Submission on the tax treatment of expenses of travel and subsistence for employees and office holders

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By e-mail: taxpolicy@finance.gov.ie

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Consultation Paper:
Tax Treatment of Expenses of Travel and Subsistence for Employees and Office Holders

Ibec thanks the Department for the opportunity to represent the views of its members on the tax treatment of expenses of travel and subsistence for employees and office holders. Ibec represents the interests of Irish business including indigenous and multinational enterprises spanning all sectors of the Irish economy. Ibec and its sector associations work with government and policy makers at national and international levels to shape business conditions and drive economic growth. Feedback from our members regarding the consultation has focused on a number of key issues which are outlined in the following sections.

1. The tax treatment of the expenses of non-executive directors
1.1 The importance of non-executive directors

In light of the revenue guidance on the tax treatment of travel expenses for non-executive directors, issued last summer, there has been a growing interest in the implications for the business community. Feedback from our members was consistent with the view that the ability to attract experienced and capable non-executive directors is of crucial importance to the growth of indigenous Irish companies. This is particularly true for small or medium sized companies who wish to expand and grow in new markets or are facing challenges requiring specialist experience.

Increasing complexity in modern business, including the growth of technology as well as continued regulatory, reputational and financial risks, means that the role of non-executive directors has never been so crucial. Recent years, in particular the financial crisis, have lead to heightened awareness of the need for effective corporate governance both globally and domestically. The diversity of skills and experience companies need access to, in order to ensure adequate guidance and risk management, are much more diverse now than ever before. For companies, particularly smaller companies, the skills necessary in order to have effective corporate governance can only be accessed through the appointment of appropriate non-executive directors. Given the rising complexity of modern business the expectations and responsibilities attached to the role of non-executive director have grown substantially in recent times.

Non- executive directors are crucial in a number of ways to a well-functioning business including:

- Devising corporate strategy and advising on paths to growth
- Assessing executive performance
- Providing objectivity and different perspectives on key matters
- Giving firms access to specialist knowledge and experience which they may not have in-house
- Ensuring that corporate governance and risk management is adequate within the company

Good governance and risk management as well as strategic thinking are crucial for the sustainable growth of Irish business. Ireland, as a small market, faces crucial challenges in attracting the skills necessary to fill non-executive posts on boards. This is particularly important for small or medium sized Irish businesses as well as those in sectors which are close to the technological frontier or which face heightened levels of risk. In a relatively small country, with a limited pool of non-executive directors, having access to a global pool of possible directors and being able to attract the right fit for growing businesses is key to the indigenous economic base.

1.2 Implications of current tax arrangements

The existing tax arrangements for non-executive directors, particularly those travelling from or based abroad, is an unreasonable impediment for growing Irish companies to attracting diverse and adequate skills to join their boards.

A large part of this is due to the taxable nature of expenses incurred by non-executive directors travelling to and from board meetings. Currently the boardroom is treated as a place of work for non-executive directors irrespective of their place of residence. As such their reimbursed expenses in getting to and from board meetings are liable for tax as would be the practice with an employee.

Large costs may be incurred by non-executive directors particularly those travelling long distances within the country or from abroad. The cost of attending meetings may include flights, accommodation and subsistence. When the travel undertaken is substantial, this can lead to fairly large expenses with significant tax liabilities attached.

The current revenue guidance on the issue states that:

"*An individual, in his or her capacity as a non-executive director with no executive role within a company, will generally perform some level of preparatory work before attending board meetings. In some instances, this preparatory work will be carried out in the director's home and, in other instances; it will be carried out at another location, generally of the director's choosing.*

Having regard to the statutory position outlined above, the fact that some work is carried out outside the board meeting does not mean that the expenses incurred by non-executive directors travelling to and from those meetings qualify for a tax deduction under section 114."

It is Ibec's position that the current practice as outlined is unreasonable given that non-executive directors are expected to take on considerable work in preparation for board meetings and work related to their position outside of the boardroom. There is no clear or reasonable basis for the current stance in revenue guidance that preparatory work, which constitutes much of the work of a non-executive director, is not taken into account in establishing the normal place of work. Additionally, it limits the potential pool of non-executive directors within the country. This has knock on effects in terms of the diversity and expertise of those charged with ensuring good corporate governance in Irish companies.

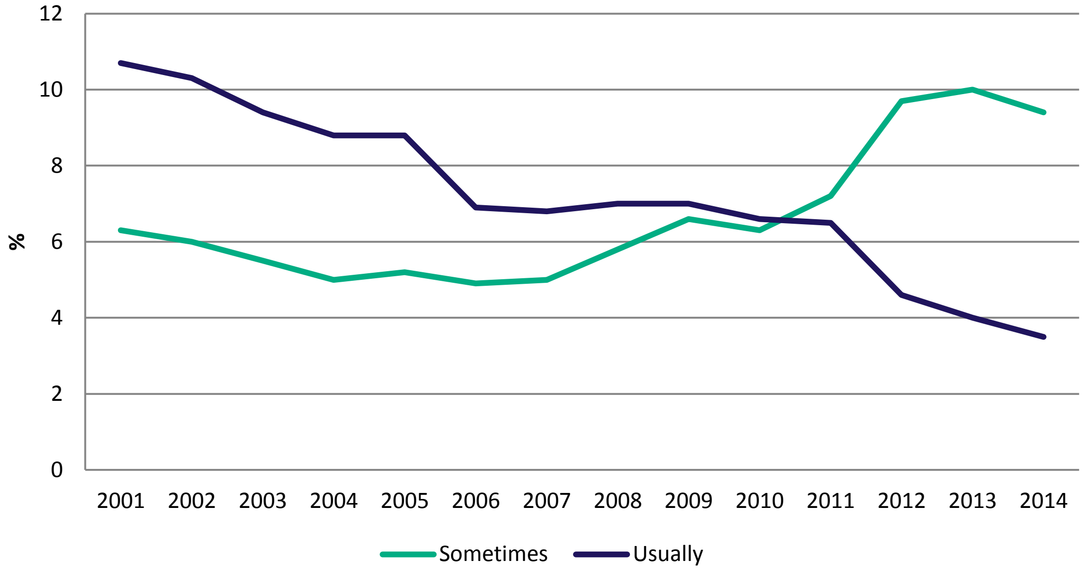
In the interest of good governance and development of experience for Irish boardrooms we should be doing everything we can to encourage overseas non-exec participation on boards. As currently formulated the rules are serving to discourage participation by leaving non-executive directors out of pocket on genuine business expenses or requiring companies to re-gross the difference. This is particularly an issue for SMEs.

We suggest that to remedy this situation a clear differentiation should be given to the role of non-executive directors. We believe that legitimate business related travel expenses incurred by a non-executive director travelling between home and board meetings should not become subject to tax. In order to guard against abuse, this could be limited to vouched expenses which are wholly and solely incurred in completing the director's duties.

2. The status of E-workers

A number of companies raised the issue of identifying the tax status of travel expenses for e-workers as problematic. This was a particular issue for employees who work part-time either in an office or at home. Around 13% of the employees or just over 200,000 people in Ireland work in this manner. This is likely to increase in the coming years as improvements to the availability of high speed broadband and mobile technology throughout the country facilitate changes to work practices.

Figure 1: % of employed persons working from home 2001 - 2014



In practice, the current rules suggest that if the employee works part-time in the office and part-time at home then Revenue will regard their place of work as being in the office. Companies, however, expressed concern over the lack of clarity on how this operates in practice. This was particularly a concern in marginal cases when an employee spends the vast majority of their time e-working but may occasionally work in the office. It is clear there are cases here where the normal place of work may be the home for the vast majority of time but on some instances the employee will be required to travel to their employers permanent office (i.e. for training, meetings etc). Feedback from members suggested that a set of clear guidelines may be advisable on this issue as the number of e-workers expands. The current revenue stance as outlined is both unclear and out of line with the modern work practices of tens of thousands of workers who usually, but not solely, work in the home.

3. Travelling salespersons and employees on the journey from home to work

A number of companies raised issues surrounding the status of salespersons, brand ambassadors and similar employees with respect of their travel expenses. Companies identified a particular problem arising when an employee fell within the definition of a 'travelling appointment' as per Revenues SP - IT/2 /07. For companies with large numbers of travelling sales staff or regional sales teams there are high costs when expenses which clearly arise in the undertaking of the duties of work are liable for tax.

Currently the rules state that:

"*Where an individual whose job can be categorised as a 'travelling appointment' would not otherwise be regarded as having a 'normal place of work' for the purposes of computing travel and subsistence expenses for this category of worker, his/her employer's base will be regarded as his/her normal place of work.*

Where a business journey commences from the employee's home or the employee returns directly to home, then the expenses of travel and subsistence that may be reimbursed without deduction of tax are the lesser of those incurred on the journey between:

(a) home and the temporary work location; or
(b) the employer's base (normal place of work) and the temporary work location"

The definition of the 'normal place of work' as being either the employees home or the employers base leads to anomalies where employees are left out of pocket or companies must re-gross to meet what are clearly genuine business expenses.

In many circumstances where an employee falls within the definition of a 'travelling appointment', an employer is unable to fully reimburse mileage to employees who are predominantly based on the road and only attend their base (e.g. Dublin) for meetings, training courses etc, when they start this trip from home.

For example, a travelling salesperson based in Killarney can be reimbursed fully for their mileage in a case where their 'temporary place of work' (i.e. on sales in Cork city) is closer to their home than the employers base (i.e. Dublin).

However, if the temporary place of work (i.e. Waterford) is closer by distance to the employers base (i.e. Dublin) then mileage is limited to the distance from Dublin rather than the actual trip from Killarney. This is neither practical nor fair to salespersons who cover large regions and spend the majority of their working week on the road.

In addition, the 100km rule (see circular 05/2015: Subsistence Allowances) allied to the definition of 'normal place of work' causes further issues. For example, where the same salesperson based in Killarney but whose employer is based in Dublin is required to be present in Dublin (e.g. for a training day) their overnight costs will be subject to tax. This is due to the fact that their 'normal place of work' defaults to their employers' office once they are closer to it.

Legislation should be altered to provide that in such situations where an expense is incurred wholly, necessarily and exclusively in the proper performance of an employee's duties; it is permissible for an employer to reimburse an employee free of tax. Again it may be reasonable to limit this to vouched expenses in order to satisfy revenue as to the bone-fides of claims.

4. Concluding remarks

Ibec is grateful to the Department for the opportunity provided to outline the views of Ibec members on the current taxation arrangements in this area. Given Ireland's position as a small country with a smaller core of possible non-executive directors – particularly in specialist areas – changes to the tax code in this area could be beneficial to the growth and good governance of the domestic enterprise base at little or no cost to the exchequer.

In particular, recognising the clear distinction between the roles of non-executive directors from executive directors would be of great benefit to Irish companies in their ability to attract the right talent and diverse experience onto their board. Recognising the skills of these non-executive directors in the tax code could bring new and different perspectives as well as more specialised skills into the Irish boardroom.

A number of our members raised a growing issue with the tax status of travel expenses for e-workers. The general comments suggested that there was a need for clear guidance in this area. Ibec's view is that this will become particularly important with the changing trends in people splitting time between e-working and office based work.

Finally, clarity is needed on allowable expenses for travelling salespersons. In many cases the current rules are neither practical nor fair. This is particularly true where the salesperson covers a large region. Changes should be made so that a person currently disadvantaged under mileage and overnight rules are not left out of pocket where there is a clear business case.

Yours sincerely,

Gerard Brady
Senior Economist

Ibec Head Office
84/86 Lower Baggot Street
Dublin 2
T: + 353 1 605 1500
E: membership@ibec.ie
W: www.ibec.ie/membership

Galway
Ross House
Victoria Place
Galway
T: + 353 91 561109
E: west@ibec.ie
W: www.ibec.ie/west

Cork
Knockrea House
Douglas Road
Cork
T: + 353 21 4295511
E: cork@ibec.ie
W: www.ibec.ie/cork

Ibec Europe
Avenue de Cortenbergh
89, Box 2
B-1000 Brussels
BELGIUM
T: + 32 (0)2 512.33.33
F: + 32 (0)2 512.13.53
E: europe@ibec.ie
W: www.ibec.ie/europe

Limerick
Gardner House Bank Place
Charlotte Quay Limerick
T: + 353 61 410411
E: midwest@ibec.ie
W: www.ibec.ie/midwest

Donegal
3rd Floor, Pier One Quay Street
Donegal Town Donegal
T: + 353 74 9722474
E: northwest@ibec.ie
W: www.ibec.ie/northwest

Waterford
Business Park Cork Road
Waterford
T: + 353 51 331260
E: southeast@ibec.ie
W: www.ibec.ie/southeast