Homeworking and hybrid working – the employment tax considerations

Tax voice

25 March 2022

Lee Knight considers the key UK employment tax issues associated with employees working from home.

The coronavirus pandemic has significantly changed the way we work. Homeworking has become the norm for employees who previously spent all or almost all of their time in offices. Millions of us are now working from home for 2 or 3 days each week and spending the rest of the working week in the office. Homeworking and hybrid working appears to be here to stay.

Employers who adopt hybrid and homeworking should establish and communicate to employees a clear homeworking and hybrid working policy.

What employment tax issues should be considered?

When determining that policy, it is important that employers consider the employment tax and NIC implications of the homeworking expenses and benefits they agree to meet the cost of, and whether the employee is working from a home overseas. Whilst we had some relaxations due to the coronavirus pandemic these are due to end on 5 April 2022.

From an employment tax and NIC perspective, there are arguably four key areas that come up regularly:

1. The provision of home office equipment;
2. The payment of additional household expenses;
3. The payment of travel costs when employees based at home travel into the office; and
4. The implications of homeworking from overseas.

Can home office equipment be provided tax and NIC free?

Potentially yes.

Clearly, employees may need additional equipment (such as an office chair, desk, printer, scanner, keyboard and monitor) over and above their laptop to work from home effectively and safely.

Under Section 316 ITEPA 2003 if an employer purchases (that is, the employer owns) and makes such home office equipment available to employees working from home then no taxable benefit arises provided that:

- The equipment is provided for the sole purpose of enabling the employee to perform their duties of employment; and
- The employee uses the equipment to perform their duties of employment, and the private use of the equipment by the employee is insignificant.

In those circumstances no Class 1A NIC will arise on the benefit also.

Additional important points to note on this include:

1.If the employer has a mixed motive in providing the equipment (that is, the motive is partly to enable the employee to perform their employment duties and partly so the employee can use the equipment privately) the exemption will not apply.

2. Insignificant private use is not defined in legislation. However HMRC's guidance makes it clear HMRC will accept that the insignificant private use test is met where:

a. an employer's policy about private use is clearly stated to employees;
b. the policy clearly sets out the limited circumstances in which private use may be made of the equipment; and
c. Any decision by the employer not to recover the costs of private use is a commercial one (for example, the decision is based on the impractical nature of doing so, rather than to reward the employee).

3. The exemption will not apply if the arrangements are part of a salary sacrifice or optional remuneration arrangement.

4.The exemption is conditional on the employer retaining ownership of the equipment. A tax and NIC liability may arise if and when ownership of the equipment passes to the employee, so care needs to be taken when old equipment is updated or replaced, or the employee returns to work at the office full time and no longer needs it to work from home.

What about where the employee purchases home office equipment and the employer reimburses the cost?

Section 316 ITEPA 2003 cannot normally apply where an employee buys home office equipment personally and the employer reimburses the cost to the employee.

However, as part of coronavirus support measures that applied from 16 March 2020 the government announced a temporary tax and NIC easement which was subsequently extended until 5 April 2022. This easement ensured relief of the tax and NIC liability where an employer reimburses employees for home office equipment the employee purchased and:

- Reimbursement is made for the sole purpose of enabling the employee to work from home as a result of the coronavirus outbreak;
- The equipment would have been exempt if it was provided by the employer;
- Private use is insignificant; and
- The employer’s offer of reimbursement is available to all its employees on similar terms.

If the employee returns to work and retains the equipment, HMRC have confirmed that no benefit in kind will arise as there is no transfer of ownership from employer to employee.

What about employees’ other household expenses?

Employers should decide whether it is appropriate to contribute towards the additional household costs employees may incur when they are working from home. These types of costs can include additional heating and lighting costs, increased water charges, and additional telephone costs.

Under Section 316A ITEPA 2003 and paragraph 9 of Part 8 of Schedule 3 to the Social Security (Contributions) Regulations 2001 (SI 2001 No 1004) where an employee works from home regularly under a homeworking arrangement with their

employer, the employer can pay any one of the following free of tax and NIC:

- The actual reasonable additional household expenses the employee incurs as a result of performing their employment duties at home; or
- The HMRC tax and NIC-free allowance of up to £26 per month (for monthly paid employees) or £6 per week (for weekly paid employees); or
- A higher scale rate payment, agreed with HMRC in advance, which is calculated to do no more than reimburse the average additional costs that employees meet while working at home.

Additional important points to note on this include:

1. The advantage of paying the HMRC £26 per month/£6 per week tax and NIC free rate is that there is no need for the employer to justify the expenditure, and no need for the employee to provide evidence of their actual additional costs.

2. It is recommended that where the employer does pay the tax and NIC-free allowance, a process is put in place to periodically assess whether the employees receiving it are still regularly working from home.

3. Where the employer reimburses the actual additional household expenses the employer must be able to justify the expenditure and so the employee must provide records. Furthermore the exemption for actual costs does not extend to:

a. Fixed costs unrelated to whether the employee is working from home (for example, mortgage interest, rent, and council tax), and
b. costs that merely put the employee in a position to work from home (for example, building alterations).

4. Where the employer reimburses the actual additional household expenses broadband costs can only be reimbursed where they are additional. This means when the employee does not have an internet connection but then needs a broadband connection to work from home or the additional cost of an upgraded broadband connection where they need to upgrade their broadband to work from home.
5. In all cases there must be a formal homeworking arrangement in place under which the employee works from home regularly. HMRC guidance states that

they will accept an employee is working from home regularly where it is frequent and follows a pattern, and the employee agrees to and actually works at least two days each week at home. HMRC will still consider it to be regular even if the employee varies the two days which they work at home each week.
6. While the HMRC guidance states that homeworking arrangements need not be in writing it is best practice to document the arrangement for tax and NIC purposes as informal working at home which is not by arrangement does not count as homeworking for these purposes.
7. During the coronavirus pandemic and when government guidance was in place, HMRC accepted that where employees were working from home because their employer's offices had closed or because the employee was following advice to self-isolate, this met the homeworking arrangement requirements.
8. HMRC also confirms that no apportionment of the £6pw/£26 per month is required if the employee works from home for only part of the week. Per point 5 above, HMRC guidance states that the employee must agree to and actually work at least two days each week at home.

What happens when an employer does not meet the cost of an employee's additional household expenses?

Where an employer decides not to meet the cost of their employees' additional household expenses, the employees cannot automatically claim tax relief personally on those household expenses. This is because, under normal rules, the employee can only claim tax relief if the costs are incurred wholly, exclusively, and necessarily in the performance of their employment duties and that usually requires the employee to show that their home is a workplace for tax purposes (which is difficult).

However, because of the coronavirus pandemic and for the 2020/21 and 2021/22 tax years only, HMRC temporarily allowed employees in that situation to make direct claims for tax relief for those tax years where, at any point in each of those tax years, they were working from home because their employer required them to and they incurred additional household costs as a result.

Employees are able to make claims for tax relief for the full tax year even if they were only required to work from home for part of the year as lockdown restrictions eased or if they only worked from home on a part time basis. Under this temporary measure employees could claim either:

- The actual reasonable additional household expenses they incur as a result of performing their employment duties at home, but they must be able to justify the amount claimed; or
- An amount of up to £26 per month (for monthly paid employees) or £6 per week (for weekly paid employees), without having to justify the amounts claimed.

Given that claims for tax relief on household expenses can be made up to 4 years after the end of the tax year they relate to, there is still time to make claims for earlier years if they have not been made already.

For further information see:

- Claiming tax back on home working expenses | Low Incomes Tax Reform Group (litrg.org.uk); and
- Claim tax relief for your job expenses: Working from home - GOV.UK (www.gov.uk)

What about travel expenses when our homeworkers and hybrid workers travel into the office?

A key consideration when moving to a homeworking arrangement is whether the employee should meet the cost of the employee's travel between their home and the office when they do travel into the office. This is of particular relevance to hybrid working arrangements.

The tax and NIC treatment of employees' travel expenses can be complex and is particularly difficult to apply practically to modern working practices such as hybrid working.

Section 337 ITEPA 2003 first needs to be considered. Section 337 ITEPA 2003 allows tax relief for travel expenses necessarily incurred in the performance of the duties of employment, including when the travel is between an employee's home and work (for example, an office) and their home is a workplace (for tax purposes) because the place where the employee lives is dictated by the requirements of their employment.

The problem with applying Section 337 ITEPA 2003 to hybrid working is that in many cases home working is a personal choice and the location of the home isn't dictated

by the requirements of the job, meaning that HMRC will not regard the home as a workplace. Section 337 ITEPA 2003 is therefore unlikely to apply to the majority of homeworking and hybrid working arrangements.

Section 338 ITEPA 2003 then needs to be considered. Section 338 ITEPA 2003 allows tax relief for travel expenses for the necessary attendance at any place in the performance of the duties of employment. To determine whether tax relief is due under Section 338 ITEPA 2003 we need to consider whether the employee is travelling to a permanent or temporary workplace.

Broadly speaking, a permanent workplace is a place that an employee attends regularly to perform their duties, where their attendance is frequent and follows a pattern. A journey between an employee's home and a permanent workplace is regarded as ordinary commuting and tax relief is not due on travel expenses attributable to such journeys.

A temporary workplace is a workplace an employee attends only to perform a task of limited duration, or for a temporary purpose. Where the purpose of each trip is for a self-contained particular purpose (rather than a series of visits to the same workplace for the continuation of a particular task) it is likely that the workplace is being visited for a temporary purpose.

However there is then a special rule that treats a workplace that would otherwise be a temporary workplace as a permanent workplace where an employee spends or is likely to spend more than 40% of their working time at that workplace over a period that lasts or is likely to last more than 24 months. These rules, prior to the pandemic, were often considered by HMRC as part of compliance reviews and we had seen many more challenges by them on the application.

A necessary journey between an employee's home and a temporary workplace is regarded as business travel and tax relief is available on travel expenses attributable to such journeys.

If the employee still has to be in an office for part of the week, then the office is likely to remain as their permanent workplace. This might be because each visit is part of a series of visits to the same workplace for the continuation of a particular task, or because the 40% working time threshold is exceeded. In this situation, unless their home is also a workplace for tax purposes (which is unlikely – see above), their travel into the office each week is regarded as ordinary commuting.

Where an employer reimburses such home-to-office ordinary commuting expenses, the expenses will be taxable and liable to NIC.

This is, however, a complex area and the circumstances may differ for different employees or groups of employees. Each case therefore needs to be considered based on its own circumstances. For example, HMRC's guidance in paragraph 3.38 of Booklet 490 suggests that where an employee works at home as an objective requirement of their employment on a certain day each week, that tax relief can be given if they unexpectedly travel between their home and their permanent workplace on that day because it is regarded as travel between two workplaces.

Whatever the circumstances, it is important that employers reassess the position as a result of a move to hybrid working, update their expense policy and (where necessary) employment contracts with employees.

What about where an employee's home is outside of the UK?

When coronavirus lockdowns first took effect, many employers had employees who were in overseas jurisdictions and couldn't get back to the UK, and many of those employees have still not returned to the UK.

In addition, as homeworking increasingly becomes the norm, many more employees are now asking their employers if they can work from a home overseas. This could range from a request to extend a holiday overseas so that the employee can work from that location for a short period of time, to a request to work permanently from a home overseas.

Furthermore, with a high demand for, and a short supply of, skilled workers for certain roles in the UK, many UK employers are having to recruit employees from outside the UK to fill vacancies

These factors have all led to an increase in global remote working.

Global remote working can result in several complex tax and social security considerations in the overseas country the employee is working in. For example, where an employee works overseas for a UK employer this potentially causes:

- Personal tax obligations for the employee overseas;
- Wage withholding obligations for the UK employer overseas;
- Social security obligations for the UK employer overseas; and

- Corporate permanent establishment implications overseas.

This is not to mention employment law, immigration, and other cyber security/data protection issues overseas

There could also be UK tax and NIC implications where the employee either remains resident in the UK for tax purposes and/or performs some of their employment duties in the UK and some overseas. In those circumstances the UK employer may (for example) need to consider:

- Whether they need to obtain a direction under Section 690 ITEPA 2003, allowing them to operate PAYE on a non-resident employee's earnings for estimated work in the UK;
- Whether UK NIC is due on their earnings, and whether they need any documentation to evidence this (for example, a certificate of coverage or an A1 certificate); and
- The tax and NIC treatment of any travel, subsistence, and accommodation expenses they might meet when the employee travels to the UK to perform their duties of employment.

It is vital that UK employers understand the full tax and Social Security/NIC implications of such arrangements in the UK and overseas before agreeing to these arrangements.

Summary

In summary, homeworking and hybrid working appears to be here to stay for many employers and employees. This change will inevitably result in changes that could have an impact from an employment tax and NIC perspective (for example in relation to home office equipment costs, employees’ additional household expenses, travel expenses, and global remote working) and it is important that employers properly consider the employment tax implications.