



HOME WORKING – THE FUTURE

Issued 24 September 2020

Text of a letter dated 20 August 2020 to HMRC

Covid-19 lockdown has kick-started the home-working revolution but the pandemic has demonstrated that our tax legislation does not support the new normal. New legislation and new guidance are needed to facilitate home working.

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TEXT OF A LETTER DATED 20 AUGUST 2020 TO HMRC

1. The covid-19 crisis has forced many more office-based workers to work from home for the first time. In many cases it has been demonstrated that it is not only commercially and environmentally advantageous for them to work remotely but facilitates a better work / home balance and improved wellbeing. We are now seeing employers start to agree that such employees can work from home permanently, both being 100% home based or with limited time in the office. Certainly, it appears that the proportion of individuals who will work less than 50% of their time in the office will increase dramatically and the home-working revolution is now happening, kick-started by covid-19.
2. Unfortunately, the pandemic has demonstrated that our tax legislation does not support this “new normal” and consequently we believe that new legislation and new guidance from HMRC is required to facilitate home working.

Reimbursement or provision of equipment for home working

3. Lockdown required employers quickly to enable their employees to work from home. Computers, monitors and desks were required and this highlighted the difference in taxation of this provision dependent on whether the equipment was paid for by the employer or by the employee and reimbursed. Fortunately, but only after extensive representations, the law was relaxed. Initially if the equipment was provided by way of reimbursement, HMRC guidance was that the benefit was taxable and the tax due could be paid by way of a PSA.
4. Following Ministerial Statement **HCWS237** relief is given provided that the two following conditions were met:
 1. That equipment is obtained for the sole purpose of enabling the employee to work from home as a result of the coronavirus outbreak, and
 2. The provision of the equipment would have been exempt from income tax if it had been provided directly to the employee by or on behalf of the employer (under **s316 of ITEPA**).
5. The relief is provided by legislation made on 20 May 2020 (**SI 2020 No.524**) and is available until 5 April 2021. Prior to 11 June 2020, relief can be obtained by HMRC exercising its collection and management powers not to collect tax and NIC due on any reimbursed payments made on or after 16 March 2020 (the date the government recommended working from home).
6. Now that it appears that working at home will become the new normal, we believe that the statutory relief should be made permanent as there appears to be no logical reason why the method of provision alone should make a difference in the tax treatment. We accept that who has ownership of the asset can have an impact and we believe that HMRC could explain in guidance what is expected by way of documentary evidence to support ownership.

Home working arrangements

7. HMRC guidance at **EIM32825** explains that the rules in **s336 ITEPA 2003** are far more restrictive than those within **s316A ITEPA 2003**. The guidance states:

“Section 316A only provides an exemption for employer payments. It does not change the law on deductions for employees’ unreimbursed household expenses. The circumstances in which an exempt payment can be made are much less restrictive than the circumstances in which an employee is entitled to relief for household expenses under Section 336. In particular, exempt payments can be made to employees who work at home under a voluntary homeworking scheme. So the fact that an exempt payment has been or could be made does not mean that the employee is entitled to relief for household expenses”.
8. **EIM01472** provides HMRC’s guidance on the application of the s316A(3) ITEPA 2003 exemption. The following two conditions have to be met:
 - there must be arrangements between the employer and the employee, and

- the employee must work at home regularly under those arrangements.
9. The guidance also helpfully explains that the exemption ...
- “will not apply where an employee simply takes work home in the evenings”
- and that HMRC accept that the exemption does apply when ...
- “an employee works at home regularly where working at home is frequent or follows a pattern. For example, where an employee agrees to work 3 days each week on the employer’s premises and 2 days at home you should accept that the work at home is regular. This will be so even if the days on which the employee works at home vary from week to week.”
10. In contrast, HMRC guidance in [EIM32760](#) on the more restrictive s336 ITEPA 2003 explains that in order to for exemption to be available the following conditions have to be met:
- 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 (see [EIM32780](#))
 - 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.
11. The last two conditions do not seem to be reasonable under the new normal. They appear particularly contradictory to non-tax professionals. Why is choice relevant above but not in the case of the financial adviser who has chosen to work from home in the final example in [EIM21613](#)? Why should whether the laptop was bought by the employer or the financial advisor employee and then reimbursed impact on the tax result?
12. If HMRC feel that they cannot relax the guidance so that expenses that support homeworking can be allowed in a similar manner to homeworking arrangements for s316A then the law should be changed.
13. If HMRC feel that this would open the floodgates too widely for expense claims then HMRC should consider a separate carve-out for expenses reimbursed for equipment that supports home working.
14. HMRC seem to be particularly concerned for example by the cost of home broadband. It should not be necessary to have to install a separate line to get relief. Why shouldn’t this be an allowable expense for home working, particularly where the employee works full time? If the concern is private use, then allow a proportion, say 5/7th, of the charge for an employee working five days a week from home. If there are other members of the household, then apportion again for the private use that the others may have.
15. Another area of concern for HMRC would be the impact on any changes on the relief for travel under the workplace and permanent workplace rules. We feel that should be subject to a separate discussion. In any event we feel that any changes in either guidance or legislation to support the increase in remote or homeworking could be ring-fenced.

In summary

16. The world has changed and the tax legislation is not fit for purpose in the light of the likely increase in employees working from home. HMRC should review both its guidance but also the legislation to support the increase in home working.
17. We look forward to discussing this further with you.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).