TC01629

Appeal number: TC/2011/01840

Income tax – self assessment – appeal against closure notice – employment – whether expenses incurred by employee required by terms of employment – with one exception, held no – other expenses not allowable – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

SHU HUI LING **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JOHN CLARK (TRIBUNAL JUDGE)
JAMES MIDGLEY

Sitting in public at 45 Bedford Square, London WC1 on 4 October 2011

The Appellant in person

Helen Durkin, Appeals and Review Officer, HM Revenue and Customs, for the Respondents

DECISION

1. Miss Ling appeals against a closure notice issued by the Respondents ("HMRC") on 24 August 2010, confirmed by a review letter dated 22 December 2010 and further confirmed by HMRC's letter dated 16 February 2011. The effect of the closure notice was to withdraw claims by Miss Ling for employment deductions of £4,068 and £5,683 in respect of the year to 5 April 2008.

The facts

2. The evidence consisted of a bundle of documents. In addition, Miss Ling gave details at the hearing, in the course of presenting her case. We have accepted such additional information as evidence. We were provided with copies of Miss Ling's contract of employment and the related "Employee Handbook", which Miss Ling stated had not been updated due to the expense involved for a small firm.

3. From the evidence we find the following background facts.

4. Miss Ling became an employee of a firm of accountants, Eric Nabarro & Company, on 1 July 1996. She continues to be an employee of the firm. While working there, she qualified as a member of the Association of Chartered Certified Accountants (ACCA). The most recently available version of her contract of employment is dated 1 August 2004, which incorporates the terms and conditions laid down in the version of the Employee Handbook dated December 2003. (We consider below the extent to which the terms of Miss Ling's employment may since have been modified without written record being kept of any modifications.)

5. During the year to 5 April 2008 Miss Ling incurred various expenses (considered in detail below). In the Employment page of her self-assessment return for the year 2007-08, she claimed £4,598 for business travel and subsistence expenses, £348 for "Professional fees and subscriptions", and £5,683 for "Other expenses and capital allowances". Under "Benefits", she gave the total for "Expenses payments received and balancing charges" as £878.

6. On 24 August 2009 HMRC wrote to Miss Ling to explain that they wished to check her return under s 9A of the Taxes Management Act 1970 (TMA 1970"). HMRC stated that the only aspect of the return that they wished to look at was the expenses claimed in respect of Miss Ling's employment income, although they indicated that when they looked at this aspect, they might find that they needed to extend their check. They wrote on the same day to her employers, whom she had stated in her return to be her tax advisers.

7. In their letter, HMRC asked for a breakdown of the £4,598 travel expenses claimed. They also asked for a full breakdown of other expenses of £5,683, including receipts.

8. HMRC received on 2 September 2009 a letter dated 28 August 2009 enclosing copies of the relevant records. (The covering letter was not included in the evidence.)

They responded on 18 September 2009 with a series of questions relating to the travel expenses, professional subscriptions and the "other expenses".

9. Miss Ling responded on 9 October 2009, stating that she had received HMRC's letter on 7 October. She set out various items of information.

10. On 4 November 2009 HMRC replied, and asked for sight of her contract of employment, together with confirmation from her employer that the expenses which she had claimed were a requirement of her employment, and an indication from the employer whether such expenses were reimbursed by the employer.

11. On 17 December 2009 Miss Ling provided a copy of her employment contract, Employee Handbook, and a letter from her employer (considered below).

12. In their response dated 28 January 2010, HMRC queried certain matters relating to an increase in salary during the year 2007-08. As their letter was returned undelivered, and a check with her employer confirmed that the address had been correct, HMRC re-sent their letter on 1 April 2010.

13. Miss Ling responded on 23 April 2010, indicating that she had received the letters from HMRC the previous day. She explained that her salary had been increased from 1 February 2009.

14. On 24 May 2010 a different HMRC officer wrote to Miss Ling, explaining that the previous officer had retired, and stating that a reply did not seem to have been received to HMRC's letter dated 28 January 2010. The officer indicated that she had reviewed the papers, and set out a series of comments. She requested a response before 21 June 2010, in the absence of which she would assume that Miss Ling agreed with the proposals set out in the May 2009 letter.

15. Miss Ling replied on 1 June 2010, stating that she had received HMRC's letter dated 24 May 2010 on 1 June 2010 and HMRC's letter dated 25 May 2010 on 28 May 2010. Miss Ling enclosed copies of previous correspondence, and set out various explanations relating to the costs incurred.

16. HMRC responded on 3 June 2010, commenting on various items of expenditure. The officer stated that unless she heard from Miss Ling before 23 June 2010, she proposed to close the enquiry and withdraw claims totalling £9,929.

17. Miss Ling replied on 18 June 2010; one of the date stamps on the letter, which we find must have been added by HMRC, showed the date of 22 June 2010, which we find to have been the date of receipt by HMRC, even though the office referred to in the stamp was not the office to which Miss Ling had sent her letter. Miss Ling set out her travel costs, and stated that her expenses had been wholly, necessarily and exclusively incurred in the performance of the duties of her employment, including P11D benefit from employer. She set out extracts from her employer's letter dated 17 December 2009. She also commented on "sundry costs". She proposed a meeting to resolve the position. She attached detailed schedules relating to the various items of expenditure.

18. On 30 June 2010, HMRC wrote again to Miss Ling's employer, requesting clarification of certain points in the latter's letter dated 17 December 2009.

19. On 1 July 2010 HMRC replied to Miss Ling's letter dated 18 June 2010, indicating that a meeting in London would not be possible, although this did not preclude a meeting in Salford. After commenting on various aspects of the expenditure claims, the officer stated that as none of the costs qualified for relief, she would close the enquiry and amend Miss Ling's self assessment return unless Miss Ling responded within 21 days.

20. On 23 July 2010 Miss Ling's employer responded with details of Miss Ling's work, and the extent of the requirements under her contract of employment. (We consider this below.)

21. On 2 August 2010 HMRC wrote to Miss Ling with comments on the matters which had been stated in the employer's letter. The officer referred to the rules at ss 337-339 of the Income Tax (Earnings and Pensions Act 2003 ("ITEPA 2003"), and the consequent need to establish precisely what the duties of the employment were. On the basis of the employer's letters, the officer concluded that attendance at the relevant conferences was not a duty of Miss Ling's employment. The officer proposed to close the enquiry and amend Miss Ling's self assessment for 2007-08. The officer also referred to the need for Miss Ling to consider the position for 2008-09. (As only one year is under consideration in this appeal, we make no findings in relation to 2008-09.)

22. On 10 August 2010 Miss Ling wrote to HMRC enclosing a letter of the same date from her employer. This letter, considered below, referred to the fact that, contrary to normal practice, the firm had paid Miss Ling's salary during her attendance at the relevant conference.

23. On 23 August 2010 HMRC wrote to Miss Ling, stating that the employer's letter did not provide any further evidence or information in support of her claim for a deduction relating to the cost of attending overseas conferences. The officer intended to close the enquiry and withdraw Miss Ling's claims for deductions. The officer had concluded that various costs listed were not eligible for a deduction under s 336 ITEPA 2003 against Miss Ling's employment income. The officer summarised the basis for that conclusion; apart from the claim for £503 reimbursed expenses, none of the claims for deductions qualified for relief because the decision to incur the costs was one of personal choice and was not imposed by the duties of the employment. The officer attached the closure notice (dated 24 August 2010) and the supporting calculations.

24. On 29 September 2010 the officer telephoned Miss Ling at her office to inform her that the officer's letter had been returned undelivered. It was agreed that a copy should be faxed to Miss Ling at her office. The covering note to the fax stated that according to Royal Mail the address was "inaccessible".

25. On 4 October Miss Ling wrote to appeal against HMRC's decision. She enclosed a further letter dated 1 October 2010 from Miss Ling's employer addressed to HMRC, explaining that he had seen the letters dated 23 and 24 August, and did not understand how HMRC had reached their conclusion. HMRC responded to Miss Ling on 21 October 2010, stating that if she did not agree with HMRC's view, she could either ask to have the decision reviewed, or notify her appeal to an independent tribunal.

26. Miss Ling responded on 17 November 2010, indicating that she wished to ask for a review; she set out various matters which she wished the review officer to take into account.

27. On 22 December 2010 the review officer wrote to Miss Ling with the results of the review. This had been directed at two main areas, namely the circumstances in which such expenses would be allowable, and the exact requirements of Miss Ling's job in relation to the expenses incurred. The conclusion of the review was that the review officer did not agree that a deduction was due for the expenses claimed, as they did not fall to be allowed under the specific legislation as set out in ss 336-338 ITEPA 2003. The review officer upheld the decision to disallow the expenses.

28. On 22 January 2011 Miss Ling wrote to the review officer, enclosing a letter of the same date from her employer. She requested a short extension of time while the review officer considered this. (To the extent necessary, we refer below to the employer's letter.)

29. On 3 February 2011 Miss Ling wrote to the review officer, referring to the latter's letter dated 24 January (not included in the evidence or the Tribunal Service file), and stating that the review officer seemed to be regarding all the expenses claimed as one item and ignoring adjustments made in the correspondence both by Miss Ling and the HMRC officer who had dealt with the case. The review officer responded on 16 February 2011 stating that he could only refer Miss Ling to his original conclusion letter.

30. Miss Ling gave Notice of Appeal to the Tribunals Service on 28 February 2011, stating that the last date for the making or notification of the appeal was 18 March 2011. In doing so, she presumably took the view that the period for making the appeal ran from date of the review officer's last letter, rather than the date of the review decision itself. Her view was incorrect, and she should have explained in the Notice of Appeal form why her appeal was being made out of time; the Tribunals Service notified her on 29 March 2011 that her Notice of Appeal was being treated as an application for permission to appeal out of time. However, HMRC stated in their letter dated 23 May 2011 to the Tribunals Service that they had no objection to that application, so the appeal has proceeded despite the late notice.

The law

31. Section 336 ITEPA 2003 is as follows:

"**336 Deductions for expenses: the general rule**

(1) The general rule is that a deduction from earnings is allowed for an amount if—

(a) the employee is obliged to incur and pay it as holder of the employment, and

(b) the amount is incurred wholly, exclusively and necessarily in the performance of the duties of the employment.

(2) The following provisions of this Chapter contain additional rules allowing deductions for particular kinds of expenses and rules preventing particular kinds of deductions.

(3) No deduction is allowed under this section for an amount that is deductible under sections 337 to 342 (travel expenses)."

32. Section 337 provides:

"**337 Travel in performance of duties**

(1) A deduction from earnings is allowed for travel expenses if—

(a) the employee is obliged to incur and pay them as holder of the employment, and

(b) the expenses are necessarily incurred on travelling in the performance of the duties of the employment.

(2) This section needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs)."

33. Section 338 sets out further provisions relating to travel expenses:

"**338 Travel for necessary attendance**

(1) A deduction from earnings is allowed for travel expenses if—

(a) the employee is obliged to incur and pay them as holder of the employment, and

(b) the expenses are attributable to the employee's necessary attendance at any place in the performance of the duties of the employment.

(2) Subsection (1) does not apply to the expenses of ordinary commuting or travel between any two places that is for practical purposes substantially ordinary commuting.

(3) In this section "ordinary commuting" means travel between—

(a) the employee's home and a permanent workplace, or

(b) a place that is not a workplace and a permanent workplace.

(4) Subsection (1) does not apply to the expenses of private travel or travel between any two places that is for practical purposes substantially private travel.

(5) In subsection (4) "private travel" means travel between—

(a) the employee's home and a place that is not a workplace, or

(b) two places neither of which is a workplace.

(6) This section needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs)."

34. Section 356 ITEPA 2003 provides:

"**356 Disallowance of business entertainment and gifts expenses**

(1) No deduction from earnings is allowed under this Part for expenses incurred in providing entertainment or a gift in connection with the employer's trade, business, profession or vocation.

(2) Subsection (1) is subject to the exceptions in—

(a) section 357 (exception where employer's expenses disallowed), and

(b) section 358 (other exceptions).

(3) For the purposes of this section and those sections—

(a) "entertainment" includes hospitality of any kind, and

(b) expenses incurred in providing entertainment or a gift include expenses incurred in providing anything incidental to the provision of entertainment or a gift."

Section 357 ITEPA 2003 provides for certain exceptions from s 356; we consider below the extent to which it applies in Miss Ling's case.

Arguments for Miss Ling

35. Miss Ling made the following points:

(1) The expenses had been incurred wholly, necessarily and exclusively for her employment and duties for the year 2007-08; later on her employer had increased her salary to cover the expenses, but these had not been deducted from her salary.

(2) She considered the expenses listed to fall within ss 336-338 ITEPA 2003. The HMRC officer had ignored completely the expenses including P11D. The total was £878, and the officer had accepted £503 only, then added everything back, which Miss Ling submitted was not the correct treatment.

(3) Adjustments made by Miss Ling and the HMRC officer had been ignored (see above).

(4) She made submissions relating to the overseas travel, which we consider below.

(5) She claimed that when visiting clients she travelled to the office to collect heavy files rather than travelling direct to clients from her own home.

(6) The review officer had taken all the expenses collectively and had completely ignored various expenses incurred under separate headings which she maintained were wholly, necessarily and exclusively incurred as required. The review officer had also ignored her employer's letter, other than her travel expenses and claim for rent (in respect of which the review officer had ignored

her accepted reduction), and had made no comments on that letter, nor referred to any relevant cases on the expenses which Miss Ling had incurred.

(7) She submitted that the contract of employment was out of date, as it had not been possible for a small firm to go to the expense of revising it to take account of the subsequent changes in the terms on which she was employed.

(8) She had become what she described as a "European trustee", and as a result of her travel she had secured a client for the firm. She had had to expend money to do so.

(9) Part of her work was at home; she was also responsible for keeping backups of the firm's computer disks at her home. Half her telephone costs were for research on behalf of the firm. Her mobile phone was for work, as the firm did not have a secretary. She paid for Companies House returns and research costs for clients with her personal credit card, and was not always reimbursed. She paid the filing fees and claimed reimbursement on a yearly basis. She confirmed that the only expenses which had been reimbursed were those totalling £878 as indicated above.

(10) She referred to her letter to Mrs Durkin dated 15 July 2011 setting out information, together with comments on the cases mentioned in HMRC's Statement of Case.

(11) She requested that account should be taken of the matters set out in the letters from her employer.

Arguments for HMRC

36. As Miss Ling was experiencing some (mainly language) difficulties in setting out the details of her case at the hearing, we asked her whether she would agree to Mrs Durkin "setting the scene" in terms of the facts. As a result, Miss Durkin set out not only the factual background, but the whole of the case for HMRC. We suggest that in future, if a Tribunal requests HMRC to set out the facts, HMRC should not combine this with their case, which should be put separately at a later stage.

37. HMRC's Statement of Case referred to ss 336, 337, 356 and 357 ITEPA 2003, and to the following cases:

Thomson v White 43 TC 256

Pook v Owen 45 TC 571

White v Higginbottom 57 TC 283

Mallalieu v Drummond 57 TC 330

Revenue and Customs Commissioners v Dr Banerjee 80 TC 205

38. Reference was made at the hearing only to *Thomson v White* and *Mallalieu v Drummond*. (In her letter responding to HMRC's Statement of Case, Miss Ling had made comments on all of these cases.)

39. For expenses to be allowed under s 336 ITEPA 2003, the employee, as holder of the employment, must be obliged both to incur the expense and to pay it. In addition, the expense had to be incurred in the performance of those duties.

40. For travelling expenses to be reimbursed under s 337 the employee had to be obliged to incur and pay them as holder of the employment and the expenses must be necessarily incurred on travelling in the performance of the duties of the employment.

41. Expenditure on clothing was not allowable, as this did not satisfy the "wholly, necessarily and exclusively" test.

42. Expenditure on entertaining and gifts was specifically disallowable by virtue of s 356 ITEPA 2003.

43. HMRC contended that the onus of proof was on Miss Ling as Appellant. The standard of proof was the ordinary civil standard of the balance of probabilities.

44. HMRC sought confirmation that the expenses did not meet the strict criteria of the legislation, in that:

(1) Miss Ling was not obliged to incur the expenditure;

(2) The expenditure was not incurred wholly, exclusively and necessarily in the performance of the duties of the employment;

(3) Miss Ling was not obliged to incur the travelling expenditure;

(4) The travelling expenses were not necessarily incurred on travelling in the performance of the duties.

45. HMRC submitted that the appeal should be dismissed.

Discussion and conclusions

46. Before considering the various categories of expenditure incurred by Miss Ling, we think it necessary to address the principles applicable to expenditure incurred by employees. This is not to apply a "blanket approach", as Miss Ling considers HMRC to have done; as Henderson J pointed out in *Banerjee* at [8] (80 TC 205 at 212), the courts have consistently placed a very strict interpretation on the words used in the preceding versions of what is now s 336(1)(b) ITEPA 2003. Other than the omission of the words "office or" before "employment, the wording of s 336 is identical to the previous version.

47. In *Banerjee* at [9]-[11], Henderson J referred to an example of the strict interpretation, and the nature of the requirements to fulfil the conditions set out in the legislation. As an indication, at the end of [11] Henderson J made the following comments on the case of *Brown v Bullock* (1961) 40 TC 1:

> "The case was therefore not one where, on a strictly objective appraisal, the duties of the employment themselves required the expenditure in question to be incurred."

48. It follows that, in order for expenditure to fulfil the test in s 336(1)(b) ITEPA 2003, the duties of the employment must be such as to require the incurring of the expenditure.

49. The approach which the Tribunal is required to follow in considering the position in a particular employee's case was explained by Henderson J in *Banerjee* at [37], referring to the statutory predecessor to s 336:

> "37. In my judgment these submissions all break down at the same point, because they seek to express as a proposition of law something that is ultimately a question of fact, or more accurately a factual ingredient of a question of mixed fact and law. The legal content of the test in s 198 has been expounded by the courts in a long line of cases, and is indeed strict and difficult to satisfy; but the factual situations to which that test has to be applied are of infinite variety, and it is always necessary to focus on the particular facts of the case in question, and to ask oneself whether they satisfy the statutory criteria."

50. Thus the test is strict, but what must be examined is whether the specific terms of the employment, whether written or oral, require the employee to incur the expenditure.

51. The second general requirement for expenditure is that contained in s 336(1)(a), ie that the employee is obliged to incur and pay it as holder of the employment. "Incur" means that the employee has to bear the expense. However, reimbursement does not prevent any payment by the employee from being eligible for deductibility, provided the reimbursement is included in the employee's earnings; see s 334(1) and (2) ITEPA 2003, referred to below.

52. The requirements in respect of travel expenses are similar; s 337(1)(a) ITEPA 2003 corresponds to s 336(1)(a), and s 337(1)(b) requires that the expenses are necessarily incurred "on travelling in the performance of the duties of the employment".

53. The treatment of business gifts is specified separately in s 356 ITEPA 2003; we consider this below.

54. Miss Ling was concerned that a general approach had been taken to the disallowance of the various items of expenditure. Although her claims fell under a variety of categories and involved a series of items, we attempt to deal with the expenditure in respect of each category. By way of general approach, we are satisfied that Miss Ling incurred all the items of expenditure listed in her claims; HMRC did not raise any suggestion to the contrary, either in the correspondence or at the hearing.

"Business and travel expenses"

55. In her letter of 18 June 2010 Miss Ling gave a breakdown of the business and travel costs as follows:

Travel	£1,224.05

Emergency back to work flight	£ 897.60
Travel insurance	£ 49.50
Conferences	£1,969.78
Special clothing for conference	£ 320.00
Gifts for conference	£ 105.35
Dinner for client's bookkeeper and student IT help	£ 31.80
	£4,598.08

56. We find that Miss Ling's contract of employment and Employee Handbook make no mention of overseas travel or conferences. We accept that the terms and conditions of her employment may have been varied by subsequent agreement between her and her employer, although there is no evidence of any formal recording in writing of any such changes. Various comments have been made in letters from her employer, and we review these items of expenditure in the light of those comments.

57. In the letter dated 17 December 2009, her employer stated that she was employed as a Manager and was primarily concerned in accounts preparation and audits, primarily of SME companies. Before the commencement of the recession, the firm had encouraged her, as Manager of the firm's South East Asia department, to register with the Taiwan Trade Centre. Referring to her native language being Chinese, and to her IT expertise, the firm referred to her obtaining new clients, among which was a Chinese school in London. Through the latter she had started to work in conjunction with the Chairman of the European Taiwan Chamber of Commerce and became Treasurer, and was asked to travel to various conferences. The employer commented:

> "All this was a natural extension of her work and we granted her the time where necessary to attend. No doubt at some future time she will obtain further assignments."

58. In the letter dated 23 July 2010, the employer further explained the position relating to the conferences:

> "There is no requirement under her contract of employment to attend these conferences. We would only pay these cost [*sic*] if we are in a points [*sic* – (we interpret this as "position")] to bill a client for her attendance. However we have paid for her time in attendance at the conference and no doubt once the clients are more established a case can be made for them to reimburse her for the costs. Obviously we could, with her agreement, reduce her salary and reimburse the costs and [*sic*] which would leave her in the same overall position but which would enable the costs to be accepted.
>
> Miss Ling was asked if she could join the conference by the clients not the firm and as I said in my letter of 17 December this was a natural extended [*sic*] of her work. Miss Ling is talented and passionate about her work. Unfortunately the recession has not helped in the expansion of this part of our work, but it has been an interesting challenge."

59. Although her employer wrote further letters in support of her claims to deduct the travel expenditure, we find that no further justification was offered beyond that stated in the above extracts.

60. The indications in her employer's letters do not in our view establish it to be a requirement of Miss Ling's employment that she should attend overseas conferences. It is clear that the employer was in favour of her attendance, and would have been prepared to meet her expenses if the firm had been able to make a charge to a client, but even in that event, this would not have been sufficient to establish that Miss Ling was ". . . obliged to incur and pay it as holder of the employment" within s 336(1)(a). Accordingly, we find that the test in that sub-section was not satisfied. In the same way, we do not consider that the test in s 336(1)(b) was satisfied, as Miss Ling was not subject to a specific requirement to incur the expenditure "wholly, exclusively and necessarily in the performance of the duties of the employment". These conclusions are the result, in relation to her case, of what Henderson J described in *Banerjee* as the strict test in what is now s 336.

61. Apart from the cost of the conference itself not being allowable, it follows that various associated expenses are also to be disallowed on the same basis. The travel costs, including the travel insurance and the emergency back to work flight, do not meet the similar tests in s 337(1)(a) and (b). The cost of the special clothing for the conference also falls to be disallowed, both on the statutory language of s 336(1)(a), and on the more general basis confirmed by the House of Lords in *Mallalieu v Drummond*; generally speaking, clothing involves a duality of purpose, and therefore cannot meet the "wholly, exclusively and necessarily" test. We accept that there may be circumstances in which specialised clothing provided by an employee might meet the test, but this would require the form of clothing both to be extremely specialised and for all practical purposes to be unusable (and unused) outside the context of the employment. We do not consider that any clothing which Miss Ling purchased for the purposes of attending the conference could possibly have fallen within such an exceptional category. We accept Miss Ling's statement in correspondence that the clothing would not have been suitable as everyday wear, but a similar argument on the part of the taxpayer was rejected by the House of Lords in *Mallalieu*, so this does not assist her case.

62. In HMRC's letters dated 24 May and 3 June 2010, the officer referred to part of the claim for travel costs as comprising the cost of journeys to clients. A concessionary offer was suggested; the officer was prepared to allow £500 to cover the cost of visiting clients' premises. This concessionary offer was withdrawn once the officer had decided to issue the closure notice disallowing the whole of the expenditure. Although there were various items relating to UK travel included in the evidence, we are not satisfied by such evidence that the terms of Miss Ling's employment required her to incur that specific expenditure. The officer's second letter mentioned that to support Miss Ling's claim a breakdown of the journeys would be required, for example a list of journeys in date order showing the purpose of the trip, the start location, destination and the miles travelled, as well as receipts for the costs incurred. In the earlier letter, the officer noted that Miss Ling's employer reimbursed business travel, and that this had been reported in Miss Ling's P11D as £120.

63. It is therefore unclear to us from the evidence what the basis was for claiming the further travel expenses, and in the absence of sufficient evidence both as to the nature of the journeys and to satisfy us that they were required by the terms of the employment, we find that there is no evidence to justify allowance of this part of the claim for travel expenses.

64. In the same way as for the other expenses relating to the conference, we find that the "gifts for conference" (the precise nature of which we did not consider) neither meet the tests in s 336 nor those in s 356 ITEPA 2003. As Miss Ling was not required by the terms of her employment to attend the conferences, it is clear that the gifts were not connected with the employer's trade, profession, business or vocation. Thus s 356 is not in point, and the general expenses rule in s 336 applies; in the light of our above findings, the expenditure on the gifts is not allowable.

65. The items comprising "Dinner for client's bookkeeper and student IT help" fall to be disallowed under s 356 ITEPA 2003, as set out above. In the absence of any statement by the employer to indicate specifically that the firm would pay these costs, we do not consider that the employer put a sum specifically at Miss Ling's disposal for the purposes of making the gifts, so the exceptions to disallowance under s 356 granted by s 357 do not apply. These items are therefore not allowable.

"Sundry costs"

66. The items listed under this heading in Miss Ling's letter dated 18 June 2010 were:

Sundry costs including £3,000 Rent	£3,327.00
Phone calls	£ 601.70
Companies House – Annual Return and Research costs	£ 378.00
Office expenses including computer and software	£ 993.37
Post Office, Curry's, Ryman, WH Smith, INK and PC World	£ 385.49
	£5,685.56

67. Miss Ling explained in her letter that office repairs and supplies and artificial flowers were not "personal choice"; she maintained that they were wholly, exclusively and necessarily incurred in the performance of the duties of the employment. She explained that her employer's office felt unsafe when she was working alone, due to persons in the vicinity, some of whom called out to her in the office. In her previous flat she had therefore not let out a room, but kept it for her office work. Her employer had increased her salary on 1 February 2009 to cover her expenses.

68. In her letter responding to HMRC's Statement of Case, Miss Ling stated that the first item had included rent of £3,000, but that she had since reduced her claim to

£500. The main purpose had been to store disk backups for her firm, as her home was within walking distance of the office. We note from her letter dated 17 November 2010 that her offer to reduce the claim for rent was made on the following condition:

> "If we can arrive at a reasonable answer on the other matters, I would suggest that this should be reduced to sum in the region of £500."

69. As no agreement was reached on the other items, we examine the position on the basis of the rent originally claimed. The actual amount does not affect the question of principle: was the amount deductible?

70. We find no evidence that keeping an office at her home was a requirement of Miss Ling's employment. The claim for rent, whatever the actual amount, does not meet the conditions set out in s 336 ITEPA 2003 as considered above. The balance of £327, consisting of £120 for artificial flowers for the office, £136 "flower for funnel", £16 dry cleaning and £45 for the Chile conference fee, also fails to meet those conditions. Thus the whole £3,327 is not allowable.

71. In relation to Miss Ling's claim for phone calls, the HMRC officer dealing with her claim had indicated readiness to consider a claim for £200 to cover the cost of business calls only. However, the offer of that concessionary treatment was withdrawn. As there is no evidence that Miss Ling was required by the terms of her employment to incur the expense of any calls, her claim has to be disallowed in full.

72. On the basis of Miss Ling's evidence at the hearing, the claim for fees paid to Companies House appears to have a more solid foundation. She explained that she was expected to make payment of such fees relating to clients, using her credit card; the arrangement with her employer was that she would submit details of all such expenses on an annual basis, and they would be reimbursed to her. In the light of her evidence, we find that this was a requirement imposed by the terms of her employment, as varied orally (and not, as might have been better, recorded in writing). As these payments related to clients, we also find that they were incurred wholly, necessarily and exclusively in the performance of the duties of Miss Ling's employment.

73. We deal with the remaining items, the office expenses and the amounts paid to the various retailers listed, together. Again, there is no evidence that she was required by the terms of her employment to incur any of these costs; this issue has to be considered irrespective of any benefit which might arise to the employer as a result of her spending these amounts. In the absence of any such requirement, we hold that these expenses were not allowable against Miss Ling's income.

74. Thus, with the exception of the Companies House costs, we find that none of Miss Ling's expenses claimed under these headings were allowable. Both Miss Ling and her employer referred to the salary increase granted to her to cover expenses. However, that informal method of reimbursement does not of itself result in the expenses becoming allowable. Section 334 ITEPA 2003 provides that a person, ie the employee, may be regarded as paying an amount despite its reimbursement, although an allowance may only be made under Chapter 5 if or to the extent that the

reimbursement or other payment is included in the employee's earnings. The effect is that such reimbursement does not prejudice the employee's claim, but the employee must still satisfy the conditions set out in the relevant section within Chapter 5. We have found that Miss Ling has not satisfied those conditions in the sections relevant to her claims, and therefore the question of reimbursement does not determine the issue.

75. Subject to the allowance of £378.00 for the payments made by her to Companies House, Miss Ling's appeal, against the closure notice rejecting her expenses claims made in her self assessment return for the year ended 5 April 2008 in the sums of £4,598 and £5,683, is dismissed.

Right to apply for permission to appeal

76. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JOHN CLARK

TRIBUNAL JUDGE
RELEASE DATE: 5 DECEMBER 2011