



TC03679

Appeal number: TC/2011/04793

Income Tax - Deduction of travel expenses and living expenses under ITEPA - employee working on various different main sites for periods of less than 2 years - Appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CRAIG WRAGG

Appellant

-and-

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS**

Respondents

**TRIBUNAL: JUDGE HOWARD M. NOWLAN
MRS CAROL DEBELL**

Sitting in public at 45 Bedford Square in London on 8 May 2014

Adam Routledge of Controlled Tax Management Limited on behalf of the Appellant

Ian Birtles of HMRC on behalf of the Respondents

DECISION

1. This emerged to be a very simple Appeal. The reason for this was that, while this did not emerge until late in the hearing, it eventually became clear that HMRC had made the additional assessments to tax on the Appellant only because information furnished to HMRC by the Appellant's previous representative had been materially wrong. Once this emerged, and once, during the lunch adjournment, the Appellant managed to obtain clear confirmation of the facts that he had consistently claimed during the hearing were as he represented, HMRC's representative immediately conceded that the Appeal should be allowed. Indeed it was accepted that had the true facts been known to HMRC at an earlier date, the assessments would not have been made and the Appeal would have been unnecessary.

2. The Appeal related to three additional assessments to tax on the Appellant for the following tax years and in the following amounts:

- 2006/7 Further tax due of £3,614.00
- 2007/8 Further tax due of £5,229,20
- 2008/9 Further tax due of £5,304.00

3. The Appellant worked as an employee for various firms specialising in digging tunnels. The detail is irrelevant but we understood that he was experienced as both a ring builder and a pressure grouter. As we understood those terms, the ring builder actually worked inside the tunnel boring machine, putting the pre-formed concrete linings into place in the section of tunnel just carved out by the boring machine, whilst the pressure grouter sprayed molten concrete or gunite into the voids between the fixed concrete sections just located and the wider dimension hole that the boring machine had cut. It sounded to be highly-specialist work, and dangerous work, not least when the tunnel boring machine (with the Appellant in it) slid down into an underground lake in a project near Croydon and it later took 6 months to retrieve it.

4. The Appellant lived at different times either in Liverpool or elsewhere in Lancashire. In periods relevant to this Appeal he had worked on tunnels in Liverpool (for a very short period); he then worked from August 2006 to August 2007 on a major tunnel system in the Stratford area, all geared to electrical installations and the Olympic games; he then worked on a 12 ½ kilometre tunnel between two electrical generating stations in the Croydon area for 1 year and 10 or 11 months, and after that (and in part for periods after the ones we are concerned with) he worked on the Hindhead tunnel that drives the A3 road through the hillside.

5. The Appellant's weekly routine was accordingly that once he was working in the South East, on Sunday evenings he would travel by train from Liverpool to London and then go to his digs. The digs varied according to whether he was working on the first project around Stratford, the second near Croydon or the third near Hindhead. He would then go to and from his place of work during the week, returning to Liverpool and his partner and young child on Friday evenings.

6. The Appellant's first representative had rather ill-served him. For one thing everyone, including the Appellant and HMRC's representative, had appeared for a Tribunal hearing on an earlier date, but the Appellant's representative had simply not appeared and had given no prior notice that he would not appear. Far more significantly as it turned out, the same

representative had confused the facts and suggested that whilst the Appellant in fact spent approximately a year on the Stratford project, and then a year and 10 or 11 months working on the Croydon project, he had rolled those two together, and thus indicated that the Appellant had worked for well in excess of two years on the same project.

7. The significance of the period of time spent on each separate project is that if the projects subsist for less than a two-year period, HMRC accept, in accordance with the provisions in section 338 Income Tax (Earnings and Pension) Act 2003 (“ITEPA”), that each relevant place of work will not rank as “a permanent workplace” so that if the employee is obliged to incur travel expenses and those expenses are attributable “to the employee’s necessary attendance at any place in the performance of the duties the employment” the travel expenses are all allowable. So too, implicitly, are the accommodation costs. This treatment is undermined if the period of work at the particular place subsists for more than two years, and thus ranks as a “permanent workplace”.

8. We consider that no particular significance relates to the following points, but we do accept the Appellant’s evidence that the pattern of work in his business was that nobody had security of continuous employment, and all accepted that they might be laid off at short notice. The Appellant also worked at various sites, some distance apart, when working at both the Stratford projects and the Croydon one. Furthermore when working at both he did periodically work at completely different sites, but mainly on an occasional weekend basis.

9. Whilst the above points further supported the transient nature of the Appellant’s employment, the key point is that the Stratford and Croydon projects were completely unconnected, as of course was the A3 project, and his period of work at any one place in the period under review never exceeded the two-year period.

10. As agreed by the Respondents, this Appeal is thus allowed, and the assessments indicated in paragraph 2 above should be vacated.

11. We would like to applaud the Respondents’ representative for immediately accepting that the Appellant’s case was transformed when the correct facts emerged. We also confirm of course that no fault of any sort attaches to HMRC, since the error appeared entirely to be that of the previous representative.

Right of Appeal

12. 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.

HOWARD M. NOWLAN

TRIBUNAL JUDGE

RELEASE DATE: 3 June 2014