Keith Graham
Chartered Accountants and Registered Auditors

Suite 2, Wesley Chambers, Queens Road, Aldershot, Hampshire GU11 3JD
Tel: +44 (0)1252 312561 Fax: +44 (0)1252 342598
www.keith-graham.co.uk

Partners - Simon Pusey BA FCA, Amanda Pusey FCA

Newsletter

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Scottish taxpayers

Correctly identifying Scottish taxpayer status matters. With Scottish Income Tax rates and bands steadily diverging from those in the rest of the UK, employers and employees alike need to be aware of what constitutes Scottish taxpayer status — and to check that HMRC has the right address on file. The rise in remote working since the pandemic means it's wise not to make assumptions.

Scottish taxpayer status is important because, in round terms, Scottish taxpayers earning more than around £28,867 currently pay more tax than those in the rest of the UK; whereas those earning less than this, pay less. The main risk, therefore, is that if someone is misclassified by HMRC, there's the potential to accumulate a hidden tax liability.

The issue is clear cut for employees with just one 'place of residence', which is in Scotland. They are Scottish taxpayers, and a tax code with the 'S' prefix, should be used. The code S1257L denotes a Scottish taxpayer with the full Personal Allowance.

But there are more complex areas. These include employees with more than one place of residence: and those moving into, or out of Scotland in the course of the tax year. Though it's the individual's responsibility to notify HMRC of a change of address, those with employees moving to Scotland might want to do some basic signposting: and most importantly, a Scottish tax code is needed if in the course of the tax year, the 'main residence' is in Scotland for longer than elsewhere in the UK. Do please contact us to discuss this more fully.

Reporting benefits in kind

Get ready for change.

From April 2026, it's expected that employers will be required to report and pay Income Tax and Class 1A National Insurance contributions on benefits in kind in real time, via payroll software.

It's anticipated that 2025/26 will be the last tax year for which HMRC will accept P11Ds and P11D(b)s, but there are still points to clarify. At present, for example, there's no detail on what will happen to benefits that currently can't be payrolled: employer-provided living accommodation and interest-free or low interest (beneficial) loans. This is presumably something HMRC will work on before 2026. Draft legislation is expected later in the year, but there is a lot of work to be done to bring the change into reality, and it remains to be seen how the upheaval of the general election will impact timetabling.

What the change means in practice is that employees receiving a taxable benefit — a company car, for example — will have the taxable value of the benefit added to taxable pay. Tax is then paid through payroll in real time, instead of via an adjustment to the PAYE tax code, or paying under self assessment, as at present.

It's all part of the push to increase digital interaction with HMRC, and HMRC is majoring on the fact that by eliminating the need to file some four million end of year returns, it will reduce the administrative burden on employers.

But this isn't quite the whole story, and in the short run, employers have a lot of work to do. Even employers who already payroll benefits will need to gear up to make sure their systems can handle a shift into real-time reporting for all employees. And for employers who don't currently payroll, there is obviously more preparation to do — not least making sure that they have appropriate payroll software in place.

Wherever on the scale your business sits, there's also a considerable communications exercise ahead. Staff will need to adapt too, as tax is collected in real time. This is likely to be a particular issue in 2026/27 when, as well as adjusting to the new system, some employees may also still be catching up on PAYE code adjustments from previous years.

If you don't already payroll benefits, do talk to us about how to get ready. One option is to register to payroll ahead of the planned implementation date, to give time to get used to the new system. To do this, advance registration with HMRC is needed.

Registration is required before the start of the tax year in which you want to payroll benefits. So to payroll benefits for the tax year 2025/26 — the earliest this can now be done — means registering before 5 April 2025. It is now possible for us to register to use HMRC's payrolling service as your authorised agents with HMRC, and we are happy to discuss this with you. Please don't hesitate to get in touch.

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It's your main residence

But if HMRC asks, can you prove it?

It's an important question when it comes to Capital Gains Tax (CGT) and Private Residence Relief. The relief means that any gain on the disposal of your main residence is usually exempt from CGT, provided you meet certain conditions:

- The property has been your only or main residence throughout the period of ownership: or throughout the period, apart from all, or any part of, the final nine months of ownership. For disabled persons or those moving into a care home, this final period can be up to 36 months.
- You have not been absent from the property during the period of ownership, other than for certain reasons permitted in the legislation. We are happy to outline these rules more fully.
- Part of the property has not been used exclusively for business purposes. It's exclusivity that is the issue here. Using part for business, so long as there is also non-business use, is acceptable.
- You have not let out part of the property. This restriction does not apply to having a lodger.
- The grounds, including all buildings, are less than 5,000 square metres (just over an acre) in total, unless you can demonstrate that a larger area is required for reasonable enjoyment of the property.
- The property was not bought in order to make a gain on disposal.

For married couples and civil partners, it should be noted that only one property per couple can count as the main residence.

Home is . . . ?

What, though, does it mean to occupy somewhere as your residence? The word residence isn't defined in the legislation, so HMRC will be on the lookout for evidence that a dwelling is actually your home. This, HMRC says, is a test of 'quality rather than quantity', involving a degree of 'permanence, continuity and the expectation of continuity'. Above all, it's a question decided on the facts of the individual case. That, regrettably, was where one taxpayer fell the wrong side of the rules at the Tax Tribunal, and was faced with a CGT bill of over £43,000 as a result.

Taxpayer, Mr Patwary, lived with his parents in London before purchasing a property in April 2010. He claimed that he had lived at his newly-purchased property with his girlfriend (subsequently his wife) until 2013, a friend also moving in from 2011. On the breakdown of his marriage, Mr Patwary moved back to his parents in 2013. The property was then sold in 2016. He lost his appeal, however, for lack of evidence proving he had actually lived in the property— as opposed to simply owning it.

What sort of evidence was the Tribunal looking for? Registering to vote at the new address; getting council tax bills in his name at that address; a television licence or parking permit for the address; sight of his marriage certificate giving the relevant address — any of these might have been persuasive evidence.

Mr Patwary said, quite plausibly, that he had not changed his address in various instances because he worked with his father and could therefore pick up his post daily. However, changing his address with the bank or HMRC might have helped his case. Ultimately, the Tribunal concluded that it had seen 'remarkably little evidence . . . to demonstrate a period of residence in the property of over three years'.

So, if HMRC asks — can you prove that you are occupying your home as your main residence? Though not mentioned in Mr Patwary's case, other helpful indicators include: registering with a local doctor or dentist; a spouse or civil partner registering to vote at the address: using the address for bank and building society correspondence, for credit cards and utility bills; registering and insuring a car at the address. It will always help to have the paperwork to hand, should you ever need it.

Training costs: HMRC shifts ground

Updated HMRC guidance makes interesting reading if you are self-employed and decide to upskill. Is the training tax deductible — or not?

There are two basic conditions for deductibility:

- expenditure is incurred wholly and exclusively for the purposes of the trade and
- it is revenue, not capital expenditure: in other words, it does not provide an enduring benefit for the business.

In practice, it can be difficult to decide. Following many years of a more restrictive approach, HMRC's new guidance suggests training costs should usually be treated as revenue expenditure if the aim is to update your skills for a current business. Deductibility may also extend to acquiring new skills to keep you up to speed with advances in science and technology relating to your existing business. And in another subtle shift of emphasis, it may likewise extend to training courses 'ancillary to the main trade', such as basic bookkeeping or digital skills. What it rules out, on the other hand, are costs for training to enable you to start up a business; or if you are already in business, to branch out into a new, unrelated line of trade.

Much will depend on the facts of your individual circumstances, and we are happy to advise further.

Travel expenses: flexible and hybrid workers

Travel costs make up a large part of necessary expenditure for many businesses. With the shift to some form of out of office working now operated by many employers, has the position on allowable travel expenses kept pace?

Recap

The position has always been that an employee cannot receive tax relief for the cost of a journey which is either ordinary commuting or private travel; and the terminology used is very precisely defined.

Ordinary commuting, for example, means travel between a permanent workplace and home. For most employees, this would refer to the journey made, most days, between home and the normal place of work. For some employees, however, the position will be more complicated.

When it comes to working from home, HMRC's position is that even if the employee's home is accepted as constituting a workplace, it does not necessarily mean they are eligible for tax relief for the cost of travel between their home and a regular workplace. This is because where they live is ordinarily a matter of personal choice. The cost of travelling from home is thus the consequence of that personal choice, rather than an objective requirement of the job. HMRC will not accept that home working is an objective requirement of the job if the employer provides appropriate facilities elsewhere that could be used by the employee, or the employee works from home as a matter of choice.

Latest guidance

HMRC has recently updated its guidance on ordinary commuting and private travel, adding a new section to clarify the rules on claiming tax relief for flexible and hybrid workers.

It says: 'Modern information and communications technology has allowed many more employees to work from home on a flexible or hybrid basis. Under such arrangements, the employee will have a base office and journeys from home to that location will be ordinary commuting.' Or put another way, tax relief will not be available for travel between home and office.

In fact, as the sheer number of different scenarios given in HMRC's guidance demonstrates, there isn't a one size fits all solution. There are likely to be many cases in which employers will have to make a judgement call on the basis of individual employment contracts.

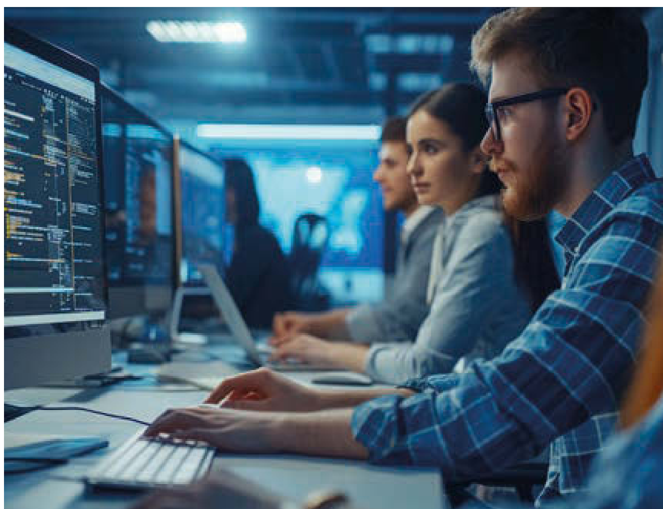
Be aware, too, that what holds good for one employee, may not hold good for another. An employee working from home by choice, for instance, would be ineligible to claim tax relief on travel expenses; but what about a colleague working from home on the basis of reasonable adjustment under the disability provisions of the Equality Act — rather than choice?

Employer options

Of course, regardless of tax relief, it is still open to an employer to foot the travel bill for ordinary commuting for employees. Where an employer reimburses for travel costs, this should be put through the payroll and taxed as additional salary. Where the employer pays the cost directly, a benefit in kind will typically arise. Please don't hesitate to contact us with any queries you may have.

Update: pensions automatic enrolment

Significant change to the pensions automatic enrolment regime, extending enrolment to younger workers, and removing the lower earnings threshold for qualifying earnings, has been said to be on the horizon for some time. A government Review in 2017 stated that the aim was to have change in place by the mid-2020s. So where are we now? We outline the current state of play.



The plan is to lower the age limit to participate in auto-enrolment to 18 from 22. In addition, pension contributions are to be calculated from the first £1 earned, essentially doing away with the lower earnings threshold (£6,240 per year for 2024/25) and introducing contributions from £1 to the upper limit (£50,270 per year in 2024/25).

When they take place, these developments will certainly mark a major milestone. For employers, they will come with a price tag, as pensions contributions are paid for more employees, and on a bigger slice of earnings. For workers, there's also a cost, and it's possible that some will want to opt out of auto-enrolment or stop contributions. Communicating all this to your workforce will be particularly important.

The question is — when? Though legislation enabling the Secretary of State to make regulations bringing in the changes received Royal Assent in 2023, no timetable for implementation has been announced. A lack of clarity is never good news for employers, and we will do all we can to update you here. Please do keep in touch with us for details of further developments.

Plant and machinery allowances

What records should you keep to keep right side of the rules?

HMRC is publicising common areas of error where businesses trip up when they claim plant and machinery allowances. It's not new guidance, just a nudge to help businesses keep on the right side of the rules, and it's intended to be read alongside other HMRC guidance.

The importance of good record keeping is an area particularly highlighted. Good records not only help ensure that claims are accurate; if HMRC comes back with questions, it should also mean any issues are resolved more speedily.

HMRC recommends that a record is kept of capital allowances claimed, either for the specific asset or as part of a pool. In particular, it is suggested that there are records of all acquisitions and disposals, including: the name of the asset; the date of acquisition; acquisition cost; date of disposal; disposal receipts or value on disposal. It is also suggested that it is useful to record how the plant or machinery was acquired: whether purchased, received as a gift, or already in use for another purpose.

Where an asset is not just used for the qualifying (business) activity, but also for other purposes, records should be good enough to show how use is split between the two. This is particularly relevant for vehicles. The key differentiation here is between business and private mileage.

Claims for capital allowances are usually made in the tax return and it should be remembered that supporting records should normally be kept for five years from the normal filing date for the tax return. Incorporated businesses will usually need to keep records supporting their returns for six years from the end of the relevant accounting period. Records may need to be kept for longer where HMRC opens an enquiry.

Plant and machinery claims are a complex area, and getting record keeping right is just the tip of the iceberg. For help and advice, please get in touch.

Staff tips: when do new employer duties begin?

Temporary delay buys more time for preparation.

Earlier this year, a new Code of Practice on the fair and transparent distribution of tips was published and laid before Parliament. It will have legal effect under the long-awaited Employment (Allocation of Tips) Act 2023.

The new regime was set to come into force on 1 July 2024, following approval by parliament, but is now pushed back to 1 October 2024. Whether the general election will mean another slide to the timetable remains to be seen.

Employers have, however, been urged by the government to follow the new requirements now, even before they have legal force. Certainly, the run-up to October would be well used to check that everything that's needed for compliance is in place and ready for the point at which the legislation finally gets over the finishing line.

Change stems from concerns that employees are losing out on tips, gratuities and service charges left by customers, and the new measures make it unlawful for businesses to retain tips rather than passing them on to employees without deductions. This will be particularly relevant in the hospitality, leisure and services sectors, but will apply across the board to all industries.

What's coming?

Setting out 'overarching principles on what fairness is', the new Code must be taken into account by employers when designing and implementing tipping policies and practices. Compliance with the Code matters, because, for example, where a case is taken to the Employment Tribunal in a dispute over tipping, employer compliance with the Code will be considered.

Briefly, under the new requirements, employers must:

- Pass on all tips to workers without deductions (limited statutory deductions excepted).
- Ensure tips are distributed in a fair and transparent manner, wherever the employer controls, or exerts a significant influence over their distribution. Many businesses currently operate what is known as a tronc system to allocate tips. Such arrangements, so long as operating fairly and independently, are also permitted under the new rules.
- Have regard to the Code when distributing or influencing the distribution of tips.
- Pay tips to workers by the end of the month following the month in which received, at the latest.
- Have a written policy on how they deal with tips, and make this available to all workers.
- Keep records of all tips paid, and their allocation to each worker. Workers have the right to request access to their own records and to the total received by the employer.

Arrangements where tips are received by workers without employer control or involvement are not impacted by the new rules. Note, too, the rules apply in England, Scotland and Wales, but not Northern Ireland, where employment matters are devolved.

Working with you

None of the new measures change the existing rules for tax and National Insurance. These can be tricky to deal with in themselves, and we are always happy to provide guidance here. We are also on hand to help with preparation for the changes expected in October.

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