A moment of relief?

Employment Tax | Personal tax



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Matthew Brown explains the tax implications of working from home during the COVID-19 outbreak

Key Points

What is the issue?

COVID-19 is having a huge impact in the way people work, with large numbers working from home for the first time.

What does it mean for me?

We consider some of the common questions which arise where employees are, temporarily, permanently based at home in response to COVID-19.

What can I take away?

Find out which employer-provided equipment, services or supplies are not taxable where an employee is working from home in response to COVID-19 and what payments employers can make to meet employees' additional costs when working from home.

COVID-19 is having a huge impact in the way people work, with large numbers working from home for the first time. For some it may only be temporary; for others they may find working from home becomes the new normal, either because it works for them or because their employers find that they don't need large business premises (and its associated costs), with everyone in one place, to function efficiently.

The changes, of course, lead to the question of who provides what – you or your employer – and what are the resulting tax implications? Below, we consider some of the common questions we've had where employees are, temporarily, permanently based at home in response to COVID-19.

Employer payments towards additional household costs

Section 316A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) provides that no liability to income tax arises where an employer makes a payment to an employee in respect of the reasonable additional household expenses which the employee incurs in carrying out duties of the employment at home where a 'homeworking arrangement' exists.

A homeworking arrangement exists where two tests are met:

- there must be arrangements between the employer and the employee; and
- the employee must work at home regularly under those arrangements.

There is nothing in s 316A that requires homeworking arrangements to be in place for a particular period of time and HMRC has confirmed that 'in the current circumstances, with employers requiring their employees to work from home for a limited or even indefinite period of time as a result of a temporary closure of the business premises, then HMRC accepts that for the duration of that period these two tests would be met'.

HMRC has also said that: 'If not already working under homeworking arrangements, HMRC would agree that employees would be covered by the exemption when either the employer agreed they could work from home or from when government advice was announced.'

Consequently, an employer can make a tax-free payment to an employee of £6 per week (£4 per week up to 5 April 2020) (or £26 per month) while the employee is working from home in response to COVID-19.
The £6 per week is likely to be sufficient in most cases, particularly where the additional costs are only for heating and lighting the work area. However, greater amounts can be paid where the employee provides the employer with evidence to justify them and the employer agrees to pay that greater amount.

Employees' un-reimbursed household costs

Of course, employers are not obliged to contribute to the additional household expenses an employee incurs when working from home and many will decide not to, especially where the employee is 'saving' on commuting costs.

In this case, can an employee make a claim to HMRC for tax relief for their unreimbursed expenses in working from home? The exemption under ITEPA 2003 s

316A for employer payments should not be confused with the deduction for an employee's homeworking expenses under s 336. The latter provides that a deduction from earnings is only allowed 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.

These conditions can be tough to meet and in HMRC's view they are met only where all the following circumstances apply (EIM32760):

- The duties that the employee performs at home are substantive duties of the employment. 'Substantive duties' are duties that an employee has to carry out and that represent all or part of the central duties of the employment.
- Those duties cannot be performed without the use of appropriate facilities.
- No such appropriate facilities are available to the employee on the employer's premises (or the nature of the job requires the employee to live so far from the employer's premises that it is unreasonable to expect him or her to travel to those premises on a daily basis).
- At no time either before or after the employment contract is drawn up is the employee able to choose between working at the employer's premises or elsewhere.

In consequence, HMRC is likely to accept that a homeworking arrangement exists for the purposes of a s 336 claim only where no facilities are available for the employee to work at the employer's business premises
(for example, because the employer has closed the premises in response to COVID-19) and there was no choice available to the employee other than to work from home.

Equipment, supplies and services Generally, we would expect employers to provide employees with the equipment, supplies and services needed to carry out their job; for example, IT equipment like computers and printers, office supplies like stationery and stamps, and services like communications equipment. Where such assets are provided for use by the employee for the sole purpose of performing the duties of their employment, then they are likely to be exempt from a liability to tax under ITEPA 2003 Part 3 Chapter 10 (the benefits code) by virtue of ITEPA 2003 s 316.

For the s 316 exemption to apply, any private use of the assets must be ‘not significant’. It is therefore best practice for employers to have a clearly stated policy as to when limited private use may be made of equipment, etc. and the consequences of not following the policy.

If assets are made available for private use by the employee, then a tax charge arises under the benefits code. Similarly, when the employee returns to work at the employer’s premises, if the equipment supplied to work from home is not returned a tax charge will arise under the benefits code.

Where a single mobile phone and SIM card is provided, this is exempt from tax under ITEPA 2003 s 319 even where there is no restriction on private use.

If an employer pays or reimburses an employee’s broadband or telephone line rental costs, this is taxable. However, if a broadband internet connection is needed to work from home and one was not already available, then the broadband fee can be paid or reimbursed tax free. Similarly, if a second line is installed and private use is prohibited, this is also likely to be exempt from tax. Otherwise, only out-of-contract excess charges arising from business use, e.g. business calls, can be claimed or reimbursed without a tax liability arising.

Where an employee purchases equipment to use while working from home and the employer reimburses the cost, it is HMRC’s view that this is taxable. The tax can, however, be settled via the employer’s PAYE Settlement Agreement (PSA). An unanswered question, at the time of writing, is whether an employee can purchase equipment as agent for his or her employer and be reimbursed tax free by the employer. Hence, to be safe it is likely to be better for the employer to purchase any equipment that the employee needs for work purposes and arrange delivery direct to the employee’s home with the supplier.

Company cars

A frequent question we have seen is whether a company car benefit-in-kind tax charge continues to accrue where an employee is either furloughed or is unable to work; for example, because they are self-isolating in response to COVID-19 and they cannot work from home.

HMRC’s view on company car benefits during the current crisis is that the benefit charge applies where a car is made available for private use, whether or not it is so

used. For example, a car kept on an employee's driveway during a period of furlough would still be considered to be made available. Neither will HMRC accept a Statutory Off Road Notification (SORN) declaration as proof of unavailability.

Ordinarily, HMRC would expect that the car is handed back to the employer so that it cannot be used. However, it is understood that HMRC recognises that under the current circumstances it may not be possible to hand the car itself back, so exceptionally it has said it will accept that where all the keys (or tabs) are in possession of the employer, and the employee does not have the authority to request the keys are returned to them, the car would be unavailable. This means employers will have to ask employees to post the keys back to the employer in order to comply with HMRC's view on whether a benefit has accrued or not. Also note that if the car was available both before and after the period in question, the period must last at least 30 consecutive days in order to count as a period of unavailability.

Data security and remote working

With all the challenges that COVID-19 is creating, it's important to remember that employees and employers still need to protect data. Unfortunately, cyber criminals are taking advantage of the current situation all businesses find themselves in. With many organisations using video conferencing apps like Microsoft Teams, Zoom, Google Hangouts and Skype (to name just a few), or seeing increased used of emails flying within and outside organisations, and with employees now routinely remote connecting to employers' virtual sites, data security risks are significantly enhanced. Many of you may have seen questions over Zoom's data protection policies and trolls interrupting Zoom meetings or posting the meetings to YouTube. We can, no doubt, expect similar attempts to attack other platforms.

Consequently, while staying connected is obviously important when working from home, so is protecting sensitive data. The last thing you need while managing so many other problems is to suffer a data breach. The best place to start when it comes to staying secure is the General Data Protection Regulation (GDPR) (https://bit.ly/34nziYR).

There are a number of steps which business can take to minimise security risks should a criminal try to gain access to an employee's laptop, for example:

- setting strict access rights, e.g. making sure that devices are password protected and that passwords are regularly changed;

- restricting rights to install new software;
- setting software security updates to install automatically; and
- requiring all work to be saved to, for example, the business's SharePoint site, plus encrypting data before it is transferred.

Businesses are also advised to consider their policies on the extent to which employees can use company laptops and other IT for personal use.

Other tax issues

Further information on the tax consequences of working from home in response to COVID-19 and other employment-related tax exemptions that may be relevant during this period can be found in the CIOT's introductory guide at www.tax.org.uk/policy-and-technical/covid-19/employment-tax. This is regularly updated as we get more information from HMRC in answer to questions raised with them and it builds on HMRC's guidance for employers which can be found at bit.ly/2RlEtU8.