

Peter Vaines considers the recent *Samadian* case

The recent First-tier Tribunal case of *Samadian v HMRC* TC02523 revisits the old question of the allowability of the cost of travelling from home to work, or between places where a person has a business base and he or she also has a business base at his home.

There are numerous authorities on this matter but the case of Mr Samadian brings a new twist.

Mr Samadian was a self-employed consultant geriatrician. He worked from home but also worked at various NHS and private hospitals. His work at the NHS hospitals was pursuant to his employment with the NHS, but his work at home and at the private hospitals was pursuant to his self-employed activity.

It may reasonably be expected from a consideration of the earlier cases that travelling from home to an NHS hospital would not be allowable. On the other hand, despite *Sargent v Barnes* [1978] 1 WLR 823, there would be a reasonable case for a deduction to be allowed for travelling between his home base and the private hospitals (or indeed between the private hospitals).

The tribunal accepted that Mr Samadian had a place of business at home. He also had places of business at the private hospitals. One might therefore have thought that the cost of travelling between two places of business ought to be allowable. However, the tribunal said that was not enough. They said that the test for deductibility established by *Mallalieu v Drummond* [1983] 3 WLR 409 applied: although Miss Mallalieu did not have any conscious non-business motive for incurring the expenditure, she must necessarily have had a non-business motive in her mind as well. One has to look behind the conscious motive of the taxpayer to see whether an unconscious object should also be inferred.

In this case, the tribunal decided that Mr Samadian had a mixed object in his general pattern of travelling between his home and his places of business at the private hospitals:

“Part of his object in making those journeys must inescapably, in our view, be in order to maintain a private place of residence which is geographically separate from the two hospitals. It follows that even though we find he has a place of business also at his home, his travel between his home and these two locations cannot be deductible on the basis of the reasoning in *Mallalieu*.”

It seems really harsh to have a tax deduction denied by the thought police. The reason Mr Samadian incurred expenditure in travelling from one base to another was exclusively for the purposes of his profession. He had his home at one of his business bases but that was simply the starting point for his journey. It is equally possible to say that travelling from one of the private hospitals to another was disallowable because there is an element of personal choice whether he made that journey at all. He was self-employed and the master of his own destiny – he could have gone fishing.

Private Advantage

As the tribunal was relying so firmly on *Mallalieu v Drummond* to deny this expenditure, it might have had regard to the following passage in the House of Lords judgment in that case, which bears out what I have just said:

“Expenditure may be made exclusively to serve the purposes of the business but it may have a private advantage. The existence of that private advantage does not necessarily preclude the exclusivity of the business purposes.”

That judgment goes on to provide an illustration – coincidentally based on a medical consultant:

“For example, a medical consultant has a friend in the South of France who is also his patient. He flies to the South of France for a week, staying in the home of his friend and attending professionally upon him. He seeks to recover the cost of his air fare. The question of fact will be whether the journey was undertaken solely to serve the purposes of the medical practice. This will be judged in the light of the taxpayer’s object in making the journey. The question will be answered by considering whether the stay in the South of France was a reason, however subordinate, for undertaking the journey, or was not a reason but only the effect. If a week’s stay on the Riviera was not an object of the consultant, if the consultant’s only object was to attend upon his patient, his stay on the Riviera was an unavoidable effect of his expenditure on the journey and the expenditure lies outside the prohibition [for deduction].”

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