

Healthcare Matters

For Private Consultants

Where is a Hospital Consultant's place of business?

It is common knowledge that for both employees and the self-employed the costs of travel from home to the place of business or work are not a deductible expense for taxation purposes. However, travelling from your place of work to see patients, suppliers and others, where the purpose relates to your business is normally a deductible expense.

HM Revenue & Customs are focusing on this particular issue in connection with specific occupations. Immediate targets appear to be self-employed hospital consultants and barristers. The issue that they are examining is what location is claimed by the taxpayer as being their business base. In particular, they are looking to attack situations where a consultant claims that his business is based at his home and is then claiming the cost of travel to the various hospitals and clinics at which he consults. Examining this can be a difficult matter and some guidance is provided by a case that went before the First Tier Tribunal in December 2010. Whilst this case did not relate to a hospital consultant, the principles that it considered are relevant.



In this case, the taxpayer, Mr Paul Mellor, was a self-employed electrician. He claimed that his business was based at his home address and that travelling to various construction sites in and around London were journeys to and from his place of business to customers. He claimed a deduction for the expenses for taxation purposes. Whilst the Judge came down in favour of Mr Mellor in this case, it is interesting to note some of the matters that were discussed.

In particular:-

- the business address appearing on any contracts with customers;
- where he kept his accounting records;
- his correspondence address for the business; and
- the fact that he kept his work tools at home and took them with him every day and so on.

The documentary evidence in this case was a little thin, for example, the taxpayer was unable to produce any contract with customers that had been signed evidencing his place of business to be at home. Nonetheless, the Tribunal decided in his favour.

Whilst the Revenue still have time to appeal the above decision, and may do so, it is not inconsistent with an early case decision of Horton -v- Young. Mr. Horton was a bricklayer based in Southampton who worked for building companies on sites within a 55 mile radius of his home. This case was slightly different in that he engaged sub-contract bricklayers who worked for him and, therefore, this gave the impression of a more complex business structure. Again, the Court decided in favour of the taxpayer.

By contrast, there is the case of Newsom -v- Robertson. This case involved a barrister who had Chambers in London but claimed that his home in Bedfordshire was his place of business. The difficulty in his case was that although he was able to demonstrate that he had an office at home and undertook some work there, he undoubtedly had an office in his Chambers which had the usual secretarial support, a tax library to refer to and at which he no doubt saw all his clients. In that case, the Court found in favour of the Revenue and decided that his home was not his place of business.

The Revenue's view is that where the taxpayer owns or rents separate business premises away from their residence there is normally little doubt that these are the base of the business. However, where there are no separate premises away from the home, the Revenue say they accept that travelling to see clients is a business expense. The examples they give are a doctor whose only surgery or an accountant whose only office is at their residence.

They draw a distinction between a situation where there are a large number of clients or patients and one where an individual works at one or a very small number of different sites during the year. In such a case it may be that the premises where the taxpayer carries on the business are, in fact, the business base. If this is so, the cost of travelling between the taxpayer's home and the business base should be disallowed.

So how do these cases apply to hospital consultants? Well, the key point is to ensure, where possible, that you are set up in a similar manner to Mr Mellor and Mr Horton rather than the barrister, Mr Newsom.

If a hospital consultant wishes to demonstrate that his place of business is at his home address then there are a number of steps that he can take to support that position.

These include:-

1. Having an office/study at home, equipped with the usual office facilities including computer and preferably a separate business telephone line.
2. Ensuring that key documents show his home to be his place of business. These could include:-
 - Public liability/Professional Indemnity Insurance;
 - Registration with various medical bodies and similar; and
 - Business cards.
3. Ensuring that all business correspondence and any contracts or invoices are showing the home address as the business address.
4. Maintaining his business accounting records at his home address.
5. Keeping a medical library at home and ensuring that any professional medical journals are delivered to his home address. It is accepted that many of these might be in digital form so that they can be accessed anywhere.
6. Having secretarial support at home.
7. Writing some reports and letters at home.

What would be a real 'decider' in favour of the home being a business base is if the consultant conducted meetings and, in particular, consultations at his home address.

This might be unusual but this would be a factor that the Revenue would find difficult to argue against as evidence.

However, if like the barrister, the consultant has an office at one or more hospitals then that does give the Revenue an opportunity to argue that there is an alternative base which should be treated as where the business operates from. A consulting room could be argued to be available simply for the purposes of consultant/patient privacy, so this should not be a deciding factor. However, if more than that is available, for example, an office at the hospital in which reports are written and secretarial support is provided, this would strengthen any Revenue argument.

Following the guidance in the Revenue's manuals, the greater the number of locations at which the consultant provides his or her services the stronger the position. The expenses may be more difficult to justify if, for example, the consultant only works at one hospital.

Establishing the location of a self employed consultant's business base is not straight forward but is extremely important. Some consultants might find it easier to establish clearly that their business is based at home than others. Whatever the circumstances, if it is to be argued that a consultant has a business base at home, then the more evidence that is available in documentary form to support that, the better.



One final point to beware of is that if a consultant has an office at home, and preferably a consulting room as well, then for capital gains tax purposes, it is important to establish that these rooms are not used exclusively for business purposes.

To do so would put at risk the capital gains tax main residence exemption in respect of that part of the property. Accordingly, any office at home should be available for use by the family generally in the evenings and at the weekends.

This is a complex issue and if you would like to discuss the matter further, please contact: Mike Hayes at mhayes@kingstonsmith.co.uk or your usual Kingston Smith contact.

Healthcare funding – Private Consultants

In the current financial climate one shouldn't be reliant upon an existing banking relationship to provide market-competitive and flexible lending terms. Taking a step back to shop around for the 'best deal' could save you money and attract less onerous terms.

Recognising the importance of providing flexibility by tailoring products, many of the major banks have recruited teams of specialist managers to unsettle existing complacent banking relationships. Additionally, off the High Street, there are niche lenders specialising in the healthcare sector, giving far greater choice and allowing for all valid borrowing needs to be sympathetically considered.

So, if you are thinking about buying, improving or developing your practice premises, buying into an existing practice, buying out a retiring partner, expanding your practice or you simply wish to refinance existing borrowings, now is an ideal time to do so with renewed enthusiasm in the market.

Accepting that the serviceability of any debt is key, secured funding to 100% is available and capital holidays can be negotiated with a repayment profile to suit.

To find out more about possible funding options, contact Nicola Hinkley on 020 8605 1213 or email nhinkley@kingstonsmith.co.uk



Contact us

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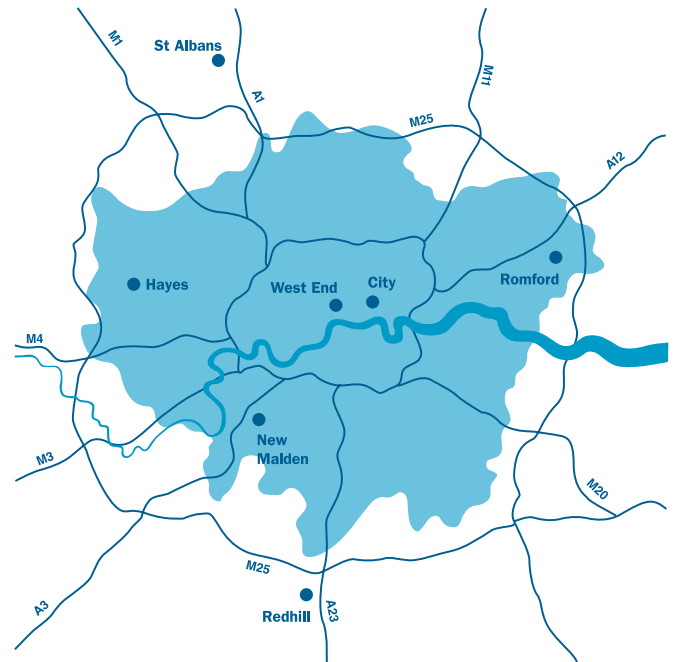
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