

Ireland issues guidance on working from home and PAYE

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Executive summary

In response to the COVID-19 outbreak in Ireland, the Government has asked people to take measures to reduce the spread of the virus, and where possible, individuals are being asked to work from home. Following the initial action by both employers and employees to facilitate this, employers may start to receive queries from their staff about reimbursement of equipment obtained in the initial response and whether other expenses can be claimed as everyone settles into the new routine of working from home.

This Alert outlines the revised tax guidance around e-workers and how the measures apply to provide tax relief. Following the release of e-brief 45/20 on 20 March 2020, clarity has been provided by Revenue in relation to the current COVID-19 outbreak, where employees working from home as part of the Government's initiative to fight the virus will qualify for e-worker relief.

Detailed discussion

E-workers and home workers

Revenue has defined e-working to be where an employee works:

- ▶ At home on a full or part-time basis
- ▶ Part of the time at home and the remainder in the normal place of work
- ▶ While on the move, with visits to the normal place of work

The guidance goes on to state that e-working involves:

- ▶ Logging onto the employer's computer system remotely
- ▶ Sending and receiving email, data or files remotely
- ▶ Developing ideas, products and services remotely

The revised Revenue guidance clarifies that the following conditions must also be met:

- ▶ There is a formal agreement in place between the employer and the employee under which the employee is required to work from home.
- ▶ An employee is required to perform substantive duties of the employment at home.
- ▶ The employee is required to work for substantial periods at home.

An employee's normal place of work has been defined by Revenue when outlining the provisions relating to business travel and subsistence. Typically, an employer will provide facilities for employees to work and the normal place of work is described as the place where the employee normally works on a day-to-day basis. The revised guidance on e-working arrangements clarifies that where an employee works part-time in the office and part-time at home, the normal place of work will remain as the office.

The revised guidance does not elaborate what a "formal agreement" is between the employer and employee, i.e., a clause in the employment contract or an agreement in writing such as an email between the employee and the person they immediately report to. It is recommended that businesses will need to consider putting a formal structure in place for any verbal agreements with employees looking to avail of the e-worker relief in the future.

The revised guidance also does not define what Revenue considers to be "substantive duties of the employment" and "substantial periods" the employee is required to work outside their normal place of work. However, the guidance specifically confirms that e-working arrangements do not apply to individuals who in the normal course of their employment bring work home outside of normal working hours. In addition, examples included in the guidance illustrate cases where the employee chooses to work at home instead of the office where there is adequate space, or in the absence of a formal agreement, or where substantive duties are completed elsewhere, the individual will not qualify as an e-worker. This suggests that where there is an occasional and ancillary element to work completed from home, the e-working provisions will not apply.

Finally, the guidance does provide an example where the Government recommends that employers allow their workforce to work from home due to national health objectives, such as the COVID-19 outbreak, where the employees will meet the conditions to qualify for e-worker relief. This provides welcomed clarity to the current working arrangements many employers and employees find themselves in over the coming weeks.

Equipment

Where an employee qualifies as an e-worker and provided that any private use is incidental, an employer can provide the following equipment for use at home where a benefit-in-kind (BIK) charge will not arise:

- ▶ Computer, laptop, hand-held computer
- ▶ Printer
- ▶ Scanner
- ▶ Software to allow the individual to work from home
- ▶ Telephone, mobile and broadband
- ▶ Office furniture

Other expenses

Daily allowance

Where an employee qualifies as an e-worker, an employer can pay an allowance of €3.20 per workday without deduction of Income Tax, Universal Social Charge and Employee Pay Related Social Insurance. The purpose of this allowance is to cover the employee's cost for heating and electricity incurred while working from home.

If the employee forgoes part of their salary to receive the allowance tax free, the salary sacrifice provisions will apply, where the allowance will remain taxable as normal remuneration. Any allowances paid in excess of €3.20 will be subject to PAYE (Pay As You Earn) in the normal manner.

The revised guidance advises that employers must retain records of all tax-free allowance payments to employees.

An important point to note, is that where the employee is working from their home on a particular day and undertakes business travel and claims travel and subsistence expenses; where the e-workers daily allowance is received for the same day, this allowance will be regarded as normal pay and will be subject to PAYE.

Business expense reimbursement

However, if the employee's utility costs are higher, the employer can reimburse actual business expenses incurred by the employee through a normal expense claim. This will involve the employee identifying the element of the utility bill relating to business use and the portion relating to private use. Provided only the business element of the utility bill is reimbursed and the general provisions for a business expense to be reimbursed without deduction of PAYE are satisfied, there is no requirement to deduct tax. Employers will be required to maintain records of such expense claims in the normal manner.

Employee claim for tax deduction

If the employer decides not to alleviate the additional expense incurred by employees in working from home via: (i) the allowance; or (ii) an expense reimbursement, employees may wish to seek a deduction from their personal taxes for work-related expenses through MyAccount directly with Revenue. Unfortunately, employees cannot claim the €3.20 tax-free allowance from Revenue.

The employee will be required to identify the number of days they have worked from home during the year and identify the portion of the utility bills relating to the e-working days.

This amount must then be apportioned further to identify the business and private elements. The guidance advised that Revenue will accept the average proportion of the house attributable to a home office to be 10% which will reflect the business element of utility bill for the e-working days. Receipts of the expenses will need to be kept and Revenue may also request a letter from the employer to support the claim.

Any reimbursement made by the employer, such as the daily allowance of €3.20 must be deducted from any claim made by the employee.

Other queries from employees

Where employees meet the conditions to be considered e-workers, they may inquire how e-working from their home will affect any tax relating to the property.

Using part of the property for e-working will not impact the employee's principal private residence (PPR) relief claim when selling their home in the future.

No reduction on the Local Property Tax (LPT) will be available where part of the property is used to facilitate e-working.

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EYG no. 001509-20Gbl

1508-1600216 NY
ED None

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