



WEEKLY COMMENT: FRIDAY 1 NOVEMBER 2013

1. Inland Revenue released a draft Question We've Been Asked *Income tax – Deductibility of a companion's travel expenses* ("the draft QWBA") with a deadline for comment of 15 November 2013. It updates and replaces the item "Deduction for Wife's Expenses – Professional People Attending Overseas Conferences" *Public Information Bulletin* No 74, p 10 (June 1973).
2. It also replaces the part of the item "Overseas Travel Expense Claims" *Tax Information Bulletin* Vol. 7, No. 2 (August 1995) ("the TIB item") dealing with claims for a companion's or a family member's overseas travel expenses, which apparently no longer reflects the Commissioner's interpretation of the law. The other two parts of the TIB item dealing with the information that a taxpayer should supply when asked by Inland Revenue to support a claim for overseas travel expenses and the apportionment of private expenses are apparently still correct and relevant.

Distinction between consumption expenditure and deductible expenditure

3. In *CIR v Haenga* [1986] 1 NZLR 119 (CA), Richardson J considered the distinction between expenditure that is really a form of consumption and expenditure that is incidental and relevant to the derivation of income. He stated at 127:

" ... expenses of travelling between home and work and expenses of child care have conventionally been regarded by the Courts as a private matter, a form of consumption. In as much as they are a prerequisite to the earning of income it is arguable that they are incurred in the gaining of the assessable income. But depending on one's perspective a similar argument could even be advanced to justify deduction of outlays on such basic items as essential food, clothing and shelter which may be said to maintain and enhance the physical and psychological wellbeing of the individual, and in turn his or her ability to perform his employment. In one sense then any such expenditure has a relation to the purpose of earning income, even if it is described as an ordinary living expense. But ... with careful emphasis on the character of the expenditure incurred the Courts have denied the notion that an expense properly characterised as consumption is incidental and relevant to the derivation of income merely because it is necessary in that sense (*Lodge v Federal Commissioner of Taxation* (1972) 128 CLR 171, 175; *Lunney v Commissioner of Taxation* (1958) 100 CLR 478)."

New Zealand case law on a companion's travel expenses

4. The deductibility of a companion's travel expenses was the subject of two New Zealand tax cases: *Case 16* (1964) 2 NZTBR 119 and *Case K75* (1988) 10 NZTC 602. The conclusion in both cases was that the companion's travel expenses were an allowable deduction:
- (a) In *Case 16* the travelling companion was a shareholder and director of a company that was a wine and spirits merchant, as well as the wife of the managing director. However, she was not an employee of the company. A dispute arose with a whiskey supplier in the UK, and the husband and wife visited the UK to settle the dispute. The wife's travel expenses were held to be deductible because:
- (i) The wife's presence was essential to the visit;
 - (ii) She was present at every meeting, took part in every business discussion and assisted in making decisions; and
 - (iii) She was not an employee of the company, but her intimate knowledge of the business meant she was able to contribute in a material way to the business being undertaken on the trip.
- (b) *Case K75* concerned the deductibility of travel expenditure incurred by a group of executives' wives. The wives assisted their husbands with networking and information gathering by meeting and assessing the integrity and competence of the delegates, hosting dinners for delegates and participating in discussions about the business. The expenditure was held to be deductible. Judge Barber commented that:
- (i) Expenditure would be deductible if the wife is travelling with the employee-executive husband to provide him with support, to a reasonably substantial degree, in undertaking the business of the employer; or, in other words, if the wife is adding in a reasonably substantial manner to the contribution which the husband would otherwise make to the business of the employer;
 - (ii) However, wives would not usually have a sufficient knowledge or interest in the business of their husband's employer to warrant deductibility, and expenditure will not be deductible where the presence of the wife has no connection with the business activities undertaken by the employee husband and the wife is travelling as part of a "junket or joy-ride".
5. In the Commissioner's opinion, for a companion to provide support to a "reasonably substantial degree, in undertaking the business of the employer" the companion (whether a spouse or otherwise) must have some knowledge of the business or some special skill or expertise to provide this support in a material way. Simply being supportive is not enough; that support must relate to the business being undertaken for a sufficient nexus to exist.

Expenses not deductible where companion required due to ill-health

6. The Commissioner has withdrawn the view expressed in the TIB item that a companion's travel expenses may be deductible if their presence is required because of the ill-health of their partner. The argument in the draft QWBA is that the companion's support relates to the taxpayer's personal circumstances and not to the business being undertaken. The expenses would likely be of a private or domestic nature.

7. A number of cases are quoted to support the view that expenses relating to a health condition are generally not deductible as business expenses: *Case E87* (1982) 5 NZTC 59,455, *Case F69* (1983) 6 NZTC 59,904, *Case F133* (1984) 6 NZTC 60,210, *Case F117* (1984) 6 NZTC 60,125, *Case F158* (1984) 6 NZTC 60,354 and *CIR v Haenga*. Reference is also made to “Self-employed person’s medical costs not deductible” *Tax Information Bulletin* Vol. 7, No. 1, (July 1995), pages 15-16.
8. In *Case F158* a taxpayer claimed a deduction for the cost of private medical treatment. The taxpayer underwent private treatment so that he was able to more quickly resume his professional work. In denying the deduction, Barber J noted:
“ ... quite apart from the legal authorities, common sense tells us that such expenditure for surgery on parts of the human body cannot be regarded as business expenditure because it has the character or nature of private expenditure and hence is not deductible under our law ... The expenditure is not an overhead or functioning cost of (the taxpayer’s) legal practice; it is a health maintenance cost for (the taxpayer) as a human being.”

Business trip with a private element

9. The TIB item sets out the Commissioner’s view when a business trip contains a private element as follows:

“ Taxpayers will often combine business and holiday elements into the trip. The costs can be relatively high, and it is important to establish any private content. Inland Revenue may ask taxpayers to supply information to support a claim for overseas travel expenses. Information we may ask a taxpayer to supply includes: the itinerary, business contacts visited, business conducted, diversions from the business itinerary for private purposes, items of expenditure, and the total cost of the trip.

... If an overseas trip contains a private element, an apportionment of some of the costs will be necessary. For example, a taxpayer who spends a week on holiday after finishing his or her business will not be able to claim any costs relating to accommodation and meals while on holiday. The Commissioner will take a reasonable approach and consider each case according to the individual circumstances.

In relation to airfares, when the holiday element is minor and incidental to the business purpose of the trip, the Commissioner may allow the full claim for the cost of the airfare. If there are clearly two advantages sought, an apportionment will be required for the cost of the airfare. An apportionment based on the number of days on business, over the combined number of business and private days, has been accepted as a reasonable method, although the method depends on the circumstances of the case: see *TRA Case G5* (1985) 7 NZTC 1,011.”

Examples

10. An example is provided of Andrew, a barrister, who attends a law conference in Japan with his wife Mary, because it is expected that attendees would bring their partners:
 - (a) Mary’s travel expenses would not be deductible due to simply providing companionship and attending dinners and cocktail functions;

- (b) The role Andrew takes at the conference has no relevance: for example presenting a paper and attempting to raise his business profile is not a sufficient reason for deductibility of Mary's travel expenses;
 - (c) If Andrew is the head of the organisation running the conference and Mary has an organisational role at the conference, her travel costs may be deductible: for example, if she attend to registrations and organises cocktail functions;
 - (d) If Mary was employed full time as Andrew's bookkeeper, her travel costs are unlikely to be deductible: employment status alone is not enough to create a sufficient nexus, and Mary is attending the conference as Andrew's wife, not as his bookkeeper;
 - (e) However, if Mary was a lawyer employed as Andrew's legal researcher, her travel costs are likely to be deductible as her attendance is likely to assist her work for Andrew.
11. Another example is of a furniture importer who travels to China on business together with her niece, who is fluent in Mandarin, and assists as an interpreter. In this case, there is a sufficient business reason for the travel expenses of the niece to be deductible.



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