

The denial of Capital Allowances for ETTF-funded surgery projects

New rules from the NHS

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Capital Allowances

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ETTF grants for surgery improvements

General Practitioners who own surgeries are able to apply for grants from the NHS Estates Technology and Transformation Fund towards the cost of premises refurbishments and improvements. Many practices have benefited from the scheme over the past decade and typically the funding will be up to 66% - with the doctors raising the rest of the money themselves.

In terms of Capital Allowances - no claims can be established on the grant element but there is an entitlement to make a claim on the proportion of the cost incurred by the practice.

While this might only be a minority share of what could have been available it has nevertheless been a useful source of top-up funding which practices often re-invest in the project in order to improve the overall specification. It has been commented that the potential tax savings can be an incentive which tips a partnership into the decision to go ahead with a scheme.

2020 - a new NHS policy

To date there have been no announcements by the NHS on the subject - but over the past three months it has become apparent that a new policy has been introduced requiring GPs applying for grant awards to agree not to make claims for "Capital and Tax Allowances" (a newly-coined phrase).

Without prior consultation, or the provision of clear definitions, it has left GPs and their accountants to work out for themselves what the extent of disallowance might be. Correspondence from the NHS to individual practices applying for awards has also obliquely referred to VAT so that it would appear that any VAT recovery is also covered by this measure.

Extent of the disallowance

Without further clarification it has to be assumed that any and all tax reliefs or savings which a practice might have been able to claim are barred. The principle category would be the fixed Plant & Machinery content

of the project. This will include all expenditure on building systems (heating/cooling, hot/cold water, electrical systems, lifts etc) and all new fit-out e.g. bespoke joinery, AV & IT systems, toilets, staff facilities etc.

In a refurbishment significant associated cost will also be relievable, for example works of stripping-out and making-good.

Other categories of tax relief will include the recently- introduced Structures and Buildings Allowance, and possibly remediation relief for asbestos or land contamination (in the case of a company).

Furthermore the measure could cover claims for expenditure that would normally qualify as repairs and be treated as revenue expense in the practice accounts.

Typically in a surgery refurbishment between 50 and 75% of the budget may become tax relieved and so the scale of the issue is not to be underestimated.

The NHS "double benefit" theory

There seems to be no general understanding outside of the NHS on the reasoning behind the introduction of this policy.

The issue seems to be that while the ETTF team recognise that a practice cannot make claims against grant monies, the doctors can claim available allowances against their own expenditure. This is now being described by the NHS as a "double benefit" and so in preventing the GPs from claiming tax relief the NHS claims to be "protecting the public purse."

This could just be a misunderstanding of the purpose of Capital Allowances, which is to enable the taxpayer to set aside money from profits to pay for future renewals of the plant & machinery in a building.

Originating in the 19th century - the principles of Capital Allowances have been around for a long time, and what can qualify will vary between types of business e.g. a restaurant will have a different fit-out from a factory. Nevertheless the way that allowances are dealt with in accounts is largely the same right across the full



spectrum of taxpayers who own commercial property. Most English-speaking countries have tax systems that are closely based upon the UK's - except that we now seem to be diverging from traditional approaches to how Capital Allowances work.

Rather than trying to bar them from their legal entitlement within the tax system, a simple alternative might have been to request a commitment from practices to re-invest their tax savings - which most of them probably already do. This would be a real "double benefit" for Primary Care.

The implications

The most obvious is a potential reduction in the take-up of ETTF grants where for some projects the numbers are already tight. Now finding themselves being treated differently from every other taxpayers can only promote disharmony between GPs and the NHS - and probably there will now be projects that simply never see the light of day.

The imposition of this measure without consultation is also likely to raise concerns among GPs on what other changes could lay in store for the future and so foster a more risk-averse sentiment with resultant slowing of the take-up of ETTF grants and the modernisation of the primary care sector.

Is the NHS within its rights?

An important question to be answered has to be whether the NHS is legally able to enter contracts that remove rights and/or entitlements which are available under other legislation. Is the ETTF team simply able to side-step any law that it deems inconvenient to its purposes? This approach, if more widely adopted by government, could have implications for other sectors. For example, should care home operators who are entirely dependent on local authority funding for their residents - also have unrestricted use of Capital Allowances?

Would a large defence contractor for whom the government is their sole client also be considered to receive a double benefit in claiming Capital Allowances? If government departments can act in this way without hindrance or question - it does not perhaps fit with wider interpretations of how democracies are supposed to work.

Is there a conspiracy theory?

To give the ETTF team the fullest benefit of any possible doubt - the denial of Capital Allowances to GPs could just be a mistake. If the question is asked of any room full of property professionals - 'Who feels they have a good understanding of property and tax?' - very few hands will go up. But to allow the view that it is just an error casts a great deal of doubt on the calibre of those in the higher tiers of the NHS or DoH. Whoever made the decision would almost certainly have consulted the

Treasury and the Solicitor General to ensure they were acting within their powers.

In which case why would the government seek to introduce a measure that can only deter investment by GPs in their own premises, and therefore increase the pressure on the public funds to further underwrite Primary Care?

Could there be an underlying motive to diminish the independence of the GPs? If the ultimate outcome is that all new surgeries have to be fully-funded by the state then the argument which follows is that there is no reason for doctors to retain their independence and they should simply go onto the NHS payroll.

It seems far-fetched but with the relationship between GPs and successive governments never more than lukewarm - and as we watch the erosion of cabinet government - could one of the inner ring of special advisers have had a new big idea on how to bring GPs to heel by quietly undermining their finances?

An alternative position

As mentioned above there would be no reason why the NHS could not have requested that practices re-invest any tax savings - and most would be happy to do so. Nevertheless, a proper consultation process on this important change is the very least that GPs might have expected and it is by no means too late to bring parties to the table and have an open discussion.

Should there be a doubt over the legality of the NHS approach - and how GPs are dealt with in the UK tax system - the government might reasonably be asked to regularise the situation by introducing an appropriate bill to Parliament. With a large majority this may be a process which is quickly concluded - but it does at least bring what is happening out into the open and allow public scrutiny of what - at least for the present - appears to be a very undemocratic new policy.

About us

Afilia Capital Allowances has a lengthy track record of advising on primary care projects and has prepared claims for Capital Allowances on over 100 surgery development projects.

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