

Working from Home (in the UK and abroad) - Common Tax Concerns

Summary

- Employers can (subject to conditions) and without incurring income tax and NICs, provide employees with:
 - equipment to help them work from home; and
 - money to cover additional working from home expenses (at the flat rate of £6 per week, or the actual amounts incurred)
- If employers don't provide money to cover additional working from home expenses, employees can claim tax relief on this amount themselves
- If employees work from home outside the UK there can be a number of key employer obligations and concerns, including:
 - a risk that a "permanent establishment" for corporation tax is created overseas for the UK employer;
 - a risk that the UK employer may have to register as an employer overseas and operate payroll withholding;
 - a risk that the UK employer may become liable for overseas employer's social security; and
 - immigration and employment law considerations
- More employers are putting in place policies for "working from home" to address these points and ensure there is consistency in their approach

Working from home in the UK

Tax relief for additional expenses

Background

Where an employer asks or requires individuals to work at home (including during the COVID-19 pandemic) either:

- the employer can reimburse the additional costs of doing so tax-free. This can be on the basis of actual costs, or at a flat rate of £6 per week or £26 per month (from 6 April 2020, or £4 per week or £18 per month before); or
- if the employer does not reimburse the costs, the individual can claim for tax relief on these costs (again on the basis of the actual costs or at the flat rate).

What costs can be claimed?

If actual costs are claimed (as opposed to the flat rate) the additional amount incurred by an individual on gas and electricity, water (if metered), home insurance, and business calls can be claimed.

Costs that remain the same (e.g., council tax, rent etc.) cannot be claimed.

It is not normally possible to claim in respect of broadband, unless it is for a new connection used solely for business purposes (which is rare).

How to claim tax relief

If an employer reimburses, they can do so without the need to deduct income tax or NICs, and no additional reporting is required. The employer should ensure adequate records are kept.

If an employee claims tax relief, they can do so in one of two ways:

- for employees who do not complete annual self-assessment tax returns, a claim can be made online, with relief provided through the individual's PAYE code (available [here](#)); or
- for employees who complete tax returns, the claim must be made on their tax return (using box 20 "other expenses and capital allowances" on page SA102 – Employment).

Equipment to work from home

Background

Where an employee works from home, their employer may provide them with office equipment to help them do so effectively, such as a desk, computer monitor or an office chair.

It is possible for employers to provide this equipment, or reimburse an employee's purchase of it, tax free, subject to conditions.

If an employee purchases such equipment wholly, exclusively and necessarily for their employment and the cost is not reimbursed by their employer, they may be able to claim tax relief on the amount they spent. However, this is narrowly defined, and it is rare that employees will be able to claim this relief.

What conditions must be met for employer provided equipment?

The equipment must be provided (or reimbursed) for business purposes and any private use by the employee must not be "significant". HMRC will normally accept this is the case where the employer has a policy in place to state that private use should not be significant, or where this is made clear to the employee when providing the equipment.

For equipment provided before 16 March 2020 (or after 5 April 2021, unless the current rules are extended) the tax exemption only applies to equipment provided to an employee by the employer. This does not include any equipment which is purchased by an employee and reimbursed by the employer – this reimbursement will create a liability for income tax and NICs (unless, in limited circumstances, it can be clearly shown that the employee was acting as an agent of the employer when purchasing the equipment).

How to claim tax relief

Where an employer provides the equipment, or reimburses an employee's expense between 16 March 2020 and 5 April 2021, they can do so without the need to deduct income tax or NICs, and no additional reporting is required. The employer should ensure adequate records are kept.

Tax consequences of the retention of equipment

Where an employee has purchased the equipment directly and has been reimbursed there will be no further charge if the employee is allowed to retain the equipment.

If an employer has provided equipment it will remain the property of the employer. If, in the future, the equipment is transferred to the employee (for example because the employee leaves and the equipment is not returned), this will be subject to the usual benefit rules – the market value of the equipment at the time of transfer (less any amount paid by the employee for the transfer) is subject to tax as a benefit in kind.

Working from home abroad

There are a number of key considerations for employers who have employees working abroad, including from home:

Permanent Establishment (“PE”)

A PE of the UK employer can be created by employees working abroad, including when they work from home abroad. This is especially true if they are undertaking client work, work closely linked to the trading activities or they have a management role.

A PE can be created through either a fixed place of business (which in most countries can include a holiday or second home) or through the individual acting as the agent of the employer whilst overseas.

Key risk factors include the employee performing management and control functions, making key business decisions, undertaking contract negotiations and signings, and employees having the authority to act on behalf of the UK employer. However, simply working from a fixed base can be sufficient to create a PE. This should be first assessed under the domestic legislation in the territory in question and then under the relevant double tax treaty if that would then potentially exempt a PE that would otherwise exist.

Where a PE is created a proportion of the UK employer’s profit will become taxable to corporation tax overseas and there is likely an impact on the UK employer’s obligation to operate payroll withholding in the overseas country.

Payroll and social security

Often, payroll withholding and employer social security is not required if an employee is working overseas outside the EU/EEA and where there is no PE of the UK employer in that overseas country. However, some countries do insist that even foreign entities with no PE in their country register as an employer and operate payroll reporting and withholding for employees working in their country.

The position is more complicated in the EU/EEA – with UK employers automatically being deemed as having a place of business in any member state for social security purposes. This means that if an employee’s working arrangements mean that they become subject to overseas social security, there will be an obligation for the UK employer to register and operate payroll withholding for social security purposes, including paying employer social security.

Employee tax concerns

Employees will need to determine whether their overseas work has personal tax consequences. Even if their employer is not required to operate payroll withholding, the individual may be subject to income tax on their earnings and may need to self-report.

There is a common misconception that an individual working overseas for less than 6 months will not create a tax liability. Commonly, the overseas country will impose a tax charge unless there is a double tax agreement (or “treaty”) in place with the individual’s “home” country, and the individual remains a tax resident in their “home” country (and subject to future conditions).

Other employer considerations – non-tax

Immigration

In our experience, it is vital to ensure that employees are legally able to work in the specific country. This is especially relevant for any UK citizens who travel to the EU on or after 1 January 2021 and who will not be protected under the terms of the UK’s Withdrawal Agreement.

Where employees “work at home” abroad they are likely to be performing their day-to-day duties and this normally goes beyond what is permissible as a tourist or short term business visitor – work permits are very often required.

Individuals who do not comply with immigration rules can create future problems for their employer – for example the employer may become restricted from hiring overseas employees into an entity it sets up or already has in that country.

Employment rights

It is our understanding that employees who work abroad, especially for longer periods, may become eligible to additional, and potentially more employee-favorable rights or benefits under the employment law of the country in which they are working. Each country will have differing rules for when this may apply.

Common market practice – employee policies

It is becoming increasingly common for employers to have specific policies on working from home arrangements, covering both domestic cases (highlighting what will, and will not, be covered by the employer) and international cases.

Domestic working from home policies

Most policies will seek to define what expenses and costs will be covered by the employer and those that will not.

In general, employers seek to write their policies in line with tax regulation and HMRC guidance and therefore to avoid creating a tax liability when reimbursing expenses or covering costs.

International working from home policies

Most employers with such policies require employee to get pre-approval centrally prior to working from an overseas location. Where limits are set on what arrangements can be approved without further investigation, this is most often set at 30 days.

Policies around working overseas will normally include restrictions on what employees may do for periods between 1 and 3 months and will include the need for specific advice on a case-by-case basis for longer term arrangements.

For further guidance please contact [Richard Turner](#) (Tel: +44 (0) 20 3727 1506) or [Lewin Higgins-Green](#) (Tel: +44 (0) 7583 117 537).

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