



SALARY SACRIFICE AND CHILDCARE VOUCHERS (commenced on or before 4 October 2018)

With reference to the initial briefing on Salary Sacrifice, which can be found [here](#), this briefing gives some more specific guidance on the provision of Childcare Vouchers, which commenced on or before 4 October 2018, together with the associated considerations when an employee is on maternity leave and was provided with childcare vouchers.

Operation of the Childcare Voucher Scheme

This scheme is only relevant in the following circumstances;

- The employee joined the scheme on or before 4 October 2018
- The employee's wages were adjusted for the childcare vouchers prior to this date
- The employee has stayed with the same employer (exceptions are in place where there is a change of owner of an employer under TUPE provisions, where the change is permitted) and the employer continues to run the scheme
- The employee has not taken an unpaid career break of more than twelve months

On the basis that the above conditions are met, the employee can salary sacrifice up to £55 per week for basic rate tax payers, £28 per week for higher rate tax payers and £25 per week for additional rate tax payers and this amount will be tax and NI free. Vouchers may be used for children up to the age of 15 (16 if they are disabled) and each parent is able to get childcare vouchers from their respective employers. The amount that can be claimed is per parent and does not take into consideration the number of children requiring childcare.

Maternity Leave and Childcare Vouchers – legal advice may be needed

Employee benefits must continue to be provided throughout a period of maternity leave, i.e. the entire 52 weeks if the full period is taken. As a result, any non – cash benefits must be provided throughout this entire maternity leave period, even where the employee is no longer entitled to any pay. Whether or not this rule applies to Childcare Vouchers (and pension contributions) under a salary sacrifice scheme is not clear for any unpaid additional maternity leave taken. There is an exception for the provision of benefits made for “employer related benefit schemes”, which states that these specific benefits only need to be provided during paid maternity leave.

Hence, whether or not childcare vouchers need to be provided during unpaid maternity leave is unclear, and is dependent upon the interpretation as to whether “employer related benefit schemes” include childcare vouchers. HMRC take the view that they are not such a benefit and therefore should be provided, along with any other non-cash benefits for the duration of maternity leave. However, the Employment Appeal Tribunal provided a different view and stated that childcare vouchers provided under a salary sacrifice arrangement were part of remuneration and therefore did not need to be provided during unpaid maternity leave. Whilst this has not been challenged in the courts to date, the general consensus is that this judgement should be viewed with caution.

It is generally recommended that childcare vouchers provided under the salary sacrifice arrangements should continue to be provided during the entire period of maternity leave, especially with the reducing numbers of employees able to take advantage of this scheme. If an employer is considering not continuing with the provision of childcare vouchers during unpaid maternity leave, we would suggest that legal advice is sought.

Tax-Free Childcare – post 4 October 2018

Since 4 October 2018, the above scheme is not available unless the conditions detailed above are met. The Government now offers a scheme whereby working parents set up a childcare account with HMRC. Working parents contribute into their account and the Government will also make tax free contributions up to £500 every 3 months for each child (the amount can go up to £1,000 every 3 months for a disabled child). This funding does not fall into a salary sacrifice scheme, as it is not facilitated by the employer, and hence falls outside the scope of this briefing.

Conclusion

Salary sacrifice and childcare vouchers is becoming less relevant as time passes, due to the restrictions under which it operates and that no new entrants have been allowed since early October 2018. In addition, consideration needs to be given by individuals as to whether the “new” scheme introduced by the Government, as a replacement, provides more or less support. This will depend on a number of factors, including the number of children an employee is paying childcare for; this decision is not something that employers will typically assist employees with, as various individual factors will need to be assessed. However, it is good practice for an employer to make an employee aware that once they have left the childcare voucher scheme, they are not permitted to return to it.



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