Inland Revenue
Te Tari Taake

INTERPRETATION STATEMENT | PUTANGA WHAKAMĀORI

Income tax – deducting costs of travel by motor vehicle between home and work

Issued | Tukuna: 15 January 2025

IS 25/01

This interpretation statement considers who can claim income tax deductions for expenditure on travel by motor vehicle between home and work under the specific deductibility rules for motor vehicle expenditure, and in what circumstances.

REPLACES | WHAKAKAPIA

- **IS3448**: Travel by motor vehicle between home and work – deductibility of expenditure and FBT implications

Contents | Ihirangi

RELATED ITEMS

- IS 17/07: Fringe benefit tax – motor vehicles
- OS 19/05: Employer-provided travel from home to a distant workplace – income tax (PAYE) and fringe benefit tax
- IR264: Rental income
- OS 23/01: When employee allowances for additional transport costs for home to work travel are exempt from income tax
- New legislation: Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Act 2023, specifically the sections on FBT exemption for certain public transport fares (at 77) and FBT exemption for certain vehicles including bicycles and scooters and certain vehicle share services (at 80)
- IS 25/02: FBT – travel by motor vehicle between home and work.

Before continuing, refer to [10]-[11] to see which issues are covered by the related items.

Summary | Whakarāpopoto

1. This item discusses the specific deduction for motor vehicle expenditure in subpart DE. Subpart DE is intended to limit deductions for motor vehicle expenditure to the "business proportion" of the expenditure for self-employed taxpayers and partners in partnerships. Some close companies can also choose to use subpart DE instead of applying the FBT rules. These taxpayers are collectively referred to as "relevant taxpayers" in this item.

2. For most companies, the ability to deduct motor vehicle expenditure is decided under the general permission and general limitations. There is no requirement to consider specific deductions under subpart DE (although travel between home and work does have FBT implications for company employees). The employment limitation prevents most employees from claiming deductions for motor vehicle expenditure altogether.

3. Unlike the general permission, the specific deduction for motor vehicle expenditure in subpart DE does not allow expenditure on a journey to be apportioned. A journey is treated as a "business journey" making up part of the "business proportion" under subpart DE only if the whole journey is "business use", that is, a journey undertaken "wholly" in deriving the person's income.

4. As a rule, the courts have viewed travel between home and work as private use. However, the courts have (so far) recognised four exceptions to this general rule.

5. Where the case law exceptions apply, journeys leaving from home and arriving at home are regarded as business journeys, rather than as private journeys to and from work. The case law exceptions apply to situations where the need for the travel arises from the nature of the work, and the travel is "on work".

6. In some cases, an overall journey can be broken into two journeys, with one being a business journey (making up part of the business proportion) and the other being a private or mixed-use journey (not part of the business proportion).

7. Incidental private use (use that confers an incidental private benefit on the taxpayer but does not add to the overall distance travelled) does not prevent a journey from being a business journey.

8. Relevant taxpayers may disregard minor or insignificant private use (*de minimis* private use) when deciding whether a journey is a business journey. The Commissioner's view on what can be regarded as minor or insignificant in the home to work travel context is set out later in this item.

9. All legislative references are to the Income Tax Act 2007, unless otherwise stated.

Who this interpretation statement is relevant to

10. This interpretation statement is relevant to self-employed taxpayers, partners in partnerships, and close companies that both qualify to and have elected to apply subpart DE to their motor vehicle expenditure (defined at [1] as relevant taxpayers).

11. Except where otherwise stated, this interpretation statement is **not** relevant to:

- companies other than close companies that both qualify to and have elected to apply the specific deductibility rules for motor vehicle expenditure (see the discussion from [79], which sets out which close companies qualify);
- employees, other than shareholder-employees of a close company considering which of their journeys can be treated as business journeys for the purposes of their close company's income tax return (see the discussion from [79], which sets out when journeys by shareholder-employees of close companies can be treated as journeys of the close company);
- employers (including companies) considering whether they have a FBT liability in relation to an employee's home to work travel (see the companion item **IS 25/02** for information on FBT and home to work travel); and
- landowners who rent out residential property or holiday homes and incur travel expenditure on journeys between home and their rental properties in doing so; in this case, travel to the rental properties or holiday homes to carry out inspections or maintenance is generally deductible (see **IR264**, at 7–9).

Analysis | Tātari

12. This analysis is divided into four sections:

    - business use (from [18]);
    - subpart DE rules (from [77]);
    - minor or insignificant private use (from [123]); and
    - vehicles taken home for secure storage or for charging (from [132]).

13. Figure | Hoahoa 1 provides an overview of the analysis in this item.

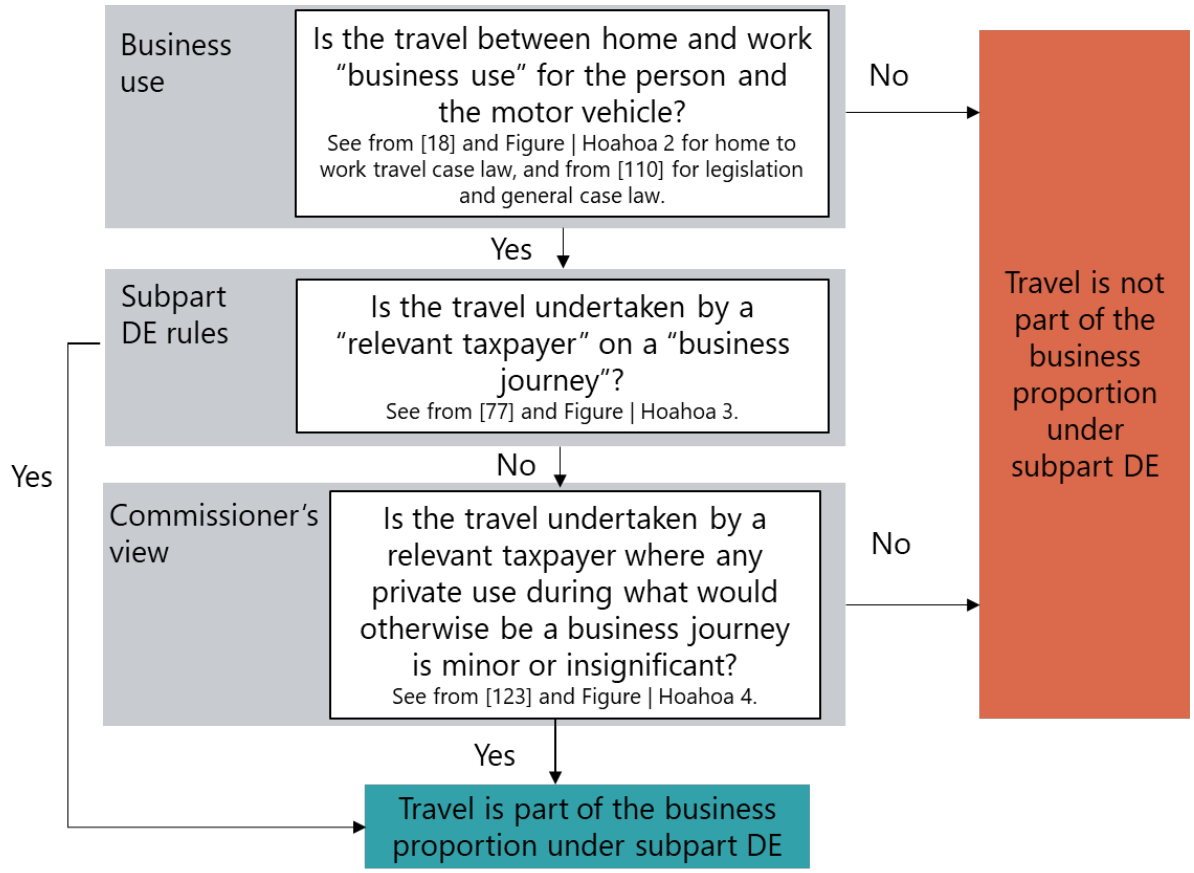
14. For those who are already familiar with subpart DE, the first section covers the case law on the meaning of "business use" that has been decided in the home to work travel context. Subpart DE allows a relevant taxpayer to claim a deduction for their "business use" of a motor vehicle. Business use is defined as "travel undertaken by the vehicle wholly in deriving the person's income". The deduction for business use is calculated by multiplying the relevant taxpayer's motor vehicle expenditure by the "business proportion". The business proportion is found by working out the total distance of the "business journeys" undertaken by the taxpayer in the vehicle as a proportion of the total distance of all journeys undertaken by the taxpayer in the vehicle. "Business journeys" are journeys by a motor vehicle for business purposes (the term business journeys is not defined in the Act, but ss DE 5 and DE 7 indicate this is the case). The case law on the meaning of "business use" is of interest only to relevant taxpayers seeking a deduction for motor vehicle expenditure under subpart DE. It is not relevant to companies seeking a deduction for travel expenditure under the general permission.

15. The second section covers subpart DE – the specific deduction for motor vehicle expenditure and at a high level how it is calculated (this section covers both the legislation and the general case law on words and phrases used in subpart DE). **We suggest readers who are not familiar with the specific deduction and subpart DE's other requirements read this section first**.

16. The third section covers the Commissioner's view on minor or insignificant private use (*de minimis* private use) in the context of travel by motor vehicle (mentioned at [8]).

17. The final section covers the Commissioner's position on vehicles taken home for secure storage or electric vehicles (EVs) taken home for charging. (This analysis stands on its own so is not covered in Figure | Hoahoa 1.)

Figure | Hoahoa 1: Travel by motor vehicle – whether part of business proportion deductible under subpart DE



Business use

18. Business use is a key concept relevant to claiming motor vehicle expenditure deductions under subpart DE. Therefore, it is discussed first in this item. **People who are not familiar with subpart DE may wish to read the next section (subpart DE rules) before reading this section**.

19. This section is structured as follows:

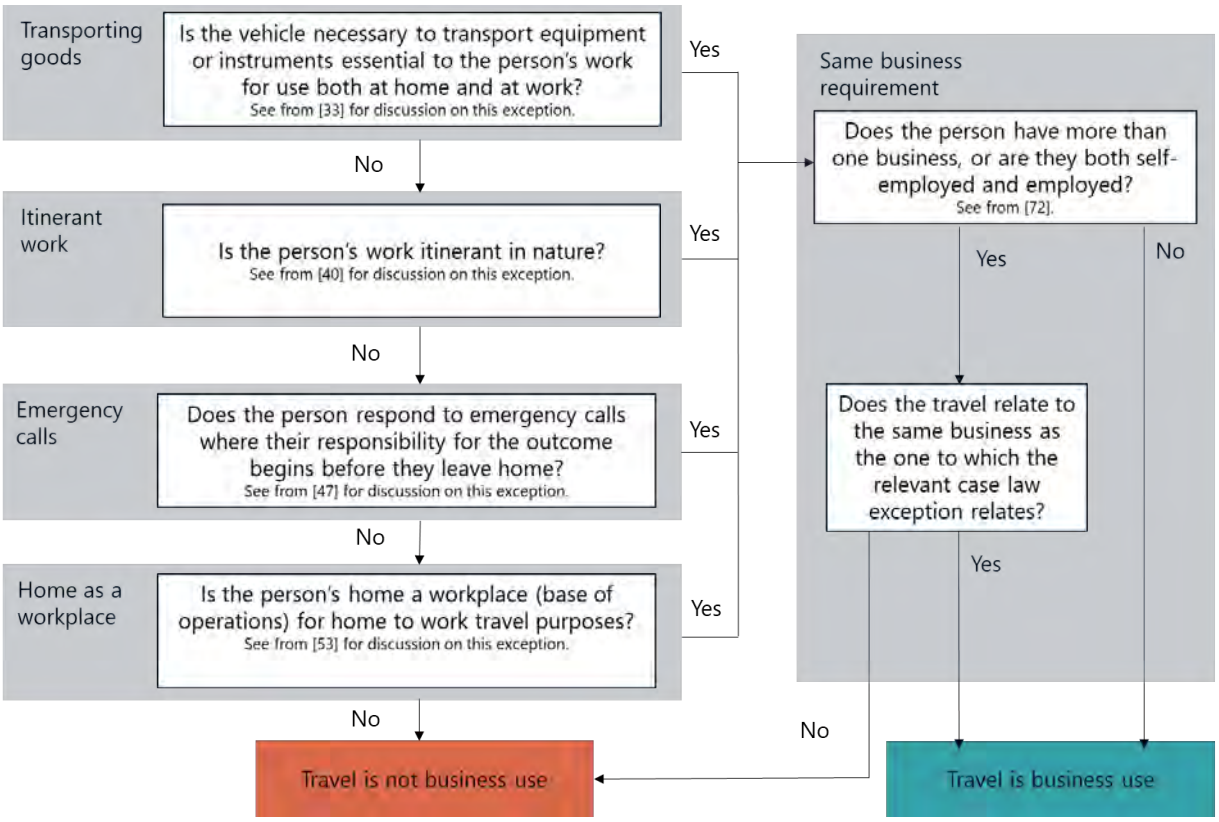
- general rule for home to work travel expenditure (from [22]);
- four case law exceptions (from [30]):
  - necessary to transport essential equipment or instruments;
  - taxpayer's work is itinerant;
  - emergency calls (case law exception); and
  - home as a workplace;
- same business requirement (from [72]); and

- summary of case law principles (from [74]).

20. As a rule, travel between home and work is private use. However, in four recognised situations this travel is business use (the four case law exceptions). The case law exceptions apply where the need for the travel arises from the nature of the work, and the travel is on work. They only apply to travel between home and work undertaken for the same business as the one to which the case law exception applies.

21. Figure | Hoahoa 2 provides an overview of this section.

Figure | Hoahoa 2: Travel by motor vehicle – business use



General rule for home to work travel expenditure

22. For relevant taxpayers, travel must be undertaken wholly for business purposes for the travel expenditure to be deductible under subpart DE. If all or part of the travel's purpose is private, the travel expenditure is not deductible. Broadly, this means travel **to** work is not deductible but travel **on** work is deductible.

23. The case law on travel between home and work has concluded, as a rule, that expenditure on travel between home and work is private expenditure: *Ricketts v Colquhoun* [1926] AC 1 (HL). Case law exceptions to the general rule are discussed from [30].

24. The general rule has stood in the United Kingdom (UK) for over 100 years.[1] Previous New Zealand decisions on travel between home and work have upheld it. Although no cases have been decided in New Zealand on travel between home and work since 1998, recent case law decided in overseas jurisdictions such as Australia and the UK has continued to uphold the general rule. The New Zealand courts have had regard to cases decided in these jurisdictions in earlier New Zealand home to work travel cases.

Rationale for the general rule

25. Lord Denning explained the reasons behind the general rule in *Newsom v Robertson* [1952] 2 All ER 728 (CA). *Newsom v Robertson* involved a barrister who worked at his chambers or in court during the day but often took papers home and continued to work there for several hours. Lord Denning explained that when income tax was introduced, most people lived and worked in the same place. Therefore, the court considered that the need for travel between a taxpayer's home and workplace arose from the taxpayer's choice to live away from their work.

26. In *Lunney v FCT* (1958) 11 ATD 404 (HCA), the taxpayer worked partly at home and argued that in travelling between his home and workplace he was travelling between two places of work. In their joint judgment Williams, Kitto and Taylor JJ referred to *Newsom v Robertson* and commented that, while few taxpayers can choose whether to live at their workplace, the purpose of the taxpayer's journeys was at least as much to enable the taxpayer to live at his home as to get to his place of work (at 413):

> None of the members of the [Court of Appeal] were prepared to assent to the proposition that the taxpayer's journeys were for the "purpose" of his profession; in the language of Romer LJ:
>
> > "The object of the journeys between his home and place of work, both morning and evening, is not to enable the man to do his work but to live away from it" (1953) 1 Ch, at p 17.
>
> The fact that few taxpayers are free to choose whether they will live at their place of work or away from it may appear to invest this statement with a degree of artificiality. But, even in these modern times, they still have, within limits, the right to choose where their homes shall be so that a taxpayer's daily journeys between his home and place of work are rendered necessary as much by his choice of a locality for his residence as by his choice of employment or occupation. And indeed the purpose of such journey [sic] is, at least, as much to enable him to reside at his home as to attend his place of work or business.

27. In *FCT v Collings* (1976) 76 ATC 4,254 (NSWSC), Rath J also noted that the decision in *Ricketts v Colquhoun* was based on ways of living that were no longer prevalent.

[1] Before *Ricketts v Colquhoun*, see *Cook v Knott* (1887) 2 TC 246 (QB).

However, changes in the way people live and work have not resulted in the general rule being overturned. In *Lunney v FCT*, Dixon CJ commented (at 405) that the rule was well established and if it were to be changed, the legislature, not the court, should change it.

28. For more recent decisions upholding the general rule in the Australian and UK courts, see the decisions of the Federal Court of Australia (Full Court) in *Bechtel Australia Pty Ltd v Commissioner of Taxation* [2024] FCAFC 33 and *John Holland Group Pty Ltd v FCT* [2015] FCAFC 82 and of the UK High Court, Chancery Division in *Jackman v Powell* [2004] EWHC 550. Recent tribunal decisions have also upheld the general rule.[2]

Temporary workplaces

29. In New Zealand, the general rule applies to relevant taxpayers regardless of whether the travel is to a temporary workplace: *Kirkwood v Evans* [2002] EWHC 30.[3] The approach in OS 19/05 for travel to a distant but temporary workplace applies only to employees.

Four case law exceptions

30. Four case law exceptions can apply to make expenditure on home to work travel deductible where subpart DE applies.

31. The four exceptions are as follows (*FCT v Genys* (1987) 77 ALR 527 (FCA) at 531):

- A vehicle is necessary to **transport equipment or instruments** that are essential to the taxpayer's work between their home and workplace.
- The taxpayer's work is **itinerant**.
- The taxpayer responds to **emergency calls** at home and their responsibility for the outcome begins before they leave home.

[2] See also, decisions of the Australian Administrative Appeals Tribunal in *London v FCT* (2022) 2022 ATC 10-625, *Mfula v FCT* (2021) 2021 ATC 10-588, *Masters v FCT* (2017) 2017 ATC 10-460, *Vakiloroaya v FCT* (2017) 2017 ATC 10-446, *Hill v FCT* (2016) 2016 ATC 10-430, *Kaley v FCT* (2011) 2011 ATC 10-193 and *Brandon v FCT* (2010) 2010 ATC 10-143; and of the UK First-tier Tribunal (Tax Chamber) in *Daniels v Revenue and Customs Commissioners* [2018] UKFTT 462, *White v Revenue and Customs Commissioners* [2014] UKFTT 214, *Meynell-Smith v Revenue and Customs Commissioners* [2013] UKFTT 113 and *Kenyon v Revenue and Customs Commissioners* [2011] UKFTT 91; of the UK Upper Tribunal (Tax and Chancery Chamber) in *Samadian v Revenue and Customs Commissioners* [2014] UKUT 13; and of the UK Special Commissioners in *Lewis v Revenue and Customs Commissioners* [2008] STC (SCD) 895 and *Warner v Prior* (2003) Sp C 353.

[3] Note that, although the principle is drawn from UK case law, the legislation has been amended in the UK to allow a deduction for travel to a temporary workplace.

- The taxpayer's **home is a workplace** (or base of operations). To satisfy this exception, the taxpayer must meet specific criteria. It is not sufficient that work is carried on at home.

32. The four exceptions can overlap: *Garrett v FCT* (1982) 82 ATC 4,060 (NSWSC).

Necessary to transport essential equipment or instruments

33. The first case law exception applies where a vehicle is necessary to transport equipment, instruments or other items (goods) that are essential to performing the taxpayer's income-earning activities, both at the taxpayer's home and at their workplace. In those circumstances, the vehicle is regarded as used to transport the goods. The transport of the taxpayer is regarded as incidental or ancillary to the transport of the goods. The taxpayer can include the journey in business journeys when calculating the business proportion as the transport of the goods makes the use "business use" and the journey a "business journey".

34. For this exception to apply:

- it must be necessary (because of the nature of the income-earning activity) to transport the goods between the taxpayer's workplace and their home to enable them to carry out the income-earning activity partly at their home; and
- a vehicle must be required to transport the goods, which may be because of their bulk or because their value, sensitivity or other special characteristics make it impractical to transport them without the use of a vehicle: *FCT v Vogt* (1975) 75 ATC 4,073 (NSWSC); *Scott v FCT (No 3)* (2002) 2002 ATC 2,243 (AATA).

35. "Bulky" in this context means "cumbersome": *Re Crestani & FCT* (1998) 98 ATC 2,219 (AATA). Whether goods are "bulky" generally depends on their weight and the relative ease of transporting them: *Re Gaydon & DFC of T* (1998) 98 ATC 2,328 (AATA).

36. A requirement to transport sensitive work-related information is not, on its own, sufficient to bring a taxpayer within the exception: *Vakiloroaya v FCT* (2017) 2017 ATC 10-446 (AATA).

37. In *Case S26* (1995) 17 NZTC 7,182 (TRA) and *Case Q25* (1993) 15 NZTC 5,124 (TRA) (both clothing manufacturer cases) one of the factors considered in reaching the conclusion that travel between home and work was not private use was that in each case a vehicle was used for transporting garments between the factory and the shareholder-employees' home for work to be performed on the garments there.

38. See also *Brandon v FCT* (2010) 2010 ATC 10-143 (AATA) in which case the taxpayer, a bombardier who transported his deployment kit between his home and the barracks in his car, was unable to prove he had met the requirements to qualify for the exception.

39. Examples might include musicians who transport musical instruments and equipment to and from their homes to be used for practice between performances, and clothing manufacturers who transport garments between their factories and homes to carry out part of the manufacturing process (such as finishing work or test washing) there. See examples from [76].

Taxpayer's work is itinerant

40. The second case law exception applies where the taxpayer's work is itinerant.

41. A taxpayer's work is itinerant if the:

- taxpayer's **home is their base of operations**;
- **nature of the taxpayer's income-earning activity is such that travel is essential** to carrying on the activity;
- taxpayer **undertakes work at various workplaces during the day, or the sequence of workplaces and the periods spent by the taxpayer at each workplace vary and are unpredictable** so it is impractical for the taxpayer to carry out the income-earning activity without the use of a car; and
- taxpayer can be regarded as **travelling in the performance of their work from the time of leaving home**.

42. See *Horton v Young* [1971] 3 All ER 412 (CA), *Re Gaydon*, *FCT v Wiener* (1978) 78 ATC 4,006 (WASC) and *FCT v Genys*. *Horton v Young* involved a labour-only subcontractor who worked for one main contractor at a variety of worksites. Although he worked for only one contractor, it was held that his home was his workplace, rather than the sites at which he sequentially performed his work. Two more recent cases confirmed that subcontractors can fall into the exception for itinerant work: *Mellor v Revenue and Customs Commissioners* [2011] UKFTT 29 (TC) and *Reed* v *Revenue and Customs Commissioners* [2011] UKFTT 92 (TC). In each case, the taxpayer's home was held to be their base of operations and their travel expenses were found to be deductible. *Gaydon* involved a shearer who travelled between his home and various shearing sheds to perform work at the sheds. *Wiener* and *Genys* involved employees, but the principle applied in the cases was the same as that in *Horton*.

43. Note the conditions at [41] must be met by the individual taxpayer – the exception does not apply to occupations (although some occupations will have more taxpayers working in them whose work is itinerant than others).

44. A taxpayer who chooses to move from place to place and take up several different jobs sequentially as a contractor is not regarded as itinerant in this context: *Hill v FCT* (2016) 2016 ATC 10-430 (AATA).

45. Travel to the first job of the day and travel home from the last job of the day is income-earning (business) travel for relevant taxpayers whose work is itinerant. The journeys are classed as business journeys and make up part of the business proportion for the purposes of calculating the relevant taxpayer's deduction for motor vehicle expenditure.

46. Examples include self-employed tradespeople and subcontractors (where the conditions listed at [41] are met). See examples from [76].

Emergency calls – case law exception

47. The third case law exception applies where the taxpayer is required to travel in response to emergency calls they receive at their home. For the exception to apply, the nature of the work must require that part of the taxpayer's work is carried out at home and the taxpayer's responsibility for completing the task to which the call relates must begin while the taxpayer is still at home: *Owen v Pook* [1970] AC 244 (HL).

48. This case law exception for emergency calls differs from the statutory exclusion from FBT for emergency calls relating to health, life, and the operation of essential machinery or services. For information on the statutory exclusion, see the companion item, IS 25/02 at [154].

49. The exception does not extend to ordinary travel to and from work undertaken by these taxpayers. It applies only to the travel they undertake in response to an emergency call (including the trip home afterwards): *FCT v Collings*.

50. Taxpayers who are called in at short notice to cover for someone who is unwell (such as a pilot or healthcare professional) are not covered by this exception: *Nolder v Walters* (1980) 15 TC 380 (KB), *FCT v Genys* and *Pitcher v DFC of T* (1998) 98 ATC 2,190 (AATA).

51. Similarly, a taxpayer whose work requires them to return to the office in the evenings or at the weekend to carry out a particular task (eg, to ensure the success of a scientific experiment) are not covered by this exception: *Case M99* (1980) 80 ATC 691 (CTBR).

52. Examples include doctors and computer consultants who give advice over the telephone from their home but who must travel to their workplace to resolve the issue if it cannot be resolved over the telephone. See examples from [76].

Home as a workplace

53. The fourth case law exception applies where a taxpayer's home is a workplace (or base of operations) for home to work travel purposes. This exception requires more than that part of the taxpayer's work is carried out at home.

54. Recently, working from home has become increasingly common due to changes in technology and social changes brought about by the COVID-19 pandemic. However, choosing to work from home does not (of itself) affect whether a person's home is their workplace (or base of operations) for home to work travel purposes.

55. Personal choice alone has never been a basis for creating a home workplace (or a base of operations at home). While relevant taxpayers will often make personal choices about whether to work from home part of the time (and it is not for the Commissioner to comment on such choices), other factors must be present for a relevant taxpayer's home to be a workplace (or base of operations). The case law has always confirmed that, for relevant taxpayers (or their equivalents in other jurisdictions), a home workplace or base of operations at home will exist only in exceptional circumstances. The most recent UK and Australian cases involving the self-employed (decided in 2020 and 2021 respectively) have done so – see [70]. Where a client or customer imposes an obligation on a relevant taxpayer to work in one place part of the time but requires additional work to be carried out elsewhere, this does not mean that the person's home has become a workplace or that the person has no choice but to carry out the additional work at home. The person still has a choice between carrying out the additional work at home, establishing their own business premises elsewhere, or carrying out the additional work in a public place (eg, a public library, hotel, café or restaurant).

56. The home as a workplace exception is best understood as a variation on the second case law exception for itinerant work. The person must be required, **by the nature of the work itself**, to do the work in two (or more) places. This was discussed in *Taylor v Provan* [1974] 1 All ER 1,201 (HL), per Lord Wilberforce at 1,213:

> To do any job, it is necessary to get there: but it is settled law that expenses of travelling to work cannot be deducted against the emoluments of the employment. It is only if the job requires a man to travel that his expenses of that travel can be deducted, ie if he is travelling on his work, as distinct from travelling to his work. The most obvious category of jobs of this kind is that of itinerant jobs, such as a commercial traveller. **It is as a variant on this that the concept of two places of work has been introduced: if a man has to travel from one place of work to another place of work, he may deduct the travelling expenses of this travel, because he is travelling on his work, but not those of travelling from either place of work to his home or vice versa. But for this doctrine to apply, he must be required by the nature of the job itself to do the work of the job in two places: the mere fact that he may choose to do part of it in a place separate from that where the job is objectively located is not enough**. [Emphasis added.]

57. Although *Taylor v Provan* involved a director (and directors are dealt with under the UK statutory provisions for employees), the concept that a taxpayer's home may be a workplace or base of operations if their work shares some characteristics of itinerant

work can also be seen in the case law for the self-employed. See *Kenyon v Revenue and Customs Commissioners* [2011] UKFTT 91 (TC), discussed at [70].

Determining whether home is a workplace

58. The factors relevant to whether a taxpayer's home is their workplace (base of operations) for home to work travel purposes are whether:

    1. a **significant amount of work** is carried out at home;
    2. there is **significant storage of business goods or equipment** at home;
    3. **significant space is set aside and used** for work activities at home; and
    4. the activities carried out at home are **closely integrated with the business**.[4]

59. Subject to the following paragraphs, it is necessary to consider all the factors listed at [58] and weigh them to get an overall picture of whether a taxpayer's home is a workplace (or base of operations). Different factors may carry different weight depending on the nature of the business.

60. For example, where a business needs substantial tangible assets to be run (eg, a manufacturing business) there may be a home workplace if some or all of the tangible assets are located at the relevant taxpayer's home, they take up a significant amount of space there, and they are regularly used there in carrying on the business (see [64] and [66]-[68]). However, where a business does not need substantial tangible assets to be run, it is more useful to move directly to considering whether the taxpayer's home is their base of operations (see [65] and [69]-[70]). (Note the base of operations approach can also be applied to a manufacturing-type business.)

61. Significant storage of business goods and equipment at home and setting aside significant space at home for business use do not of themselves make a home a place of work or business. Whether these factors are relevant depends on:

    - the nature of the taxpayer's work;
    - whether the goods and equipment stored at home are necessary for the performance of the work; and
    - the space requirements of the activity.

62. Changes in technology mean significant space or significant storage of tangible goods may no longer be necessary for carrying on a business activity at a home. Technology

[4] See companion item IS 25/02 at [69] for the factors relevant to employees, as set out in *CIR v Schick* (1998) 18 NZTC 13,738 (HC). The sound business reasons factor is relevant to only employees and FBT. It is not relevant to relevant taxpayers claiming motor vehicle expenditure deductions under subpart DE. This is because the sound business reasons factor stems from the "necessarily incurred" requirement, which is not a feature of the "business use" test.

has also made it easier for taxpayers to carry out some of their work outside the office or factory environment. This does not mean that setting aside a desk and chair in a room (or even a small room) at home to be used solely for work purposes is now considered to amount to setting aside "significant space".

63. Instead, for these reasons, the Commissioner considers that the presence or absence of the first three factors listed at [58] do not necessarily determine whether travel between home and work is private travel. A home still retains the characteristics of a home, even though some business goods may be kept there, some space may be set aside for carrying on business activities there, and some work may be performed there.

64. Setting aside significant space for carrying out business activities at home or storing a significant quantity of business goods at home and performing work at home will make the taxpayer's home a workplace (or base of operations) for home to work travel purposes only if the work requires the space and the goods stored at home are necessary for and used in performing the work. Even then, if the space set aside or goods stored at home are used only rarely, travel between home and work may be private travel.

65. If a business does not require significant tangible assets to run, whether there is significant storage of business goods and equipment at home and significant space is set aside at home for business use will be less important in deciding whether a taxpayer's home is a workplace (or base of operations). Although choosing to work partly at home does not make a home a workplace, choosing to establish a facility at home (with significant space set aside for carrying on particular work, and/or significant space set aside for storage of work items) is different to choosing to work at home where no significant space is required at home by the work activity (either for carrying on the activity or for storage). Once a facility has been established at home, the taxpayer may have no choice but to carry out part of their work at home (because they do not have access to such a facility elsewhere).

Manufacturing businesses

66. In *Case R37* (1994) 16 NZTC 6,208 (TRA), it was held that travel between the shareholder-employees' home and the factory was travel between workplaces. The company carried on the business of screen-printing. The actual printing and screening work was carried out at the company's factory. Test washing of sample garments (to check for the adherence of inks and dyes) was carried out at the shareholder-employees' home on most days as the factory had no washing facility. Preparation of artwork and clerical work was also carried out at the shareholder-employees' home.[5]

[5] In *Case R37,* because it could not be shown that the vehicle was not available for private use or enjoyment, the company was ultimately liable for FBT.

67. In *Case S26,* the shareholder-employees' home was also considered to be a workplace. The company's clothing manufacturing business was initially conducted from home then later expanded to the factory. Although much of the manufacturing was carried out at the factory, finishing work continued to be done at home.

68. In *Case Q25,* also, garments manufactured at the company's factory were taken to the shareholder-employees' home for finishing-off work to be carried out on the garments. It was held that the vehicles were used for travel between home and work for income-earning (business) purposes.

Base of operations approach

69. The home workplace is referred to as a base of operations in some case law. The relevant cases take the approach that, usually, when considering whether expenditure on travel between home and work is business use, the first step is to identify the taxpayer's base (or bases) of operations. If the base of operations is not at the taxpayer's home, travel between the taxpayer's home and their base of operations is private use. This is because the taxpayer has incurred the expenditure (at least in part) for the private purpose of maintaining their home at a distance from their base of operations. Therefore, the expenditure is not "wholly and exclusively" (solely) incurred in deriving income. The approach is based on Lord Denning's judgment in *Newsom v Robertson*.[6]

70. The UK case law on the base of operations approach illustrates the following:

- A base of operations need not be at a single address. It can be an area, such as a network of streets, if the taxpayer's work requires them to move from place to place as part of their daily work, for example, a milk delivery person: *Jackman v Powell*.
- A relevant taxpayer who travels between home and only one other place at which significant work is carried out is unlikely to have a base of operations at home, particularly if the work carried out at home is preparatory in nature or could be done anywhere: *Meynell-Smith v Revenue and Customs Commissioners* [2013] UKFTT 113 (TC); *Daniels v Revenue and Customs Commissioners* [2018] UKFTT 462 (TC).
- A relevant taxpayer may have two bases of operations, both of which are not at home (even though some or all of the administrative work relating to their

[6] The words "and exclusively" were removed from the New Zealand legislation during the 2004 rewrite of the Income Tax Act. However, sch 22A of the Income Tax Act 2004 does not show an identified policy change in relation to the removal of the words. Therefore, the case law on the meaning of "wholly and exclusively" is still relevant to the interpretation of "business use" in s YA 1. See also the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill, cls 105(7) and (37) and 200.

business is done at home), for example, a consultant doctor who runs their private practice from rooms at two private hospitals or a flying instructor who runs their instructor business from two airfields: *Samadian v Revenue and Customs Commissioners* [2014] UKUT 13 (TCC); *White v Revenue and Customs Commissioners* [2014] UKFTT 214 (TC). (The same decision was reached in relation to a doctor who provided assistant surgeon services at different hospitals as a sole trader in an Australian case: *Mfula v FCT* (2021) 2021 ATC 10-588 (AATA).)

- A relevant taxpayer who decides to base themselves temporarily in an area to carry out several different contracts (eg, a subcontractor to an engineering business) does not have their base of operations at home. Travel between their home and the base from which they carry out the contracts is not deductible, even if the base is only temporary: *Taylor v Revenue and Customs Commissioners* [2020] UKFTT 416 (TC).
- A taxpayer who works at various customer sites as well as working at home will have their base of operations at home if the taxpayer does not work at any of the sites for a sufficient duration or with a sufficient degree of consistency and predictability to make any of them a base of operations for the taxpayer: *Kenyon v Revenue and Customs Commissioners*.

71. See examples from [76].

Same business requirement

72. Travel between a home workplace and another workplace is work-related travel only where the two workplaces relate to the same business: *FCT v Payne* (2001) 2001 ATC 4,027 (HCA).

73. Travel between the workplaces of two different businesses or between the workplace of a business and a place of employment is private travel. Therefore, if a taxpayer:

- has two businesses, even if their home is a workplace in relation to their first business, travel between their home and a workplace relating to their second business is private travel; or
- carries on a business at their home and is also employed to work at a workplace away from their home, travel between the taxpayer's home and the workplace that relates to their employment is private travel.

Summary of case law principles

74. For deductions to be claimed for expenditure on travel between home and work under subpart DE the following must be the case:

- It is not enough that a taxpayer performs part of their work at home. The need for the work to be performed partly at home (and, therefore, the need for the travel) must arise from **the nature of the work**. Travel between home and work is private travel if a taxpayer chooses to work partly at home. This includes situations where there are inadequate facilities at the client's or customer's premises to perform the additional work that the taxpayer chooses to perform at home, if that additional work is of a type that could be performed anywhere. This also includes situations where the taxpayer's client or customer requires the taxpayer to work at the client or customer's premises while they are open, but to perform additional work elsewhere while the premises are closed, if that additional work is of a type that could be performed anywhere.

  In such cases, the taxpayer still chooses to perform the additional work at home. The taxpayer will undertake the travel between home and work partly because they have chosen to live at a distance from their workplace (or base of operations). This prevents the travel from being undertaken wholly for business purposes.

  However, choosing to establish a facility at home (with significant space set aside for carrying on particular work, and/or significant space set aside for storage of work items), is different to choosing to work at home where no significant space is required by the work activity (either for carrying on the activity or for storage). Once such a facility has been established at home, the taxpayer may have no choice but to work partly at home.

- A distinction exists between travel to work or home from work and travel that is "**on work**". The four case law exceptions are recognised situations where the travel is on work, rather than travel to or home from work (and where the need for the travel arises from the nature of the work). When a taxpayer travels in the situations covered by the four case law exceptions, the travel is for business purposes. The journeys are "business journeys" and the use of the vehicle is "business use" (and the journeys are part of the "business proportion" that determines the amount of the motor vehicle expenditure deduction for income tax purposes).

75. Based on the factors from the case law the principles can be summarised as follows:

A journey that consists of home to work travel is a business journey for a relevant taxpayer and the use is business use if the:

- need for the work to be performed partly at home (and therefore the need for the travel) arises from the **nature of the work**; and
- travel is in the course of performing work (**on work**).

Examples of general rule, case law exceptions and same business requirement

76. Example | Tauira 1 to Example | Tauira 8 illustrate the general rule, case law exceptions and same business requirement.

Necessary to transport equipment or instruments

Example | Tauira 1 – Taxpayer transports equipment between home and work that they use both at home and at work

The taxpayer runs a deli from which they sell jams, pickles and chutneys, as well as other food (such as baked goods, quiches and sandwiches) prepared in the deli's commercial kitchen. They also sell some luxury foods that they buy in. The deli is open from Tuesday to Sunday.

The fruit and vegetables for the jams, pickles and chutneys are delivered to the taxpayer's home in boxes on a Monday (Monday is delivery day for the fruit and vegetable supplier). The taxpayer carries out some initial preparation of the fruit and vegetables in their home kitchen on Mondays (removing outer leaves and stems, halving or quartering the larger vegetables, then rinsing, drying, and putting the fruit and vegetables into purpose-bought storage containers). The taxpayer refrigerates the fruit and vegetables overnight in a large refrigerator they have in their home scullery specifically for this purpose.

On Tuesday mornings, the taxpayer drives the fruit and vegetable containers to the deli in their car, triple washes the fruit and vegetables, and makes preserves from them in the deli's commercial kitchen. On Sunday evenings, the taxpayer transports the clean containers home in their car to be used on Mondays at their home.

Travel between the taxpayer's home and the deli on a Tuesday morning and between the deli and the taxpayer's home on a Sunday evening is business travel for the taxpayer. The fruit and vegetable containers are, together, cumbersome to transport. The transport of the taxpayer between home and work in their motor vehicle on a Tuesday morning and on a Sunday evening is incidental to the transport of the fruit and vegetable containers. The need for the travel arises from the nature of the taxpayer's work, and the travel is "on work". Because the transport of the taxpayer can be regarded on these particular journeys as incidental to the transport of the fruit and vegetable containers, the travel is regarded as undertaken wholly in deriving the taxpayer's income. Travel between the taxpayer's home and work at other times is private travel.

Itinerant work

Example | Tauira 2 – Taxpayer's work is itinerant (tradesperson)

The taxpayer is an electrician who operates as a sole trader. The taxpayer owns a van in which they store most of their tools and other equipment. They also have a workshop in their garage at home where they store additional equipment that they use less regularly. The taxpayer does not have business premises at a separate location. Each day the taxpayer travels from their home directly to the location of their first customer for the day, continuing from one location to another, and returns directly from the location of the last customer of the day to their home in the evening. The electrician's work list changes daily. The electrician visits electrical supply stores to pick up equipment as needed.

The taxpayer's travel is business travel, including the travel from their own home to the location of their first customer for the day and the travel from the location of their last customer of the day to their home. The taxpayer's home is their base of operations. Travel is essential to the taxpayer's work. The locations at which they perform work are varied and unpredictable and their work could not easily be performed without the use of a vehicle. The need for the taxpayer's travel arises from the nature of the work and the taxpayer is travelling "on work" from the time they leave home until the time they return home. Their travel is undertaken wholly in deriving their income.

Example | Tauira 3 – Taxpayer's work is itinerant (delivery person)

The taxpayer is a driver for a food ordering and delivery platform (the Service). The taxpayer works as an independent contractor. The taxpayer owns a car which they use to collect food orders and deliver them. The taxpayer uses the Service's hardware and software in their car to let them know when delivery jobs become available and to help them find their way to restaurants or supermarkets to collect customers' orders and deliver them to customers.

The taxpayer does not have business premises at a location separate from their home. The Service does not have business premises in New Zealand (and the taxpayer does not visit the Service's business premises outside New Zealand). Each day the taxpayer travels from their home, directly to the location where their first order for the day is to be collected, then on to their first delivery location. They continue from collection location to delivery location throughout their workday and return directly from the

location of their last delivery for the day to their home when they have finished working. The taxpayer's work list changes daily.

The taxpayer's travel is business travel, including the travel from their own home to the location of their first food order collection for the day and the travel from the location of their last delivery of the day to their home. The taxpayer's home is their base of operations. Travel is essential to the taxpayer's work. The locations at which they perform work are varied and unpredictable and their work could not easily be performed without the use of a vehicle. The need for the taxpayer's travel arises from the nature of the work and the taxpayer is travelling "on work" from the time they leave home until the time they return home. Their travel is undertaken wholly in deriving their income.

Emergency calls

Example | Tauira 4 – Taxpayer responds to emergency calls and their responsibility for the outcome begins while at home

The taxpayer is a computer consultant. The taxpayer contracts to more than one company and performs work at different locations during the week. Under the taxpayer's contract with one company, the taxpayer has agreed to take emergency calls between 6 pm and 6 am on Fridays and Saturdays. The taxpayer receives telephone calls during these hours and talks to the client's on-site employees. If the taxpayer cannot resolve the issue over the telephone, the taxpayer travels to the client's premises to resolve it.

The taxpayer's travel to and from the client's premises in response to the calls is business travel, including the travel home from the client's premises after a call. The computer consultant is responding to an emergency call, the responsibility for which begins at the time the call is received (at home). The need for the travel arises from the nature of the taxpayer's work, and the taxpayer's travel is "on work" (the taxpayer having begun giving advice over the phone as soon as the call is answered). The travel that results from a call is undertaken wholly in deriving the taxpayer's income.

Home as a workplace (or base of operations)

Example | Tauira 5 – Taxpayer works from home part of the time

The taxpayer is a barrister. The taxpayer works completely from home some days, in a small room set up as a home office and used only for this purpose. On days when the taxpayer works at their chambers, they tend to work at home for the first and last parts of the workday, because they would otherwise spend long periods of time travelling due to traffic congestion.

Travel between the taxpayer's home and chambers is private travel. The taxpayer does not have significant space set aside at their home either for carrying out work or for the storage of goods related to their work. Although the taxpayer performs some work at home, and that work is integral to the taxpayer's business, the taxpayer could perform that work anywhere. The taxpayer chooses to perform some of their work at home for their own convenience. The need for the travel does not arise from the nature of the taxpayer's work, and the taxpayer's travel is not "on work", even though it is undertaken during the workday. Instead, the travel is necessary because the taxpayer lives at a distance from their work. The taxpayer does not undertake the travel wholly in deriving their income.

Example | Tauira 6 – Taxpayer works at home and in a variety of different locations

The taxpayer is a self-employed pipe-fitter whose clients include different breweries. The taxpayer travels from home to complete work at the breweries, which are located 100 km to 500 km from their home.

In one income year, the taxpayer's clients included five different breweries. The taxpayer spent about 60% of their time working away from home. Of the time spent away from home, around 60% was spent working for one brewery at one location. The other 40% of the taxpayer's time away from home was split between the remaining four breweries at six different locations.

When working at home, the taxpayer's time was spent arranging future pipe-fitting contracts and carrying out administrative tasks relating to their pipe-fitting business.

The taxpayer's home is their base of operations. The taxpayer regularly carries out work at home between attending the various brewery locations to perform work there. The work carried out at home is integral to the pipe-fitting business. Although the taxpayer does not have significant space set aside at home for carrying out work or for storing goods related to their work, the locations at which the taxpayer performs pipe-fitting work are varied and unpredictable. The taxpayer does not spend sufficient time at any of the seven brewery locations for any one of them to be regarded as the taxpayer's workplace or base of operations for home to work travel purposes. The need for the taxpayer's travel arises from the nature of their work, and the travel to and from the different brewery locations is "on work". The travel between the taxpayer's home and the seven brewery locations is undertaken wholly in deriving the taxpayer's income.

Example | Tauira 7 – Taxpayer works at home most of the time but occasionally at different locations

The taxpayer is a self-employed tutor for primary school children. The taxpayer is not affiliated with a tutoring organisation, instead developing their own tutoring sessions. The children and their parents come to the taxpayer's home for the tutoring sessions. However, sometimes the taxpayer travels to children's homes to carry out initial assessments. The taxpayer does not have any other business premises. The taxpayer holds the tutoring sessions at a desk in their living room, rather than setting aside an entire room for tutoring purposes.

In one income year, the taxpayer tutored ten children. Nine of the initial assessments were carried out at the children's homes. The tenth child came to the taxpayer's house for their initial assessment. The taxpayer taught each of the ten children for one hour per week during term time, in total, for 40 weeks. Therefore, of the 400 tutoring sessions, only 9 sessions took place outside the taxpayer's home, and they were in 9 different locations. Aside from tutoring, the taxpayer also works at home developing their programme and carrying out administrative work.

The taxpayer's home is their base of operations. The taxpayer regularly carries out work at home between attending the children's houses to carry out initial assessments. The work carried out at the taxpayer's home is integral to the taxpayer's business. Although the taxpayer does not have significant space set aside at home for carrying out work or for storing goods related to their work, the locations at which the taxpayer performs work outside their own home are varied and unpredictable. The taxpayer does not spend sufficient time at any of the nine children's homes for any one of them to be regarded as the taxpayer's workplace or base of operations for home to work travel purposes. The need for the taxpayer's travel to the children's homes to carry out initial assessments arises from the nature of their work, and the travel to and from the different houses is "on work". The travel between the taxpayer's home and the nine houses is undertaken wholly in deriving the taxpayer's income.

Travel must relate to same income-earning activity

Example | Tauira 8 – Taxpayer runs their own business from home and is also employed on a part-time basis

The taxpayer is a plumber. On Mondays to Fridays, the taxpayer runs their own plumbing firm. The taxpayer has a van in which they keep their tools and equipment. They also keep a small amount of extra equipment and some spare parts in their garage at home. They do not have any other business premises. The taxpayer receives customer calls on their mobile phone and travels directly to the first job of the day, then from one job to another throughout the day, and directly home at the end of the day.

On Saturdays, the plumber is employed to carry out plumbing and maintenance work at a private school. The plumber has entered into an employment contract with the school which states that the plumber must be present at the school between 8:30 am and 5:00 pm every Saturday, must use the tools and equipment that the school supplies, and must report to and work under the supervision of the school caretaker.

The plumber's home is their workplace (or base of operations) in relation to the plumbing firm that they run from Monday to Friday. This is because their work is itinerant in nature, and the travel they undertake on Mondays to Fridays falls within the second case law exception. However, the travel the plumber undertakes on Saturdays to and from the private school to perform employment duties there is private travel. This is because the case law exception for itinerant work that applies to make the plumber's home a workplace (or base of operations) applies only in relation to the work they undertake for their plumbing firm. The travel on Saturdays does not relate to work undertaken for the plumbing firm, but instead, relates to their employment with the private school.

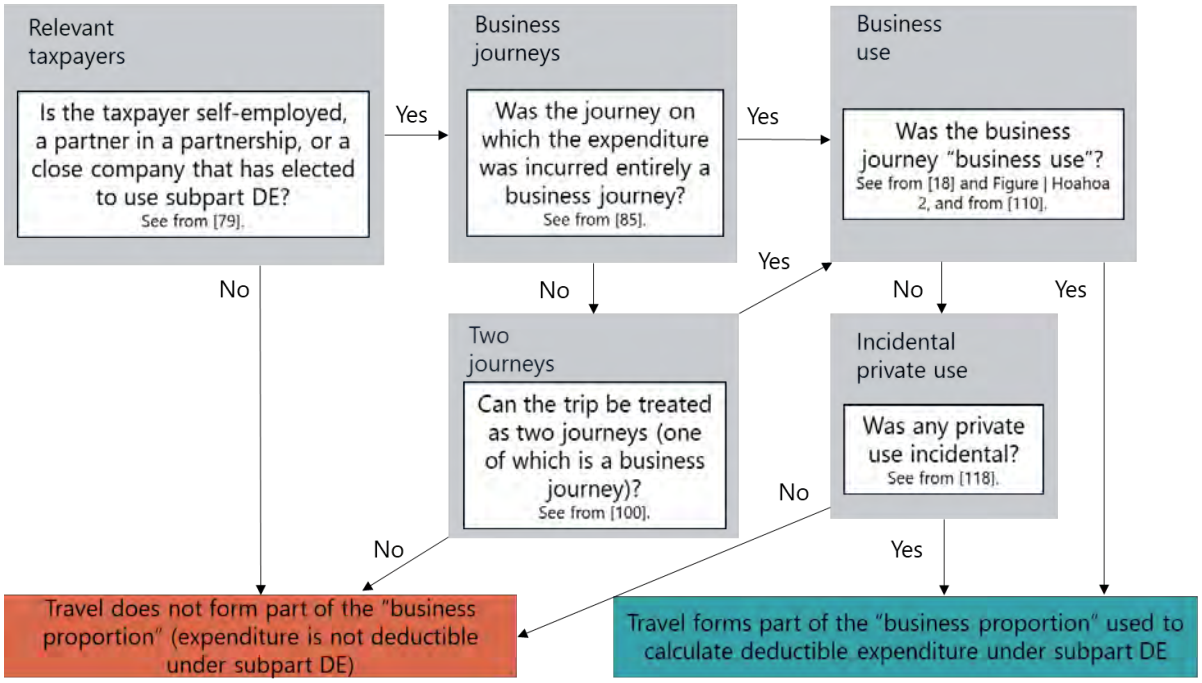
Subpart DE rules

77. Subpart DE contains the specific deduction for motor vehicle expenditure and covers related matters such as the requirement to keep a logbook. Subpart DE has its own methods for apportioning motor vehicle expenditure, which differ from the apportionment methods that can be used when deducting expenditure under the general permission.

78. Figure | Hoahoa 3 overviews the analysis in this section, which discusses:

- relevant taxpayers – which taxpayers must (or can choose to) apply subpart DE (from [79]);
- business journeys – which journeys make up the business proportion under subpart DE (from [85]);
- two journeys – when an overall journey may be treated as two journeys, one of which is a business journey (from [100]);
- business use – when travel is undertaken wholly and exclusively for business purposes (from [110]); and
- incidental private use – case law on this type of private use and that such use will not prevent use from being business use (from [118]).

Figure | Hoahoa 3: Travel by motor vehicle – subpart DE rules



Relevant taxpayers

79. Subpart DE applies to:

- self-employed taxpayers;
- partners in partnerships; and
- close companies that elect to apply subpart DE for that motor vehicle and that shareholder-employee (defined at [1] as relevant taxpayers).[7]

80. To qualify, a close company must supply no more than two fringe benefits that consist of private use of a motor vehicle to shareholder-employees during the relevant income year (ie, motor vehicle benefits that would otherwise give rise to fringe benefits under s CX 6) and must not supply any other fringe benefits to employees during the relevant income year. When a close company elects to use subpart DE, the shareholder-employee's expenditure is treated as the close company's expenditure.

81. Subpart DE does not apply if:

- the motor vehicle is not used for private travel; or
- all private travel undertaken by the motor vehicle is a fringe benefit.

82. The legislation that supports [79] to [81] can be summarised as follows:

- Subpart DE does not apply to a person whose only income is income from employment (s DE 1(2)(b)).
- Partners in partnerships are taxed on a look-through basis (s HG 2). The partner is treated as carrying on the activities carried on by the partnership, and the partnership is treated as not carrying on its activities (s HG 2(1)(a)).
- Subpart DE does not apply to most companies (s DE 1(2)(a)). However, subpart DE does apply to a close company that chooses to apply subpart DE for a motor vehicle and a shareholder-employee instead of applying the FBT rules (s CX 17(4B)(c)). The benefit must arise when the close company makes a motor vehicle available to a shareholder-employee for their private use, and when the benefit would, in the absence of s CX 17(4B)(a), be a fringe benefit arising under s CX 6 (s CX 17(4B)(a)). In addition, all benefits that the close company provides to employees in the income year must be one or two benefits that:

[7] "Close company" is defined in s YA 1 to mean a company that has five or fewer natural persons or trustees who either hold voting interests or hold market value interests of more than 50% in the company. Under this definition, all associated natural persons are treated as one natural person. See IS 17/07 at [189].

- arise when a close company makes a motor vehicle available to a shareholder-employee for their private use; and
- would, in the absence of s CX 17(4B)(a), be a fringe benefit arising under s CX 6 (s CX 17(4B)(b)).

- Where subpart DE applies to a close company, the shareholder-employee's business use is treated as business use of the close company (s DE 1(3)).
- Subpart DE does not apply to a motor vehicle that is used only for the purpose of deriving income or for a purpose that amounts to a fringe benefit (s DE 1(2)(c)).

83. Due to s DE 1(2)(c), there is no requirement to keep a logbook if a motor vehicle is used **only** for business purposes. (This is because it is subpart DE (which under s DE 1(2)(c) does not apply to a motor vehicle that is used only for business purposes) that mandates the use of logbooks.) However, the Tax Administration Act 1994 sets out record-keeping requirements for business taxpayers, including in relation to deductions claimed (s 22(1) and (2)(h)). It is prudent for relevant taxpayers to keep records to support their claims for motor vehicle expenditure deductions. Although a logbook is not required, there is still an evidential requirement and a need to show that there is only business use. Therefore, if a taxpayer does not keep appropriate records, they will have insufficient evidence to support the full amount of the deduction they claim.

84. For more information on close company elections to use subpart DE for a motor vehicle and a shareholder-employee instead of applying the FBT rules, see **IS 17/07: Fringe benefit tax – motor vehicles** from [278]. For the relevant legislation, see the Appendix to this statement.

Business journeys

85. Travel that consists of a "business journey" in a "motor vehicle" forms part of the "business proportion" that is then used to calculate the amount of motor vehicle expenditure that is deductible under subpart DE. The business journey must consist of "use for business purposes". In subpart DE, a motor vehicle is a road vehicle (other than a trailer) that is ordinarily used to transport people, goods or animals. This is qualified by the following two points:

- Under the case law, a journey is still a business journey if its purpose is a business purpose but there is some incidental private use. Incidental private use arises where the relevant taxpayer receives an incidental private benefit or advantage as a consequence or effect of undertaking the journey solely for a business purpose that does not increase the overall distance travelled. See from [118].

- A journey is treated as a business journey if there is minor or insignificant private use under the *de minimis* principle.[8] The Commissioner takes the view that a private detour that does not exceed **both** approximately 5% of the journey and approximately 2 km will be considered minor or insignificant private use. See from [126].

86. A relevant taxpayer must keep actual records or a logbook to show the proportion of business use of a motor vehicle or elect to use the kilometre rate method for the motor vehicle. Otherwise, under the default method the deduction for motor vehicle expenditure is limited to the lesser of the proportion of actual business use of the vehicle, or 25% of the total use of the vehicle. Actual records can only be used during a logbook term if the taxpayer and the Commissioner agree.

87. The legislation that supports the above paragraphs can be summarised as follows:

- Deductions for motor vehicle expenditure are allowed by s DE 2. Under that section, a person is allowed a deduction for expenditure that they incur for the "business use" of a "motor vehicle" (s DE 2(1)).
- "Business use", for a motor vehicle and for a person, means travel undertaken by the vehicle wholly in deriving the person's income (s YA 1).
- In subpart DE, "motor vehicle" means a road vehicle, whenever or however used, that is not a trailer and is of the kind ordinarily used for the carriage of people or the transport or delivery of goods or animals (s YA 1).
- The amount of expenditure incurred for business use is calculated by using the formula in s DE 2(2). This requires the person to multiply their total motor vehicle expenditure for the income year by the business proportion (a decimal). The business proportion is the part of total use that represents the business use of the motor vehicle for the income year, calculated under ss DE 3 to DE 11 (s DE 2(3)).
- The business proportion may be based on actual records or on a logbook kept for a 90-day test period (ss DE 3 and DE 7(1)).[9]
- Where actual records are used, the records must show the reasons for and the distance of "journeys" travelled by a motor vehicle for business purposes (note actual records can only be used during a logbook term where the taxpayer and Commissioner agree) (s DE 5).
- Where a logbook is used, it must represent, or likely represent, the average proportion of travel by the vehicle for business purposes (s DE 7(1)) and record,

[8] The principle based on the legal maxim *de minimis non curat lex* (the law does not concern itself with trifles).

[9] A person may also choose to apply the kilometre rate method (s DE 2B).

among other things, the length of each business journey, the date of each business journey and the reason for each business journey (s DE 7(2)).

- When a person has not maintained actual records or a logbook to show the proportion of business use of a motor vehicle or elected to use the kilometre rate method for the motor vehicle, the default method applies. The deduction under s DE 2 is limited to the lesser of 25% of the total use of the vehicle, or the proportion of actual business use of the vehicle (s DE 4).

88. The phrase "to the extent to which" does not appear in s DE 2 or in ss DE 5 and DE 7. This means no apportionment of a mixed-use journey is allowed (see further from [90]). A journey is either a business journey (and the distance of the journey is counted in calculating the business proportion) or it is not a business journey (and no part of the distance of the journey is counted in calculating the business proportion). The Commissioner acknowledges this means expenditure incurred for business purposes on a mixed-use journey is non-deductible. However, the case law allows what would otherwise be a single journey to be viewed as two journeys in some cases (see from [100]). The Commissioner also takes the view that certain minor or insignificant private use (*de minimis* private use) can be disregarded to lessen the effect of this (see from [126]).

89. For the relevant legislation, see the Appendix to this statement.

Understanding the difference between apportionment under the general permission and apportionment under subpart DE

90. Broadly, motor vehicle expenditure is deductible under subpart DE if it is incurred on a business journey and the journey is business use, that is, travel undertaken by the vehicle wholly in deriving the person's income. This is because the distance of business journeys is included in calculating the business proportion. (Incidental private use does not prevent use from being business use – see from [118].)

91. This differs from the approach to deducting expenditure under the Act generally. Under the Act, there is a general deductibility rule (the "general permission") and there are specific deductibility rules. There are also general limitations that apply to the general permission and to some of the specific deductibility rules.

92. Under the general permission, a person is allowed a deduction for an amount of expenditure, "to the extent to which" the expenditure is incurred by them:

- in deriving their assessable or excluded income, or a combination of the two; or
- in the course of carrying on a business for the purpose of deriving their assessable or excluded income, or a combination of the two (s DA 1).

93. Under the general limitations, no deduction is allowed for expenditure "to the extent to which" it is (among other things):

- capital in nature (the capital limitation);
- private in nature (the private limitation);
- incurred in deriving exempt income (the exempt income limitation); or
- incurred in deriving employment income (the employment limitation) (s DA 2).

94. The phrase "to the extent to which" appears in both the general permission and the general limitations. This means that under both the general permission and the general limitations it is possible to apportion expenditure into its, for example:

- capital and revenue elements; or
- income-earning (business) and private elements.

95. These are the deductibility rules that apply, for example, to motor vehicle expenditure incurred by companies (except for close companies that have elected to apply the specific deductibility rules for motor vehicle expenditure – see [80]).

96. By contrast, for motor vehicle expenditure deductions under subpart DE, s DE 2 supplements the general permission and overrides the private limitation. The other general limitations still apply (s DE 2(13)).

97. Subpart DE supplements the general permission because it is necessary to consider **all** motor vehicle expenditure (including private expenditure) before apportioning the expenditure using one of the methods outlined in subpart DE.

98. Subpart DE needs to override the private limitation because it has its own methods of apportioning motor vehicle expenditure. Two of these methods (actual records and logbooks) involve a two-step approach as follows:

- First, record the distance of all business journeys undertaken by the relevant taxpayer in the motor vehicle during the relevant period **and** the total distance travelled by the relevant taxpayer in the motor vehicle during the relevant period.
- Secondly, calculate the combined distance of all business journeys as a proportion of the total distance travelled by the relevant taxpayer in the motor vehicle during the relevant period.

99. The actual records and logbook methods under subpart DE have the effect of averaging the fluctuations in the running costs of the motor vehicle (such as petrol, diesel, or electricity for EVs) across the relevant period. The taxpayer does not obtain a deduction for the actual expenditure they incur on each business journey – the deduction is based on the total distance travelled on business journeys as a proportion of the total distance travelled on all journeys. This is then used to calculate the proportion of the total expenditure that is deductible under subpart DE.

Two journeys

100. Sometimes, travel that involves an intermediate stop between two points is treated as two journeys rather than a single journey. Whether an overall journey can be treated as two journeys depends on whether the intermediate stop is incidental to the overall travel.

101. If the intermediate stop is incidental to the travel, the travel is a single journey. If the stop is **not** incidental to the travel, the travel is treated as two journeys. For example, if a taxpayer travels from their home to their office to carry out substantive work there and then travels on to another place for business purposes, there would be two journeys.

102. If there are two journeys, one of them may be a private journey and the other may be a business journey. If the journey cannot be treated as two journeys, the overall journey is a mixed-use journey and **none** of its distance is counted in calculating the business proportion. For example, for the taxpayer who travels to their office to carry out substantive work there and then travels on to another place for business purposes, only the distance of the first journey is excluded when calculating the business proportion (assuming none of the four case law exceptions apply to that taxpayer to make their home to work journeys business travel). The second journey is a business journey and its distance is counted in calculating the business proportion. This is illustrated by *Sargent v Barnes* [1978] STC 322 (Ch).

103. In *Sargent v Barnes,* the taxpayer was a dentist. He used a laboratory 1 mile from his home and 11 miles from his surgery where technicians repaired, altered and made dentures for his patients. Each morning on his way to the surgery, the taxpayer spent about 10 minutes at the laboratory collecting completed work. Each evening after closing his surgery the taxpayer called in at the laboratory to deliver dentures and other items to the technician working there. Sometimes the taxpayer stayed at the laboratory for up to an hour to help the technician.

104. Oliver J considered that the taxpayer's journey was essentially a private journey (travel between home and work). The intermediate stop at the laboratory did not alter the character of the travel. Therefore, expenditure on such travel was not incurred wholly and exclusively for business purposes (at 328):

> In seeking to assess, on the facts as found by the commissioners, the taxpayer's purpose in incurring the expenditure here in question, counsel for the taxpayer points to the fact that he paused in his progress to the surgery to discuss matters with the technician and that he sometimes spent up to an hour with him in the evening, even carrying out work on dentures himself. But the interruption of a journey, whether for five minutes or for a longer period, does not alter the quality of the journey, although it may add to its utility. At highest, as it seems to me, it merely furnishes an additional purpose.

> Of course, it is right to say that if I notionally interrupt the taxpayer's journey at an intermediate point between the laboratory and the surgery and ask myself the question 'Why is he on this particular road at this particular time?' I may come up with the answer that he is taking that particular route because it passes the laboratory. But, as counsel for the Crown points out, that is not the right question. **What the court is concerned with is not simply why he took a particular route (although that may be of the highest relevance in considering the deductibility of any additional expense caused by a deviation) but why the taxpayer incurred the expense of the petrol, oil, and wear and tear and depreciation in relation to this particular journey.** [Emphasis added]

105. In each case, the question is: what is the real purpose of the travel? Where travel between home and work is private travel for the taxpayer, the taxpayer might call in at a workplace to drop off or collect a work-related item while travelling elsewhere, even though the taxpayer has no substantive work to do at that workplace. In that case, the stop does not alter the overall nature of the travel.

106. In *Sargent v Barnes,* Oliver J disagreed with the taxpayer's argument that once it was shown that the laboratory was a place of business, a deduction was allowable for travel between the laboratory and the surgery (at 327):

> Now the assumption here is that the expense of travel between two places of business is always and inevitably allowable, and counsel for the taxpayer bases himself on this passage in the judging of Lord Denning MR in *Horton v Young* [1971] 3 All ER 412 at 415, [1972] Ch 157 at 168, 47 Tax Cas 60 at 71:
>
> > "If the commissioners were right it would lead to some absurd results. Suppose that Mr Horton had a job at a site 200 yards away from his home, and another one at Reigate, 45 miles away. All he would have to do would be to go for five minutes to the site near home and then he would get his travelling expenses to and from Reigate. I can well see that he could so arrange his affairs that every morning he would have to call at a site near home. Instead of going to that absurdity, it is better to hold that his expenses to and from his home are all deductible."
>
> I question, however, whether, in that passage, Lord Denning MR intended to suggest that by deliberately planning your journey to your place of work so as to incorporate a deviation through another place of work where you actually have no business to do you alter the quality of the journey.

107. *Sargent v Barnes* was applied in *Meynell-Smith v Revenue and Customs Commissioners*. In that case, the taxpayer travelled from his home in Chirk, Wrexham, to his place of work in Birmingham and back again, an approximate round trip of 187 miles per day. The taxpayer stopped in at a unit near to his home on the way, where he stored his van and tools. The UK First-tier Tribunal held, consistent with *Sargent v Barnes*, that the unit was no more than a facility where the taxpayer called in to pick up his van and tools on his way to work and to drop them off again for storage on his way home from

work. The taxpayer's base of operations was in Birmingham and the travel between his home in Wrexham and his workplace in Birmingham was private travel.

108. The onus is on the taxpayer to show that substantive work was undertaken during the stop. Therefore, it is prudent for relevant taxpayers to keep records sufficient to show that substantive work was undertaken during a stop, if counting the distance of one of the two journeys when calculating the business proportion.

109. See Example | Tauira 9 to Example | Tauira 11.

Note: Example | Tauira 9 to Example | Tauira 11 assume travel between home and work is private travel for the taxpayer (ie, none of the four case law exceptions applies).

Example | Tauira 9 – Single journey – taxpayer has two workplaces

A taxpayer has two workplaces. One workplace (A) is situated in another town, 20 km from the taxpayer's home. The other workplace (B) is only 2 km from the taxpayer's home.

Usually, the taxpayer works from A on Mondays to Thursdays and from B on Fridays. Sometimes, the taxpayer travels between A and B during the day. One Monday, the taxpayer stops in at B on the way to their usual workplace at A, because they had left their mobile phone at B on Sunday evening while printing some documents for a Monday morning meeting at A.

The travel between the taxpayer's home and A is a single journey (and is a private journey). The taxpayer cannot alter the character of the journey by detouring through B when the taxpayer has no substantive work to do at B.

Example | Tauira 10 – Two journeys – taxpayer has two workplaces

A taxpayer has two workplaces. One workplace (C) is situated 10 km from the taxpayer's home. The other workplace (D) is only 5 km from the taxpayer's home.

Usually, the taxpayer travels from their home to C each morning. Sometimes, the taxpayer travels from C to D during the day to meet with staff at D.

One day the taxpayer travels to C and completes a morning's work there. The taxpayer then travels to D and holds meetings with staff there in the afternoon. The taxpayer travels from D to their home at the end of the business day.

The travel from the taxpayer's home to C in the morning is a private journey for the taxpayer. The travel between C and the taxpayer's home can be split into two journeys,

because the intermediate stop at D is not incidental to the overall journey from C to the taxpayer's home. The travel from C to D is a business journey, and the travel from D to the taxpayer's home is a private journey.

Example | Tauira 11 – Two journeys – substantive work is undertaken during a stop

A taxpayer has an office situated 10 km from the taxpayer's home. The taxpayer's client has an office situated 2 km from the taxpayer's office and 10 km from the taxpayer's home.

One day, the taxpayer travels to their office first thing in the morning and completes 7 hours' work there. The taxpayer then travels to the client's office and holds a one-hour business meeting there late in the afternoon. The taxpayer travels from the client's office to their home at the end of the business day.

The travel from the taxpayer's home to their office in the morning is a private journey for the taxpayer. The travel between the taxpayer's office and the taxpayer's home via the client's office is two journeys. The intermediate stop at the client's office is not incidental to the overall journey from the taxpayer's office to the taxpayer's home. The travel from the taxpayer's office to the client's office is a business journey, and the travel from the client's office to the taxpayer's home is a private journey.

Variation

A taxpayer has an office situated 10 km from the taxpayer's home. The taxpayer's client has an office situated 4 km from the taxpayer's office and 6 km from the taxpayer's home (ie, on the route that the taxpayer usually takes home from the office).

As before, one day the taxpayer travels to their office first thing in the morning and completes 7 hours' work there. The taxpayer then travels to the client's office and holds a one-hour business meeting there late in the afternoon. The taxpayer travels from the client's office to their home at the end of the business day.

The travel from the taxpayer's home to their office in the morning is a private journey for the taxpayer. The travel between the taxpayer's office and the taxpayer's home via the client's office is still two journeys. It does not matter that the client's office is on the route home for the taxpayer. The intermediate stop at the client's office is not incidental to the overall journey from the taxpayer's office to the taxpayer's home. The travel from the taxpayer's office to the client's office is a business journey, and the travel from the client's office to the taxpayer's home is a private journey. However, as noted at [108], the onus is on the taxpayer to show that a journey is a business journey when treating it as such in calculating the business proportion.

Business use

110. Under s DE 2, a person is allowed a deduction for expenditure that they incur for the business use of a motor vehicle. "Business use" means "travel undertaken by the vehicle wholly in deriving the person's income". As discussed from [22], use is business use if one of the four case law exceptions applies or if the need for the travel arises from the nature of the work and the travel is "on work". These are situations in which the travel is regarded as undertaken wholly in deriving the person's income.

111. However, more case law on the meaning of the words "wholly and exclusively" can be considered.[10] For example, the UK legislation that governs the deductibility of travel expenditure incurred by self-employed taxpayers (and which has a wholly and exclusively test) also governs the deductibility of other types of expenditure for self-employed taxpayers. Case law on this provision considers the meaning of the phrase in other contexts.

112. The rest of this section briefly discusses this other case law. It explains there are three alternative ways of deciding whether use is business use in the context of travel between home and work:

- Do any of the four case law exceptions apply to the travel?
- Did the need for the travel arise from the nature of the work, and was the travel on work?
- Was the travel undertaken by the vehicle wholly and exclusively (solely) in deriving the taxpayer's income?

Case law on the meaning of "wholly and exclusively"

113. A key UK case on the meaning of "wholly and exclusively" in the context of travel between home and work is *Newsom v Robertson*. Key non-travel cases on the meaning of wholly and exclusively are *Bentleys, Stokes and Lowless v Beeson* [1952] 2 All ER 82 (CA), *MacKinlay v Arthur Young McClelland Moores & Co* [1990] 1 All ER 45 (HL) and *Mallalieu v Drummond* [1983] 2 All ER 1,095 (HL).

114. The cases interpret wholly and exclusively to mean **solely** incurred for income-earning purposes. The expenditure must have no other purpose.

115. Travel between home and work is, as a rule, not "travel undertaken by the vehicle wholly in deriving the person's income" because it is not undertaken solely for that

[10] The words "and exclusively" were removed when the legislation was rewritten in 2004. However, sch 22A of the Income Tax Act 2004 does not show an identified policy change in relation to the removal of the words. Therefore, case law on the meaning of "wholly and exclusively" is still relevant to the interpretation of "business use" in s YA 1. See also the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill, cls 105(7) and (37) and 200.

purpose. It is undertaken in part to enable the taxpayer to live their private and domestic life away from their place of work.

116. Similarly, a journey undertaken for a business purpose but that includes a material detour undertaken for a private purpose is not undertaken solely in deriving the person's income (eg, where a journey to a customer's site would be a 20 km "business journey", but the person makes a 10 km detour to their home for lunch on the way, making the total journey 30 km).

117. Other relevant observations from the case law are as follows:

- Except where a case law exception applies, expenditure on travel between home and work is at least partly incurred for the purposes of the taxpayer living at a distance from their work base. Therefore, it is not solely incurred for the purposes of the taxpayer's business: *Newsom v Robertson* per Denning LJ at 731.
- The sole question is: What was the object in mind of the taxpayer engaging in the activity in question? And the statute requires the purpose must be the sole purpose of incurring the expenditure. If the activity is engaged in with both that purpose and another purpose in mind, the statute is not satisfied, even if, in the mind of the taxpayer, the business purpose is the dominant purpose: *Bentleys, Stokes and Lowless v Beeson* per Romer LJ at 84–85.
- If the expenditure inherently serves the taxpayer's private purposes as well as the purposes of their business, regardless of whether the taxpayer consciously considered their private purposes at the time of incurring the expenditure, the expenditure does not meet the wholly and exclusively test: *Mallalieu v Drummond* (Lords Diplock, Keith of Kinkel, Roskill and Brightman, and Lord Elwyn-Jones dissenting) per Lord Brightman at 1,103–1,104.
- In the context of partners in partnerships, expenditure that serves, and is necessarily and inherently intended to serve, the personal interests of one or more partners in the partnership is not incurred wholly and exclusively for the purposes of the partnership practice: *MacKinlay v Arthur Young McClelland Moores & Co* (Lords Bridge of Harwich, Brandon of Oakbrook, Templeman, Oliver of Aylmerton and Goff of Chieveley) per Lord Oliver of Aylmerton at 51–52.
- Save in obvious cases, finding the object or purpose of something involves an inquiry into the subjective intentions of the relevant actor. Object or purpose must be distinguished from effect. Effects or consequences, even if inevitable, are not necessarily the same as objects or purposes. Subjective intentions are not limited to conscious motives, and motives are not necessarily the same as objects or purposes. Some results or consequences are so inevitably and inextricably involved in an activity that, unless they are merely incidental, they must be a purpose for it. It is for the fact-finding tribunal to decide the object or purpose sought to be achieved, and that question is not answered simply by

asking the decision maker: *BlackRock HoldCo 5, LLC v Revenue and Customs Commissioners* [2024] EWCA Civ 330 (see also digest at [2024] All ER (D) 76 (Apr)) per Falk LJ at [124].

Incidental private use

118. This section discusses incidental private use – a further matter relevant to whether use is "business use" as defined (see Figure | Hoahoa 3 at [78]).

119. A private benefit that a taxpayer receives is disregarded where the relevant travel is undertaken solely to achieve a business purpose but the travel also gives rise to an incidental private benefit for the taxpayer.

120. In *Bentleys, Stokes and Lowless*, under the relevant UK Act expenditure could only be deducted if it was "money wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation". Romer LJ considered whether the receipt of an incidental private benefit from expenditure affected whether the expenditure was money wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation. He concluded (at 85) that if the sole purpose of the expenditure was business promotion, the expenditure was not disqualified from deduction because the nature of the activity engaged in meant some other objective or result was achieved, if that other objective or result was inherent in the activity.

121. Therefore, an incidental private benefit arises where, objectively viewed, a person incurs expenditure solely to achieve a business objective or result, but the expenditure also inherently achieves some other non-business objective or result. In the home to work travel context, a taxpayer who is undertaking a work-related journey might stop and purchase something to be used for non-work purposes without travelling any added distance to do so. For example, a taxpayer who is travelling on work passes a café to reach their destination. The taxpayer stops at the café to buy a sandwich for lunch. The private benefit received in this situation (the travel to a location at which the taxpayer can buy their lunch) is incidental to the business use of the motor vehicle. The journey is still a business journey and forms part of the business proportion that is used to determine the amount that is deductible under subpart DE.

122. An incidental private benefit also arises where the transport of the taxpayer is incidental to (that is, a necessary consequence of) travel undertaken for business purposes. For example, if it is essential for a taxpayer to use a vehicle to transport business instruments or equipment (because of their bulk, weight or other special characteristics) between home and work while carrying out income-earning activities, the journey is business use, even though the taxpayer is also transported. See the discussion on the first case law exception for the transport of equipment or instruments that are essential to the taxpayer's work from [33].)

Minor or insignificant private use and the Commissioner's view

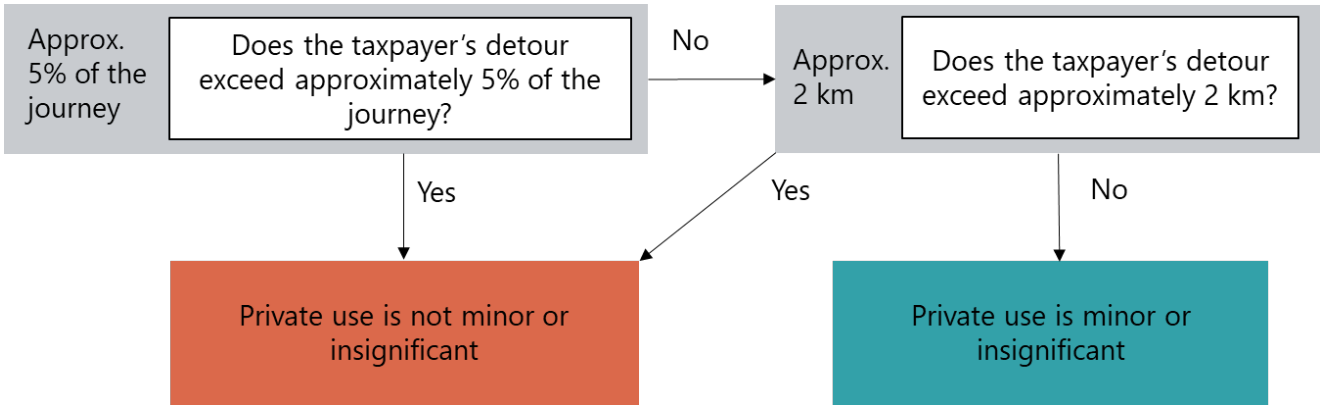
123. In the previous interpretation statement on travel by motor vehicle between home and work (IS3448), the Commissioner expressed a view on what constituted minor or insignificant private use (*de minimis* private use) in the travel between home and work context. The Commissioner continues to take the same view.

124. This section of the item considers:

- what minor or insignificant private use is (the *de minimis* principle) (from [126]); and
- what the Commissioner's view is, and how to apply it (from [128]).

125. Figure | Hoahoa 4 gives an overview of the Commissioner's view.

Figure | Hoahoa 4: Travel by motor vehicle – minor or insignificant private use



Note: The Commissioner considers private use is minor or insignificant (*de minimis*) if it does not exceed **both** approximately 5% of the journey and approximately 2 km.

Minor or insignificant private use

126. Minor or insignificant private use arises where a person makes a minor or insignificant detour for a private purpose during a journey that adds to the overall distance travelled (this differs from incidental private use which by its nature does not add to the overall distance travelled). Minor or insignificant private use can be disregarded under the *de minimis* principle.

127. The *de minimis* principle is based on the legal maxim *de minimis non curat lex* (the law does not concern itself with trifles). It has been applied in New Zealand by the Taxation Review Authority in several deductibility cases: for example, see *Case S7* (1995) 17 NZTC 7,055, *Case S75* (1996) 17 NZTC 7,469 and *Case T16* (1997) 18 NZTC 8,095.

Commissioner's view

128. The Commissioner accepts that where a journey that would otherwise be undertaken solely for business reasons involves a minor or insignificant detour for a private reason, the journey can be classified as a business journey under the *de minimis* principle.

129. Any added distance travelled for a private reason must be minor or insignificant both as a percentage of the total journey and in itself. This means **both** the percentage of the total journey that the added distance makes up **and** the added distance travelled must be considered to decide whether a private detour is minor or insignificant.

130. The Commissioner considers that private travel that does not exceed **both** the following would be minor or insignificant private travel:

- approximately 5% of the journey; and
- approximately 2 km.

131. See Example | Tauira 12.

Example | Tauira 12 – Minor or insignificant private use

A taxpayer is a self-employed plumber whose home is their base of operations. Their travel between home and work is not private travel because they are within the itinerant work case law exception.

The taxpayer goes to the gym on their way home at the end of the day. The stop at the gym involves the taxpayer travelling an alternative route from the last job of the day to their home workplace that adds 1 km to the journey. The total journey is 17 km.

In this case, the taxpayer's 1 km detour is 5.88% of the journey. The Commissioner considers this would meet the requirement that the taxpayer's private use does not exceed "approximately 5% of the journey". The detour to the gym also meets the requirement that it must not exceed "approximately 2 km". The detour to the gym is minor or insignificant private use and the journey is a business journey.

Vehicles taken home for secure storage or for charging

132. The Commissioner is aware some taxpayers have taken the view that taking a vehicle home for security reasons is sufficient to mean the travel is a business journey and the use is business use (travel undertaken wholly (solely) in deriving income). This has been argued on the following bases:

    - The vehicle is essential business equipment and it is necessary for the taxpayer to take it home for security reasons. The transport of the taxpayer between home and work in the vehicle is merely an incidental flow-on consequence or effect of the requirement to take the vehicle home (so the first case law exception applies).
    - The taxpayer's home is a workplace (or base of operations) for home to work travel purposes because the taxpayer stores significant business equipment (the vehicle) at home (so the fourth case law exception applies).

133. The Commissioner disagrees with this view (as he did in IS3448).

134. The Commissioner has also been asked to consider whether taking an EV home to recharge the battery is sufficient to mean the travel is undertaken wholly (solely) for business purposes.

135. For use to be business use under subpart DE, the travel must be undertaken by the vehicle wholly in deriving the taxpayer's income. The case law requires that the journey must be undertaken **solely** for business purposes for travel to be undertaken wholly in deriving income. Transport of the taxpayer must not make up **any** part of the journey's purpose but must instead be limited to an incidental flow-on consequence or effect of undertaking the journey.

136. For relevant taxpayers, when a vehicle is taken home for security purposes or charging, the transport of the taxpayer between home and work will, in all but perhaps a very few cases, still be one of the purposes of the journey. Transport of the taxpayer between home and work is a private purpose. This makes the journey a mixed-use journey. None of the journey is counted in calculating the business proportion.

137. Even if on the facts, the dominant purpose of the journey is the transport of the vehicle home for storage or charging, the journey is still a mixed-use journey. The transport of the taxpayer between home and work will still, except in perhaps a very few cases, be more than an incidental flow-on consequence or effect of the journey. The taxpayer saves time, receives shelter from inclement weather, can hold confidential conversations on private matters, and may have a greater degree of personal safety because of travelling by motor vehicle instead of walking or taking public transport. These are all private purposes for travelling by motor vehicle.

Case law exceptions

138. The following paragraphs consider whether the first or fourth case law exception applies (see [33] and [53]) when a vehicle is taken home for security reasons or for charging.

Necessary to transport essential equipment or instruments

139. The Commissioner considers the first case law exception will not usually apply where a vehicle alone (that is, a vehicle that is not carrying equipment or instruments essential to the taxpayer's work) is taken to the taxpayer's home to be stored there overnight for security purposes or for recharging the battery where the vehicle is an EV.

140. The first case law exception requires that the equipment or instruments are used both at home and at work, and this is why they are being transported back and forth – so the taxpayer can continue their work at home. A taxpayer who takes a vehicle home to store or charge it does not use it at home. The vehicle remains parked while it is stored or charged, and the taxpayer does not continue their work at home using the vehicle.

Home as a workplace

141. Whether significant space has been set aside for the storage of business goods at home is one of the factors to consider when determining whether a taxpayer's home is a workplace (or base of operations) for home to work travel purposes (see [58]). This factor is relevant to whether taking a vehicle home for security reasons or to charge the battery makes the taxpayer's home a workplace (or base of operations). None of the other factors listed at [58] are relevant to this question.

142. In *CIR v Schick* (1998) 18 NZTC 13,738 (HC) (a FBT case), it was decided that the storage of a vehicle at home should not be given too much weight in deciding whether the employees' homes were workplaces, given that the issue being considered was whether the travel between home and work was private travel.

143. In *Case Q25* (also a FBT case), the Taxation Review Authority appeared to give some weight to the evidence that the vehicle was taken home because it was unsafe to leave it at the factory. However, other factors were present in the case that led to the conclusion that travel between home and work was income-earning (business) travel and did not give rise to a private benefit to the employees. First, the vehicle was used to transport garments between the factory and the taxpayers' home so that further work could be carried out on the garments there and the garments could be stored there. (One room at the shareholders' home was set aside and used for pressing garments and for unpicking any defective sewing work and refinishing it. Two further rooms at the shareholders' home were set aside and used for storing garments. Up to

5,000 garments may have been stored there at any one time.) Secondly, the taxpayers had a further vehicle that they used purely for private purposes.

144. The Commissioner considers the same reasoning applies for relevant taxpayers and their ability to claim deductions for motor vehicle expenditure under subpart DE. Although *Schick* and *Case Q25* are both FBT cases, the question being answered is essentially the same – whether the travel is business use or private use.

145. The requirements that must be met for travel to be considered business use under subpart DE differ only subtly from the requirements that must be met for travel to be considered not private use for FBT purposes. The business use test for relevant taxpayers (that the travel was undertaken wholly in deriving the person's income) and the private use test for employees (that the travel expenditure, had it been incurred by the employee, would have been wholly, exclusively and necessarily incurred in the performance of the employee's employment duties) are sufficiently similar that they can be summarised in the same way (see [74] and companion item IS 25/02 at [100]).

146. No cases have decided that simply taking a vehicle home for security reasons or to charge the battery is sufficient to make the taxpayer's home (or employee's home, in the FBT context) a workplace or base of operations for home to work travel purposes. Simply storing or charging a vehicle at home does not mean the taxpayer necessarily has a significant amount of space set aside for the storage of business goods at home. It does not mean the taxpayer is carrying out a significant amount of work that is integral to their business at home or that the taxpayer has a significant amount of space set aside for carrying on business activities at home and uses that space for carrying on business activities at home.

147. Therefore, based on *Schick* and *Case Q25*, the Commissioner considers that taking a vehicle home for security reasons or to charge the battery is not of itself sufficient to make the taxpayer's home a workplace or base of operations for home to work travel purposes. If other factors listed at [58] are present, then the taxpayer's home may be a workplace or base of operations, depending on the taxpayer's particular fact situation.

Equivalent to stopping during a business journey to charge an EV

148. Some taxpayers have taken the view that charging an EV at home makes their journeys between home and work business use on the basis that if the taxpayer had instead driven their vehicle from their workplace to a rapid charging station during the workday, and then on to a customer's business premises, the trip to the rapid charging station would have been business use and the first part of a business journey. The Commissioner agrees that the part of the journey to the rapid charging station would have been business use and the first part of a business journey. Stopping during a business journey to charge an EV is incidental to the overall purpose of the journey from the taxpayer's business premises to the customer's business premises. However,

that is not what the taxpayer has done if the EV is taken home. The taxpayer has driven the vehicle from work to home, charged it, and driven it from home to work again.

149. Assuming the taxpayer does not fall into any of the four case law exceptions, neither of the journeys (from work to home or home to work) is business use or a business journey. One of the taxpayer's purposes for making the journeys home and back to work again in the EV is still to transport themselves between home and work (ie, each journey has a private purpose). Although charging the EV is also a purpose of the journeys, it does not make the transportation of the taxpayer merely incidental to, or a mere flow-on consequence or effect of, undertaking the journeys.

150. The taxpayer's position is instead analogous to that of a taxpayer who stops on the way home to fill up with petrol. In that case, the stop is incidental to the purpose of the journey and does not affect the private nature of the journey.

Applying summary of case law principles

151. The above conclusions can be supported by applying the case law principles as summarised at [75].

152. First, driving a vehicle home to store or charge it does not mean the travel arises from the nature of the work. Driving a vehicle home to store or charge it differs from transporting goods that the taxpayer uses to perform work, both at work and at home. The first case law exception applies to taxpayers whose work by its very nature requires the taxpayer to have the goods at home with them, such as a musician who requires their instruments at home between performances so that they can be used for practice, or a dentist who takes dental moulds home so they can use them to make prosthetics in their home laboratory in the evenings. While a taxpayer who stores or charges a vehicle at home may carry out work at home in the evenings, this work is typically administrative in nature and the taxpayer does not typically use the **vehicle** to carry out such work. Taxpayers whose home is a workplace (or base of operations) are typically taxpayers who have varying places of work, even if not on a daily basis. No necessary connection exists between driving a vehicle home to securely store or charge it and shifting places of work.

153. Secondly, travel that is undertaken when a taxpayer takes a vehicle home to store or charge it is not typically undertaken "in deriving the person's income" (ie, it is not "on work"). The travel takes place after the end of or before the start of the workday. The travel is private travel between home and work, made necessary at least in part because the taxpayer lives at a distance from their workplace.

Appendix – Legislation

154. Sections DE 1, DE 2(1), (1B), (2), and (3), DE 3, DE 5, DE 7 and CX 17(4B) and related definitions in s YA 1 state:

DE 1 What this subpart does

Apportions motor vehicle expenditure

(1) This subpart sets out the rules for determining the proportion of business use of a motor vehicle to its total use when a person uses a motor vehicle partly for business purposes and partly for other purposes.

Exclusions

(2) This subpart does not apply—

(a) to a company, unless the company is a close company to which section CX 17(4B)(b) and (c) (Benefits provided to employees who are shareholders or investors) applies:

(b) to a person whose only income is income from employment:

(c) to a motor vehicle that is used only—

(i) for the purpose of deriving income; or

(ii) for a purpose that constitutes a fringe benefit.

Application of subpart to close companies

(3) When this subpart applies to a close company to which section CX 17(4B)(b) and (c) (Benefits provided to employees who are shareholders or investors) applies, business use of a motor vehicle by a shareholder-employee of the close company is treated as being business use by the close company.

DE 2 Deductions for business use

Deduction

(1) A person is allowed a deduction for—

(a) expenditure that they incur for the business use of a motor vehicle:

(ab) interest on amounts used to fund, directly or indirectly, expenditure the person incurs for the business use of a motor vehicle, if the person is a close company that has chosen to apply this subpart instead of the FBT rules, in accordance with section CX 17(4B)(c) (Benefits provided to employees who are shareholders or investors):

(b) an amount of depreciation loss for the business use of a motor vehicle.

Costs method or kilometre rate method

(1B) A person can choose under section DE 2B to calculate the total amount of the deduction described in subsection (1)—

(a) under subsections (2) and (4) (the **costs method**) by adding together—

(i) a deduction amount for expenditure, calculated under subsection (2); and

(ii) a deduction amount for depreciation loss, calculated as described in subsection (4); or

(b) by using the kilometre rate method described in section DE 12.

Amount, and timing, of deduction: expenditure

(2) The amount of the deduction allowed in an income year for the expenditure for the business use of the vehicle is calculated using the formula—

expenditure × business proportion.

Definition of item in formula

(3) In the formula in subsection (2), **business proportion** is the proportion of business use of the motor vehicle for the income year, expressed as a decimal, calculated under sections DE 3 to DE 11.

...

DE 3 Methods for calculating proportion of business use

The 2 methods that may be used to calculate the proportion of business use of a motor vehicle are—

(a) actual records, see section DE 5:

(b) a logbook, see sections DE 6 to DE 11.

DE 5 Actual records

To determine the proportion of business use of a motor vehicle, a person may use actual records showing the reasons for and the distance of journeys by a motor vehicle for business purposes. However, when the period covered falls within a logbook term, actual records may be used only if the person and the Commissioner agree.

DE 7 Logbook requirements

Test period

(1) When a logbook is used to establish the proportion of business use of a motor vehicle, a person must select a start date, and keep the logbook for at least 90 consecutive days at a time that represents, or is likely to represent, the average proportion of travel by the vehicle for business purposes during the logbook term.

Record of reasons for, and distance of, journeys

(2) The logbook must record—

(a) the start and end of the 90 day test period; and

(b) the vehicle's odometer readings at the start and end of the test period; and

(c) the distance of each business journey; and

(d) the date of each business journey; and

(e) the reason for each business journey; and

(f) any other detail that the Commissioner may require.

CX 17 Benefits provided to employees who are shareholders or investors

…

Exclusion: election by close company

(4B) Despite subsection (4), subsection (2) does not apply and the benefit is neither a fringe benefit nor a dividend in an income year if—

(a) the benefit—

(i) arises when a close company makes a motor vehicle available to a shareholder-employee for their private use; and

(ii) would, in the absence of this subsection, be a fringe benefit arising under section CX 6; and

(b) the total benefits the close company provides to all employees in the income year are 1 or 2 of the benefits described in paragraph (a); and

(c) the close company chooses to apply subpart DE (Motor vehicle expenditure) for the motor vehicle and the shareholder-employee instead of the FBT rules.

…

YA 1 Definitions

In this Act, unless the context requires otherwise,—

…

business use, for a motor vehicle and for a person, means travel undertaken by the vehicle wholly in deriving the person's income

…

motor vehicle,—

(a) in subpart DE (Motor vehicle expenditure), means a motor vehicle that—

(i) is a road vehicle, whenever or however used; and

(ii) is not a trailer; and

(iii) is of the kind ordinarily used for the carriage of persons or the transport or delivery of goods or animals:[11]

…

[11] Note a different definition of "motor vehicle" applies for the purposes of the FBT rules. See the companion item IS 25/02 at [200].

References | Tohutoro

Legislative references | Tohutoro whakatureture

Income Tax Act 2004, sch 22A

Income Tax Act 2007, ss CX 6, CX 17, subpart DE, HG 2, YA 1 ("business use", "close company", "motor vehicle")

Tax Administration Act 1994, s 22

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