

SUPPORTING HOMEWORKING EMPLOYEES: TAX RELIEFS AVAILABLE TO THEM

As at 18 May 2020



Government guidance is now for employers to make every reasonable effort to enable employees to work from home as a first option and only to ask them to return to their normal workplace where working from home is not possible. For employees who have been working at home since mid-March, this looks set to continue until at least the autumn.

Setting aside the logistical, technological and data security issues of running an office-based business with its employees working in multiple locations, employers are also having to navigate the complex employment tax rules that apply to payments made to employees and whether these are taxable or not. This note describes the main rules applicable to homeworking employees.

What payment can I make to my employees to compensate them for using their home as a workplace?

Where an employee is working from home under "homeworking arrangements", their employer can reimburse the incremental costs incurred by the employee at a flat rate of £6/week or, if records are kept to justify the costs, the actual amounts spent.

"Homeworking arrangements" exist where, under an agreement between the employer and the employee, the employee works at home regularly under those arrangements. The arrangements need not be in writing and they do not need to apply to all employees.

While the government is recommending that employees work at home, it is expected that this will be accepted by HMRC as a "homeworking arrangement". The sustained period of homeworking is "regular" and it is mainly happening on instruction from the employer which would represent an "agreement".

Most of the costs an employee incurs regarding their home are incurred regardless of whether they use it for work, for example, mortgage interest, rent, council tax or water rates. These expenses do not increase with use so cannot be included in the incremental cost of working at home.

However, an employer can reimburse incremental costs such as additional costs of heating and lighting the work area, the cost of business telephone calls or the metered cost of increased water use.

This exemption cannot be claimed where the payment is made under a salary sacrifice scheme (i.e. the employee agrees to reduce their taxable salary by £6 per week in exchange for a tax-free reimbursement of £6 of homeworking costs).

As access to technology is essential to effective homeworking, can I pay for my employees' broadband costs?

The monthly cost of an employee's broadband connection does not change with usage so HMRC will not allow a tax/NI exempt reimbursement of broadband costs. Any payment to employees towards an existing broadband connection would need to be put through the payroll in the same way as a payment of salary.

However, if the employee does not already pay for a broadband internet connection at home, and needs one in order to work from home under "homeworking arrangements", the broadband fee is an additional household expense that the employer can reimburse, tax-free as a homeworking expense.

What equipment or facilities can I make available to my employees without creating a tax problem for them?

There are certain essential items that employees need from their employers to enable them to work from home. The ownership of these items remains with the employer but they are made available to the employee to use in their home.

There is no tax or NI where an employer provides their employees with supplies and services that:

- are provided other than on the employer's premises (e.g. employees who work at home or while travelling), and
- are provided for the sole purpose of enabling the employee to perform the duties of the employment, and

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- the employee uses in performing the duties of the employment, and providing any use for the employee's private purposes is not significant.

For example, this exemption covers the provision to employees of:

- office furniture and equipment such as a desk or office chair;
- stationery and normal office or workshop materials and supplies;
- an additional home telephone line intended for business calls only;
- a laptop computer or other computer equipment;
- a broadband connection – this is difficult to arrange as the exemption only applies where the contract for the broadband connection is in the name of the employer but the connection is in the employee's home.

This exemption cannot be used to apply to building work carried out on the employee's home or the construction of a home office in the garden.

Can I reimburse my employees for any office equipment they have purchased themselves to allow them to work at home during the lockdown period?

A new and temporary tax exemption has been announced to allow employers to reimburse employees for items of office equipment they have purchased themselves. This announcement was made on 13 May 2020 in parliament and was followed with a Written Statement issued on 16 May 2020 with more guidance to follow.

The exemption will apply to reimbursements paid to employees from 16 March 2020 to 5 April 2021 provided that:

- the equipment was purchased by the employee for the sole purpose of enabling them to work from home as a result of the Coronavirus outbreak; and
- any use for the employee's private purposes is not significant.

If employers want to take advantage of this new exemption, we suggest that employers create a policy setting out the circumstances in which reimbursements will be made which makes it

clear that the "sole purpose" test will be met. The policy should also state that, on the basis that the employer is meeting the cost of these assets, any personal use should be kept to a minimum.

In practice, provided there is an appropriately worded policy in place, HMRC does not require the employer to attempt to monitor personal use of the home office equipment.

My employees have paid for heating, lighting and other homeworking costs that my business is not going to reimburse. Can they claim any tax relief for these expenses they have incurred?

Employees can claim a tax deduction for expenses that are "wholly, exclusively and necessarily" incurred in the performance of their duties of employment.

When applying this rule to expenses they have incurred while homeworking, HMRC will normally only allow a tax deduction in the following circumstances:

- 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;
- 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.

The circumstances listed above, which permit employees to claim a tax deduction themselves, were drawn up before the possibility of Coronavirus was contemplated. HMRC could argue that working at home as a result of the current government guidance does not fall within these circumstances but this risk feels reasonably low. If the employee accepts that there is a risk that HMRC could challenge the deduction, they could make it with full disclosure to HMRC on the basis of the claim.

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For a 20% taxpayer, a claim of £1,000 of expenses will give them a £200 tax refund. For a 40% taxpayer, the refund increases to £400.

If the employee does not complete a tax return and the expenses being claimed are less than £2,500 in a tax year, the claim can be made on a form P87. This can be done online here.

If the employee does complete a tax return or is claiming more than £2,500 in a tax year, the claim will need to be made on a tax return.

Many of my employees have purchased annual season tickets which they will now not be using. Can any refund be claimed?

Refunds should be available, although the way in which they are calculated is complicated.

For weekly, monthly or annual season tickets, the operator will calculate the cheapest way the employee could otherwise have bought the travel which they have already used. A refund is then claimed for the difference between the season ticket price and the cost of the travel they have already used.

Employees should get in touch with their train company or the website where they bought their ticket to see what they might be entitled to.