

1 May 2024

TAX NEWS ENGLAND

Welcome to our latest monthly tax newswire. We hope you enjoy reading this newsletter and find it useful. Contact us if you wish to discuss any issues further.

WANT TO BE PART OF BETA TESTING OF MTD FOR INCOME TAX?

Although making tax digital income tax self assessment (MTD ITSA) is not mandatory until 6 April 2026 at the earliest, it is possible for certain individuals to join the HMRC pilot testing. HMRC have relaunched beta testing of MTD ITSA on 22 April 2024.

Just five software products so far have been listed by HMRC as compatible with MTD, with a further 21 listed as being in development. Those products that are currently compatible are:-

- 123 Sheets
- Intuit QuickBooks Online
- Sage Accounting
- SE_Reports
- Self assessment direct

All products have to meet HMRC's minimum functionality standards. If your current accounting software is not listed, it may be that it will soon receive HMRC approval.

To join the pilot, you need to be up to date with your tax returns and have relatively straightforward tax affairs. For example, you can't be a member of a partnership or be subject to the High Income Child Benefit Charge. Those with jointly owned rental properties or furnished holiday lettings are also currently excluded from the pilot.

Please discuss with us whether you would be interested in joining the pilot testing and we can help you get ready for the new regime.

HMRC PUBLISH UPDATED GUIDANCE ON WORK TRAVEL

Travelling from home to an employee's normal workplace does not qualify for tax relief. This is referred to as "ordinary commuting and, furthermore, if the costs of the journey are reimbursed by the employer, those costs are taxable. There are exceptions to this rule, in particular where the employer pays for the employee to travel home in a taxi safely late at night.

Travelling to a "temporary workplace" is a qualifying business journey and, where the costs are reimbursed by the employer, there is no taxable benefit. Note also that any associated subsistence costs such as overnight hotel accommodation costs are also a tax-free benefit. HMRC Booklet 490 provides detailed guidance on employee

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travel, together with comprehensive examples (this is an online document these days).

With more and more employees working from home these days, for at least one day a week, attention should be paid to the latest HMRC guidance on such arrangements.

WORKING FROM HOME

Whether or not an employee's home is a workplace does not affect the availability of tax relief for travel expenses. Travel expenses from home to a permanent workplace will only qualify for tax relief if the journey qualifies as travel in the performance of the duties of the employment.

Even though it may have been accepted that the employee's home is a workplace, it does not necessarily follow that they'll be entitled to tax relief for the cost of travel between their home and a permanent workplace.

This is because the place where an employee lives will ordinarily be down to their personal choice. The expense of travelling from their home to any other place is a consequence of that personal choice; not an objective requirement of the job.

HMRC guidance states that where an employee performs substantive duties of their employment at home as an objective requirement of the job, they may accept their home as a workplace for the purposes of the 'travelling in the performance of the duties' rule. Where this is the case, the employee will be entitled to tax relief for the expenses of travelling from home to other workplaces, as their travel is in the performance of their duties.

HMRC will usually only accept that working at home is an objective requirement of the job if the employee needs certain facilities to perform those duties, and those facilities are only practically available to the employee at their home.

HMRC state that they will not accept that working at home is an objective requirement of the job if the employer provides appropriate facilities in another location that could be practically used by the employee, or the employee works from home as a matter of choice.

Even where the employee works at home as an objective requirement of the employment, tax relief for the cost of travel between their home and their permanent workplace will only be due for travel made on days where the employee's home is a workplace.

Only on those days is the employee travelling between 2 workplaces. On other days the employee is travelling between their home and a permanent workplace, which is ordinary commuting.

LATE NIGHT TAXIS PAID BY EMPLOYERS

Payments by the employer for taxis to take employees home late or at night are exempt from tax if:

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- the failure of car sharing arrangements conditions are satisfied (see below); or
- all 4 late night working conditions are satisfied; and
- the number of such journeys for which a taxi has been provided for that employee in the tax year is no more than 60.

There are 4 late working conditions, all of which must be satisfied.

1. The employee is required to work later than usual and until at least 9pm.
2. This occurs irregularly.
3. By the time the employee ceases work, either:
 - a. public transport has ceased, or
 - b. it would not be reasonable to expect the employee to use public transport.
4. The transport is by taxi or similar road transport - this condition is not contentious and is not referred to again in this guidance.

The 60 journeys is a single limit that applies to late night journeys and failure of car sharing arrangements together. This means that journeys under both headings must be added together when working out whether or not the 60 journeys limit has been reached.

OFFICIAL RATE OF INTEREST FOR 2024/25 REMAINS AT 2.25%

HMRC have confirmed that the official rate of interest for employee and directors' beneficial loans remains at 2.25% for 2024/25, despite a Bank of England base interest rate of 5.25%.

This means that where the employer lends an employee more than £10,000, the taxable benefit would be the difference between 2.25% and the amount paid on the outstanding loan.

INVESTING AN UNQUOTED TRADING COMPANY

If you are considering lending money to, or subscribing for shares in, an unquoted trading company then, like many investments, there is always a risk that you may lose your money.

However, there is potentially tax relief for the lender if the loan meets certain conditions, in particular the money lent is used by the borrower wholly for the purposes of its trade, and the trade does not consist of or include the lending of money.

The tax relief is by way of a capital loss that can be set against gains in the same or future tax years. In order to make a claim for capital loss relief, any outstanding amount of the principal of the loan must have become irrecoverable, the claimant

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must not have assigned their right to recover that amount, and the claimant and the borrower were not each other's spouses or civil partners, or companies in the same group, when the loan was made or at any subsequent time.

CAPITAL LOSS ON SHARES IN AN UNQUOTED TRADING COMPANY

Where an individual subscribes for a new issue of shares in an unquoted trading company, there is an even more generous form of loss relief where those shares are disposed of at a loss, including the situation where the shares have become worthless. In that situation, it is possible to make a negligible value claim which creates a deemed disposal and reacquisition of the shares at that low value, thereby creating a capital loss. A further claim can then be made to set that capital loss against the subscriber's income in the year of the loss and/or the previous year. The attraction here is the income tax relief could save tax at 40% for higher rate taxpayers and 45% for additional rate taxpayers, as opposed to a capital gains tax saving at a maximum 24% (on residential property gains).

CONVERTING LOANS INTO SHARES

As mentioned above, where a loss is made on a loan to an unquoted trading company, relief for that loss may be claimed against capital gains, whereas the loss on subscriber shares can be set against income, saving tax at higher rates. It is possible for the lender to be issued with shares in the company in satisfaction of the loan, which potentially would allow the investor to claim relief for any subsequent loss against their income. Note that where the company is already insolvent at the time that the shares are issued, no capital loss will arise and HMRC are likely to challenge the loss claim, as they have done successfully in two recent tax cases.

TAX RELIEF UNDER THE ENTERPRISE INVESTMENT SCHEME

Where the company qualifies under the Enterprise Investment Scheme (EIS) or Seed EIS, the subscribers potentially qualify for even more generous tax reliefs. Where the investor is not connected with the company, they are entitled to tax relief based on 30% of the amount invested (EIS) or 50% in the case of Seed EIS. This relief is deducted from the investor's income tax liability for the year, or the previous year in the case of EIS investment. The shares need to be held for at least 3 years to retain the income tax relief and the shares would also be exempt from CGT when disposed of.

Should the EIS or Seed EIS shares be disposed of at a loss, then the capital loss arising (net of income tax relief given) can be set against the investor's income as set out above.

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DIARY OF MAIN TAX EVENTS

MAY/ JUNE 2024

Date	What's Due
01/05	Corporation tax payment for year to 31/7/23 (unless quarterly instalments apply)
19/05	PAYE & NIC deductions, and CIS return and tax, for month to 5/05/24 (due 22/05 if you pay electronically)
01/06	Corporation tax payment for year to 31/8/23 (unless quarterly instalments apply)
19/06	PAYE & NIC deductions, and CIS return and tax, for month to 5/06/24 (due 22/06 if you pay electronically)

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