

The Case of Healy Provides a New Angle On This Principle

The Upper Tribunal has recently considered HMRC's appeal in the case of *Healy v HMRC* [2013] UKUT 0337, where the First-tier Tribunal allowed Mr Healy a deduction from his professional income as an actor for the costs of renting a flat close to the theatre where he was in a long running production. The problem can be expressed comparatively simply. If he had stayed in a hotel close to the theatre, the expenditure would have been deductible, so why should the (no doubt cheaper) cost of renting a flat for exactly the same purpose not be tax-deductible?

Unfortunately, the analysis is not so easy. We all learnt at our mother's knee that to be deductible, the expenditure must be laid out wholly and exclusively for the purposes of trade. If the money is spent partly for business purposes and partly for private purposes, none of it is deductible. You might think that buying clothes exclusively (even necessarily) for the purposes of your work would be deductible; even more so if the idea of some private purpose never entered your head. But we know from the House of Lords in *Mallalieu v Drummond* [1983] STC 665 that this is not good enough. We must have regard to the subconscious motive of the taxpayer – that is the motive that he does not know about. In *Mallalieu v Drummond*, the need for warmth and decency was a subconscious private motive – and this meant that the whole of the expenditure was disallowable on the grounds of duality of purpose.

However, even in *Mallalieu v Drummond*, the House of Lords recognised that there is a distinction between the purpose of the expenditure and the effect of that expenditure – and it gave an example of the doctor who needs to attend upon his patient who lives in the South of France. The cost of his journey is deductible if attending on his patient is the sole purpose for the trip – the fact that he will have a nice time on the Riviera is incidental and not a private purpose.

Returning to Mr Healy, the First-tier Tribunal found that his sole purpose for renting the flat was 'wholly and exclusively in connection with his profession as an actor'. Not quite the right wording perhaps, but certainly close enough. The Upper Tribunal said that the First-tier Tribunal did not apply the right test. They should have considered whether there was a dual purpose in Mr Healy renting the flat. This is a bit puzzling because the tribunal judge specifically said: 'I do not find that there was a duality of purpose'. The Upper Tribunal went on to say that the First-tier Tribunal should have considered whether the effect of renting the flat, namely the provision of warmth, shelter and comfort, was merely incidental to the business purposes or whether there was a dual purpose.

The Upper Tribunal explained that 'there is a distinction between effects which are aimed at (and that is the purpose of the expenditure) and those which are incidental to that aim'. Having regard to the above, this is also rather unfortunate wording, but I think it is clear what they mean.

They said that it was necessary to establish on a subjective basis what was in Mr Healy's mind when he entered into the tenancy agreement. The Upper Tribunal did not have the benefit of the presence of Mr Healy and were unable to carry out that exercise, so the matter has been remitted to the First-tier Tribunal for reconsideration.

This all seems a bit odd to me. The evidence was that that Mr Healy's subjective purpose was to do nothing more than provide himself with the equivalent of hotel accommodation. He could hardly give evidence about his subconscious purpose – if he knew about it, it would not be subconscious. Accordingly, I cannot see why the Upper Tribunal were concerned that they did not have Mr Healy before them to consider this aspect. He could not have told them about his subconscious motive and it would have to be inferred from the facts. Anyway, the matter is going back to the First-tier Tribunal to consider whether there was a duality of purpose or not.

It gets odder.

The Upper Tribunal acknowledged that if a duality of purpose test were to be applied to expenditure for hotel accommodation, it could never be deductible because it inevitably provided shelter and warmth. It concluded that if the provision of warmth and shelter is merely an incidental aspect of the expenditure, rather than a purpose in itself, the expenditure is allowable. But why does anybody ever stay in a hotel? It is for warmth and shelter overnight – that is the whole point – and it certainly seems no more incidental that Miss Mallalieu's court clothing for which she failed to obtain a deduction because they provided her with warmth and decency.

Trying to divine some general principle here is rather difficult and it will be very interesting to see what happens when the matter is reheard by the First-tier Tribunal.



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