[2016] UKFTT 38 (TC)

TC04832

Appeal number: TC/2014/05339

Income tax - sections 336-342 Income Tax (Earnings and Pensions) Act 2003 whether locum nurse engaged by agency travelled to temporary or permanent workplaces - whether travelling, subsistence and training expenses deductible - no - whether HMRC amendments correct - yes - Appeal dismissed - amendments confirmed

FIRST-TIER TRIBUNAL
TAX CHAMBER

ANTHONY MARK KRISTIAN **Appellant**

- and -

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

TRIBUNAL: JUDGE MICHAEL CONNELL
MEMBER JACQUELINE DIXON

Sitting in public at Fox Court, Brook Street, London on 11 September 2015

Mr Liban Ahmed for the Appellant

Ms Bisi Sanu, Officer of HM Revenue and Customs, for the Respondents

DECISION

The Appeal

1. This is an appeal by Anthony Mark Kristian ("the Appellant") against the decision of the Respondents ("HMRC") dated 4 September 2014, to disallow, under s 28A(1) and (2) Taxes Management Act 1970 ("TMA 1970") travel, subsistence and training expenses claimed on his self-assessment tax returns against his employment income in respect of years ending 5 April 2008, 2009 and 2010.

2. The point at issue is whether expenses claimed by the Appellant in relation to travel, subsistence and training are deductible against employment income.

Evidence

3. The documentary evidence consisted of two bundles prepared by HMRC, containing the Appellant's self-assessment returns and tax calculations in respect of the years under appeal, copy correspondence between the Appellant's agents and HMRC, relevant legislation and case law. The Appellant provided a witness statement and also gave oral evidence to the Tribunal.

Background

4. The Appellant, who is a Nurse Practitioner and Prescriber, worked as a locum for Medacs Healthcare Plc ("Medacs"). Medacs is a NHS approved recruitment agency which provides long term and short term healthcare personnel, supplying into NHS Trusts, PCTs, local authorities, GP surgeries, the MOD, private hospitals and the private sector. The agency provides work assignments for locum doctors and other medically qualified individuals.

5. The Appellant was not obliged to accept any assignment offered. When he accepted an assignment, he operated as an agency worker employed and paid by Medacs. The contract of employment was not with the organisation offering the position. The Appellant would be offered a temporary engagement with Medacs for the period of an assignment. As such, he was subject to the employment agency regulations, (The Conduct of Employment Agencies and Employment Businesses Regulations 2003).

6. Although assignments were always temporary, the location where the work was actually carried out would be a permanent workplace for the duration of each engagement. The Appellant was paid an agreed rate of remuneration and also received mileage and expense payments from Medacs.

7. The Appellant says that he did not have an express contract with Medacs. He says that the first position which he accepted was only for "a couple of shifts and subsequent assignments were agreed on a verbal basis". In respect of each assignment, an implied contract would nonetheless have existed between the

Appellant and Medacs under the Supply of Goods and Services Act 1982, based on the course of dealings between the parties.

8. A labour agency supplying workers to a contractor is obliged to operate PAYE even though the contract between the agency and the worker may be a contract for services (s 44 Income Tax (Earnings and Pensions) Act 2003), ('ITEPA 2003'). Medacs were therefore obliged to deduct basic tax at source under the PAYE system. Occasionally the Appellant would work for the organisation offering the position directly on a self-employed basis, particularly if the assignment was likely to be of a longer duration. When that happened, the Appellant would submit yearly self-assessment tax returns in order to account for any further income tax due.

9. Medacs paid the Appellant mileage at a rate of £0.28 per mile. The Appellant, in his self-assessment returns, claimed the difference between the rate paid and HRMC's £0.40 per mile allowance.

10. On 15 November 2010, the Appellant submitted self-assessment tax returns for the years 2007-08, 2008-09 and 2009-10 which included claims for travelling from his home near Newark, Lincolnshire to his various places of work, accommodation costs, subsistence, and training expenses:

<u>2007-08</u>

i. From 3 August 2007 to 9 December 2007 (18 weeks) the Appellant's work placement was at the Police Divisional Headquarters in Blackpool. The weekly mileage for a round trip from his home to his place of work was 296 miles.

ii. From 14 January 2008 to 5 April 2008 (11 weeks) the Appellant's work placement was at the Royal Military Academy, Sandhurst, a weekly round trip was 316 miles.

iii. The Appellant's claim at 40p per mile totalled £3,521.60 less 23p per mile received from Medacs of £2,465.12 resulting in a claim for £1,056.48.

iv. The Appellant stayed overnight in Blackpool for 80 nights paying approximately £40 per night resulting in a claim for £3,200.

v. The Appellant stayed overnight in Sandhurst for 48 nights paying approximately £55 per night resulting in a claim for £2,640.

vi. The Appellant therefore claimed a total of £5,840 accommodation costs, plus £5 per night subsistence for 128 nights of £640.

<u>2008-09</u>

i. In 2008/09 the Appellant was assigned to various work placements travelling approximately 448 miles each week.

ii. The Appellant's claim at 40p per mile after deducting 23p per mile received from Medacs was approximately £3,680.

iii. He stayed overnight for 200 nights claiming a rounded figure of £55 per night for accommodation, i.e. £11,000, plus £1,000 for subsistence.

2009-10

i. In 2009-10 the Appellant was assigned to various work placements travelling approximately 340 miles weekly.

ii. The Appellant's claim at 40p per mile after deducting 23p per mile received from Medacs was approximately £3,005

iii. He stayed overnight for 112 nights claiming a rounded figure of £55 per night for accommodation, i.e. £6,160, plus £560 for subsistence.

11. The Appellant also claimed for:

i. Professional fees and subscriptions totalling £1,084, (subsequently withdrawn).
ii. Training costs of £1,430.
iii. Other expenses, shoes, socks and laundry £118.

12. On receipt of the Appellant's self-assessment tax returns, HMRC asked for the following further information:

- the Appellant's job title with Medacs and the nature of his duties
- the name and postcode of two workplaces in 2007-08
- the name and address of the establishments the Appellant stayed at during 2007-08 to 2009-10
- a letter from each establishment giving the dates the Appellant stayed and the amount paid.
- an explanation as to why the Appellant had not provided any expense records.

13. The Appellant was unable to provide his P60's, receipts for any of the claimed expenditure, or any other detailed information to support his expenses claims. He said that he had not retained any contemporaneous records with which to verify mileages and could not recall the places at which he had stayed overnight, other than to say that he had stayed frequently at the IBIS in Preston in 2007-08.

14. On 31 August 2011 HMRC notified the Appellant that they were carrying out a check on the Appellant's returns under s 9A TMA 1970 in relation to the expenses claimed and invited the Appellant to provide any further information he had to support the claim.

15. The Self-Assessment, under HMRC's 'process now check later system', resulted in tax overpaid for the three years. HMRC therefore issued a repayment, in the sum of

£8,459.13 on 20 September 2011. It appears that the cheque did not reach the Appellant, and therefore the refund remained unpaid.

16. A P Robinson & Co Accountants Grimsby, the agent acting for the Appellant at the time, provided HMRC with a breakdown of all items claimed, including the travel, and subsistence and training costs.

17. The agents explained that the Appellant's travel costs were incurred in attending various placements, the two main ones being Blackpool (3 August 2007 to 9 December 2007) and Sandhurst (14 January 2008 to 5 April 2008).

18. HMRC replied that each assignment on which the Appellant was engaged was regarded as a separate employment at a permanent workplace, and that consequently travel to and from the workplace was ordinary commuting. For travel expenses to be allowable, the travel must be undertaken while performing the duties of an employment. Travel between home and a permanent workplace even though there may have been many, is regarded as ordinary commuting and as such does not qualify for deduction. For the same reasons accommodation costs were also not deductible.

19. The expenses claimed for training were in relation to a post graduate course the Appellant attended to qualify him to undertake 'supplementary prescribing'. HMRC advised that there is a distinction between preparation for the performance of duties of an employment and actually performing those duties. Expenses of preparation are not an allowable deduction.

20. In February 2014, the agents A P Robinson & Co, ceased acting for the Appellant (there appeared to be an issue with regard to fees). Shortly prior to that the agents appear to have decided not to pursue the Appellant's claim for accommodation expenses.

21. On 6 May 2014, having received no further representations or evidence from the Appellant, HMRC issued closure notices under s 28A TMA having amended the Appellant's self-assessments for 2007-08, 2008-09 and 2009-10 as advised.

22. In July 2014 the Appellant appointed CTM Limited as his agents.

23. On 15 September 2014, CTM Limited lodged a Notice of Appeal against HMRC's decisions, saying that:

> "The Respondents have notified the Appellant of their decisions to disallow certain items of expenditure, namely, essential training courses and travel from home to what the Appellant contends are temporary places of employment. These decisions relate to the tax periods 2007-08, 2008-09 and 2009-10, and these grounds apply to all three periods.
>
> It is the view of the Respondents that the expenses are disallowable for the following reasons: in respect of travelling, because the Appellant is not travelling to temporary workplaces, but rather to a succession of permanent (albeit short-lived) workplaces. This is an incorrect interpretation of the relevant facts. The Appellant was travelling to workplaces which were impermanent and temporary in nature.

With regard to the training courses which are in dispute, it is the view of the Respondents that these expenses are disallowable because the training neither formed part of the Appellant's duties, nor was it carried out whilst the Appellant was engaged in those duties.

The Appellant contends that this is incorrect. The training in question fulfilled both of the criteria specified by the Respondents.

Relevant Legislation

24. The Income Tax (Earnings and Pensions) Act 2003, Part 5, Chapter 2 contains provisions regulating allowable deductions from a person's earnings:

"336 Deductions for expenses: the general rule

(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.

(2) The following provisions of this Chapter contain additional rules allowing deductions for particular kinds of expenses and rules preventing particular kinds of deductions.

(3) No deduction is allowed under this section for an amount that is deductible under sections 337 to 342 (travel expenses).

Section 337 Travel in performance of duties

(1) A deduction from earnings is allowed for travel expenses if--

(a) the employee is obliged to incur and pay them as holder of the employment, and

(b) the expenses are necessarily incurred on travelling in the performance of the duties of the employment.

(2) This section needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs).

Section 338 Travel for necessary attendance

(1) A deduction from earnings is allowed for travel expenses if--

(a) the employee is obliged to incur and pay them as holder of the employment, and

(b) the expenses are attributable to the employee's necessary attendance at any place in the performance of the duties of the employment.

(2) Subsection (1) does not apply to the expenses of ordinary commuting or travel between any two places that is for practical purposes substantially ordinary commuting.

(3) In this section “ordinary commuting” means travel between--

(a) the employee's home and a permanent workplace, or

(b) a place that is not a workplace and a permanent workplace.

(4) Subsection (1) does not apply to the expenses of private travel or travel between any two places that is for practical purposes substantially private travel.

(5) In subsection (4) “private travel” means travel between--

(a) the employee’s home and a place that is not a workplace, or

(b) two places neither of which is a workplace.

(6) This section needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs).

Section 339 Meaning of “workplace” and “permanent workplace”.

(1) In this Part “workplace”, in relation to an employment, means a place at which the employee’s attendance is necessary in the performance of the duties of the employment.

(2) In this Part “permanent workplace”, in relation to an employment, means a place which -

(a) the employee regularly attends in the performance of the duties of the employment, and

(b) is not a temporary workplace.

This is subject to subsections (4) and (8).

(3) In subsection (2) “temporary workplace”, in relation to an employment, means a place which the employee attends in the performance of the duties of the employment -

(a) for the purpose of performing a task of limited duration, or

(b) for some other temporary purpose.

This is subject to subsections (4) and (5).

(4) A place which the employee regularly attends in the performance of the duties of the employment is treated as a permanent workplace and not a temporary workplace if -

(a) it forms the base from which those duties are performed, or

(b) the tasks to be carried out in the performance of those duties are allocated there.

(5) A place is not regarded as a temporary workplace if the employee’s attendance is -

(a) in the course of a period of continuous work at that place -

(i) lasting more than 24 months, or

(ii) comprising all or almost all of the period for which the employee is likely to hold the employment, or

(b) at a time when it is reasonable to assume that it will be in the course of such a period.

(6) For the purposes of subsection (5), a period is a period of continuous work at a place if over the period the duties of the employment are performed to a significant extent at the place.

(7) An actual or contemplated modification of the place at which duties are performed is to be disregarded for the purposes of subsections (5) and (6) if it does not, or would not, have any substantial effect on the employee's journey, or expenses of travelling, to and from the place where they are performed.

(8) …."

25. HMRC's Guide 409 'Employee Travel', sets out HMRC's approach in applying the legislation relating to employee travel. The guide itself has no binding force in law, but sets out HMRC's interpretation of the legislation.

The basis of tax relief for employee travel and subsistence

Paragraph 1.7 states: "Employees are entitled to tax relief for the full cost they are obliged to incur travelling in the performance of their duties or travelling to or from a place they have to attend in the performance of their duties – as long as the journey is not ordinary commuting or private travel. The following chapters explain how these rules apply in practice."

The Guide states (so far as relevant):

"Paragraph 2.1 The term 'travel expenses' includes the actual costs of travel together with any subsistence expenditure and other associated costs that are incurred in making the journey. In most cases, tax relief is available for the full cost of business travelling expenses. Business travelling expenses are travelling expenses which are incurred on:
• Journeys which employees have to make in the performance of their duties (travel in the performance of the duties)
• Journeys which employees make to or from a place they have to attend in the performance of their duties (travel to a place where attendance is in the performance of the duties) – but not journeys which are ordinary commuting or private travel.

Paragraph 2.2 Tax relief is available only where travel is in the actual performance of the duties or where it is necessary – in a real sense – for the employee to attend the particular place on that occasion to perform the duties of their employment.

Travel in the performance of the employee's duties

2.3 The sort of travel that qualifies for tax relief on this basis is travel that is 'on the job', as distinct from travel 'to the job'. The most common example is travel between one workplace and another in connection with a single employment. The cost of such travel is incurred in actually carrying out the duties of the employment, although the treatment may be different where one of the workplaces is the employee's home.

Travel to a place where attendance is in the performance of duties

2.5 This category covers journeys an employee makes to or from a place he or she has to attend to carry out duties of that employment. Such places are referred to as 'temporary workplaces'. This is explained at paragraph 3.13, but a typical example might be where an employee has to travel directly between home and a client's office.

It excludes journeys that constitute ‘ordinary commuting’ or ‘private travel’. The meaning of ordinary commuting and private travel are explained at 3.2.

2.6 To get relief for the cost of travel, the employee’s attendance at the temporary workplace has to be necessary in the sense that it is dictated by the requirements of the duties of the employment and not, in any way, by the personal convenience of the employee. Similarly, an employer cannot turn an ordinary commuting journey into a business journey by requiring an employee to stop off on the way to carry out business tasks such as making phone calls

What is ordinary commuting?

Paragraph 3.2 - The term ‘ordinary commuting’ means any travel between a permanent workplace and:

• home
• any other place which is not a workplace

A workplace is a place where the employee’s attendance is necessary for the performance of the duties of that employment. For most employees this means that ordinary commuting is the journey they make most days between their home and their normal place of work. However, for some employees the position is more complicated.

Permanent workplace

Paragraph 3.10 - It is usually clear whether or not a place is an employee’s permanent workplace (and, therefore, whether a journey to or from that place is ordinary commuting). A place is a permanent workplace if the employee attends it regularly for the performance of the duties of the employment and it is not a temporary workplace. A temporary workplace is somewhere the employee goes only to perform a task of limited duration or for a temporary purpose.

Regular attendance at a workplace

Paragraph 3.11 -An employee attends a workplace regularly if their attendance:

• is frequent
• follows a pattern
• is for all or almost all of the period for which they hold or are likely to hold that employment

The proportion of an employee’s working time spent at a particular workplace is a factor in determining whether or not it is treated as a permanent workplace, but it is not the only factor. Even if the employee attends the workplace only on one or two days a week, if it is on a regular basis, the workplace may still be a permanent workplace. It is possible for an employee to have 2 or more permanent workplaces. The employee will not be entitled to tax relief for the costs incurred in travelling from home to any of the permanent workplaces.

Temporary workplace - attendance for a limited duration or temporary purpose

Paragraph 3.13 - A place is a temporary workplace if an employee goes there only to perform a task of limited duration or for a temporary purpose even where the employee attends it regularly.

Task of limited duration

Paragraph 3.14 - Where an employee attends a workplace for a limited period of time to do a particular task or project then the workplace will be a temporary workplace, even where the employee's attendance is regular. This is on the basis that they are attending for the purpose of performing a task of limited duration.

Attendance for a temporary purpose

Paragraph 3.15 - An employee may attend a workplace regularly and perform duties there which are not of limited duration without that workplace becoming a permanent workplace provided the purpose of each visit is for a temporary purpose. See paragraph 3.41.

3.16 Where a visit is self-contained (that is, arranged for a particular reason rather than as part of a series of visits to the same workplace for the continuation of a particular task) it is likely to be for a temporary purpose.

The fixed-term appointment rule

3.28 The fixed-term appointment rule prevents a workplace being a temporary workplace where an employee attends, or is likely to attend, it in the course of a period of continuous work for all or almost all of the period that they are likely to hold the employment.

Agency workers

3.40 - Where a worker provides their services through an agency and their income is subject to tax as employment income, and they generally attend only one workplace in respect of each engagement that workplace will usually be a permanent workplace. Where nurses, domestic workers and others provide their services through an agency and do a number of different jobs on the same day, those workers may obtain tax relief for travel between those jobs, but not for travel from home to the first job and to home from the last job on each day.

> Example. Beth is an accounts clerk who gets all her work through an employment agency. She rarely takes a job, which lasts more than 2 weeks. Beth always travels straight from home to work at the premises of the employment agency's client. She is not entitled to tax relief for any of these journeys because each job is treated as a separate employment and so all her journeys are ordinary commuting.

People with more than one workplace at the same time

3.41 Someone who has 2 or more employments or is in an employment which requires regular attendance at more than one workplace, may have more than one permanent workplace during the same period."

26. The Appellant's reason for pursuing his expense claims and HMRC's detailed response is contained in their exchange of correspondence prior to the Appellant submitting his Notice of appeal and is summarised below.

Training expenses

27. With regard to the Appellant's training expenses, HMRC explained that for a deduction to be permitted, the expense must, as stated in s 36(1)(b) ITEPA 2003, be incurred wholly, exclusively and necessarily in the performance of the duties of the employment; that is:

> "…in doing the work of the office, in doing the things which it is his duty to do while doing the work of the office." - Rowlatt J in *Nolder v Walters* (15TC380).

Therefore, the expense must be incurred in actually carrying out the duties of the job. It is not enough for the expense to be relevant to the job, or for it to be incurred in connection with the duties of the job; nor is it enough if the expense only puts the employee in a position to start work or keeps the employee qualified to do the work. Expenses that are incurred in preparation to carry out the duties of the employment or as training to carry out the duties of the employment are not deductible.

28. The Appellant's agents responded that the courts have emphasised the importance of ascertaining exactly what a tax payers duties entail (*Taylor V Provan* (49TC579)) in order to determine whether training formed an intrinsic part of such duties. They argued that the Appellant's training fell within the permitted exceptions as outlined in *Revenue & Customs v Dr Piu Banerjee (No 1)*, CA 2010, 80 TC 205; 2318; [2010] EWCA Civ 843; [2011] All ER 985 as it was an intrinsic contractual duty of the employment to undertake the training.

29. In *Banerjee,* a dermatologist Dr Banerjee, employed by an NHS trust, claimed deductions for the costs of attending various courses, conferences and meetings. HMRC issued amendments to her self-assessments, disallowing the claims. Dr Banerjee appealed contending that she was required to attend the courses as a condition of her employment, and that they took place within her normal working hours. The General Commissioners allowed her appeal (by a majority), finding that the expenses "were all incurred wholly and exclusively and necessarily as an intrinsic part of the performance of her duties". The Ch D upheld the Commissioners' decision as one of fact and the Court of Appeal upheld this by a 2-1 majority, Pitchford LJ dissenting. Rimer LJ held that "the reason why Dr Banerjee attended the courses and incurred costs was because she was required to attend them as part of the duties of her employment and because if she did not do so, her employment would have been terminated".

30. HMRC responded that in this case the Appellant had no contract of employment and therefore would have had no contractual obligation to undertake training. In *Banerjee* the Court of Appeal decided that that the training costs paid for by Dr Banerjee were an allowable expense under s 336 ITEPA 2003, because Dr Banerjee was employed under a specific training contract pursuant to which she was obliged to undertake continuing professional training/education. Dr Banajee was at the time a specialist registrar in dermatology, essentially a training post for which attending the required training courses was a condition of her employment. Her contract stated:

> 'Training: Employment is dependent on your continuing to hold a National Training Number. Your fixed term number is THS/005/005/n. This placement is for the fourth year of your training programme.'

31. The Appellant had provided no evidence that he had a specific training contract with Medacs or that a training programme was required as part of his duties. The facts and circumstances of the Appellant's claim were totally different to those in the *Banerjee* decision. Although the training course was relevant to the Appellant's work and he was encouraged to undertake appropriate courses, that was not sufficient to show that the cost of the course was incurred wholly, exclusively and necessarily in the performance of the duties of his employment.

32. The Appellant explained that he was previously employed as a staff nurse and that the training he undertook was for 'Supplementary Prescribing'. HMRC therefore requested clarification of the nature of the duties he performed as a staff nurse, the exact nature of the training he received and an explanation of why he had been employed for over two years prior to the training course, effectively doing the same job.

33. The agents explained that the Appellant's duties included those usually expected of a Registered General Nurse ('RGN'), but he was in a senior position and was often left in sole charge of personnel. He undertook a number of duties which were above and beyond that usually expected of a RGN. In particular he:

- Managed the care of inpatients as per doctor's requests and to observe and monitor and take appropriate action if required on emergency basis.
- Saw patients autonomously and (within the military) prescribed in accordance with pre-determined protocols which meant that it was obligatory to have prescribing rights for which the training courses were necessary.
- Administered vaccines/medication as required, to both civilian and military patients.
- Carried out emergency treatment at various levels.
- Took responsibility for staff medical needs (approx. 2,500 at any one time). Monitored and educated junior members of staff - both civilian and military. Undertook sole responsibility of 'sick parades' and referred or treated patients as required.
- Maintained the pharmaceutical stock of the organisations medical centre.
- Trained military personnel in the treatment of minor illnesses.

The course which the Appellant undertook allowed him to prescribe. He was obliged to undertake the training in order to fulfil the role for which he had been appointed and to properly carry out his duties. A failure to undertake the training would have rendered him incapable of carrying out his duties. The training enhanced his ability to continue in the role he was already fulfilling.

34. HMRC argued that the training would have done no more than assist the Appellant in his role and that for a deduction to be permitted the expense had to be one which he would have to incur and also actually be incurred wholly, exclusively

and necessarily in the performance of his employment duties. That was clearly not the case.

Travel and subsistence

35. With regard to the Appellant's travel and subsistence expenses, HMRC advised that the costs were only allowable if the associated journey could be regarded as allowable business travel. Travel between home and a permanent workplace is regarded as ordinary commuting for which, in accordance with s 338(3) ITEPA 2003, no relief is due. Where a worker provides his services through an agency, and the agency legislation in s 44 ITEPA 2003 applies, each agency assignment is treated as a separate employment in accordance with s 339(5) ITEPA 2003. Thus, where there is only one workplace for an agency assignment, that workplace will be a permanent workplace and therefore no relief is due - *Kirkwood v Evans* (74TC481). Each work placement was a separate employment at a permanent workplace for the duration of the engagement, no matter how short. Any travel from home to the permanent workplace and return home is ordinary commuting and as such the cost of the travel is not an allowable expense.

36. HMRC referred to the following tax cases in support of their view:

> *Parikh v Sleeman* (63TC75) where a hospital doctor was refused relief for the expenses of attending training courses during periods of study leave.
>
> *Consultant Psychiatrist v CIR* (SpC557) where a NHS consultant was refused relief for the expenses of continuing professional education necessary to maintain her professional qualification.
>
> *Decadt v CRC* (TL3792) where a specialist registrar was refused relief for the expenses of taking professional examinations, even though it was a condition of his employment that he should do so.

37. The Appellant's agents argued that the agency rules did not apply because if the Appellant could not attend the work placement for some reason, Medacs had a 'right to substitution' of his services which was unfettered. Each place of work was therefore temporary. His contracts could be terminated at any point and were renewed on a day by day basis. Medacs had the right to send a substitute at their discretion. Medacs were ultimately responsible for providing appropriate staff and collectively taking all of this into account each period of employment had to be regarded as temporary.

38. At the hearing the Appellant gave oral evidence and said that the assignments at Blackpool and Sandhurst were the two longest placements, but that there were many other short ones. He said that he would be notified on a week to week basis the organisation he would be placed with and its location. He could accept or reject an assignment and the organisation could terminate at any time without notice. He had no role in the decision as to where he would be working. There was no entitlement to

sick leave and no holiday pay. Placements could be as long as several months or as little as a few hours. Sometimes placements were extended. When he was at Sandhurst his placement was extended numerous times, although on each occasion he had the option of declining the extension. For at least part of the period at Sandhurst he was self-employed.

39. The Appellant said that he sees patients either on a walk-in or appointment basis. He would assess necessary treatments and medications and where appropriate refer patients to specialist professionals. He would sometimes treat with vulnerable adults and children.

40. Mr Ahmed for the Appellant said that with regard to training courses the Appellant went on, these were entirely his choice, but were undertaken because he had to renew his registration annually with his regulatory body and provide evidence that he had attended training courses relevant to his field of work. The courses were obligatory and a legal requirement insofar he was required to have appropriate professional qualifications relating to the treatment which he administered and medication which he prescribed. He also had to be able to show that he had undergone supervised practice. He said that nurses were becoming increasingly specialist and autonomous to assist GPs in becoming more specialist. Training was not subsidised; there was no employer or government contribution and the cost had to be met entirely from his own resources.

41. Mr Ahmed argued that the Appellant had been sent to numerous and varied locations as and when required by Medacs. He did not accept HMRC's view that those individual locations each constituted a permanent place of work. Given the extreme fluidity of the Appellant's retainer, HMRC were stretching the concept of permanence to breaking point and beyond. There was very little which could be fairly and properly described as permanent with regard to the Appellant's working location at any material time. The Appellant could not accurately be described as 'commuting' in the accepted sense of the word.

Conclusion

Training expenses

42. Section 336 ITEPA 2003 states that in respect of expenses, the general rule is that a deduction from earnings is allowed for an amount if the employee is obliged to incur and pay it as holder of the employment, and the amount is incurred wholly, exclusively and necessarily in the performance of the duties of the employment.

43. There can be no allowances in respect of the costs of attendance at education or training courses where such events are undertaken simply to put an employee in a position to continue with their duties and not in the actual performance of those duties, whether or not the training is closely relevant to the nature of the individual's employment. That is so even if non-participation in such activities may lead to the employee losing his or her professional qualifications and/or job.

44. Where the performance of the duties of the employment necessarily include education and training, for example where employment involves research, or attendance on a course represents an intrinsic part of the duties of the employment and as such forms part of their contract, any associated costs would be deductible. However this was not the case with Appellant. He was not 'contractually' obliged to attend the training courses. Although it may have enhanced his skills or been a requirement for him to continue practicing in his chosen field of work that is not the same as a contractual obligation and any associated costs cannot be regarded as expenses wholly exclusively and necessarily incurred.

Travel and subsistence

45. Section 337 ITEPA 2003 states that for travel expenses to be deductible the expenses must be necessarily incurred on travelling in the performance of the duties of the employment. Further under s 338, the employee must be obliged to incur and pay them as holder of the employment, and the expenses must be attributable to the employee's necessary attendance at the place of employment in the performance of the duties of that employment.

46. Under s 338(4) ITEPA 2003, a place which the employee regularly attends in the performance of the duties of the employment is treated as a permanent workplace and not a temporary workplace if it forms the base from which those duties are performed, or the tasks to be carried out in the performance of those duties are allocated there.

47. The Appellant was offered various placements throughout the UK which he could either accept or decline. Once accepted, a placement became a separate permanent employment for the entirety of its duration however short. The workplace attended to carry out the duties of that particular employment is therefore treated as a permanent workplace if it forms the base from which those duties are performed. This is settled law as numerous decisions of this Tribunal show. See *Reita v HMRC* [2010] UKFTT 299 (TC) and *Sathesh- Kumar v HMRC* [2011] UKFTT 489 (TC).

48. For travel expenses to be allowable, the travel must be undertaken while performing the duties of an employment. Travel between home and a permanent workplace is regarded as ordinary commuting and as such does not qualify, s 338(2) ITEPA 2003. As the assignments which the Appellant accepted were each separate employments at permanent workplaces then it follows that travel to and from those places of employment was ordinary commuting.

49. The Appellant's working arrangements did not fall within the criterion envisaged by paragraphs 1.7 and 3.11 of HMRC's guide in that each employment is separate and the workplaces permanent; the expenses were merely incurred in travelling to and from the various employments and are therefore not allowable. The Appellant was not travelling somewhere as part of his duties, he was getting to a place in order to work. Although HMRC's guide does not have the force of law it nonetheless, in our view, sets out concisely and accurately a correct interpretation of the relevant legislation.

50. Although the Appellant has not pursued his claim to deduct accommodation costs, for the avoidance of doubt these costs must be viewed within the same parameters and constraints as attached to travel expenditure. By his own choice the Appellant accepted the assignments. The fact that the location of the assignments involved travel or overnight accommodation is irrelevant. Each accepted placement was a temporary assignment at a permanent workplace and where work is carried out at a permanent workplace the cost of any overnight accommodation near that workplace is not an allowable expense.

51. For the above reasons given we have to concur with HMRC that none of the expenses claimed can be allowed as a deduction. The decision of HMRC dated 4 September 2014, to disallow the travel, subsistence and training expenses claimed on the Appellant's self-assessment tax returns against his employment income in respect of years ending 5 April 2008, 2009 and 2010 is accordingly confirmed and the appeal dismissed.

52. 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 CONNELL

TRIBUNAL JUDGE
RELEASE DATE: 20 JANUARY 2016