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Technical Paper: **Determination of Payments as Tax Free Benefits for Work
from Home and Remote work**

TECHNICAL ADVISORY

Table of Contents

Abbreviations and Glossary of terms	1
Purpose	3
Background	3
Legislative References	4
Work from Home Arrangement	9
What constitutes “Working from Home”?	9
Persons affected by Work-From-Home (WFH) or Remote Work Arrangements	9
Impacts of the Work from Home or Remote Work Arrangements	10
Obligations of the parties under a work from home arrangement	10
Records to be maintained by employers and self-employed persons	11
Expenses likely to be incurred as a result of working from home or remote work	12
I. Factors for the Employers to consider when determining the taxability of payments made to or on behalf of employees	12
(i) Telephone usage	12
(ii) Internet usage	13
(iii) Furniture/ Equipment provided by the employer for the purposes of work from home or remote work	13
(iv) Furniture/Equipment acquired by the employee for the purposes of work from home ..	13
(v) Area of home designated for office use	14
(vi) Increased expenses for the employee as a result of working from home	15
(vii) Where the employee is in receipt of other approved tax free benefit such as travelling	15
(viii) Where employee is entitled to Meal Allowance and Supper Allowance	15

TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

II. Factors to consider when determining deductible expenses for Self-Employed Persons.....	17
(i) Area of home designated for office use.....	17
(ii) Internet usage	18
(iii) Furniture/ Equipment acquired by the self-employed person for the purposes of work from home or remote work	18
(iv) Increased expenses for the self-employed person as a result of working from home	18
Deductibles	18
Tax Treatment	19
Audit Verification Review	20
QUESTIONS AND ANSWERS	21
APPENDIX 1.....	24

TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

Abbreviations and Glossary of terms

BPO	Business Process Outsourcing
Broadband	A high-capacity internet transmission technique using a wide range of frequencies, which enables a large number of messages to be communicated simultaneously
Capital Allowance	The means by which tax relief is given for some (but not all) capital expenditure. It is effectively a standardised tax-deductible version of depreciation or amortisation which replace accounting depreciation on an income tax return . ¹
Closed User Group (CUG)	Closed User group is a service provided by the mobile operators to mobile subscribers who can make and receive calls from any member associated within the group but limiting access beyond the defined set of group members.
CG	Commissioner General, Tax Administration Jamaica
DRMA	Disaster Risk Management Act
Employee	The Second Schedule, Part I, The Income Tax (Employments) Regulations interprets this to mean any person in receipt of emoluments
Employer	The Second Schedule, Part I, The Income Tax (Employments) Regulations interprets this to mean any person paying emoluments, whether on his own account or on behalf of another person;
Flexible Working Hours (FWH)	This arrangement allows for greater flexibility in the scheduling of the traditional 40-hour work week, with alternate work schedules.
Honorarium	A voluntary payment that is given to a person for services for which fees are not legally or traditionally required.(Investopedia)
ITA	Income Tax Act
Normal Working Hours	Hours of work fixed by or in pursuance of laws or regulations, collective agreements or arbitral awards, or the number of

¹ <https://www.lexisnexis.co.uk/legal/guidance/what-are-capital-allowances-capital-expenditure>

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TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

	hours in excess of which any time worked is remunerated at over-time rate. ²
Remote Work	Remote work is a non-traditional workplace concept, which allows an employee to work from outside the official office environment of the employer or a type of flexible working arrangement that allows an employee to work from a remote location, not necessarily at home, but outside of corporate offices.
Self-Employed Person	This is a person gainfully occupied in Jamaica who, in relation to that occupation, is not an employed person. These persons earn their living from any independent pursuit of economic activity, rather than working for a company.
Special Economic Zone (SEZ)	Area designated under Section 18 of the Special Economic Zones Act, 2016
Stipend	A fixed sum of money paid periodically for services or to defray expenses.
Supper Allowance	An allowance payable to non-shift workers who are required to work beyond 7:00 p.m. and not in receipt of overtime payment, duty allowance or honourarium.
TAJ	Tax Administration Jamaica
Telecommuting	This is a work situation where an employee does his or her work off-site; typically, from home, an agreed location but stays in communication with his employer and other employees via telephone, email and other internet-related mediums of communication. Telecommuting, is also known as telework or remote work.
VPN	Virtual Private Network
Virtual Private Network	An encrypted connection over the Internet from a device to a network that helps to ensure that sensitive data is safely transmitted and prevents unauthorized people from eavesdropping on the traffic and allows the user to conduct work remotely ³ .
Work from Home (WFH)	This type of flexible working arrangement allows the employee to work remotely from their place of residence or any other agreed location as an alternate option to working from the employer’s workplace. This arrangement may be temporary or long-term.
WFH	Work From Home

² Glossary of Statistical Terms (OECD), ILO, Geneva, 2002

³ <https://www.cisco.com › Products & Services › Security>

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TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

Purpose

The purpose of this Technical Advisory is to provide guidance on the treatment of payments made to employees for additional expenses incurred as a consequence of working from home or any other agreed location outside of the employer’s normal place of business. Guidance will also be provided to those self-employed persons who were originally operating their businesses outside of their homes and now perform their duties from a designated area of their homes.

It also seeks to guide persons operating within the Special Economic Zone (SEZ) on the potential impact of having the functions being executed from home instead of within the area so designated for such operations.

Background

On March 10, 2020, Jamaica recorded its first case of corona virus. As a result of the increase in cases, a number of businesses and other institutions had to make provisions for their staff to work from home in order to meet the safety requirements of the Ministry of Health and Wellness and comply with Orders made under the Disaster Risk Management Act where physical distancing is a major requirement. Given the situation being experienced in this current pandemic, WFH became a legal necessity and has resulted in workers incurring related expenses.

WFH expenses traditionally are not reimbursable under most national laws and practices. In the absence of legislative requirements, employers should consider reimbursing workers for their reasonable and necessary home office expenses incurred in performing required tasks. TAJ has agreed to allow a certain degree of flexibility and provide guidelines to facilitate the implementation of the WFH policy.

With this ‘new normal’, some companies are now providing the relevant office equipment, furniture and systems access in the homes of their employees to ensure the continuity of their business operations. In some sectors such as the BPO, staff was required to utilize network platforms with specific bandwidth in order to effectively carry out their functions. In other instances, employees had to adjust their homes, to make provisions for an office space to facilitate efficient work operations. These adjustments may have resulted in significant increases in utilities and other expenses. As such, a number of entities have been assisting the affected employees with stipends or subsidies to offset the additional expenses being absorbed by them during this time.

Some self-employed persons have had to rearrange their business operations which required them working from the confines of their home, resulting in similar increases in utilities and other expenses.

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TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

Furthermore, as COVID-19 restrictions are being lifted worldwide, and businesses have reopened with face-to-face contact, a number of companies have implemented new work policies for flexible hours, telecommuting and remote-work arrangements which will become part of the new normal. Studies carried out have indicated that many employers have experienced how successful the work from home arrangement was for their organization or how work hours that differ from the normal 9-to-5 can be adopted without injury to productivity, so offering flexible work arrangements may become more common in the general landscape of business operations.

Legislative References

Income Tax Act

Definition of Emoluments as per Section 2

emoluments includes, in relation to any office or employment of profit-

(a) all salaries, fees, wages, all provision or payment, as the case may be, in respect of living or other accommodation, entertainment, utilities, domestic or other services and other benefits, perquisites and facilities whatsoever (whether or not similar to any of the foregoing and whether in money or otherwise); and

(b) without prejudice to the provisions of section 13, all sums paid to any person by an employer in respect of expenses whether reimbursable or not;

(c) all annuities, pensions, superannuation or other allowances payable in respect of past services in any office or employment of profit, whether legally due or voluntary, and including lump sums paid in commutation or in lieu of a pension or other periodical superannuation payment, and any payment of money made, or other valuable consideration given, to any person being the holder or past holder of any office or employment of profit in consideration for, or otherwise in connection with, the termination of the holding of that office or employment (otherwise than by death) or any change in its nature or terms, or any undertaking given by that person as to his future conduct, whether the payment is made to that person or to his relative or dependent (in which case it shall be treated as made to that person, unless he is dead, when it shall be treated as made to the recipient thereof);

Tax on Income/Emoluments

Section 5 (1) – Chargeable incomes.

5. (1) Income tax shall, subject to the provisions of this Act, be payable by every person at the rate or rates specified hereafter for each year of assessment in respect of all income, profits or gains respectively described hereunder-

(a) the annual profits or gains arising or accruing-

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TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

(i) to any person residing in the Island from any kind of property whatever, whether situated in the Island or elsewhere; and

(ii) to any person residing in the Island from any trade, business, profession, employment or vocation whether carried on in the Island or elsewhere;

...

(c) all emoluments, whether in the form of cash, benefit or kind, arising or accruing to any person or any members of his family or household by reason of his office or employment of profit, including the full cost of providing the benefit or kind (such as a rent, uniform or laundry allowance):

Provided that-

(i) the said emoluments shall not include-

(A) any payment made to an employee in respect of meal allowance in relation to work done outside of normal working hours; or

(B) any payment of an allowance in respect of the provision of a uniform or the laundering thereof to an employee who falls within any of the categories specified in Appendix B of Part I of the Second Schedule and who the Commissioner is satisfied is required to wear a uniform for the purpose of protection or identification in the interest of safety, security or public health; or for any purpose as may be required by law or pursuant to any international agreement so however that, the maximum amount of allowance which shall be allowable shall be \$5,739 per annum in respect of the provision of uniform and \$3,395 per annum in respect of laundry or such other amounts as the Minister may by order prescribe.

(ii) the said emoluments shall not include emoluments of an office or employment of profit held by a person in the course of a trade, profession or business if either-

(A) any emoluments of that office or employment were taken into account in the case of that person in computing the profits or gains of that trade, profession or business for the purposes of income tax for the year of assessment, or

(B) the office or employment is such that the emoluments thereof would ordinarily be taken into account in computing the profits or gains of that trade, profession or business;

(iii) the annual value of accommodation provided among the emoluments of any person shall, for the purposes of this paragraph, be determined by the Commissioner having regard to such regulations (if any) as may be prescribed by the Minister, but, subject to section 40A, as regards any person-

TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

(A) where the accommodation provided is rented premises and the rent is paid directly to the landlord, a third party or the employee, the MI amount of rent paid is taxable;

(B) where the accommodation provided is rented premises and the employer is the landlord for the accommodation, the value of that accommodation shall be deemed to be the market value thereof;

(C) where an employee is required to live in accommodation provided by the employer and it can be established that it is necessary for the employee to have that accommodation in order to exercise his employment, the value of the benefit on which he is liable to be taxed shall not exceed the amount equal to 30 per cent of his emoluments (excluding the value of the accommodation);

(D) where the employee lives in accommodation owned or operated by an approved charitable organization, the value of the benefit on which he is liable to be taxed shall not exceed the amount equal to 30 per cent of his emoluments (excluding the value of the accommodation).

...

(vi) the said emoluments shall not include any sum paid in respect of the maintenance of a telephone made available at the residence of a person and used for purposes connected with his employment;

(vii) where a credit card is provided for any person (hereinafter in this section referred to as the employee) by reason of his employment then-

(A) without prejudice to the provisions of section 13, on each occasion that the employee uses the credit card to obtain money, goods or services, he shall be treated as having received from his employment an emolument of an amount equal to the expense incurred by the person providing the credit card in or in connection with the provision of the money, goods or services obtained but the actual money, goods or service obtained by the employee by the use of the credit card, shall be disregarded; and

(B) the expense incurred by the person providing the credit card shall be treated as reduced by any part of that expense made good to that person by the employee;

...

Section 13 -Deductions allowed.

13. (1) For the purpose of ascertaining the chargeable income or statutory income, as the case may require, of any person, there shall be deducted all disbursements and expenses wholly and exclusively incurred by such person in acquiring the income-

TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

(i) where the income arises from emoluments specified in paragraph (c) of subsection (1) of section 5 during the year of assessment; and

(ii) where the income arises from any other source, during such time as is provided for in section 6, and such disbursements and expenses may include –

...

(b) rent paid by any tenant of land or buildings occupied by him for the purpose of acquiring the income;

(c) any sum expended for repair of buildings, plant and machinery employed in acquiring the income, or for renewal, or repair of any implement, utensil or article so employed;

...

(e) any allowances made in accordance with the provisions of the First Schedule;

...

Section 15 - Deductions not allowable.

15. (1) Subject to the provisions of this Act, and for the purpose of ascertaining the chargeable income or statutory income, as the case may require, of any person, no deduction shall be allowed in respect of-

(a) domestic or private expenses;

(b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income;

(c) any capital withdrawn or any sum employed or intended to be employed as capital;

(d) any capital employed in improvements;

...

Second Schedule

Part 1 The Income Tax (Employments) Regulations

8. The Commissioner may disregard part or all of any expenses in respect of which the employee is entitled to relief from income tax if it is impracticable to take account of all those expenses in determining the appropriate allowance in relation to that employee and where he does so he shall direct the employer to disregard an equivalent amount of the employee's emoluments in calculating the tax to be deducted or repaid when any payment of emoluments is made to the employee.

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“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

The Special Economic Zones Act, 2016

Section 18 Designation of Special Economic Zone

18 - (1) *The Minister may, on the recommendation of the Authority, after consultation with the Minister responsible for Finance, designate a geographical area as a Special Economic Zone by order published in the Gazette*

The Disaster Risk Management (Enforcement Measures) Order, 2022 dated January 14, 2022 states the following in relation to workplace requirements:

Workplace requirements

16. —(1) *All employers shall implement arrangements that provide for their employees to work staggered working hours, or to work from home, during the period from January 14, 2022 to January 27, 2022, where—*

(a) such arrangements are necessary to minimise the spread of the SARS – CoV-2 (Coronavirus COVID-19); or

(b) the area of work is not sufficient to allow for social distancing as required under this paragraph.

(2) Notwithstanding sub-paragraph (1), during the period from January 14, 2022 to January 27, 2022, an employer that is a public entity (as defined in the Public Bodies Management and Accountability Act)—

(a) shall permit each employee, who is able to carry out that employee’s duties from home, to work from home; and

(b) has a duty to permit that employee to work from home without imposing on the employee any adverse consequences in respect thereof, but this sub-paragraph does not apply in respect of employees whose duties are required to be discharged in person at the physical location of their workplace or whose duties involve the delivery of services that are critical to the workplace.

(3) During the period from January 14, 2022 to January 27, 2022, any of the following employees may request the employer’s permission to work from home—

(a) an employee—

(i) who is immunocompromised with underlying illnesses that are not under control, thereby rendering the employee unable to safely work in an environment in gatherings or other conditions that put that employee at heightened risk during a pandemic; and

(ii) who presents the employer with a medical certificate as to the matters set out in sub-paragraph (i);

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TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

(b) an employee who has no suitable arrangements available to care for a child of that employee;

(c) an employee who has no suitable arrangements available to care for an elderly or ill family member, or a family member who is a “person with a disability” (as defined in the Disabilities Act), and an employer who grants such an employee permission to work from home shall do so without imposing any adverse consequences to the employee, in respect thereof.

(4) During the period from January 14, 2022 to January 27, 2022, the employer shall not require to attend for work at the workplace any employee—

(a) who has attained the age of 60 years or more; and

(b) who—

(i) has not been fully vaccinated against the SARS – CoV-2 (Coronavirus COVID-19); or

(ii) has received the dose of the vaccination required for the person to be medically considered as fully vaccinated against the SARS – CoV-2 (Coronavirus COVID-19) but fourteen days have not elapsed since the employee received that dose, and such an employee may work from home if agreed to between the employee and employer.

Work from Home Arrangement

What constitutes “Working from Home”?

While our labour laws and taxing statutes do not define work from home arrangements in an employer /employee case, there are two conditions that must be met;

(i) There must be a formal arrangement between the employer and the employee and

(ii) The employee must work at home regularly under such arrangement.

Work from home arrangements must include an employee or self-employed person performing most or all their duties from home. There must be clear, formal arrangements in writing stipulating the work from home arrangements in an employer /employee situation. This can be a set amount of days every week or month and evidence of the regularity of the arrangements must be seen.

There are also cases where the employee is considered a “**remote worker**” which may include working from home or anywhere outside the place of employment within Jamaica.

Persons affected by Work-From-Home (WFH) or Remote Work Arrangements

The categories of persons that are affected are:

- Employers
- Employees

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TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

- Self- Employed Persons

Impacts of the Work from Home or Remote Work Arrangements

Employers

Some employers have reported increased productivity; however, they are faced with additional expenses which includes having to provide employees with additional sums to offset increased expenses faced by them as they work from home.

Employees

Some employees would normally have benefitted from lunches provided by their employers at a minimal cost or no cost and in some instances travelling benefits. Being at home there is now an increase in the food bill of the employee, a lack of an exclusive working area or air-conditioned office space, distractions, increased utilities and possible health issues.

Self-Employed Persons

The self-employed persons who may be affected are those persons who operated their businesses outside of their homes and now performs their duties from a designated area of their homes. As a result of this change in business operations, the expenses will more than likely increased.

Obligations of the parties under a work from home arrangement

WFH requires shared responsibility and commitment by both employers and employees to ensure accountability, business continuity and employment. WFH should not change the normal working hours, compensation, benefits or work responsibilities. However, due to the current circumstances, some flexibility may be required with agreement between the employer and employees and in compliance with the applicable labour laws, regulations and company policy.

For the purpose of determining the tax treatment, although not all a mandatory requirement by TAJ, we require that the employer:

- Modify or develop a company work from home policy to provide clear guidelines on implementing a WFH arrangement
- Identify job functions that can be done remotely
- Must seek prior approval from Tax Administration Jamaica for any WFH payments to be made tax free. There should be no discrimination by the employer in the determination of the amounts to be paid to different categories of employees. Equity must be applied in making such determination.
- Ensure that the work being asked to be performed is one that can be safely performed from home

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“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

- Assess the possibility and practicality of WFH
- Ensure that it is clear that the employee’s obligations and responsibilities apply even in the informal surroundings of a WFH arrangement
- Communicate the WFH policy effectively to all employees and any changes to the policy must be communicated as early as possible
- Establish a system of tracking employees – hours of engagement etc. for example, some employers are able to track employees who do remote work online
- Must make it clear whether, and to what extent, the company will bear the expenses of WFH arrangement
- Provide clear guidelines on the use of equipment provided by them to the employee
- Regularly assess the effectiveness of the WFH policy

Some functions that are deemed not eligible for WFH tax free benefits

Employees operating in roles that cannot facilitate working from home will not be considered for such benefits. Some of these categories may include drivers, delivery personnel, office attendants, cashiers (excluding virtual cashiers), receptionists, tellers, canteen personnel, security personnel and construction workers.

Notwithstanding the above, The Commissioner General reserves the right to examine the facts and circumstances presented for a determination to be made for eligibility.

Any payments made to employees whose function cannot be executed from home or agreed location will be treated as emoluments and will be taxed in full.

As a requirement for facilitating the process, the employee should:

- As far as is possible, comply fully and cooperate with the company policy or guidelines on WFH and abide by the terms and conditions provided by the employer
- Restrict working time to those agreed with the employer and in line with the normal hours of work or employer’s policy
- Keep regular contact with the employer and inform them of any need before they proceed in incurring expenses
- Seek prior approval for reimbursement of expenses incurred in WFH situations for example purchasing equipment. Reimbursement is the sole discretion of the employer
- Maintain proper accounting of all expenses incurred and provide all documentary evidence to justify such expenses to his /her employer.

Records to be maintained by employers and self-employed persons

- Detailed list of employees who are working remotely or from home whether on a part time or full-time basis.

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TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

- Copies of individual work from home or remote work arrangement between employee and employer.
- Evidence of reimbursements for expenses incurred solely for the purpose of facilitating work from home.
- List of all benefits paid highlighting those related to the WFH or remote work arrangement.
- The basis on which any other payments were determined and made
- Breakdown of staff costs where applicable.
- Any approvals received from TAJ to make any payment tax free.
- Evidence of all expenses wholly and exclusively expended by the self-employed persons in earning the business income.

Expenses likely to be incurred as a result of working from home or remote work

- Increased water bills
- Increased electricity bills
- New or increased internet costs, due to the need for internet capabilities
- Acquisition of computers or other devices
- Setting up of space to facilitate home office
- Increased food bill

The expenses that may be reimbursed must be wholly and exclusively incurred for performing the required work from home or remote work tasks. Some expenses may not warrant reimbursement and if incurred would be taxable.

Expenses mainly for workers’ convenience for example faster broadband, additional monitor, ergonomic chairs or printers may not be allowed for temporary WFH situation.

I. Factors for the Employers to consider when determining the taxability of payments made to or on behalf of employees

The Income Tax Act sets out the criteria by which expenses are allowed or disallowed. The following situations must be assessed before a determination is made on the tax treatment.

(i) Telephone usage

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“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

Where the employee had a functional land line for which monthly payments were being made, only the additional charges incurred as a result of working from home or remote work can be considered a tax-free reimbursable. However, this amount must be clearly identified.

If, however, the landline was installed solely for the purpose of executing the work function, then the cost for set up and subsequent expenses may be reimbursed tax free. However, subsequent monthly payments/bills may not be fully reimbursed tax free, if the employee incurs charges for personal telephone calls.

Where a phone is provided by the employer (e.g. phone provided under a Closed User Group (CUG) agreement with a mobile provider), the need for reimbursement by the employer would not arise.

(ii) Internet usage

Where broadband internet connection is already in place in the home being an existing expense to the employee (whether or not he was working from home), the monthly payments are not tax-free reimbursable.

If the employee, had to acquire broadband internet connection in order to execute the function of his/her employment, the amount for installation is fully reimbursable tax free. However, subsequent monthly payments cannot be fully reimbursed tax free as the employee would have used the internet connection for other private purposes. Any monthly amount to be reimbursed must be authorized by TAJ before the payment can be made tax-free. *(See Appendix 1 for guide on possible payment).*

Where broadband services existed and was upgraded for the purposes of facilitating work from home or remote work, any additional amount that was paid to acquire such services may be allowed as a tax free reimbursement.

(iii) Furniture/ Equipment provided by the employer for the purposes of work from home or remote work

Where the employer provides the employee with office furniture or equipment including computers, desks and chairs to make a functional office space at home, no reimbursement can be requested to be paid by the employer. The cost of the furniture/or equipment is a capital expense to the employer and as such would be eligible for capital allowance.

If the furniture or equipment is subsequently transferred to the employee, then a taxable benefit may arise.

(iv) Furniture/Equipment acquired by the employee for the purposes of work from home

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“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

Where the employee purchases furniture or equipment for work purposes, any reimbursement to the employee may be paid tax free. This is to the extent that it can be proven that there is no significant private use. Where the employer provides these resources solely for the purpose of enabling work from home, there would be no tax consequence to the employee.

Where there is no reimbursement from the employer of the expense incurred in acquiring the furniture or equipment and it can be demonstrated that they were used solely for the purpose of executing their duties, the employee may make a claim for capital allowances on the submission of the relevant income tax return.

(v) Area of home designated for office use

Where as a result of work from home, an area of the house is designated as home office or home workplace; to qualify for any deduction, the area must be used exclusively for the execution of the functions of work. The reimbursement of certain fixed costs such as rent, mortgage, insurance etc. which were already being incurred by the employee prior to working from home will not be allowed for tax purposes.

Research has shown that the standard home office size ranges between 70 sq. feet and 100 sq. feet. Expenses for the home office space therefore can be apportioned based on square footage or if actual expenses can be ascertained, then this can be used.

If it is difficult to ascertain actual expenses incurred for working from home, or to apportion expense based on square footage for the employee, a percentage not exceeding 10 % of all the overall expenses incurred for the period of working from home could be considered. It must be clearly established and accepted, that the home is now the place of work before any allowances can be made.

It must be noted that expenses such a rent, mortgage or any other fixed costs that would have incurred whether or not the employee was working remotely from home or otherwise, cannot be considered reimbursable expenses but will be a taxable benefit to the employee if paid by the employer.

The Employer

Where the employer decides to offset home office expenses except for capital items, this amount is a taxable benefit to the employee except as provided in Note I (iv) above. However, the employer can claim same as a business expense.

The Employee

Where an employee is working from home, no claims can be made for office expense or accommodation except under the following conditions:

TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

- a. Additional expense has been/is being incurred to acquire additional space solely for office use.
- b. If the employer pays the employee rent for an office space, the payment is taxable on the employee, but he/she is allowed to claim expenses established to have been incurred solely for the purpose of earning that rental income.

(vi) Increased expenses for the employee as a result of working from home

Any expenses that would have been incurred whether or not the employee was working from home cannot qualify as a tax-free reimbursable. Any such payment by the employer is a taxable benefit to the employee and must be included in their total emoluments.

(vii) Where the employee is in receipt of other approved tax free benefit such as travelling

Where approval was received for tax free travelling allowance and the employee is in receipt of same, no sums can be paid in addition to that as travel expenses. Any such payment is an additional benefit to the staff and is subject to tax.

If the working from home arrangement changes the employee’s job functions significantly, and such an employee is no longer required to execute the functions that supported the approval of the allowance, such payments would now be a taxable benefit.

Any reimbursement for expenses which would have been incurred whether or not the employee was working from home cannot be considered as a tax free benefit and would be considered taxable emolument.

(viii) Where employee is entitled to Meal Allowance and Supper Allowance

Bearing in mind that WFH or remote work is not an entitlement or a benefit, it is recognized that apart from the change in workplace, the terms and conditions of the employee’s employment in most cases remain the same. Without prejudice to the requirements of Section 5(1)(c) of the ITA, some employers may provide lunch or supper allowance to an employee who is required to work from home.

- **Meal Allowance**

An increase in the employee’s expenses for meals may become likely specifically where terms of employment allowed them to have access to a meal (which may be provided tax free under certain circumstances). The general rule is that where meals are provided and the cost is determinable, then it will be subject to tax unless it is prepared in a

TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

canteen (where cost determination and traceability is highly impossible). Lunch vouchers also are a perquisite and therefore taxable because they are quantifiable and traceable to the individual who use the voucher or receive the cash.

Any other arrangement to provide meal/lunch to an employee in a WFH or remote work arrangement will be subject to the same rigors of crossing the hurdle of traceability and quantifying the cost. Even if the test is passed, the difficulty also lies in the means of delivery to the employee. Neither the legislation nor the guidelines for providing meals without the incidence of a tax contemplated a delivery cost.

If meals are provided in a WFH or remote work arrangement and the criteria is met for the benefit to be tax free, the employer must in these circumstances seek permission from TAJ. In most cases the meals will be subject to tax unless it is prepared in a canteen and delivered or collected by the individual. Any reimbursement of delivery/collection cost will be subject to tax.

- **Supper Allowance**

Supper allowance is given in cases where the employee works outside of normal working hours. Only meal allowance within the stipulated limit for work done outside of normal working hours is exempt from tax subject to the approval of the CG.

The employer may provide supper allowance in the above circumstances however, this is complicated in the context of working from home or remote work. This is due to the strict application of the taxing statute which is to be made to any payment in cash, vouchers convertible to cash, or meals that have a quantifiable dollar value.

On that basis, TAJ is prepared to approve tax free supper allowance only under the following conditions (bearing in mind the obligations of the employer).

The employer:

- Must be able to track the time that the employee is engaged in the work activity outside of normal working hours
- Seek permission for approval of the allowance and all applications must be within the guidelines of TAJ and the ITA
- Must make it expressly clear to the employee that the duties must be performed within the particular timeframe stipulated
- Must provide records to support that the person was working within that physical space during and after the normal working hours
- Must ensure that there is control mechanism online or otherwise to ensure that the employee was actually working.
- Must ensure that the working hours are independently verifiable

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TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

Outside the scope of the above conditions, the supper allowance will be a taxable benefit to the employee.

Entities operating within the Special Economic Zone (SEZ)

The Special Economic Zone Act (2016) provides a wide range of tax concessions for entities operating under such regime. The main participants who operates in the Zone and would benefit from such tax concessions are the Zone Developers and Zone Occupants.

Notwithstanding the SEZ designated area, employees who perform duties in a WFM or a remote work arrangement will continue to benefit from the reimbursement of certain expenses provided that the provisions of the income tax act are satisfied.

General Considerations

- TAJ will not approve any amount outside the normal existing rates that apply
- The benefits do not apply where an employee works from home informally or voluntarily and not by an arrangement with the employer (for example where the employee simply takes home work in the evenings).
- These benefits only apply where an employee works at home or remotely by arrangement with the employer instead of working on the employer’s premises.
- No consideration will be given to treating the delivery costs for meals borne by the employees as a tax-free reimbursement.
- Any application to the CG for approval must be supported by the appropriate documentation.

II. Factors to consider when determining deductible expenses for Self-Employed Persons

The self-employed person, in fulfilling the objective of making a profit, will incur expenses that are wholly and exclusively related to earning the business income. Working from home now will see ‘unusual’ home expenses appearing as deductible business expenses. The statutory rules for deductibility of expenditures as outlined in Section 13 and 15 of the Income Tax Act will determine if such expenses will be allowed. Expenses associated with a designated work area which can either be specifically identified or apportioned, may be considered.

(i) Area of home designated for office use

This can be a common area that has other purposes besides business use (e.g. working at a kitchen table, living room). It may also be a designated room which is used only for business use (e.g., private study room, a spare room).

For an expense associated with the area of the home designated as an office to qualify as a deductible expense, the workspace must be an area where the individuals principally

TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

perform their work most of the time. It must be an area also used exclusively on a continuous and regular basis for meeting clients, customers or other people in the furtherance of earning the business income.

Where the self-employed person now operates from the confines of the home and an area is exclusively designated for the sole purpose of the earning the income, any such expenses which can be clearly identified as directly related to the purposes of working from home would be accorded the normal treatment as provided for by Sections 13 and 15 of the Income Tax Act.

(ii) Internet usage

If the self-employed person had to acquire broadband internet connection in order to earn business income, the amount for installation is fully allowed as a deductible expense. Subsequent monthly payments cannot be fully allowed as the individual would have now used the internet connection for other private purposes. The possible amount to be allowed must be apportioned and the amount attributable to business, using an appropriate bases of allocation, will be allowed.

However, where broadband internet connection is already in place in the home and this is an existing expense to the individual (whether or not he was working from home) then a reasonable basis of apportionment must be applied to determine the amount wholly and exclusively incurred in earning the business income.

(iii) Furniture/ Equipment acquired by the self-employed person for the purposes of work from home or remote work

Where the self-employed person acquires office furniture or equipment including computers, desks and chairs to make a functional office space at home, the cost of the furniture/or equipment is a capital expense to the individual and as such would be eligible for capital allowance.

(iv) Increased expenses for the self-employed person as a result of working from home

Any expenses that would have been incurred whether or not the self-employed person was working from home cannot qualify as a fully allowable deduction. Where there is no clear distinction as to the amount of expenses directly relating to the business, the self-employed person must use an appropriate basis of apportionment to determine the portion of expenses not directly attributable.

Deductibles

All payments made for reimbursements to employees by employers are allowed as a business expense for the employer in accordance with Section 13 of the Income Tax Act.

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TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

Where an employed person incurred expenses as a result of working from home or remote work and is not reimbursed by his/her employer, such an employee may claim those expenses but must prove that they were incurred solely for the performance of duties of the office or employment. In order for the employee to make such claims, a return will have to be filed and all documentary proof of such expenses provided for consideration to be given. This may be done using the IT05 or S04 where a claim for capital allowance is necessary.

For self-employed persons, receipts for deductible expenses should be retained to support the deduction (in the event of a tax audit) and the amount of expenses that are deductible as home office expenses which cannot be directly identified must be calculated on a reasonable basis. Therefore, the self-employed person may choose to use, e.g. square foot of the home workspace in proportion to the entire home, to ascertain the amount of expense attributable to the business where there is a difficulty in identifying the actual amount expended for the home office space.

Nevertheless, there are expenses that are directly attributable to the home office that would not generally be prorated (e.g., furniture and décor for the home office). In accordance with Section 13 of the Income Tax Act, these amounts can be reported on the financial statement and claimed when filing a return using the SO4 form.

Tax Treatment

Additional benefits and expenses

It must be noted that all benefits whether in cash or kind constitutes emoluments and therefore is a taxable benefit as per **Sections 2 and 5 of the Income Tax Act** unless the necessary approvals have been received from TAJ for such payments to be made tax free.

Apportionment of Income

In determining the apportionment between the taxable and non-taxable portion of the income, the facts and circumstances of each case are essential to the decision (***Local Investment Co. v Commissioner of Taxes (SR) 22 SATC4***).

The statutory rules of deductibility as outlined in Section 13 and 15 of the Income Tax Act, while prescribing certain expenditures, do not expressly address an expenditure incurred which has dual purposes. To this end, applicable case law is used to provide guidance in making the determination. Precedent suggests that some expenditure incurred by a taxpayer for business purpose which also serves to meet a personal/private need, and the private benefit is merely incidental, then the expense will not be disqualified from deductibility on the grounds of duality of purpose. (***Mallalieu v Drummond [1983] & Bowden v Russell [1965]***)

The apportionment must be fair and reasonable, having regard to all the circumstances of the case.

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TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

Audit Verification Review

TAJ reserves the right to review supporting documentary evidence of all payments made by the employer to the employee as part of the WFH policy arrangement.

The returns filed by self-employed persons will continue to be subjected to an audit review process whenever the CG deems it necessary.

TECHNICAL ADVISORY

"Determination of tax free benefits for Work from Home Arrangements or Remote Work"

QUESTIONS AND ANSWERS

- a. (i) Can I set off my additional costs for say electricity, telephone, water etc. against my emoluments thereby reducing my taxable income?**

Response -

Evidence must be provided that it was a requirement for you to work from home and the necessary individual agreement between employer and employee can be provided. The cost to be considered should only relate to the work from home arrangements and sufficient documentary evidence and approval from your employer must be made available.

- (ii) What proportion of WFH expenses, if any, would be deductible and how do I determine that amount?**

Response -

A reasonable proportion of expenses using a predetermined method agreed on with the employer. Approval must be granted by TAJ on the amount to be allowed as a tax free payment. TAJ reserves the right to review the amount approved where it is deemed necessary.

- b. If my employer gives an allowance to cover increased expenditure - is this taxable?**

Response -

The employer must request prior approval from Tax Administration Jamaica providing justification for the need for the allowance and how the amount to be paid was determined. Where no prior approvals were received or if the amount paid exceeds what was approved, such amounts are taxable emoluments.

- c. What are the implications where arrangements are made to rent space at my home to my employer for my "at home office working area"?**

Response -

Where an arrangement is in place and Tax Administration Jamaica is sufficiently satisfied, any relevant deductions would be allowed against the rental income earned.

Where no formal arrangement was in place and no approvals were granted, any such payments received from the employer will be treated as a cash allowance and will be taxed in full.

TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

- d. Can an employee claim a portion of the rent, mortgage, insurance or any other fixed charges as a deduction?**

Response:

Where the use of the premises does not result in any change to the rent, mortgage, insurance or any other amounts that are fixed and would be incurred whether or not the work from home occurred, such amounts are not deductible. (*Baird v Williams (71TC390)*)

- e. If my Employer decides to pay the rent for a fixed period during the work from home, is that taxable?**

Response:

In accordance with Section 5 (1) (c) such a payment would constitute emolument and would be subject to the relevant taxes. However, if a formal rental arrangement is in place, the rent received must be reported and any expenses directly related to such income will be allowable as a deduction in accordance with Section 13 of the Income Tax Act.

- f. If my staff is rotated periodically, how should I treat any approved benefits paid without being subject to tax while they operated from home?**

Response:

Where approvals were granted for benefits to be paid to employees without the application of tax solely for the purposes of offsetting additional expenses as a result of working from home and the affected employees are now required to work from the office, such benefit will cease to take effect.

Any such payments made during the rotational period of working from the office will be subject to tax. If such payments are made without the deduction of the relevant tax and statutory deductions, the employer will be held liable to make such payments which will be a deductible expense to the employer.

- g. As a result of a change in business model from brick and mortar to remote working, most of my staff will now be operating outside of the office space but under the same contractual arrangements. A decision is taken to insure all staff from any potential accidents that may occur while working remotely, as such the company will be making payments for life insurance. Will all payments made to the staff be subject to tax and can the life insurance payments be made tax free?**

TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

Response:

A change of the location where the job is performed in an employee/ employer relationship does not affect the statutory treatment of any emoluments paid to such employees. The employer still has an obligation to make all the statutory payments on a monthly basis (S01) and file the annual return (S02).

The life insurance premium paid on behalf of the staff working remotely is deemed emoluments in accordance with Section 5 of the Income Tax Act and would therefore be subject to tax and all the relevant statutory deductions.

h. If I am self-employed and now operates from the confines of my home which was retrofitted to facilitate my business, are there any special provisions to compensate for the additional expenses

Response:

As a self-employed person, you are required to retain all receipts for deductible business expenses. Any amount claimed as home office expenses which cannot be directly identified as incurred for business use purposes must be apportioned on a reasonable and applicable basis.

In accordance with Section 13 of the Income Tax Act amounts which are incurred wholly and exclusively in earning the income can be reported on the financial statement and claimed when filing the annual return using the SO4 form. The provisions of the Section 13 would apply in a similar manner as if the business was carried out from an external location.

However, as usual, the onus of proof that a deduction is allowable will rests with the taxpayer.

TECHNICAL ADVISORY

“Determination of tax free benefits for Work from Home Arrangements or Remote Work”

APPENDIX 1

Determination of Light and Internet expense that could be considered as tax –free reimbursement based on the following assumptions:

- Employees work on average 40 hours from home
- Employees work on average of four (4) weeks per month
- Employees uses the normal standard light bulb and a computer
- Employees utilizes standard internet packages offered by both utility companies except for those in the BPO who would require greater bandwidth

Estimated cost for light based on rates obtained from the website of the utility companies as at October 20, 2020

Description	# of hours per week	Cost
1 200 watt Computer	40 hours	\$864.00
1 Incandescent #1 40 watt	40 hours	\$172.80
Total cost		\$1,036.80
Average weeks per month	4 weeks	X 4
Total JPS charges		\$4,147.20

Flow Internet packages

Description	Cost
Essential 20 Mbps Internet (VDSL)	\$4,699.00
Plus 25 Mbps Internet (VDSL)	\$5,499.00
Ignite – 40 Mbps (GPON)	\$4,699.00

Digicel Internet packages

Description	Cost
Classic bundle 50.25 Mbps	\$6,399.00
Variety	\$7,899.00
Premiere	\$11,399.00

Utility cost per month using the lower internet package costs

JPS & Flow	Cost	JPS & Digicel	Cost
JPS	\$4,147.20	JPS	\$4,147.20
Flow	\$4,699.00	Digicel	\$6,399.00
Total	\$8,846.20	Total	\$10,546.20

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TECHNICAL ADVISORY

"Determination of tax free benefits for Work from Home Arrangements or Remote Work"

Utility cost per month using the highest internet package costs

JPS & Flow	Cost		JPS & Digicel	Cost
JPS	\$4,147.20		JPS	\$4,147.20
Flow	\$5,499.00		Digicel	\$11,399.00
Total	\$9,648.20		Total	\$15,546.20

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