Warmth and decency?

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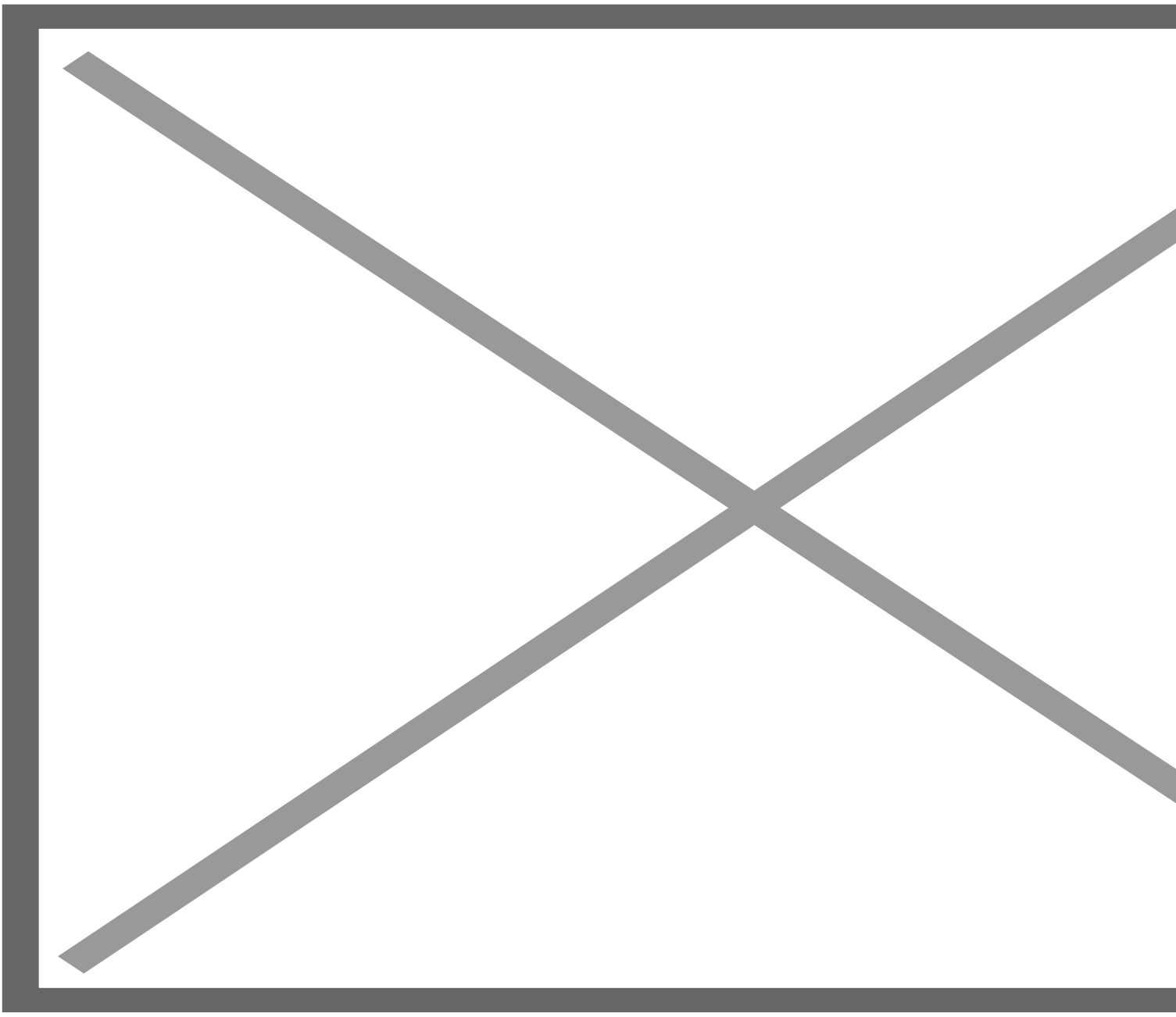

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Meg Saksida considers the impact of the recent case of an exotic dancer who won her appeal on deductible expenses against HMRC in the FTT

Key Points

What is the issue?

Duality of purpose has been debated in various tax cases, including *Mallalieu v Drummond*. In this case, Miss Daniels had claimed various expenses, including home to work travel, clothing, lingerie, dry cleaning, makeup, beauty treatments, and hairdressing.

What does it mean to me?

Initially HMRC rejected her claims, creating a discovery assessment, but in the end the FTT held on appeal that Miss Daniels' claims were allowed in part.

What can I take away?

Thus, there were only two things that left me flummoxed by the decision of the case; the fact that less than 10% of her claimed expenses could be backed up by invoices and receipts, and the decision to allow her to offset her perfume.

An appeal case in the First Tier Tribunal of May this year, *G Daniels v HMRC* [2018] UKFTT 462 TC06640, made for entertaining reading. Firstly, there were the tabloid headlines, '… pole dancer … court rules her kinky nurse outfits and stockings are essential business expenses' (*Daily Mail*) '… stripper wins … tax relief on her saucy stage gear including naughty nurse and schoolgirl outfits' and even the accountancy world came up with 'Dancer in pole position for tax relief' (*Accountancyweb*). I'm not sure if these surpass 'Sexpenses poleaxed' from the *Daily Mail* in 2009, but if not, they're close. Secondly, there was the case itself. Ignoring for a second the huge impact it has had on the concept of duality of purpose, it had everything required for a bodice ripping blockbuster of a tax case: intrigue, scandal, villains, accusations, and of course, sex (well, sexy outfits and naked dancing…).

The case surrounds Miss Daniels, a self-employed 'exotic' dancer who had been working at Stringfellows for some nine years. During this time Miss Daniels had claimed various expenses, including home to work travel, clothing, lingerie, dry cleaning, makeup, beauty treatments, and hairdressing. Initially HMRC rejected her claims, creating a discovery assessment, but in the end the FTT tribunal held on appeal that Miss Daniels' claims were allowed in part. The 'part' that was allowed, were her claims for clothing, garments (including lingerie), dry cleaning, shoes, cosmetics, perfume, and beauty treatments. Her appeals against the assessment of the expenses for travelling from home to work were dismissed.

Scandal, villains and accusations

Miss Daniels argued that, because she carried on her business from her home (which she used as a base), her travelling expenses were deductible in accordance with the principle established in the decision of the Court of Appeal in *Horton v Young* 47 TC 60 and [1971] 2 All ER 351. It was quick work, and not in the least unexpected that the tribunal dismissed these claims out of hand relying on *Newsom v Robertson* 33 TC 452 and [1952] 1 All ER 1290 and *Samadian v HMRC* [2014] STC 763. It won't be necessary to explore these expenses further as there was not a scrap of doubt that this would be the case. So far so predictable… but a sniff of scandal followed.

HMRC had challenged Miss Daniels' assessments and issued penalties alleging that, by consistently claiming travelling expenses from home to work without questioning why such expenses could be deductible, she was considered to have been 'careless'. In addition, HMRC had found the disclosure 'prompted', as Miss Daniels did

not tell them about the inaccuracy ‘before [she] had reason to believe [they] had discovered it, or were about to discover it.’ The tribunal agreed that the claims were indeed careless, and that HMRC were justified in charging penalties. However, Judge Guy Brannan ruled that the penalties were excessive. The judge thought that the cold relationship between the HMRC officer and Miss Daniels’ tax agent was affected by HMRC’s ‘rather unreasonable approach’. This had soured the relationship from the beginning of the case and thus a greater reduction in the suspended penalty for the home to work travel claim should be allowed. Penalties for the items that the tribunal eventually allowed were dismissed.

Sexy outfits and naked dancing

Mallalieu v Drummond (Inspector of Taxes) [1983] 2 A.C. 861 is the classic case on the topic of the duality of purpose of clothing. A female barrister, who wore dark suits only in court, wished to deduct from her income, normal female attire (her clothing and tights), that were capable of being worn in public by any woman. She lost due to the duality of purpose that her clothes had, as they were used in addition to her presence in the courtroom, for her ‘warmth and decency’. Compare this with HMRC’s manual at BIM50160 where we see that ‘The cost of clothing acquired for a role in a film, stage or TV performance is … allowable. If the clothing is not part of an everyday wardrobe; it is “costume” used in a performance.’ The decision the tribunal needed to make was then to assess whether Miss Daniels’ clothes were used as part of a performance, or part of a normal everyday wardrobe of female attire. Miss Daniels’ dresses, which were purchased only for the purposes of her performances, were described as ‘see-through’ and ‘skimpy’, and often adorned with sequins. They were erotic, designed to allure and arouse, and would not be described as providing ‘warmth and decency’. Indeed the tribunal judge considered that Miss Daniels’ expenditure on her clothing was ‘akin to the acquisition of a costume by a self-employed actor for use in a performance, expenditure which is … deductible’.

The judges further went on to explain that the expenditure on the dry-cleaning of this same clothing, should also be allowable.

The makeup worn by the dancers is also different, being theatrical makeup; heavily applied and ‘over the top’. So much so that Miss Daniels would not, and did not wear it outside the club. The tribunal agreed that it was wholly and exclusively used for the purpose of her performance and was deductible.

Lingerie, stockings, hair, tanning, waxing, and nails

The tribunal found it was clear that the type of underwear and lingerie (stockings) bought by Miss Daniels was of a suggestive nature, and as such, they accepted her evidence that these were not suitable for use outside Stringfellows. They were purchased solely for her performances. One can only imagine they were more shocking than standard M&S holdups.

In addition to her lingerie and stockings, Miss Daniels was allowed a deduction for hair and beauty appointments, where she received arm and leg waxes, fake eyelashes and spray tans. Hair extensions, nails and generally looking glamorous is required by her job, and as the tribunal judges explained, she could not remove her hair extensions or her false nails at the end of the night, and thus there was unavoidably some duality of purpose. Similarly with the fake tanning, waxing, and eyelashes. The tribunal felt it important to distinguish between the purpose and the effect of the expenditure; the *purpose* being to make her look better during her dances, and the *effect* being that the hair, nails, golden tan, and long eyelashes would also look attractive in everyday life. However, let’s also consider the statement of Sales J in *Samadian*, where in discussing the duality of purpose states ‘The “wholly and exclusively” test is to be applied pragmatically and with regard to practical reality. Private interests may be served by expenditure in the course of a trade or profession, but be so subordinate or peripheral to the main (business) purpose of the expenditure as not to affect the application or

prevent the satisfaction of the statutory "wholly and exclusively" test…' It is difficult to imagine that a young, immaculately groomed woman who has her hair (£250 a month alone), tan, waxing, lashes, and nails done, has a subordinate or peripheral private interest in this.

Perfume and shoes

Finally, let's turn to perfume and shoes. Unlike the hair, tan, waxing, lashes and nails, these things *can* be taken off at the end of the night. For the purposes of this article, I interviewed a strip-club manager who told me these shoes would never be worn outside of the club. She explained that they are mostly plastic with extremely high stiletto heels (with platforms), and that they are designed for indoors and pole hanging. Like Mallalieu's suits however, they do of course serve a dual purpose. In this case that is they protect the feet from the debris of broken glass and spilt champagne, and other dangers, on the club floor in addition to their 'sexy' pole gripping role. But on balance, I agree with the tribunal. They were akin to a costume and wholly and exclusively for the purpose of the business.

Intrigue

Thus, there were only two things that left me flummoxed by the decision of the case; the fact that less than 10% of her claimed expenses could be backed up by invoices and receipts, and the decision to allow her to offset her perfume.

My understanding, as a fellow self-employed tax-payer, is that one needs to have receipts and invoices for all business expenses. I wouldn't claim a deduction for something I didn't have an invoice for unless the receipt was lost as an oversight, and the expenditure was obvious and in some other way attestable. HMRC's review decision proceeded on the basis that there was insufficient documentary evidence but, before the Tribunal, chose simply to argue on deductibility principles. I can't help but wonder what message we are sending out to the public when a tax-payer can provide less than 10% of the receipts of her transactions and is allowed to claim all the expenditure.

And the perfume. Miss Daniels states that she only used the perfume for her performances, explaining that she did not use perfume in her everyday life because she did not want to be reminded of 'getting naked in front of drunken men'. The perfume clearly could have a duality of purpose, being worn any other time she pleased outside of work. The tribunal said that '…the fact that Ms Daniels could have worn make-up and the perfume outside her work is not the correct test. Her evidence was that she did not do so and that she bought those items solely for her performances. We consider that she incurred the expenditure wholly and exclusively for the purposes of her performances and that it was therefore deductible'. This is confusing.

I have a surgeon friend who wears his superman boxers every time he operates. It gives him confidence and he never wears them outside the operating theatre. Am I to tell him now that he can offset his pants as 'wholly and exclusively' for his profession since he doesn't wear them anywhere else? And me? I think I may start keeping a separate (deductible) bottle of perfume to wear when I am writing or lecturing, just so I don't get reminded about tax on the weekend…