



TC01392

Appeal number TC/2010/1377

INCOME TAX – EXPENSES IN CONNECTION WITH EMPLOYMENT –
Appellant claimed deductions of £4,023 & £17,412 for 2003/04 and 2006/07 against his employment earnings – No evidence substantiating that the majority of the earnings was wholly necessarily and exclusively incurred in the course of the Appellant’s employment – Appeal dismissed – discovery assessment for 2003/04 and amendment to self assessment 2006/07 confirmed.

FIRST-TIER TRIBUNAL

TAX

MR MANUEL P GONCALVES

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: MICHAEL TILDESLEY OBE (TRIBUNAL JUDGE)
RAYNA DEAN FCA**

**Sitting in public at 4th Floor, City Exchange, 11 Albion Street, Leeds, LS1 5ES on 27
July 2011**

The Appellant did not appear

Tony Burke, Tribunal Case Worker, for HMRC

DECISION

The Appeal

1. The Appellant appealed against an amendment to self assessment for 2006/07 dated 23 March 2009 and a discovery assessment for 2003/04 also dated 23 March 2009. The amendment to the self assessment resulted in an increase in tax due in the sum of £3,291.04 which reduced the tax repayment for 2006/07 to £1,746.53. The discovery assessment was in the sum of £849.64.
2. The issue in dispute was the amount allowed in expenses against the Appellant's employed income for the relevant tax years.
3. The Appellant did not attend the hearing on 27 July 2011. The Appellant's representative contacted the Tribunal to advise that no-one would be appearing for the Appellant. The Tribunal understood that the Appellant was in Switzerland. This was the third occasion on which the Appeal had been listed. The Tribunal had adjourned the two previous hearings at the Appellant's request. Given these circumstances HMRC applied for the Appeal to proceed in the Appellant's absence. The Tribunal granted the application. The Tribunal was satisfied that the Appellant had been duly notified of the hearing and that it was in the interests of justice to proceed with the hearing.

The Law

4. The general rules for deduction of expenses from earnings are found in sections 328 and 336 of Income Tax (Earnings and Pensions) Act 2003 (ITEPA)
5. Section 328 provides so far as is relevant:
- “(1) The general rule is that deductions under this Part are allowed—
(a) from any earnings from the employment in question, and
(b) not from earnings from any other employment”.
6. Section 336 provides so far as is relevant:
- “(1) 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”.

Facts Found

Amendment to Self Assessment 2006/07

7. The Appellant's self assessment return for 2006/07 showed that he was a director of Diplockheath Limited throughout the tax year and employed by AMEC Group Ltd as a Stores Co-ordinator from 6 June 2006 to 23 November 2006. The return declared gross earnings of £18,989.44 (£13,952 net of tax) and expenses of £17,412 with his employment with AMEC Group Ltd, and gross earnings of £2,835 and no expenses in

respect of his directorship with Diplockheath Limited. Thus the expenses net of capital allowances claimed by the Appellant in respect of his employment with AMEC Group Limited exceeded his net available income, which in the Tribunal's view cast considerable doubt on the authenticity of the claim for expenses.

5 8. The Appellant's representative submitted expenses sheets in support of the expenses deduction. These covered a period starting before 6 June 2006, where his tax return shows him as employed by Diplockheath but claiming no expense deductions, and a period after 23 November 2006 showing expenses for work done for Brush Traction, AMEC and Excel. The Appellant's tax returns did not show any
10 employment income from these periods.

9. The Tribunal deals in turn with each aspect of the Appellant's claim for expenses:

(1) **Travel & subsistence: £5,481** which consisted of accommodation: 40 weeks x £80 said by the Appellant to equal £3,840; meals £415; and motor travel at 40p per mile totalling £1,226. The majority of the Appellant's travel claims
15 related to journeys which were completed outside the period of his employment with AMEC Group Limited. There were 20 claims during his employment with AMEC Group Limited (6 June to 23 November 2006), 19 of these related to journeys from Sheffield to Loughborough with one from Sheffield to Aberdeen. The Tribunal was satisfied that the journey from Sheffield to Loughborough was
20 from home to place of work which meant that the expenses incurred on such journeys were not eligible as taxable expenses. The Tribunal agrees with HMRC's decision to allow travel expenses for the trip to Aberdeen which was for a training course. The amount allowed under this head was 420 miles x 40pence = £168

25 (2) **Subscriptions/Fees: £1,450** which consisted of £1,200 for AMEC-Agency fees and £250 for Seagrave Accounting. The Appellant supplied no explanation for why these expenses were incurred in the course of his employment. The Tribunal disallows this claim.

30 (3) **Motor Expenses: £3,238** the approved mileage rate for travel expenses in connection with employment includes an element for motoring expenses. The Tribunal disallows this claim.

35 (4) **Telephone: £2,472:** the Appellant's supporting documentation showed expenditure of £1,216 including VAT, of which only £581 (pre VAT) related to telephone calls. Also the telephone bills submitted were for the whole of the tax year, 2006/07. The Tribunal considers HMRC's adjustment of telephone expenses to £339 a reasonable reflection of the Appellant's telephone's expenses incurred in the course of his employment.

40 (5) **Bank Charges: £323,** the Appellant supplied no explanation for why these expenses were incurred in the course of his employment. The Tribunal disallows this claim.

(6) **Postage, stationery etc: £143,** the Appellant supplied no explanation for why these expenses were incurred in the course of his employment. The Tribunal disallows this claim.

5 (7) **Tools (£150) and Work-wear (£150):** the Appellant had no invoices to substantiate the claim for tools and work-wear. The Appellant argued that they were nominal amounts which reflected the nature of his employment as a stores co-ordinator. The Tribunal agrees with HMRC's decision to allow £150 under this claim.

(8) **Loan Interest: £691,** the Appellant supplied no explanation for why these expenses were incurred in the course of his employment. The Tribunal disallows this claim.

10 (9) **Sundry: £814,** which consisted of £133 to Rotherham Magistrates, £43.16 Wm Morrison – petrol, £211.64 Tesco Stores, £140.56 Boots/Superdrug, £25.59 Wicks, and £260 Sundry. The Appellant supplied no explanation for why these expenses were incurred in the course of his employment. The Tribunal disallows this claim.

15 (10) **Capital Allowances: £2,500,** the Appellant supplied no explanation for why these expenses were incurred in the course of his employment. Moreover the approved mileage rate for travel expenses in connection with employment includes an element for the capital costs of running a car. The Tribunal disallows this claim.

20 10. The Tribunal decides that the Appellant incurred expenses of £657 in the course of his employment with AMEC Group Ltd as a Stores Co-ordinator from 6 June 2006 to 23 November 2006. The Tribunal disallows the balance of £16,755 (£17,412 - £657). The percentage of deductions allowed was four per cent of the total claim.

Discovery Assessment 2003/04

25 11. The Appellant's 2003/04 tax return showed that he had gross earnings of £19,021.06 from his employment with First South Yorkshire Engineering against which the Appellant claimed deductions of £2,535 (travel and subsistence costs), £250 (professional fees), and £1,238 (other expenses). The Appellant in his employment return supplied no additional information on the deductions.

30 12. The Tribunal was satisfied that HMRC met the legal requirements for making a discovery assessment. HMRC decided to examine the Appellant's previous tax returns following its enquiry into the Appellant's 2006/07 return which showed that he had made incorrect claims in respect of expenses incurred in the course of his employment¹. The Tribunal finds that HMRC discovered that income had not been
35 assessed in the Appellant's 2003/04 return. Further HMRC could not have been reasonably expected on the basis of the information provided to it before the end of the enquiry period for 2003/04 to have been aware of the correct status of the deductions claimed.

¹ His 2004/05 and 2007/08 tax returns did not include a claim for expense deductions against employment income.

13. The Appellant provided no information or vouchers to substantiate the declared expenses in connection with his employment with First South Yorkshire Engineering. In the absence of supporting information HMRC decided to allow four per cent of the value of the deductions claimed in the 2003/04 return. HMRC used the same percentage of four per cent which applied in respect of the deductions allowed in the 2006/07 return. The Tribunal agrees with the method adopted by HMRC. The Tribunal decides that £161 instead of £4,023 should be allowed for deductions against employment income in respect of the Appellant's 2003/04 tax return.

Decision

14. The issue in this Appeal was whether the Appellant's claims for expenses incurred in connection with his employment for the years 2003/04 and 2006/07 were allowable deductions.

15. Sections 328 and 336 ITEPA 2003 set down the general legal rules for deduction of expenses. Section 328 only allows deductions from any earnings from the employment in question and not from earnings from any other employment. Section 336 provides that deductions are permitted only if the employee is obliged to incur and pay it as holder of the employment, and the amount claimed is incurred wholly, exclusively and necessarily in the performance of his employment duties. The Appellant has the burden of proving on the balance of probabilities that his claim for expenses meet the legal requirements of sections 328 and 336.

16. The facts found in this Appeal showed that the Appellant failed to substantiate that his claims for expenses for 2003/04 and 2006/07 met the legal requirements except for amounts of £161 and £657 respectively for 2003/04 and 2006/07.

17. The Tribunal, therefore, dismisses the Appeal and confirms:

(1) The amendment to self assessment for 2006/07 which resulted in an increase in tax due in the sum of £3,291.04 and a reduction in the tax repayment for 2006/07 to £1,746.53.

(2) The discovery assessment for 2003/04 in the sum of £849.64.

18. 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.

Michael Uddsey

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TRIBUNAL JUDGE
RELEASE DATE: 11 August 2011

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