

Personal tax update (Lecture P1286 – 15.27 minutes)

Grants for electric cars

In 2011, to encourage the take up of ultra-low emission cars, the government launched the plug-in vehicle grant scheme (PIVG). Since then, the scheme has been extended to cover eligible vans, trucks, motorcycles and taxis.

The scheme is administered by the Office for Zero Emission Vehicles (OZEV), previously known as the Office for Low Emissions Vehicles (OLEV), a government unit supporting the transition to zero emission vehicles.

The PIVG scheme offers grants towards the price of ultra low emission vehicles (ULEVs). To be eligible, vehicles must be on the government's approved list. Details of the eligible vehicles and the grants that can be claimed can be found at <https://www.gov.uk/plug-in-car-van-grants>.

For cars, the grant covers 35% of the purchase price (including VAT and delivery fees), up to a maximum of £2,500 provided the vehicles:

- cost less than £35,000;
- have CO2 emissions of less than 50g/km and be able to travel at least 112km (70 miles) without any emissions at all.

Under the PIVG scheme, consumers pay the discounted price automatically, and do not have to go through a separate application process. Only dealers and manufacturers need to access the portal directly to apply for the grants available.

Home charging points

A second scheme, the Electric Vehicle Homecharge Scheme (EVHS), currently provides a grant towards the cost of installing electric vehicle smart chargepoints at domestic properties across the UK.

Under this scheme, up to 75% of the cost of installing these chargepoints is currently available in the UK, capped at £350.

However, from April 2022, the EVHS will:

- no longer be available to homeowners (including people with mortgages) who live in single-unit properties such as bungalows, detached, semi-detached or terraced housing;
- remain open to homeowners who live in flats and people living in rental accommodation (flats and single-use properties).

According to the government, to remain eligible for this grant, orders placed prior to and including 1st February 2022 will still qualify provided that:

- installations in single-unit properties are completed by 31 March 2022; and
- a claim is submitted to the Driver and Vehicle Licensing Agency by 30 April 2022.

Scottish EST and Commercial Grants will still remain in place.

<https://www.gov.uk/government/collections/government-grants-for-low-emission-vehicles>

Allowable accommodation costs

Summary – The taxpayer was allowed to claim a percentage of accommodation costs incurred, to be calculated by reference to the actual duties performed at the accommodation.

Jayamth Kunjur was an experienced, qualified dental surgeon. He lived in Southampton with his wife, a teacher, and his children who were at school there.

He wanted to become a maxillofacial surgeon and in 2012 accepted the only available training position, which was at St George's Hospital, South London. It was a four-year contract. He initially travelled by car from Southampton, leaving home at 5.30 am and returning home at 11pm but within a week, realised that this was not sustainable. He was on-call for two nights each week, but not necessarily the same two nights each week, and also one weekend in six. When on-call, to be able to deal with emergencies, he was required to have accommodation within 30 minutes of the hospital. He was also 'informally on-call' for any maxillofacial patients needing assistance during the night and indeed, this occurred most nights.

He rented accommodation close by, staying there during the week as well as the one weekend in six that he was on-call. He had a telephone and broadband contract so that he could perform his on-call duties, with the cheapest contract also including a Sky TV package. He used the broadband to get access to materials to do research and write articles he was required to undertake under his contract.

During his 4-year training contract, he incurred £39,000 of accommodation-related costs that he claimed were wholly, exclusively and necessarily incurred in the performance of duties.

HMRC denied the claims, arguing that his employment contract did not require him to live near the hospital, and so he did not incur the expenses wholly, exclusively, and necessarily in the performance of his duties. HMRC issued careless behaviour penalties totalling £7,600.

Jayamth Kunjur appealed.

Decision

The First Tier Tribunal considered whether the requirements of s.336 ITEPA 2003 had been satisfied, which states that 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.

The First Tier Tribunal confirmed that as a registered member of the General Medical Council, he was subject to the professional obligation to place the interests of his patients above his own. His formal on-call duties required him to be able to treat patients within 30 minutes of being called and so he was obliged to rent accommodation close to the hospital.

The Tribunal stated that the wholly and exclusively part of the test would only be met where there was no private benefit to the employee, other than a merely incidental benefit. The Tribunal confirmed that Jayamth Kunjur obtained no personal benefit from the accommodation at the weekends when he was not on formal on-call, as he returned to Southampton. Further, there was no private benefit from the accommodation when he was on formal on-call and actually in attendance at the hospital. Nor did he gain private benefit when he was on informal on-call and was actually called for the duration of the call or when he went to the hospital during informal on-call. However, the Tribunal concluded that there was no requirement for him to undertake research and prepare articles so close to the hospital and so he obtained private benefit from the use of the accommodation while preparing those articles.

It was the last part of the legislation that proved to be problematic - that the expenses must be incurred 'in the performance of the duties of the employment'.

The Tribunal concluded that Jayamth Kunjur did satisfy this part of the test when he was on informal on-call and gave advice over the telephone from the accommodation. At this time, both the accommodation and telephone were used in the performance of the duties for the duration of the calls. However, when he was on formal on-call and present at the hospital, the accommodation was not being used in the performance of the employment. They stated that being present at the accommodation waiting for a call was not the performance of the duties.

Overall, the Tribunal stated that only the proportion of the expenditure that satisfied all three aspects of the test within s.336 ITEPA 2003 was eligible for relief and that this proportion must be determined by reference to the amount of time he spent giving advice from the accommodation while on informal and formal on-call. Only a small proportion of the expenses were capable of satisfying the requirements.

In concluding the Tribunal stated that they allowed the appeal in respect of the percentage of the accommodation costs relating to the actual duties performed at those premises and requested the parties to agree the exact proportion involved.

The Tribunal reduced the related penalties to nil. The Tribunal stated that the statutory test was a particularly difficult one that is counter intuitive. Jayamth Kunjur was entitled to rely on his adviser's advice and was not obliged to check that advice.

Jayamth Kunjur v HMRC (TC08296)

Employments not aggregated

Summary – Two employments should not be aggregated for National Insurance purposes and so the taxpayer was not entitled to claim employment and support allowance.

South-West Ambulance Services NHS Trust (SWAST) used to provide both ambulance services dealing with emergencies and patient transport services dealing with non-emergencies. Management of the two services was separate even though the employees were all paid by SWAST. The services were always invoiced separately.

Following a new tender, in 2013 the patient transport services contract was awarded to an independent private company, NSL Ltd.

SWAST and NSL operated independently of each other from separate premises and had no board members in common. They did not share any vehicles or equipment and each company was responsible for their own maintenance and upkeep. SWAST did not provide services to NSL, and vice versa.

Previously a driver for SWAST providing both services, Martin Long was subsequently employed by both companies. During a working day, he could work for both employers, taking a patient to hospital under his SWAST contract and then later collecting that same patient under his NSL job. He was believed to be the only worker employed in this way.

In 2016, due to bad health, he worked reduced hours. He claimed employment and support allowance which the Department of Work and Pensions rejected, stating in a letter that he had not paid enough NICs on his earnings in 2013/2014 and 2014/2015 to make them qualifying years to receive such payments.

Martin Long argued that the NIC aggregation rules, normally used to prevent the artificial splitting of two employments, should be applied in his case as he was undertaking a single job. More NIC should have been deducted.

However, HMRC advised that the combined earnings from separate employments could not be used in this case to calculate weekly earnings for NIC purposes as he was working for two separate organisations, doing two separate jobs. His income had not reached the Lower Earnings Limit and that his contributions paid were correct. No NICs were paid on his earnings from NSL and only £27 NICs were paid on his earnings from SWAST.

Martin Long appealed.

Decision

The Tribunal stated that for earnings to be aggregated, SWAST and NSL must have carried on business in association with each other. Even though Martin Long did work for both companies during the same day, this was not enough to establish a business association between the two companies.

The Tribunal did not accept Martin Long's argument that SWAST and NSL were 'emanations of the state carrying on business in partnership'. They were two separate companies: SWAST being an NHS trust and NSL a private company. It did not matter that the ultimate funding for the contracts came from the same government department.

The Tribunal concluded that the companies operated completely independently from each other and the appeal was dismissed.

Martin Joseph Long v HMRC (TC08272)

Wrong form but relief allowed

Summary - It was clear from the company's communications with HMRC that it had intended to submit form SEIS1. Submission of EIS1 was not an acceptable reason for HMRC to deny SEIS relief on qualifying shares.

Fashion on the Block Limited was a fashion technology start-up company that wanted to raise funds by issuing shares that qualified for relief for its investors under the seed enterprise investment scheme (SEIS).

The company applied for Advance Assurance from HMRC, with the covering email headed 'Application for SEIS'. HMRC granted the Advance Assurance by letter dated 2 May 2019 stating that they would be able to authorise the company to issue compliance certificates for the SEIS and Enterprise Investment Scheme (EIS). The letter explained that once the shares had been issued, the company must complete and send a compliance statement to HMRC.

Having issued the shares and raised £150,000 from UK investors, the company's advisors submitted the required compliance statement but unfortunately used form EIS1 rather than SEIS1. However, the covering letter stated, "Please find enclosed an SEIS1 form."

When HMRC replied confirming that the company could issue certificates to investors claiming EIS relief, the advisor realised their mistake and immediately contacted HMRC by email, drawing attention to the mistake and requesting authority to issue SEIS certificates instead. HMRC refused on the grounds that because a form EIS1 had been submitted and shares issued, an investment had already been made under the EIS so that the company could not qualify under the SEIS. Consequently, the investors were adversely affected as SEIS income tax relief is given at 50% rather than the 30% that applies for EIS.

The company appealed.

Decision

The First Tier Tribunal highlighted that in order to authorise a company to issue SEIS certificates, HMRC's requirements are substantively the same as for EIS certificates.

The Tribunal considered the Upper Tribunal decision in *X-Wind Power Ltd v HMRC* where it was found that 'there is no provision in the legislation for the withdrawal, setting aside, replacement or revocation of a ITA 2007 s 205 [EIS] compliance statement'. However, the Tribunal concluded that there was no evidence in this case that considered what should happen where a company submits an EIS form in error.

HMRC had taken a literal interpretation of the conditions contained within the legislation but the Tribunal found that the legislation should have been applied purposively. With the exception of the incorrect form having been used, everything else submitted by the company made reference to the SEIS and it was clear that this was the relief that the company had intended to apply for. There had been no prior EIS investment and so the conditions needed for SEIS relief to apply had been satisfied.

Alternatively, the Tribunal considered the equitable remedy of rectification. In giving the information and declarations, the company believed it was providing what was required by SEIS1. The Tribunal found that the equitable remedy of rectification would be available to Fashion On The Block Limited, with the form provided by the company being treated as if it had been rectified to reflect the information and declarations in form SEIS1.

The appeal was allowed.

Lack of a bath, shower or hand basin

Summary – The purchase of a property with a self-contained annex did not qualify for Multiple Dwellings relief as it lacked suitable washing facilities.

Simon Ogborn bought a property on 1 November 2017 and filed his SDLT return two days later, stating that SDLT was payable of £57,850.

Just over a year later, Simon Ogborn claimed a repayment of close to £20,000 arguing that he was eligible for Multiple Dwellings Relief.

HMRC refunded the difference but later, following an enquiry, issued a closure notice denying the relief.

Simon Ogborn appealed arguing that the annex was a self-contained annex, with its own entrance as well as living and sleeping accommodation, kitchen, washing and toilet facilities.

Decision

The First Tier Tribunal accepted that there were separate entrances to the main house and annex.

However, relief was denied due to the lack of appropriate washing and personal hygiene facilities as the annex had no bath, shower or hand basin. The Tribunal found that a tap, hot water and a sink in the utility room was 'not practical, private or indeed hygienic'.

Simon Ogborn's appeal was dismissed.

Simon Ogborn v HMRC (TC08263)