

A level playing field?

At a time when Government policy promotes equal opportunities for disabled people, Robin Williamson and Janet Tish, of the Low Incomes Tax Reform Group, look at how disabled employees fare under the tax regime for employment-related expenses as compared with their non-disabled colleagues. Just how level is the playing field?

When the Low Incomes Tax Reform Group reported on how the tax system deals with disability in December 2003¹, we noted several areas where disabled people appeared not to fare as well as their non-disabled counterparts. In this article we examine one such area: the costs incurred by disabled employees to put themselves in a position to work. To what extent can those be offset against tax? Or if a sympathetic employer decides to meet all or part of those costs, to what extent can the employee claim relief from tax on the benefit? And how does that compare with the rules for employees without disabilities?

As anyone working in payroll is acutely aware, the tax deductions for expenses incurred by employees are highly restrictive. The general rule is that to be deductible employment expenses must be 'wholly, exclusively and necessarily' in the performance of the duties of the employment². In particular, the word 'necessarily' has been held to be an objective test applicable to all people carrying out those duties, and denoting that the duties 'cannot be performed without incurring the particular outlay'³.

As a rule, people with disabilities need to spend more money than those without disabilities in performing the same tasks. The question is – are the extra disability-related costs of carrying out an employment allowable against tax?

The answer is that there is no blanket exemption or relief for the extra costs involved in being disabled. Instead, relief is given piecemeal for certain costs and not others.

The main exemption

The main relief for costs incurred by disabled employees is contained in the Income Tax (Benefits in Kind) (Exemption for Employment Costs Resulting from Disability) Regulations 2002⁴. These give an exemption from tax on earnings for any employment-related benefit provided to a disabled employee, the purpose of which is to enable that employee to do their job, provided that:

- the benefit consists in 'the provision of a hearing aid or other equipment, services or facilities'; and

¹ See *Disability in Tax and Related Benefits: The Case for a Modern and Coherent Approach*: <http://www.litr.org.uk/reports/reports.cfm?id=72>

² ITEPA 2003, s 336(1)

³ *Lomax v Newton* 34 TC 558.

⁴ SI 2002/1596

- the benefit is provided under the Government's Access to Work programme⁵, or any other statutory provision or arrangements. This applies whether or not the employer has the legal duty to provide the benefit.

The benefit or facility can be used privately as well as at work without incurring a tax charge – see the official Manual at SE21846.

Examples of the kind of costs met by the Access to Work programme include:

- a communicator at a job interview for people who have a hearing impairment;
- a reader at work for someone with a visual impairment;
- a support worker for practical help at work or in getting to work;
- adaptations to a vehicle, or help towards taxi fares or other transport costs if someone cannot use public transport to get to work because of their disability;
- equipment (or alterations to existing equipment) necessary because of an individual's disability;
- alterations to premises or a working environment necessary because of a person's disability.

So these regulations enable many, but not all, disability-related costs to be relieved from tax. To take one example: a maximum relocation allowance of £8,000 can, if certain conditions are met, be paid tax-free to any employee who incurs costs in moving to a new job location. Disabled employees may well have greater costs if their home is adapted than a non-disabled employee – yet there is no enhanced allowance for disabled employees on a job-related move.

Home to work travel

There is an income tax exemption on the provision of the benefit of, or any contribution towards, the cost of disabled employees' journeys from home to work, provided the journeys are 'substantially ordinary commuting'⁶.

This rule started life as an extra-statutory concession, being converted into a statutory relief in 2003. Until 2000, it was only available where the employee was 'severely and permanently disabled'. The enactment of the relief in ITEPA 2003 has brought the definition of 'disabled employee' into line with that in the Disability Discrimination Acts (DDA): 'an employee who has a physical or mental impairment with a substantial and adverse long-term effect on the employee's ability to carry out normal day-to-day activities'.

⁵ see <http://www.employers-forum.co.uk/www/guests/info/factsheets/sheet1.htm> for background information on this programme.

⁶ ITEPA 2003, s 246 (formerly extra-statutory concession A59)

However the HMRC Manual (SE10080) has not been updated for ITEPA 2003 and refers still to the concession, albeit with the amended definition. SE10081 also indicates the IR staff should note that the concession is still directed primarily to those afflicted by a substantial and long-term condition. It would not therefore be of use to someone who has a short term affliction; but the directions in SE10081 are nonetheless in line with the DDA.

Note also that this exemption only applies where the employer or a third party meets the cost. Disabled employees cannot claim a deduction for costs they bear themselves.

Where employees use their own, adapted, car for travel then they are entitled to claim under the Authorised Mileage rates for re-imbusement of 40p per business mile for the first 10,000 miles and 25p thereafter. One assumes, under the terms of ITEPA 2003, s 246, that journeys between home and work would qualify for this allowance; but there is no mention of this in either leaflet IR124 which explains Approved Mileage Allowance Payments, or the Manuals.

There is a detailed account of the exemption under section 246 in the official Revenue booklet 490 entitled *Employee Travel. A tax and NICs guide for employers*.

Adaptations to cars

Special 'equipment designed to enable a disabled person to use a company car' is exempt from tax on the benefit arising when car accessories are provided by an employer⁷.

The expression 'equipment to enable a disabled person to use a car' is quite closely defined, by contrast with the wide definition used for home to work travel (above). The first part of the definition requires the equipment to be 'designed solely for use by a chronically sick or disabled person', but does not go on to define 'chronically sick or disabled'. The second part of the definition requires the equipment to be 'made available for use with the car because it enables a disabled employee to use the car in spite of the disability'; a 'disabled employee' is one who holds a disabled person's badge, and 'the disability' is the disability entitling the disabled employee to hold the disabled person's badge.

Where definitions of disability and cognate expressions are closely defined, disabled people who do not fulfil the strict criteria laid down are apt to be excluded from the allowance or exemption on offer, thus making uneven the playing field not only as between disabled and non-disabled, but between different groups of disabled, people.

Provision of cars and car fuel

⁷ ITEPA 2003, s 125(2)(c) and 172

No tax charge arises on the provision of a car, or fuel, or the payment or reimbursement of expenses incurred in connection with it, to a disabled employee, in the following circumstances:

- the car is specially adapted for the employee's use, or fitted with automatic transmission because the employee cannot use a manual gearbox, and
- the employee uses the car only for business travel or for ordinary commuting between home and work.

At face value this exemption from tax and NI, including Class 1A for the employer, for cars and fuel provided to a disabled employee looks generous. However, the condition that no other non-business use of the car is allowed is a major drawback, especially as home to work is classed as business use here. Disabled employees are unlikely to want an adapted company car if they are not able to use it themselves. Certainly they are unlikely to get grants towards the cost of another vehicle if they already have the use of one.

So assuming there is no alternative to a car benefit, the fuel charge can be mitigated by the disabled employee paying for all private fuel other than the home to work and training courses already counted as business miles (SE23600).

A further concession in calculating the car benefit charge allows a CO₂ emission to be calculated by reference to a manual transmission where an automatic one is needed by the disabled driver⁸. The previous benefit, under which disabled people could also count in their home to work mileage in computing the %age reduction in the charge due to annual mileage, has now been lost.

Accompanied overseas business trips

There is an extra-statutory concession for directors or higher paid employees who, if they have 'precarious health', may take their wives with them on an overseas business trip at the expense of their employer without a charge to income tax⁹. Note that this concession is not replicated for business women in precarious health who take their husbands abroad with them on business trips, nor for unmarried couples, nor for civil partners nor for same-sex couples living together as civil partners.

Termination Payments

There is an exception from the charge on termination payments made to an employee 'on account of injury to, or disability of, the employee'¹⁰. Because 'disability' follows 'injury' in the legislation, the Inland Revenue (as was) originally interpreted it as being qualified by 'injury', thus including only

⁸ ITEPA 2003, s 138

⁹ ESC A4(d)

¹⁰ ITEPA 2003, s 406

conditions brought on by a sudden affliction, such as a heart attack, not a gradual decline owing to chronic illness. They abandoned this view after losing a case before the Special Commissioners, and their revised view was published as Statement of Practice 10/81. It is reflected in the Manual at SE13610 – SE13630.

Concluding remarks

This article has tried to show that while there are reliefs and exemptions in the tax system that reflect the extra costs incurred by disabled employees in putting themselves in a position to work, such reliefs and exemptions are on the whole quite narrowly targeted. There is no overall tax deduction for such expenses, nor is there a general exemption from charge where an employer discharges the costs on the employee's behalf or provides the employee with a benefit to help with their disability-related costs.

The most comprehensive relief available is that set out in the Exemption for Employment Costs Resulting from Disability Regulations (see above). Otherwise, as we have seen, there are specific exemptions or deductions relating to home to work travel, cars and fuel, adaptations to cars, and termination payments which seem to have accumulated piecemeal over time.

In conclusion, many disabled employees are at a disadvantage in having to bear work-related costs over and above those borne by their non-disabled colleagues. Given the Government's policy of promoting equal opportunities for disabled people, it is surprising that not more is done through the tax system to correct the imbalance.

ENDS

Robin Williamson and Janet Tish are both members of the Low Incomes Tax Reform Group (LITRG), an independent policy group supported by the Chartered Institute of Taxation. The Group aims to help people on low incomes to cope with their tax and campaigns for a more friendly tax and tax-benefit system for unrepresented tax payers and credit claimants.

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