

Personal tax round up

(Lecture P1191 – 21.49 minutes)

Expenses when working from home

Following the Government's March announcement that, wherever possible, people should work from home, employers and employees may be wondering whether there are any tax breaks available for the household expenses that they are now incurring.

Provided that the employee can demonstrate that their home is truly a place of work, some relief for expenses should be available.

In principle, there are two ways that homeworking employees may be able to claim relief:

1. The employer could make tax free payments to cover employment related costs;
2. The employee could claim a deduction against income for qualifying expenses that they incur.

1. Tax-free payments by employer

Under s316A ITEPA 2003, employers are able to reimburse employees tax-free any reasonable additional household expenses that the employee incurs in carrying out their employment duties at home.

Additional household expenses: HMRC's Employment Income Manual (EIM01474) clarifies the types of expense that can be reimbursed tax-free:

“heating and lighting the work area or the metered cost of increased water use.... increased charges for broadband, home contents insurance or business telephone calls”

As we are looking at 'additional' amounts, costs that would be the same whether or not the employee works at home are excluded, so that would include mortgage interest, rent, council tax or water rates.

There is currently no limit to the amount that an employer can reimburse but once payments exceed £6 per week (£4 per week prior to 6 April 2020), the employer must keep records to evidence that the higher payments were wholly in respect of additional household expenses incurred by the employee working from home.

As the legislation stands, tax-free reimbursement is only allowed if the reimbursement falls under a homeworking arrangement where the employee regularly works at home. So the big question at the moment is whether these homeworking rules apply to employees now working from home on a temporary basis due to COVID-19? HMRC has published guidance that identifies which expenses can be provided tax-free and which are taxable.

The guidance covers employees who are required to work from home either because their place of work has shut or because they are following advice to self-isolate. It does not cover Furloughed employees.

Specific items covered in the guidance include:

- Mobile phones - One mobile phone per employee may be provided tax free, with no restriction on private use;
- Broadband - Where broadband connection is needed to work from home but it is not already available, the cost can be reimbursed tax free by the employer but, any private use must be limited;
- Additional expenses – Where the employee incurs additional expenses for electricity, heating, metered water etc or incurs additional broadband expenses, this will be covered by the £6 weekly allowances explained above. If the claim is higher, then the employee will need to seek employer approval prior to incurring the costs and keep receipts;
- Laptops, tablets, office supplies – Provided these are used mainly for business purposes these will be non-taxable; however, reimbursing expenses for office equipment that the employee has bought will be taxable and should be reported on your PAYE Settlement Agreements

Significant private use

HMRC state that significant private use should not be based on the time spent on different uses but rather on the employee's duties and their need to have the equipment or services provided so that they can do their job.

HMRC accepts that where an employer clearly states their private use policy, in say an employment contract or by asking employees to sign a statement acknowledging company policy on what use is allowed and any disciplinary consequences if the policy is not followed, any decision not to recover the costs of private use is a commercial decision, rather than rewarding your employee.

2. Deduction against income for qualifying expenses

The exemption above only applies to payments made by the employer to cover employee homeworking expenses. If an employee incurs additional expenses as a result of working from home that are not reimbursed, they will be able to claim these expenses as a deduction from earnings if they satisfy the 'wholly, exclusively and necessarily' test that applies under s336 ITEPA2003.

HMRC guidance at EIM32760 suggests that to pass the wholly, exclusively and necessarily test, the employee should not be able to choose between working at the employer's premises or elsewhere. In the current situation, where the government is requiring employees to work at home wherever possible, a tax deduction should be available for additional household expenses similar in nature to those covered by the employer reimbursed homeworking payments.

<https://www.gov.uk/guidance/check-which-expenses-are-taxable-if-your-employee-works-from-home-due-to-coronavirus-covid-19>

Car unavailable for private use

Employees, whether working from home or furloughed, with company cars that are currently sitting parked in a garage or on a drive may be wondering whether their car benefit can be reduced.

Remember, a car benefit arises where a car is made available for private use, irrespective of whether it is so used. To prove that there is no private use, an employer should normally consider:

- Ensuring that the employee's employment contract bans private use;
- Insuring the car principally for business use;
- Keeping the car on the company's business premises;
- Requiring a mileage log to be kept;
- Preparing a Board Minute banning private use.

The benefit can be reduced for non-availability for a continuous period of at least 30 days. Under normal circumstances, this could include a car where an employee joins or leaves a company part way through a tax year or, for example, where a car is involved in a major accident and is off the road while for several months.

The Car Fleet industry is reporting that HMRC has confirmed that a car that is kept on an employee's drive is available for private use. A SORN declaration as proof of unavailability would not be accepted and the benefit would still apply. Currently it may not be possible to hand the car back to the employer, and so HMRC "are accepting that where all the keys (or tabs) are held by the employer, and the employee does not have the authority to request that the keys be returned to them, the car would be 'unavailable.'"

<https://www.fleetnews.co.uk/news/fleet-industry-news/2020/04/02/coronavirus-hmrc-company-car-tax-clarification-welcomed>

Would it be possible for the company to introduce a policy prohibiting private use until further notice? Any such policy should be minuted at a board meeting and reflected in an updated employment contract (where appropriate).

Presumably, HMRC would need to see evidence that the car had not been used privately in the period. This could be achieved using a tracker or alternatively 'before and after' photos of the car mileage to show it had not been moved. Whether HMRC would accept this approach we do not know but some clients might think it is worth a try.

Remember, if any of your clients do go down this route, changing the basis on which the car is used would need to be reported on a P46(Car) form to HMRC.

Project manager subject to IR35

Summary –An IT project manager working for Nationwide through his personal service company fell within IR35 and so was subject to income tax and NICs as an employee.

Northern Lights Solutions Ltd is wholly owned by Robert Lee, who together with his wife are directors of the company. The company's business consisted of supplying Robert Lee's services

For some 10 years before setting up the company, Robert Lee worked across a number of industries as a project manager. In the six months immediately prior to incorporation, he was engaged by Nationwide through an umbrella company, acting as Robert Lee's employer, deducting PAYE and NICs through payroll systems and providing his services to Nationwide. Since its incorporation in 2008, Robert Lee worked almost continuously for Nationwide for seven years under a series of contracts with similar terms. He stated that in practice he was on Nationwide's premises almost continuously.

The issue to be decided was whether Robert Lee should be treated as a Nationwide employee under the IR35 rules as argued by HMRC.

Northern Lights Solutions Ltd appealed.

Decision

In common with other IR35 related cases, the First Tier Tribunal considered a number of factors, concluding that the relationship that existed between Robert Lee and Nationwide was one of employment.

- Despite there being several contracts, with no obligation outside of those contracts to offer work or provide services, mutuality of obligation existed within each of those contracts. Robert Lee worked for Nationwide for many years full-time, with only a few gaps;
- Nationwide controlled when, where and how long Robert Lee worked. The Tribunal concluded that Nationwide also exercised sufficient control over his actions, despite him having substantial freedom over how he managed his projects. This freedom was consistent with that of a highly-skilled employee and did not amount to the level of control exercised by a self-employed person;
- Other than not being engaged on a new contract, Robert Lee took no financial risk beyond that of an employee, and was 'part and parcel' of Nationwide's operations;
- Despite the contracts allowing for a substitute to be provided, there was no real prospect of this ever happening.

In summing up, the First Tier Tribunal found that the hypothetical contract between Robert Lee and Nationwide was one of employment and the appeal was dismissed.

Northern Lights Solutions Ltd v HMRC (TC07594)

Statutory Residence Test

When determining tax residency in the UK, under the statutory residence test, individuals who have been prevented from leaving the UK may be able to exclude up to 60 days in a tax year due to 'exceptional circumstances'.

HMRC's Residence Domicile and Remittance basis manual has now been updated to give guidance as to when days should be disregarded as exceptional days due to COVID-19 (RDRM11005). They state that this guidance should be read in conjunction with the current published guidance on exceptional circumstances that is contained at RDRM13200.

In summary, under the new guidance, days spent in the UK can be disregarded due to exceptional circumstances where the person is:

- quarantined or advised by a health professional or public health guidance to self-isolate in the UK as a result of the virus;
- advised by official Government advice not to travel from the UK due to the virus;
- unable to leave the UK as a result of the closure of international borders; or
- asked by their employer to return to the UK temporarily as a result of the virus.

Remember, to exclude these exceptional circumstances days, the individual must leave the UK immediately upon the restrictions being lifted.

<https://www.gov.uk/hmrc-internal-manuals/residence-domicile-and-remittance-basis/rdrm11005>

The Chancellor has written to the chair of the Treasury Select Committee to outline temporary changes to the Statutory Residence Test for those coming to the country to work on Covid-19 related activity, bringing talent and expertise that is greatly needed. The Chancellor plans to amend the Statutory Residence Test so that initially any period(s) between 1 March and 1 June 2020 spent in the UK by individuals working on COVID-19 related activities will not count towards the residence tests. The plan is to only support persons whose skillsets are currently required.

https://www.gov.uk/government/publications/covid-19-temporary-changes-to-the-statutory-residence-test?utm_source=7c491cd8-8763-40cd-9f32-735178025cb4&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

New reporting on UK residential property

Since April 2015, non-UK residents have been required to report disposals of interests in UK property (residential and non-residential properties, direct and indirect disposals) regardless of whether there was a CGT liability, within 30 days of completion of the disposal. Payment could be deferred via a Self- Assessment return.

From 6 April 2020:

- the 30 day reporting and payment requirement has been extended to include UK resident individuals disposing of UK residential property, usually where the contract was exchanged from 6 April 2020 onwards;
- the non UK resident payment deferral option no longer applies and any tax owed must now be paid within the 30-day reporting and payment period;
- there is a new online reporting service that can be used by both UK and non UK residents.

UK residents disposing of UK residential property

From 6 April 2020, taxpayers have 30 calendar days from the date of completion to report and pay any CGT owed.

However, where gains are not chargeable to capital gains tax they do not need to be reported so this would include:

- Main residence where gain is covered by PPR relief;
- Gains are covered by the annual exemption
- Property transferred on a no gain no loss basis between spouses or civil partners;
- Property acquired to develop and re-sell where profits are liable to income tax.

That means that the most likely relevant disposals will be:

- a UK holiday home;
- a UK property that was previously let out;
- an inherited house in the UK, not used as taxpayer's main residence.

Reporting the gain

From 6 April 2020 HMRC have introduced a new Beta online service on GOV.UK so that taxpayers can notify and pay the CGT due on the gain. The site can be found at:

https://www.tax.service.gov.uk/capital-gains-tax-uk-property/start/report-pay-capital-gains-tax-uk-property?_ga=2.245893127.2044502986.1586156364-921708348.1578308931

The site provides links through for individuals who are:

- Acting in their own capacity;
- Acting as an agent for a client;
- Acting as trustee or are an agent acting for a trustee;

Note that:

- Paper returns are still required for individuals, agents and personal representative who are reporting property sold for someone who has died;
- Non-residents reporting indirect or mixed-use disposals must use the old reporting system at:

https://www.tax.service.gov.uk/shortforms/form/NRCGT_Return

Failing to report and pay tax within 30 days

Initially, HMRC has stated that they will not issue late filing penalties for returns received late up to and including 31 July 2020. This means that transactions completed from 1 July 2020 onwards will receive a late filing penalty and interest will accrue if the tax remains unpaid after 30 days.

HMRC have stated that where a chargeable UK residential property has been sold for cash, the taxpayer will have received money from the sale and so should be able to pay the tax due. However, the Government acknowledges that this will not always be the case. Where property has been gifted, tax may be payable but no cash will have changed hands. Equally, as a result of the Covid-19 crisis, the taxpayer may have been forced to sell property to generate funds for their business. HMRC has stated that they will be adopting a flexible approach to dealing with requests for time to pay arrangements, taking specific circumstances into account, on a case-by-case basis.

Following the introduction of the 30 day reporting requirement for non residents in April 2015, there have been a good number of First Tier Tribunal cases involving non-residents who failed to report on time, arguing that they were not aware of the UK rule change. Some, but not all, were overturned on appeal. However, it is likely that the courts will be less lenient with UK residents, who arguably should keep up with changes to UK legislation.

Year end Self-Assessment Return – to file or not? Where a taxpayer has no reason to file a Self-Assessment tax return, other than reporting their property disposal that falls within the new 30 day regime, they will not need to register for Self-Assessment. However, where a taxpayer is required to file a Self-Assessment return for other reasons, they must continue to do so and report all income and gains for the tax year, including any gains that have already been reported, and tax paid, within the 30 days of completion.

Suggested action

It is important that tax advisors contact their clients to make sure that they are aware of the new legislation and more importantly, they understand how the changes could affect them when they sell UK property.

For many, property disposals are not regular events, so it might be worth reminding clients annually that if they are considering a property sale, they should make contact well in advance. Issuing clients with an updated engagement letter that draws attention to these new in-year reporting and payment requirements would be a good idea.

Agents who need to report and pay tax under this new system on behalf of a client cannot use their existing 64-8 authorisations. If they do not already have one, they need to set up an agent services account and then log in to that account and select 'ask a client to authorise you'. This then involves entering the client's details that then creates a digital link to share with the client, asking them to authorise the agent.

<https://www.gov.uk/government/news/get-ready-for-changes-to-capital-gains-tax-payment-for-uk-property-sales>

Not a payment for goodwill

Summary – A payment of £1.2 million was not payment for goodwill but should be treated as employment earnings under s 62 ITEPA 2003.

Neill Dyer was a Chartered Accountant who ran a successful practice. At various times, he traded as a sole trader and in partnership as Dyer & Co, before incorporating his business in 2003. He maintained that on incorporation, goodwill was not transferred to the company. This was reflected by the fact that no goodwill appeared in the company accounts.

A few years later, after he was admitted to hospital and a fellow director clocked up gambling debts, the new company failed and on specialist advice, the company was liquidated with the business and clients being transferred to a new company owned by Neill Dyer. Under a Deed, the parties agreed to settle all claims that the liquidator might have had against Neill Dyer and the company in connection with the liquidation in return for a payment of £100,000. In his witness statement, Neill Dyer said that the sum represented payment for personally acquired the goodwill from the liquidator.

In good health, the business improved and the new company's turnover returned to its old levels. In 2014, he claimed that he had assigned ownership of goodwill back to the company for £1.2m. He claimed entrepreneurs' relief as an associated disposal.

HMRC argued that the goodwill was incapable of existing separately to the business. Rejecting the entrepreneurs' relief claim, HMRC raised an income tax assessment amending his 2014/15 self-assessment tax return and included the £1,200,000 as employment income, resulting in extra tax due of £431,400.

Neill Dyer appealed.

Decision

The First Tier Tribunal stated that it was clear from the terms of the Deed that the £100,000 payment settled all potential claims, and not payment for the transfer of any goodwill from one company to another.

The First Tier Tribunal decided that Neill Dyer had not established, on the balance of probabilities, that he owned any goodwill that was capable of being assigned. The Tribunal agreed with HMRC's submission and found that, even if Neill Dyer had retained any personal goodwill in 2003, it would not have existed or had any value in 2014 because, by then, the company would have established its own goodwill independently of any goodwill that he had formerly enjoyed as a sole practitioner or partner.

The £1.2 million payment was not consideration for goodwill and so entrepreneurs' relief was denied. Neither was it a distribution but, rather it represented earnings derived from Mr Dyer's employment with the company. The Tribunal agreed with HMRC that the payment of £1.2 million should be treated as earnings under section 62 ITEPA 2003.

Neill Dyer V HMRC (TC07567)