

Tax Health Plan (THP)

Blood pressure levels within the medical sector have risen sharply this year, except this time it is not the patients who are suffering, but the medical professionals themselves.

This follows the announcement on 11 January 2010 by HM Revenue & Customs (HMRC) of its Tax Health Plan (THP) through which it is encouraging medical professionals to make a full disclosure of all undeclared liabilities, not just those connected with any undisclosed income.

Seven days later, HMRC widened the scope of the THP to include dentists.

In return for complete and accurate disclosures, HMRC are offering to accept a reduced fixed penalty of 10% of the total unpaid tax and national insurance, with no penalty at all where the unpaid duties are less than £1,000.

Background

Over the last couple of years, HMRC has been selecting enquiries into medical professionals primarily based on, in its view, excessive business mileage expenditure claims and similarly high capital allowances claims. Secondary expenditure 'risks' were the use of home as office claims, wages paid to family members and meeting / conference travelling costs.

After selecting the cases, launching the enquiries and requesting the business records, HMRC found the record keeping to be incomplete in many cases. This was attributed to medical professionals being time poor because of their NHS and private practice commitments.

When the business records were reviewed in depth and the business bank deposits analysed alongside invoices raised for work done, HMRC discovered several cases where the medical professionals had not declared all of their private practice income, or their private practice awards and commissions received from BUPA, Sun Life and other medical insurers.

This is the history behind HMRC's decision to offer the THP.

The Disclosure

The first deadline is 31 March 2010. This is the date by which HMRC has to be notified of the intention to make a disclosure.

The second deadline is 30 June 2010. This is the date by which the disclosure has to be made, as well as payment of all of the additional tax, national insurance, interest and penalty arising.

It is important to remember the disclosure has to include all undeclared liabilities, whether in the form of additional income received or excessive expenditure claimed.

Potential Dangers

The calculation of any additional income to be declared should be relatively straightforward, albeit time consuming, depending on the paperwork and evidence to be gathered and the number of years involved.

However, the disclosure of excessive expenditure claims is far more subjective and problematical.

The mileage issue referred to earlier is still a highly contentious area.

Typically, medical professionals have been treating their homes as their business base with regard to their private work and claiming business mileage on journeys, from and back to their homes, when they have been visiting their private patients.

HMRC has sought to disallow the mileage from and to the home on duality grounds. Tax Inspectors have extensively quoted the tax case of *Newsom v Robertson* (33TC452) as their precedent, in their pursuit of sizeable reductions in the business mileage and capital allowances claimed.

In the *Newsom v Robertson* tax case, Mr Newsom was a barrister who carried on his profession partly in Lincoln's Inn and partly at his home in Whippsnade. He claimed the expenses of travelling between his home and his chambers, but the Court of Appeal held that none of the expenses could be claimed as a deduction. His chambers were deemed to be the business base.

HMRC is applying that decision to medical professionals and rigorously arguing the business base is the hospital or clinic at which the private client is treated.

Medical professionals have been responding by stating their home is used as a business base to conduct research, issue, maintain and store paperwork and, in some cases, to conduct initial examinations and treatments.

Unfortunately a test case on the same subject was due to be heard under the new Tribunal system imminently, but the doctor involved has had a stroke and the hearing has been postponed.

Almost perversely, HMRC is happy to allow a reasonable use of home as office claim, but again has been calling into question some of the amounts claimed, particularly those that include a mortgage interest element.

In summary, whilst the undeclared income to be included in a disclosure under the THP may be quantifiable with relative ease and accepted by HMRC, deciding what to disclose as disallowable expenditure is far more troublesome.

A situation could arise where HMRC is happy with the undeclared income disclosed, but unhappy no expense related adjustments have been made. That type of scenario could lead to an enquiry and the incentive of the reduced 10% penalty lost. Where HMRC rejects 'mismatched' disclosures and launches enquiries, it has signalled the minimum penalty is likely to be 30%.

Hopefully HMRC will review any disclosures carefully on a case by case basis and not choose potential enquiry cases using inflexible selection criteria. For example, a surgeon involved in life threatening surgery is likely to have a higher business mileage claim because of allowable emergency call outs compared to, say, an anaesthetist who would not be called out as often.

HMRC has identified upwards of 800 medical professionals it is watching and waiting for disclosures from. The THP could be a lucrative venture for HMRC and encourage it to offer similar schemes to other professions in future years.

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