

Private use of computers

Do you allow your employees private use of computers which are in the office or at the employee's home? And similarly do you allow private use of notebook computers? Private use will often include accessing the internet.

If you allow private use of computers for employees or directors it is essential to have a clearly stated policy in place in order to remove the risk of benefits-in-kind being taxed on employees and directors.

There are good reasons for allowing private use including the maintenance of good employer/employee relationships and the development of computer skills by the employee. Even if an employer forbids private use, there may still be an issue as the benefit-in-kind regime is based on whether the asset is available for the use of the director or employee. Whether or not it is used is immaterial.

Prior to April 2006 a benefit-in-kind did not generally arise on private use of computers by employees. But the tax law has changed where a new computer is provided to an employee after 5 April 2006. From this date there is a risk that allowing private use will result in a benefit-in-kind arising on the employee and extra employers' National Insurance (NI) contributions. The liabilities may not come to light until HMRC conduct a PAYE and NI compliance visit (with the charges arising being calculated cumulatively from April 2006. However by properly managing the type of private use allowed, it is possible to remove this risk.

Key points to consider

What is the potential charge?

Where there is private use of an asset placed at the disposal of a director or employee the value of the benefit-in-kind to be charged is:

- the 'annual value of the use of the asset' or, if greater, the rent or hire charge paid for it; and
- any expenditure on the asset including expenditure on running costs, repairs, maintenance, etc.

The annual value is 20% of the market value of the asset at the time it was first used to provide a benefit-in-kind. This is charged every year.

How can the charge be removed?

A charge will not arise if any of the following apply:

- private use is not allowed and there is no private use;

- where a computer is made available to an employee under an arrangement entered into before 6 April 2006 (this exemption will not continue when that computer is replaced);
- the computer is located on the employer's premises and any use for the employee's private purposes is **not significant**;

Where the computer is not located on the employer's premises a charge will not arise if:

- it is provided for the sole purpose of enabling the employee to perform the duties of the employment; and
- the individual uses the computer in performing the duties of the employment; and
- any use for the employee's private purposes is **not significant**.

What does the term 'not significant' mean?

'Not significant' is not defined in statute and so HMRC have recently published guidelines as to when the test will be satisfied.

The 'not significant' condition is not decided purely on the absolute time spent on different uses of the equipment or services provided. It should be considered in the context of the employee's duties and the necessity for the employee to have the equipment or services provided in order to carry out the duties of the employment.

Two examples from HMRC show where the test is met or not met.

Financial adviser

An employee for a financial advisory firm chooses to work at home every Friday. The employer provides a laptop computer for the employee to take home. It is not an essential part of his job to work from home on Fridays, but since the employer agrees to this working pattern, the laptop is required to enable the employee to do his job. The amount of time spent on the laptop for business use on Fridays is roughly equal to time spent at other times of the week on personal use of the laptop.

The sole reason that the laptop is provided is to enable the employee to work from home on Fridays. It is essential for this purpose. Private use of the laptop is secondary to this primary purpose and is therefore not significant.

Retail assistant

A shop assistant works for a large retail employer and is loaned a computer by the employer for personal use at home. The duties of the employment do not require the employee to work at home except on infrequent occasions when the computer may be used to produce a spreadsheet of weekly or monthly sales, compared with sales targets. The employee regularly uses the computer to order online weekly groceries and to book holidays.

The sole purpose for providing the computer was not for business use and the private use is significant relative to the business use of the computer.

So what do you need to do?

HMRC have included some other requirements to be met before the 'not significant' test is satisfied. Expressing these guidelines as a set of procedures means you need to do the following.

- The employer's policy about private use must be clearly stated to the employees and sets out the circumstances in which private use may be made. This can be achieved in a number of ways:
 - if you have an employee handbook which sets out corporate policies, incorporate the model policy statement included with this letter into the handbook;
 - ask employees to sign a statement acknowledging company policy on what use is allowed (see the end of the policy statement).
- Document that a management decision not to recover the costs of private use is a commercial decision, for example based on the impractical nature of doing so, rather than a desire to reward the employee.

A model policy statement

Policy and scope

All the company/firm's resources, including computers, access to the internet and email are provided solely for business purposes.

The purpose of this policy is to ensure that you understand to what extent you may use the computer(s) owned by the company for private use and the way in which access to the internet should be used within the company/firm, to comply with legal and business requirements.

This policy applies to all employees of the company/firm and failure to comply may lead to disciplinary action in line with the Disciplinary Procedure. In addition, if your conduct is unlawful or illegal you may be personally liable.

General principles

A computer and internet access is provided to you to support the company/firm's activities.

Private use of computers and the internet is permitted, subject to the restrictions contained in this policy. Any private use is expected to be **in** the employee's own time and is not to interfere with the person's job responsibilities. Private use must not disrupt our IT systems or harm the company/firm's reputation.

You should exercise caution in any use of the internet and should never rely on information received or downloaded without appropriate confirmation of the source.

Inappropriate use

Computers are a valuable resource to our business but if used inappropriately may result in severe consequences to both you and the company/firm. The

company/firm is particularly at risk when you have access to the internet. The nature of the internet makes it impossible to define all inappropriate use. However you are expected to ensure that your use of computers and the internet meets the general requirements of professionalism.

Specifically, during any use of the computer or internet you must not:

- copy, upload, download or otherwise transmit commercial software or any copyrighted materials belonging to the company/firm or other third parties;
- use any software that has not been explicitly approved for use by the company/firm;
- copy or download any software or electronic files without using virus protection measures approved by the company/firm;
- visit internet sites or download any files that contain indecent, obscene, pornographic, hateful or other objectionable materials;
- make or post indecent, obscene, pornographic, hateful or otherwise objectionable remarks, proposals or materials on the internet;
- reveal or publicise confidential or proprietary information about the company/firm, our employees, clients and business contacts.

The following activities are expressly forbidden:

- the deliberate introduction of any form of computer virus;
- seeking to gain access via the internet to restricted areas of the company/firm's computer system or another organisation's or person's computer systems or data without authorisation or other hacking activities.

Using laptops/portables

Laptops supplied by the company/firm may be used for email/internet use without being connected to the corporate server. The software to allow such access and to control viruses should be installed only by a member of the IT department.

Monitoring

At any time and without notice, we maintain the right and ability to examine any systems and inspect and review any and all data recorded in those systems. Any information stored on a computer, whether the information is contained on a hard drive, computer disk or in any other manner may be subject to scrutiny by the company/firm. This examination helps ensure compliance with internal policies and the law. It supports the performance of internal investigations and assists the management of information systems.

In order to ensure compliance with this policy, the company/firm may employ monitoring software to check on the use of the internet and block access to specific websites to ensure that there are no serious breaches of the policy. We specifically reserve the right for authorised personnel to access, retrieve, read and delete any information that is created by, received or sent as a result of using the internet, to assure compliance with all our policies. Such monitoring will be used for legitimate purposes only.

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