

JTC NEWSLINE

Issue 154

September 2021

Working from home update

Employees

Following a previously announced relaxation to the rules, where an employer does not reimburse an employee for the costs of working from home, the employee can claim tax relief for either:

- The actual additional costs of heating, lighting, metered water and business calls resulting from working from home.
- A flat-rate of £26 per month (£6 per week), plus itemised business calls.

Before the relaxation, employees could only claim tax relief on expenses where strict conditions were met. This meant that most individuals homeworking due to Coronavirus would not have been able to claim tax relief on their working from home costs.

For 2020-21 and 2021-22, employees working from home due to Coronavirus can make the flat-rate tax relief claim for a full year even if they have only been required to work

from home on one day during the tax year, or if they work part-time.

Claims

- Already made for 2020-21 will not be automatically rolled forward. A new claim is required for 2021-22.
- Can be made using HMRC's dedicated online portal, via post, telephone or on a tax return, for those within self-assessment.
- Claims can be backdated for four years.

Self-employed individuals

Self-employed taxpayers can claim tax relief on costs that are wholly and exclusively incurred for business purposes. This can include costs relating to working from home.

- A proportion of costs such as light and heat, insurance, council tax, repairs, cleaning and mortgage interest may be deductible.

Alternatively, as a simplification, fixed-rate deductions have been available since April 2013. ■

Advisory fuel rates from 1 September 2021

HMRC have published new advisory fuel rates for company car drivers which apply from 1 September 2021.

Petrol and diesel rates have increased from the rates applicable for the previous three months. Rates for fully electric cars have remained at 4p per mile since their introduction in September 2018.

Hybrid cars are treated as either petrol or diesel cars for these purposes. The old rates may be used until 30 September 2021, ■

The new rates per mile are:

Engine size	Petrol	Diesel	LPG	Electric* Fully electric cars only
1,400cc or less	12p		7p	4p
1,600cc or less		10p		4p
1,401cc - 2,000cc	14p		8p	4p
1,601cc - 2,000cc		12p		4p
Over 2,000cc	20p	15p	12p	4p

IR35 in the private sector: is your business 'small'?

The IR35 rules have applied to private sector engagements since April 2021 except where the engager is small. Part of the test to see if you are small considers the turnover of you and all 'connected' persons.

To qualify as 'small' for the IR35 rules an end-client entity must meet two of the following qualifying conditions:

1. Annual Turnover; not more than £10.2 million.
2. Balance sheet total; not more than £5.1 million.
3. Number of employees; no more than 50.

Where the engager is a company in a group these tests are to be applied to the group as a whole. The rules do not end there and non-group companies and unincorporated entities such as partnerships and Limited Liability Partnerships (LLPs) must consider all connected parties when considering whether they breach the turnover test.

'Connected' means relatives, spouses and civil partners and their relatives, and commonly controlled companies.

By **'relative'** means brother, sister, parent, grandparent, child or grandchild.

To check whether an engager company and another company are under **common control** you need to consider the rights of not only the engager shareholders but also those of their associates.

The meaning of **'associate'** for these purposes is relatives, spouses and civil partners. Unlike for **'connected'** to apply, the relatives of spouses/civil partners do not count for associates. **'Relative'** has the same definition as for **'connected'**.

For example, James is the 100% shareholder of X Ltd. His father wholly owns Y Ltd. His father's sister and her husband jointly own Z Ltd. X Ltd and Y Ltd are commonly controlled and so are connected for the turnover test. Y Ltd and Z Ltd are also commonly controlled. X Ltd and Z Ltd are not as James and his aunt and uncle are not associates.

Considering these rules, the turnover test seems harsh as there is no requirement for the connected businesses to operate in the same field. It is to be hoped that where the connection rules cause businesses to exceed the £10.2 million turnover threshold they then fail the other two tests, though the number of employees may cause problems for some.

The onus is on the engager to determine if they are small or not and they have a legal obligation to confirm this to the agency or worker within 45 days.

If they get their size wrong they may face being liable for the obligation to deduct Income Tax and National Insurance Contributions (NICs) with associated implications such as interest and penalties although HMRC have agreed to waive penalties until April 2022.

All I can say is if you think you are small, be very careful. ■

Inheritance Tax

There is a new online tool which shows how much inheritance tax would be payable on an estate, sadly it does not actually show the notional tax due, you must work that out for yourself. It shows the amount that would be taxed after reliefs.

<https://www.gov.uk/valuing-estate-of-someone-who-died/estimate-estate-value> ■

Off-payroll working

HMRC are aware of arrangements being put in place following the 6 April 2021 off-payroll working changes which purport to mean that some organisations would no longer be responsible for considering the off-payroll working rules. These may be labelled as 'contracted out services' or 'statement of works'. **HMRC recommend approaching claims that you do not need to consider the off-payroll working rules with caution. ■**

CIS: Failure of reasonable care costs contractors £1.7m

In North Point (Pall Mall) Limited (NP) & China Town Development Company Limited (CT) v HMRC [2021] TC8205, the First Tier Tribunal dismissed appeals against determinations for tax not deducted under the Construction Industry Scheme (CIS). The contractors had failed to take reasonable care by making gross payments to their sub-contractor without actually checking their status.

Both companies were special purpose vehicles set up to purchase and redevelop two sites in Liverpool.

- NP and CT engaged the same sub-contractor to carry out the construction works under separate design and build contracts.
- The contracts identified NP and CT as 'Employer' and the sub-contractor company as 'Contractor'. They failed to take tax advice about the contracts or check them over before signing, relying on previous experience, legal advice taken in 2013 and the advice of their property agent.
- They did not immediately register for the Construction Industry Scheme (CIS) believing that they were not a 'Contractor'.
- Payments to the sub-contractor were made without any deduction of tax on the basis that gross payment status applied.
- Following a PAYE review, HMRC concluded that the conditions for gross payment status were not met by the contractor at the point at which payments were first made to them. HMRC issued determinations.
- NP and CT appealed; they claimed they had taken reasonable care and the failure to deduct was due to an error made in good faith. They held a genuine belief that the legislation (s.61 FA 2004) that required deductions to be made did not apply; they had been overcharged and should either be absolved of liability under regulation 9(3), as they had taken reasonable care, or the assessment should be discharged under s.50(6) TMA 1970. Regulation 9(3) relief claims had already been made and HMRC had refused them.

The First Tier Tribunal dismissed the appeal ruling the appellants had failed to take reasonable care so had not been overcharged. The error made was made in good faith, but this did not amount to taking reasonable care. ■

Employer Bulletin: August 2021 A quick run through

Changes to right to work checks from 1 July 2021

The process for completing right to work checks on EU, EEA, and Swiss citizens changed from 1 July 2021.

- EU passports or ID cards can no longer be accepted by employers as valid proof of right to work, with the exception of Irish citizens.
- A job applicant's right to work must be checked online.
- EU, EEA, and Swiss citizens employed before 1 July 2021 do not need to be retrospectively checked. ■

Coronavirus Job Retention Scheme (CJRS)

- The deadline for CJRS claims for July 2021 was 16 August 2021.
- HMRC's templates should be used when claiming for 16 or more employees.

The Government will pay:

- 70% of employees' usual wages for hours not worked, up to a cap of £2,187.50, to the end of July 2021.
- 60% in August 2021 and September 2021, up to a cap of £1,875. ■

Informal payrolling of Benefits In Kind

- HMRC will only accept new informal payrolling arrangements for Benefits In Kind (BIK) during the 2021-22 tax year.
- Businesses that previously had an informal payrolling arrangement with HMRC **must** register for formal payrolling before April 2022 for 2022-23 as informal arrangements can only apply for a maxi of one tax year. ■

Correct payment of National Minimum Wage to apprentices

All apprentices are entitled to be paid at least the National Minimum Wage, but around one in five apprentices earn less than their legal entitlement.

Common errors noted by HMRC are:

- Failure to pay the higher age-related minimum wage rate to those apprentices who are aged 19 and over and have completed the first year of their apprenticeship.
- Paying the £4.30 per hour minimum wage apprentice rate before or after an apprenticeship actually starts or finishes.
- Not paying for all the time worked by an apprentice: training time is working time. ■

Kickstart Scheme: funding

Employers of all sizes can apply for Kickstart Scheme funding to create new jobs for 16 to 24-year-olds on Universal Credit.

Funding will cover:

- 100% of the National Minimum Wage for 25 hours per week for a total of six months.
- Employer NICs.
- Minimum automatic enrolment pension contributions.
- £1,500 grant per job to cover set-up costs and employability support. ■

PAYE Settlement Agreement payments

Electronic payments of NICs and tax in respect of PAYE Settlement Agreements for 2020-21 must clear HMRC's bank account by **22 October 2021**.

- Late payment may result in a penalty and/or interest.
- Use the PSA reference number from the HMRC payslip, for example XA123456789012 when making payment.
- If you do not have your PSA reference number, contact HMRC's office dealing with your application.
- Do not use your PAYE Accounts Office reference (format: 123PA12345678) to make payment as this will cause the incorrect allocation of the amount paid. ■

P11D(b) penalty warning letters

- 2020-21 P11D(b)s filed on or before 6 July 2021 have been captured by HMRC.
- Some employers and their agents may receive a penalty warning letter from HMRC, where a return was expected, but not delivered.
- The letter warns employers that they may have incurred a penalty and should file their outstanding return as soon as possible to avoid further penalties. Information on the action they need to take is included in the letter.
- Employers who registered to payroll benefits for 2020-21 still need to submit a P11D(b) to tell HMRC about the Class 1A NICs due.
- A nil P11D(b) can be submitted to HMRC if you do not owe Class 1A NICs by completing a declaration. ■

Packaging tax

A survey by Veolia, the waste management company, has found that 83% of UK companies don't know about the Plastics Packaging Tax due to come in next year. The Treasury announced its intentions for plastics tax in 2018 and the new tax Plastics Packaging Tax will commence in April 2022 but Veolia's research indicates most companies remain unaware of the impact on their own business.

- The tax will be £200 per tonne (apportionment for part thereof).
 - The tax will apply to plastic packaging that is manufactured in or imported into the UK containing less than 30% recycled plastic when measured by weight.
 - It applies to businesses that manufacture or import plastic packaging components or import packaged goods into the UK.
 - 'Small operators' who manufacture or import less than 10 tonnes of plastic packaging in a 12-month period are exempted from the charge.
- If you buy materials that are heavily packaged in plastic, you may need to prepare for price increases. ■

Employers claiming the Employment Allowance

Employers may have unwittingly received double relief if also claiming Coronavirus Job Retention Scheme (CJRS) payments due to the pandemic. The ICAEW Tax Faculty has consulted with HMRC to provide clarification.

The Employment Allowance (EA) provides relief against employer's Class 1 National Insurance Contributions (NICs) up to £4,000. Businesses with less than £100,000 of employer's Class 1 NICs in the previous tax year are eligible.

CJRS claims paid for the period from March 2020 to July 2020 included an amount to cover the employer's Class 1 NICs.

If a business deferred the EA claim until after running the July payroll, HMRC do not believe that there's any danger of double claiming, provided:

- The employer Class 1 NIC liabilities arising from August 2020 until March 2021 were sufficient to absorb the whole £4,000 allowance.
 - Businesses with liabilities of less than £4,000 will have had the unrelieved balance offset against liabilities incurred during the period April 2020 to July 2020. This, in turn, may lead to double claiming, as the EA takes priority over CJRS claims.
 - Businesses that had the EA backdated and offset in the first quarter will need to check that the CJRS secondary NIC payments do not exceed the amount actually paid. Any excess claimed will need to be repaid.
- If a business had claimed EA at the start of 2020/21:
- Secondary NICs were not being paid as they were absorbed by the EA.
 - CJRS claims should not have included NICs that had not been paid.
 - If such a claim was still made, the excess CJRS amount will need to be repaid. ■

Asking Companies House to extend filing deadline

Did you know that since 2019 you can ask Companies House to extend your filing deadline for company accounts? You can apply to extend your deadline if you cannot send your accounts because of an event that is outside of your control. ■

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