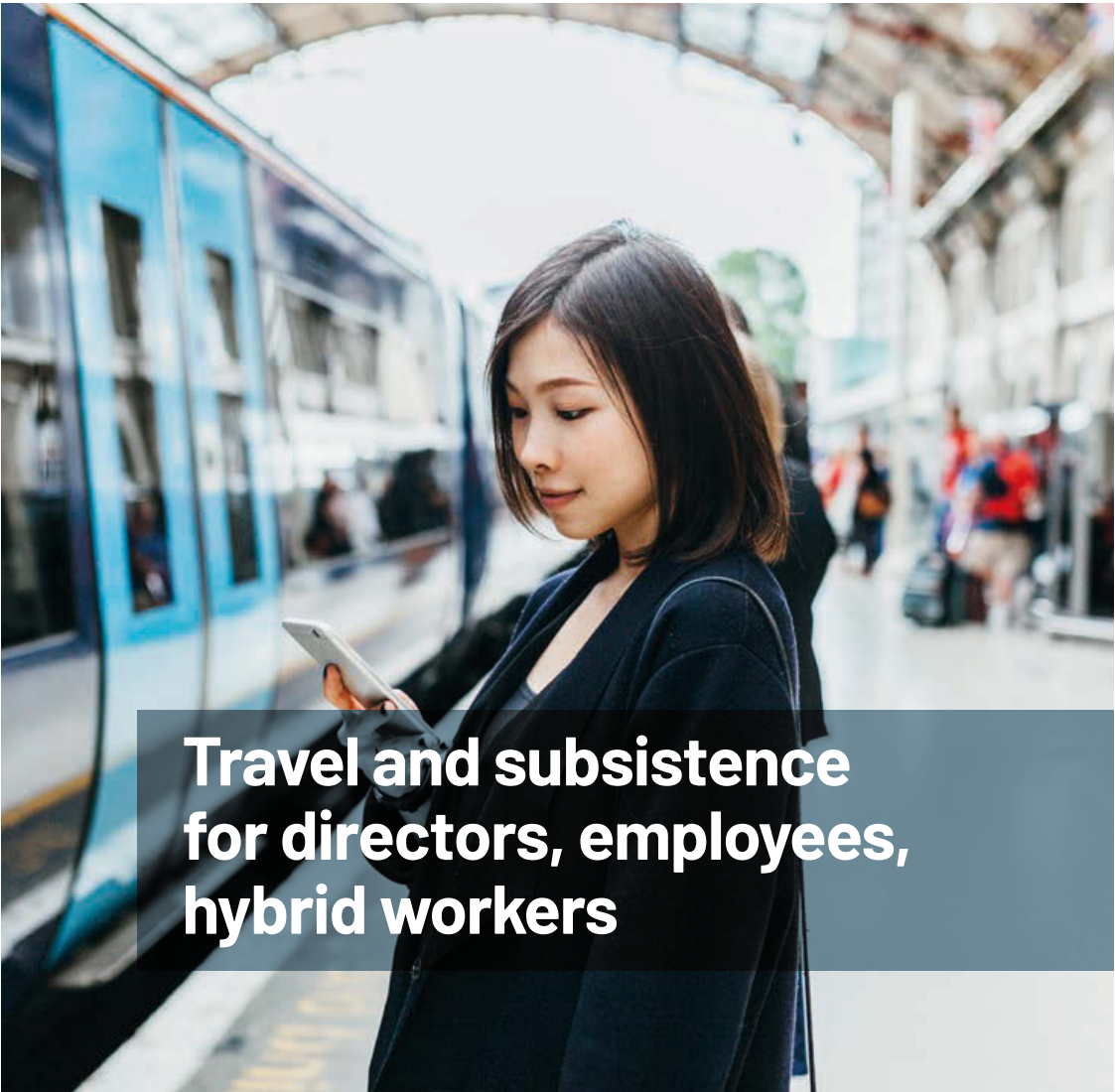


ASTER & TRUJILLO

3-7 Temple Avenue, Temple Chambers, London EC4Y 0HP
Tel: + 44 (0) 20 7190 9812 Fax: + 44 (0) 20 7190 9813
info@astertrujillo.co.uk www.astertrujillo.co.uk



**Travel and subsistence
for directors, employees,
hybrid workers**

When it comes to expenses incurred by or on behalf of directors and other employees, the tax rules on travel and subsistence are not intuitive. Errors can have expensive consequences both for the business and employee.

This Briefing discusses the taxation of such expenses and explains where relief is allowed. It also covers hybrid working arrangements.

Travel expenses – allowable expenses?

Travel expenses are not always allowable expenses. To be allowable, travel must be either:

- travel in the performance of duties

A deduction is allowed if the employee is obliged to incur and pay the expenses as holder of the employment **and** the expenses are necessarily incurred on travelling in the performance of the duties of the employment

or

- travel for necessary attendance

A deduction is allowed where the employee is obliged to incur and pay the expenses as holder of the employment **and** they are attributable to their necessary attendance at any place in the performance of the duties of the employment.

These conditions also apply to employees with flexible or hybrid working arrangements. We look at such arrangements in more detail below.

Permanent workplace, temporary workplace

It is important to identify the type of workplace correctly. Tax law recognises two categories: the permanent workplace and the temporary workplace. Broadly speaking, travel from home to a temporary workplace is an allowable expense, whilst travel to a permanent workplace is not. It's an area of considerable complexity where errors can often be made.

So, what makes the difference between the two? A permanent workplace is defined as a place an employee attends regularly for the performance of the duties of the employment. It is also defined as not being a temporary workplace. It is possible to have more than one permanent workplace at the same time.

Permanent workplace

In many cases, it will be clear if there is a permanent workplace. This then has important implications for the concept of 'ordinary commuting'. Ordinary commuting, defined as travel from home to a permanent workplace, is not allowable. There are certain tightly-drawn exceptions, but generally, if an employee or director chooses where to work, and chooses where to live, the cost of travel to the permanent workplace does not attract tax relief. Should the costs of ordinary commuting be paid or reimbursed by the employer, this would usually create a taxable benefit.

Having established that an employee has a permanent workplace, and that the cost of ordinary commuting is not allowable, it is then possible to establish which travel costs are allowable. Basically, full tax relief is available on travel to and from a temporary workplace. Some travel between a temporary workplace and home may not qualify for relief if the journey is 'substantially similar' to that to or from the permanent workplace. HMRC construes this as a journey using the same roads, or the same train or bus for most of the journey.

Special provisions apply to site-based employees, and employees for whom travelling is an integral part of the job, such as salespeople. We can advise further here.

Temporary workplace

A workplace is held to be temporary if an employee goes there only to perform a task of limited duration, or for a temporary purpose. Even where a workplace fits into this category, other conditions can apply to mean it is treated as a permanent workplace instead:

- the 24 month rule: where an employee attends (or there is an intention that they attend) the workplace in the course of a period of continuous work that lasts or is likely to last, for more than 24 months, it's deemed a permanent workplace. HMRC treats 'a period of continuous work' as meaning 40% of the employee's working time
- the fixed term appointment rule: if the employee attends in the course of a period of continuous work expected to last for all, or almost all, the period they are expected to hold the employment, the workplace is also treated as a permanent workplace.

Homeworking: hybrid working

Since the pandemic, homeworking is no longer a rarity, and hybrid working, where work is split between office and home, is also increasingly common. The tax treatment of travel costs for employees travelling into the office under such arrangements is a new area for most employers.

HMRC has recently updated its employment income manuals with more guidance and examples on home and hybrid working, but this doesn't mean any change to the way that the rules operate. Tax relief on travel for homeworking or hybrid working arrangements will only be available in very specific circumstances.

This may come as an unwelcome surprise for employees who began homeworking during the pandemic, when easements applied to some homeworking expenses. Of course, an employer can choose to pay for, or reimburse such travel costs: it is simply that doing so is likely to create a benefit in kind, and that reporting and compliance obligations then also apply.

Hybrid workers face two challenges. There is the basic question of whether home qualifies

as a workplace, and there are only very specific circumstances in which HMRC will accept that this is the case. Then there is the question of whether the employer's normal workplace is their permanent workplace. If it is, then the ordinary commuting rules deny tax relief. Trips between home and temporary workplaces however, will be allowed.

HMRC manuals state 'For most people, the place where they live is a matter of personal choice. So the expense of travelling from home to any other place is a consequence of that personal choice, not an objective requirement of their job.' For tax purposes, the fact that there is employee choice runs counter to the idea of an expense necessarily incurred by any holder of that post. There may be the possibility for relief for travel costs necessarily incurred in the performance of the duties of employment, when the home is accepted by HMRC as a workplace, or when the place that the employee lives is a requirement of the employment.

If working arrangements have changed within your business since the pandemic, it makes sense to check that employment contracts accurately reflect the new reality, and that your expenses policy is adapted as needed. We should be pleased to help you review this and to advise on how the rules with regard to travel expenses currently impact you.

Frequently asked questions

Where does travel fit in with the wholly and exclusively for business test?

There is an important difference between the position with regard to deductibility for travel expenses and the position for other expenses. Travel expenses do not have to be incurred wholly and exclusively for business purposes, although care is always needed in cases where there could appear to be duality of purpose.

HMRC manuals cite the example of an employee travelling to New York on business for two weeks. During the trip, there is a free weekend, which is spent on a sightseeing trip to Boston. Whilst the costs of the break in Boston are not deductible,

they do not disqualify the deduction for the cost of the flight to New York and other necessary travelling expenses. These have been necessarily incurred in travelling to a temporary workplace. Please do contact us for help with potentially borderline cases.

What about overseas conferences?

Special rules apply to expenses incurred by employees for overseas conferences, seminars or study tours. A particularly restrictive test applies in these cases, with the employee having to demonstrate that attendance is necessary in order to carry out the duties of the employment. We can advise further here.

Can a spouse go too?

We are often asked about the tax position where a director or employee is accompanied by a spouse on a business trip, particularly overseas. Where the employer pays or reimburses the spouse's expenses, they are assessable on the employee as general earnings, and the employee will need to establish if it is possible to obtain a deduction. This will depend on the facts, and it will have to be shown that the expense was necessarily incurred in the performance of the duties.

In general, a deduction is unlikely to be given unless certain specific conditions are met. This could be, for example, if the spouse has a special skill or qualification needed on the trip, perhaps being a competent linguist and acting as an interpreter.

What scale of expenditure will HMRC accept?

The important point is not so much the size of the expense: the issue is whether or not the expense is attributable to business travel. If genuinely attributable to business travel, it should qualify for a deduction.

A deduction for first class rail travel, for instance, should not be debarred on the grounds that

the journey could be made more economically. HMRC may, however, query 'unusually lavish' arrangements, seeking to establish if there is 'some sort of reward', rather than a genuine attribution to business travel.

What about subsistence?

Subsistence includes accommodation and the cost of food and drink while an employee is away from the permanent workplace, and the treatment of these expenses mirrors the treatment of travel expenses. This means that if travel is allowable travel, relief for subsistence should follow.

The rules allow a deduction for subsistence costs attributable to the business travel which are additional to costs the employee would ordinarily incur if they were not travelling on business. This would cover, for example, a deduction for the cost of a sandwich and coffee bought at the station while travelling on business. The cost of a sandwich and flask of coffee made at home and consumed while travelling, on the other hand, would not qualify, as they do not represent costs incurred in the course of the journey.

Working with you

In this Briefing, we have only been able to touch on some of the important areas for consideration. Please don't hesitate to contact us for more advice. We can help you deal confidently with the rules on travel and subsistence, enabling you to meet reporting and compliance obligations to HMRC. We can, for example, assist with your year end reporting, help you review for any errors, and advise as to the suitability of benefits, or using a PAYE Settlement Agreement.

Finally, as hybrid work patterns become more mainstream, it is likely that HMRC will take a closer interest in travel and subsistence expenses in this area. We should be delighted to assist with any queries you may have.