Wholly and exclusively

Willie MacKenzie gives a salutary tax lesson.

Most dentists will have claimed motor expenses as a routine deduction in their tax returns over the years, but the recent tax tribunal case of *Samadian v HMRC* provides a salutary lesson as to the size of the hurdle that has to be overcome in getting tax relief for motor expenses. The issue of deductibility of expenses centres on the words "wholly and exclusively" and in the context of this article I would like to focus on just how difficult an obstacle these words represent in providing dentists with tax relief on their motor expenses.

Background information

The recent tax case of Samadian is particularly relevant. The panel also provided some very useful commentary on recent case law. Dr Samadian was a consultant geriatrician with a thriving private practice that he operated in conjunction with his full time NHS employment. As with many consultants, he saw his patients on a sessional basis at the out-patient consulting rooms at two local private hospitals. The rooms were shared with other consultants and were not for his exclusive use. No administrative support was supplied by the private hospital which was all provided at his home/office (his office which was maintained at home). All the patient records and business records were maintained at home and it was undoubtedly the case that the home/office was the centre from which he provided the administrative support for his practice as all correspondence with patients and insurers was actioned from there.

Dr Samadian's travel, and the tribunal's decision is detailed in table 1.

The point at issue

Tax legislation specifically excludes a deduction in calculating a profit which is not incurred "wholly and➲

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exclusively" for the purposes of the trade and to establish what this means in the context of travel expenditure one has to look at case law.

The decision

The tribunal ruled that although Dr Samadian had a place of business at home, that did not mean that his travel expenses to and from his home were deductible for tax purposes as crucially, part of the object in making these journeys was to maintain a home which was geographically separate from the two private hospitals – it failed the "wholly and exclusively" test. Furthermore, the tribunal drew a distinction between travelling in the course of business and travelling to get to the place where the business is carried out. It disallowed travelling expenses incurred in commuting between NHS hospitals and the private hospitals. My understanding is that Dr Samadian was claiming almost 2/3rds of his motor expenses as a tax deduction whereas HMRC was offering less than 10 per cent - a significant difference.

Basis of decision

The test of wholly and exclusively has been reviewed extensively by the courts over the years and it is a fairly strict test in that it means just what it says: wholly and exclusively. Any expense incurred with a dual purpose in mind (and this may be a conscious or unconscious motive) will fail the statutory test. The tribunal discussed at some length the basis of the major decisions on travelling expenses over the years and homed in on two cases – *Horton v Young* and *Mallalieu v Drummond*. Although the last case did not cover travel expenses it provided very useful judicial comment as to the

	Journey	Tribunal's decision
1	Mileage between home and NHS hospital/s	Not deductible
2	Mileage between NHS hospital/s and private hospital/s	Not deductible
3	Mileage between private hospitals	Deductible
4	Mileage between home and private hospital/s	Not deductible

Table 1.

interpretation of the words "wholly and exclusively".

Horton v Young (1972)
Mr Horton was a self-employed bricklayer who worked on seven different sites during the year in question at distances of between five and 55 miles from his home. He had no business premises other than his home and the main contractor (his only customer) visited Mr Horton's home to agree the details of each job. Mr Horton would collect the rest of the bricklaying team in his car and take them to the site. It was held that Mr Horton's base of operations was his house and he was therefore entitled to claim the travelling expenses to and from that base. Great emphasis was placed on the itinerant nature of his trade in reaching this decision.

Mallalieu v Drummond (1983)
Miss Mallalieu claimed the cost of professional clothing for use in court as a barrister. The claim failed because although Miss Mallalieu had no conscious motive for incurring the expenditure which was not a business motive (she was required to wear the robes in court only), the facts were such that there must have been a non-business motive in her mind as well (wearing the robes as clothing to keep warm or look decent). On this basis there was a dual purpose for incurring the expenditure and so it failed the wholly and exclusively test.

Commentary
Dentists carry on their trade from a surgery. They travel from their home to the surgery where they 'ply their trade' and return home each day. Consequently, the extent of allowable travel for the average dentist will be minimal and more often than not will be restricted to travel attending professional courses, seminars and perhaps the occasional visit to his or her accountant and bank manager. In the circumstances of a hospital consultant where there was extensive travel between private hospitals (and this will vary according to the workload of each consultant and the location of the private hospitals) HMRC only conceding 10 per cent of travel as being allowable. On this basis it would be difficult to see how the average dentist could argue for anything more than 10 per cent as being allowable. Dentists should review the level of their motor expense claims and exercise extreme caution in future or risk a tax enquiry.