

## Temporary Workplaces (Lecture P1242 – 15.51 minutes)

### *Introduction*

s.338 ITEPA 03 denies a deduction from earnings for travel expenses incurred in 'ordinary commuting', which is travel between:

- the employee's home and a permanent workplace; or
- a place that is not a workplace and a permanent workplace.

A permanent workplace is defined in s.339 as a place the employee regularly attends in the performance of the duties of the employment and which is not a temporary workplace.

### *Temporary workplace*

A temporary workplace is a place the employee attends to perform a task of limited duration or for some other temporary purpose.

A workplace is not regarded as temporary if the employee's attendance is during a period of continuous work of a significant extent (being at least 40% of working time) lasting:

- More than 24 months; or
- Comprising all, or almost all (i.e. at least 80%) of the period for which the employee is likely to hold the employment.

It becomes permanent at the time that it is reasonable to assume one of the above is true. This could be at the start of the work, or during it (for example, if an existing 18-month secondment is extended by another 12 months).

### *Example*

Karen works for a firm of architects at its Petersfield branch. She is sent to work full-time at the branch in Andover for 15 months, at the end of which she will return to the Petersfield branch. Andover is approximately 36 miles north-west of Petersfield.

Although she is spending all her time at the Andover branch, it will not be treated as her permanent workplace, as her period of attendance will not exceed 24 months. Therefore, Karen can claim a deduction for the costs of travel to and from her home to the Andover branch.

The allowable travel is from Karen's home (or other starting point) to the temporary workplace, even if this is shorter than the journey to her permanent workplace, or she drives past her permanent workplace to get there. If her employer only reimburses the difference in mileage between the two journeys, the employee can claim a deduction for the balance.

Note that if Karen was recruited on a 15-month contract to work at the Andover office, this would be her permanent workplace (as she would be working there for all of her period of employment) and no travel would be deductible.

### *Subsistence costs*

Where travel is deductible, any reasonable subsistence costs (for example hotels and evening meals) will also be deductible, although this is not likely to be relevant in Karen's case, given the distances involved.

### *Separate temporary workplaces or one permanent workplace?*

It is possible for different workplaces situated close together to be regarded as one (s339(7)). This says that, when determining where a temporary workplace is, you should ignore any modification of the place at which duties are performed if it does not, or would not, have any substantial effect on the employee's journey, or expenses of travelling, to and from the place where they are performed.

In the recent case *Narinder Sambhi v HMRC* (TC07717), the appellant was on a long-term secondment from Birmingham to London, working at various different sites in south and central London, whilst staying in east London.

The FTT found that

- the journey times to each site from his accommodation differed by no more than half an hour; and
- the cost varied by no more than £14.

In the Tribunal's view, the change of worksites was not substantial. His work at various sites in Greater London would therefore be treated as one workplace, which had become a permanent workplace after he had been in London for more than two years.

### *What does the employment contract say?*

Contractual terms are very important in establishing whether somewhere is a permanent or temporary workplace. For example, if an employee is being taken on to carry out several short-term assignments at various sites, they will all be permanent workplaces if each location is dealt with under a separate contract. In contrast, if all the work is covered under a single contract, it is likely that many of the locations will be regarded as temporary workplaces, with travel allowable.

In both *N Ratcliffe v HMRC* TC2814 and *Paul Nowak v HMRC* (TC07307), the appellants worked at various locations for their employer, but where work at a particular site was covered by a separate contract, that site was held to be a permanent workplace, with travel not allowable for the employee.

*Contributed by Kevin Read*