Mileage allowances

Employment Tax | Tax voice

13 March 2018

Peter Moroz provides updates on some issues regarding mileage allowances

Electric vehicles

A year ago, I wrote about business mileage for electric cars:

“How much can I pay an employee for his business mileage in an electric company car without causing a tax problem?”

This was the question put to me by a client. It related to a company car being charged at home. The answer would have been simple for an employee owned

vehicles charged at home because the AMAPs rate of 45ppm would apply.

The client wanted to pay a mileage rate for business mileage and could not find the rate to use in the HMRC literature. In fact, HMRC explicitly state that their company car Advisory Fuel Rates (AFR) can't be used for electric vehicles, (although curiously, they can be used for hybrid vehicles; even if the driver mainly uses the electric motor rather than the petrol engine!).

In brief, my conclusion a year ago was that the employer could use a calculated rate based on the cost of electricity to the driver. Carrying through a hypothetical calculation, this came to about 6 pence per mile.
Of course, it would be handy if that rate were added to the official list of AFR figures which already include petrol, diesel and LPG powered vehicles.

I was therefore encouraged to hear that, in his Autumn Budget the Chancellor mentioned electric cars. However, disappointingly this particular issue was not what was addressed. All he did was indicate that the Government would legislate in the 2018/19 Finance Bill to exempt employer provided electricity from being taxed from April 2018 for workplace charging of employee owned electric / hybrid vehicles.

This will presumably mirror the relief given in S149(4) ITEPA 2003:

"References to fuel in this section [i.e. company cars] to fuel do not include any facility or means for supplying electrical energy or any energy for a car which cannot in any circumstance emit CO2 by being driven."

This will only address a separate anomaly; namely that if you charge your company electric car at work, there is no tax charge whereas for an employee owned vehicle using the same charging point; there is a tax charge (at least there will be until April 2018). The basis of the charge is not clear- presumably someone has to look at the company's electricity bill and somehow apportion it!

The proposed change will not address the problem of paying for business mileage for company electric cars and, so I am still stuck with my calculated estimate to arrive at about 6pm as being reasonable.

Do you remember the *Total People* case?

Lots of companies have lodged claims for the repayment of NIC where their car allowance drivers had business mileage and the drivers were consequently able to claim Mileage Allowance Relief on their tax return. The level of Mileage Allowance Relief a driver can claim for tax purposes cannot exceed 45p per business mile (25ppm if the mileage exceeds 10,000) less any amount already paid tax free to the driver. The maximum relief for NIC is always 45p per business mile.

The claims for reimbursement of NIC effectively provide for a mirroring of the tax relief enjoyed by the driver. This is done by reducing the amount of NIC charged on the cash allowances or fuel card expenses if any, paid by the company.

However, HMRC have been reluctant to make any repayments of NIC.

Their contention is that for NIC to be refunded, the car allowance/ fuel card expense must fall into the definition of Relevant Motoring Expenditure (RME). This is provided in SI 2001/1004 Reg 22A(3):

> *A payment is relevant motoring expenditure if,*
>
> *a) It is a mileage allowance payment as per s229(2) ITEPA 2003 (i.e. an AMAPs payment); or*
>
> *b) It would be such a payment but for the fact that it is paid to another for the benefit of the employee; or*
>
> *c) It is any form of payment, except a payment in kind, made by or on behalf of the employer, and made to the benefit of the employee in respect of the use by the employee of a qualifying vehicle.*

HMRC refuse to accept that car allowances fall within this definition unless there is a direct linkage between total miles driven and allowance paid to each employee. In our view such an assertion is not supported for the reasons given below which is why some companies are perhaps closer than others, to negotiating refunds for prior years.

On a reading of (c), it looks like a very broad definition which would include car allowances. Many companies have a car allowance policy that:

- Stipulates the kind of vehicle that can be driven on company business;

- Indicates that the car allowance covers certain expenditure incurred by the driver such as servicing, Road Fund Licence, MOT, business insurance;
- Indicates it is (unlike salary) a non-pensionable payment designed to enable the driver to meet costs incurred in providing their own vehicle;
- Indicates that car allowances may cease if there is a breach in the policy or loss of driving licence or there is no car being used by the driver.

All of these are indicators that the reason the car allowance is paid is for the driver to finance and use their own car. The car allowance is not just “extra salary”.

However, HMRC contend that if the car allowance was not set (and regularly reviewed) by reference to the anticipated private & business miles to be driven and by reference to the type of vehicle driven, then it cannot be RME. This is even though their own manuals admit that a reimbursement or a payment towards MOT, Road Fund Licence, insurance or servicing costs are indeed RME.

Needless to say, there are many companies which disagree with the HMRC view, as the legislation makes no mention of any test to link a payment to anticipated car use for it to be RME. Instead the law just says that the definition of RME includes “any form of payment for the use of the vehicle”.

HMRC have shown a certain reluctance to debate some of the technical points presented indicating that they will supply detailed points on their legal opinion when the matter comes before Tribunal.

This sounds as if they very much expect the matter to come to Tribunal. If this is true, then it is disappointing that many companies have received letters requesting extensive further data on their car allowances in tight deadlines. Some may perceive that the tone of the letters is such that if they fail to meet these challenges, HMRC are pressurising them into withdrawing their claim.

Our view is that if companies agree to disagree with HMRC on what constitutes “a payment for the use of a vehicle” then it should be for the Courts to decide. Any pressure to withdraw claims in advance of such a clarification is therefore probably best resisted.