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Post-pandemic checks for your business

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With some tax rules having been put on hold during the pandemic, we set out the position on compliance now.

Homeworking expenses

The temporary exemption from income tax and Class 1 National Insurance contributions, where employers reimbursed employee expenses for the purchase of home-office equipment to enable working from home because of Covid-19, ended on 5 April 2022.

Recap

The normal position is that where an employer reimburses an employee for such a purchase, or indeed pays any costs on behalf of an employee, there is no tax exemption. On the other hand, an exemption exists where an employer provides supplies directly (rather than reimbursing the cost) and retains ownership of them, and the employee's private use is not significant.

Whilst it is possible for an employee to obtain tax relief themselves for a cost incurred 'wholly, exclusively and necessarily in the performance of the duties of their employment', in practice this is a very difficult condition to meet.

There is a specific tax exemption which covers the position where an employee has a formal homeworking arrangement in place. The exemption applies where an employee regularly performs some or all of the duties of the employment at home. It does not apply where work is carried out at home on an informal basis. To avoid possible HMRC challenge, we recommend defining the arrangement as formally as possible, and putting the arrangement in writing.

Where such an arrangement is in place, certain specific payments made by an employer can be made tax free, where it can be shown that the costs are incurred carrying out the duties of the employment. They include for example, the additional costs of heating and lighting the work area. Alternatively, a flat rate of £6 a week, or £26 a month for employees paid monthly, can be used.

Moving out of the pandemic, it will be important to review the position where employees adopt hybrid or flexible working arrangements, and we can advise further here. We can help you check that expenses and benefits paid to employees are compliant and, where needed, correctly reported to HMRC. We can also advise on the tax consequences if you allow employees to keep any equipment provided during the pandemic.

Enterprise Management Incentive

The pandemic easement relating to the Enterprise Management Incentive (EMI) scheme ended on 5 April 2022.

This means that where employees participate in an EMI scheme, the usual working time rules are again in force. They must, therefore, spend at least 25 hours per week working for the company or group whose shares are subject to the EMI option, or, if working hours are shorter, at least 75% of their total working time.

Recap

The EMI is aimed at small to medium-sized, higher risk, entrepreneurial companies, to facilitate the attraction and retention of high calibre employees. It can be operated by qualifying independent trading companies with assets of £30 million or less. By allowing key eligible employees to obtain shares in the employer company, it can provide a flexible add-on to remuneration. It is particularly beneficial in the more cash-constrained early years of such companies.

In outline, the employee receives the grant of an option giving the right to obtain shares at a later date, subject to meeting certain conditions. Where an outright grant of shares would fall to be taxed on the employee as earnings from employment, the EMI route is particularly tax efficient for both employer and employee.

One major benefit lies in the fact that the arrangement can be structured without tax and National Insurance consequences for the employee at the time the option is granted, deferring any tax liability potentially until the shares are actually sold. From the employer perspective, there is usually no charge to employer National Insurance on the grant or exercise of options. In addition, corporation tax relief may accrue when the share option is exercised, subject to specific conditions.

Obviously this is a specialist area, and strict qualifying conditions apply. Tax advantages can be jeopardised without close attention to detail: for example, if the scheme is not set up correctly, or if a company fails to notify HMRC within 92 days of the grant of an option. Care is thus required to ensure not just that arrangements correctly reflect the company's goals, but also that eligibility criteria are met, both as regards the company and employees. The valuation of such shares, which must be carried out when the scheme is set up and registered with HMRC, is particularly critical. To give assurance, HMRC can be approached in advance to agree the valuation, and that the company qualifies to grant an EMI option.

We can guide you through the EMI rules and compliance.

Salary sacrifice: the cycle to work scheme

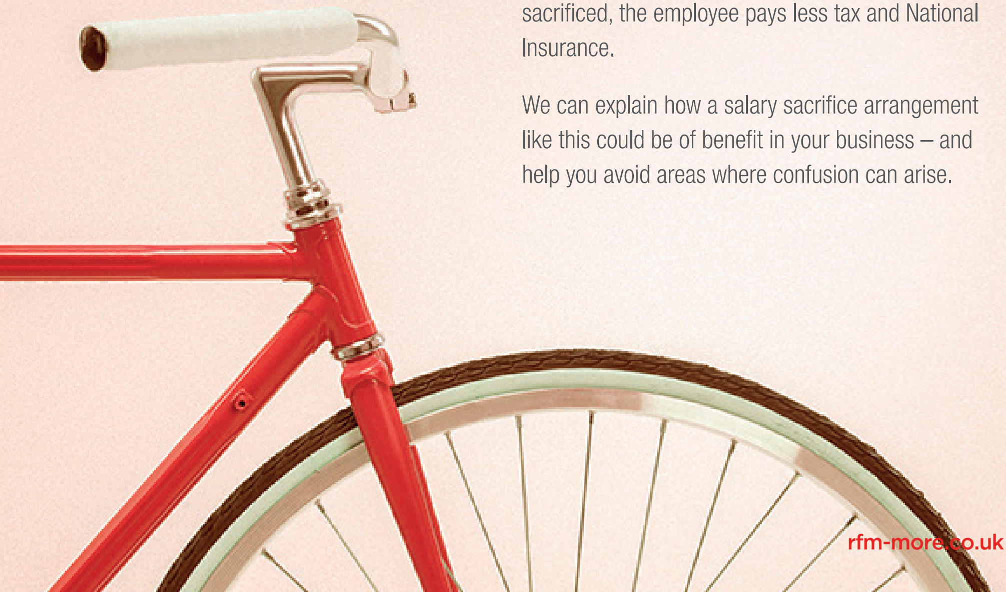
During the pandemic, scheme rules around use of cycle or cyclists' safety equipment 'mainly for qualifying journeys' were modified. This temporary easement ended from 6 April 2022.

The return of the main use test means that employees must use the cycle or equipment mainly for qualifying journeys. Other use of the cycle, whether for pleasure, or by family members, won't disqualify the exemption, so long as it's not the main use of the cycle. HMRC will accept the test is met if qualifying use is substantial and there is no clear evidence of extensive (over 50%) non-qualifying use.

Recap

The cycle to work scheme is one of the few benefits that can still be offered as a salary sacrifice arrangement without creating a benefit in kind charge. In outline, it allows employers to lend or hire cycles or cyclists' safety equipment to employees without a liability to income tax for the employee, subject to certain conditions. As a salary sacrifice arrangement, saving is two-way: the employer saves National Insurance contributions on the amount sacrificed, the employee pays less tax and National Insurance.

We can explain how a salary sacrifice arrangement like this could be of benefit in your business – and help you avoid areas where confusion can arise.



Coronavirus Statutory Sick Pay Rebate Scheme

The usual Statutory Sick Pay (SSP) rules are now in operation.

Recap

During the pandemic, SSP for Covid-related absences was paid from the first day of absence. Now however, the usual waiting days are once more in force, meaning SSP is not paid until day four of an employee's absence from work (including non-working days). We can advise on the correct operation of SSP or any other statutory payment.

Covid-19 testing

Special pandemic tax provisions still apply here. If an employer provides Covid-19 antigen tests to employees, or reimburses the cost of such tests, they continue to come under an income tax and National Insurance contributions exemption. This will apply until 5 April 2023.

Recap

The default position is that a payment or reimbursement of this kind would create a benefit in kind for the employee. We should be pleased to explain how benefits in kind can be fitted into a tax efficient remuneration strategy.

Right to work checks

Right to work checks changed during the pandemic, allowing employers to conduct the process remotely. Although scheduled to revert to normal on a number of occasions, the temporary rules are still in force and continue until 30 September 2022.

It is therefore still possible to carry out right to work checks over video calls, with job applicants and existing workers sending scanned documents, or a photo of documents for checks, using email or a mobile app, rather than sending originals.

There are, however, other developments to be aware of, so that the coming of September is not just about turning the clock back to pre-pandemic rules. Since 6 April 2022, new procedures apply to right to work checks for those holding a biometric residence permit, biometric residence card or a frontier worker permit. Some checks must now be carried out online, rather than manually.

There are also wider digital developments, intended to allow checks to continue to be conducted remotely but with enhanced security. The government is rolling out new technology called Identity Document Validation Technology (IDVT) for right to work, right to rent and criminal record checks. From 6 April 2022, employers and landlords have been able to use certified digital identity service providers to carry out the digital identity verification element of right to work checks on their behalf for British and Irish citizens who hold a valid passport (including Irish passport cards). A list of certified providers is maintained on gov.uk.

Covid-19 support schemes

HMRC continues to review claims that were made for financial support during the pandemic, such as the Self-employment Income Support Scheme (SEISS) and the Coronavirus Job Retention Scheme (CJRS), often called the furlough scheme.

Claims may have contained inadvertent errors. Where these gave rise to overpayment, in most cases there will be the requirement to repay monies to HMRC. It is therefore important to review claims made and check that they will pass HMRC scrutiny. Taxpayers are required to notify HMRC and repay amounts to which they are not entitled within time limits, usually 90 days. Income tax and corporation tax returns now include sections where taxpayers can report pandemic support to which they are not entitled. Voluntary disclosure of error is likely to minimise penalties in any situation.

Pandemic support to companies and unincorporated businesses is taxable and must be entered on the relevant tax returns. Such support includes:

- SEISS
- test and trace or self-isolation payments in England, Scotland and Wales
- Coronavirus Statutory Sick Pay Rebate
- CJRS
- Coronavirus Business Support Grants (also known as local authority grants or business rate grants)
- Eat Out to Help Out payments.

It is worth noting that HMRC has a time to pay facility for those experiencing financial difficulty, which is not limited to use because of Covid-19 hardship. Time to pay can be arranged for business taxes as well as income tax. There is no standard set of repayment terms: arrangements are always based on individual financial circumstances.

Working with you

Keeping up to date with tax requirements is important for every business and we are always available to help with any aspect of tax compliance.

Finally, as we emerge from the pandemic, we can also suggest ways to health check business profitability, giving you confidence for the longer term.

Speak to your usual RfM advisor or contact us online via our website rfm-more.co.uk/contact