

## **EMPLOYER SUPPORTED CHILDCARE – GUIDANCE AND FAQs FOR EMPLOYERS**

**This guidance is written specifically for the period 6 April 2011 to the date of Royal Assent for the Finance Act 2011. We will update the guidance after Royal Assent.**

### **Introduction:**

From 6<sup>th</sup> April 2011 there will be changes to Employer Supported Childcare that will affect employers who operate a childcare voucher scheme and/or directly contracted childcare.

Employer-supported childcare schemes are voluntary arrangements. The Government supports these initiatives with the tax exemption and NICs disregards (referred to elsewhere in this guidance as tax relief) that are available, but it is up to the employer to decide whether or not to offer childcare support to its employees.

There are no changes to workplace nursery schemes.

The purpose of the change is to even out the amount of tax savings available for all employees regardless of the tax rate that the individual pays.

**Note - If you have no employees joining your childcare vouchers or directly contracted childcare scheme on or after 6 April 2011, you need not read any further.**

**If you are unsure how to decide if an employee is in your scheme on or before 5 April the section below will help you decide.**

### **How to decide if an employee is in your scheme on or before 5<sup>th</sup> April 2011**

In order to fall within the former arrangements, an employee must have submitted an application to join a scheme, and to have had that application accepted by the employer, on or before 5<sup>th</sup> April 2011. Acceptance of the application means that the employee will be entitled to receive either childcare vouchers or directly contracted childcare and will qualify for the tax relief from that date.

The employee does not have to have received their first batch of childcare vouchers or directly contracted childcare on or before 5<sup>th</sup> April 2011 to qualify for tax relief under the old rules, but they must be entitled to receive them by that date.

In the event that the employee is not entitled to the tax relief on or before 5<sup>th</sup> April 2011, (for example, there is no qualifying child or they have agreed to work for you but have not yet started their employment with you), then the employee will be subject to the new arrangements as and when they do become eligible.

Do not forget that your employee can suspend the support they receive from you for up to 12 months and HMRC will treat them as continuing to be members of your scheme for that period (see “Temporary cessation of childcare vouchers or directly contracted childcare” below).

**Can an employee join my scheme before their child is born?**

No – your employee must be a parent or have parental responsibility for a child at the time they join your scheme.

**I have someone who will start working for me on 11<sup>th</sup> April 2011 – can they join my scheme before 6<sup>th</sup> April and get tax relief under the old rules?**

No – these are tax reliefs for employer-supported childcare, and you will not be this individual’s employer on or before 5<sup>th</sup> April 2011.

**Renewal of employee agreements**

Annual renewal of agreements between employers and employees is normal practice. Providing the employee was participating in your scheme on or before 5<sup>th</sup> April 2011, then the existing entitlement will continue.

**Change in voucher value**

An employee can alter the amount of the childcare voucher or directly contracted childcare they receive without affecting the level of tax relief to which they are entitled.

**My employee is changing from part-time work to full-time work and will be increasing the level of childcare vouchers to £55 from £30 a week with effect from 1<sup>st</sup> May 2011. Will they still be able to get tax relief on the new amount?**

Yes. Under the old rules the tax relief applies for vouchers up to a value of £55 per week, and because your employee was already a member of your scheme at 6<sup>th</sup> April 2011, that limit will still apply.

**I have decided to increase the level of vouchers I provide under my scheme to £100 per week because of the cost of childcare in this area. Can the scheme members who joined on or before 6<sup>th</sup> April 2011 get tax relief on the full value of £100?**

No. Under the old rules the tax relief applies for vouchers up to a value of £55 per week. Therefore the first £55 worth of vouchers will be exempt from tax and NICs, but there will be a tax liability on each employee for £45 of tax and NICs, and you will also be liable to employer NICs on £45.

## **Temporary cessation of childcare vouchers**

An employee can ask to stop receiving childcare vouchers temporarily whilst still remaining in your scheme – for example, if your employee only works during school term time and does not need childcare vouchers during school holidays. You do not have to treat the employee as a new joiner when they resume receiving childcare support from you, providing that the cessation does not exceed a continuous period of 12 months.

This also applies to employees who are on maternity leave, long-term sick leave, and those who wish to take a career break – providing the total length of absence does not exceed a continuous period of twelve months.

## **Exempt amounts for childcare vouchers and directly-contracted childcare - Employees who are already members of your scheme before 6<sup>th</sup> April 2011**

<b>Weekly</b>	£55
<b>Monthly</b>	£243
<b>Annually*</b>	£2915

The same weekly limits apply for the level of disregard for employer and employee Class 1 NICs for childcare vouchers. There will be no NICs liability (Class 1A employers only) on directly contracted childcare for employers where no taxable liability arises.

If you have no employees joining your childcare vouchers or directly contracted childcare scheme on or after 6 April 2011 you need take no further action until you do.

## **EMPLOYEES JOINING SCHEMES AS NEW MEMBERS ON OR AFTER 6<sup>TH</sup> APRIL 2011.**

To identify what the level of tax relief on employer-supported childcare an individual employee will be entitled to in any one tax year, you will need to carry out an assessment of the level of the employee's "relevant earnings amount" (referred to elsewhere in this guidance as the basic earnings assessment).

Employees who already participate in an employer scheme on or before 5<sup>th</sup> April 2011 are not affected by these changes unless they cease employment with you or leave your scheme and join another.

## **Why are these changes being made?**

Under current arrangements, employees on higher earnings receive a greater tax saving than those who pay tax at the basic rate. The change evens out the amount of tax saving available for all employees regardless of the rate of tax an employee pays on rewards from that employment. It will affect the monetary value of the vouchers

or directly-contracted childcare you can provide to stay within the limits of the tax relief.

These changes mean that anyone who joins an employer-supported childcare scheme from 6<sup>th</sup> April 2011 will receive the same level of income tax saving, which is approximately £11 per week.

### **Who will be affected by these changes?**

The changes will only affect people joining an employer's scheme on or after 6<sup>th</sup> April 2011.

Any employee who already participates in your scheme will not be affected. They will retain their current level of tax relief until:

- they leave your employment; or
- they leave your scheme; or
- they receive no employer-supported childcare from you for a continuous period exceeding 12 months; or
- their child no longer receives qualifying childcare; or
- they no longer have a qualifying child.

### **How do employers know which employees will be affected?**

Employers must carry out a **basic earnings assessment** to check the estimated employment income of any employee who joins a scheme on or after 6<sup>th</sup> April 2011. The amount of exempt income (in the form of childcare vouchers or directly contracted childcare) that the employee can subsequently receive will be determined by the result of the basic earnings assessment.

There is no need to carry out an assessment for existing members of schemes who were already participating on or before 5<sup>th</sup> April 2011.

Further information on the basic earnings assessment is provided below in the section headed "The Basic Earnings Assessment".

### **Exempt amounts for childcare vouchers and directly-contracted childcare**

#### **Employees who join on or after 6<sup>th</sup> April 2011.**

	<b>Basic Rate</b>	<b>Higher Rate</b>	<b>Additional Rate</b>
<b>Weekly</b>	£55	£28	£22
<b>Monthly</b>	£243	£124	£97
<b>Annually*</b>	£2915	£1484	£1166

\*The annual figure is based on 53 weeks a year as the 1 or 2 (for a leap year) days at the end of the year are treated as a complete week.

The same weekly limits apply for the level of disregard for employer and employee Class 1 NICs for childcare vouchers. There will be no NICs liability (Class 1A

employers only) on directly contracted childcare for employers where no taxable liability arises.

## **How to administer childcare vouchers or directly contracted childcare schemes for employees who join on or after 6<sup>th</sup> April 2011**

For all employees who join your scheme on or after 6<sup>th</sup> April 2011, you will need to decide the monetary value of the support you can provide that qualifies for the tax exemption and NICs disregard (referred to elsewhere in this guidance as “tax relief”). To establish this you must carry out a basic earnings assessment and keep evidence of that assessment to support the level of tax relief.

### **How to decide if an employee is in your scheme on or after 6<sup>th</sup> April 2011**

If your employee has submitted an application to join a scheme, which has not been accepted by the employer before 6<sup>th</sup> April 2011, their entitlement to tax relief will be based on the new rules.

In the event that the employee is not entitled to the tax relief on or before 5<sup>th</sup> April 2011, (for example, there is no qualifying child or they have agreed to work for you but have not yet started their employment with you), then the employee will be subject to the new arrangements as and when they do become eligible.

Do not forget that your employee can suspend the support they receive from you for up to 12 months and HMRC will treat them as continuing to be members of your scheme for that period (see “Temporary cessation of childcare vouchers or directly contracted childcare”, above).

### **Change of employment**

Where an individual joins a childcare voucher or directly contracted childcare scheme with a new employer on or after 6<sup>th</sup> April 2011 they will be treated as a new joiner and the employer will be required to carry out a basic earnings assessment. There are no exclusions for people working in particular types of employment or sectors where change of employer takes place on a frequent basis.

**What about the position of hospital doctors in the NHS? They are often contracted to work for relatively short periods of time in different Primary Care Trusts as part of their training. The PCT they are contracted to work for is their employer – will they be regarded as new joiners if they get childcare support from their new PCT?**

Yes. They have left one employer’s scheme and joined another’s, therefore they must be treated as new joiners and assessed under the new rules.

### **Changes of employer circumstances**

#### **Change of employer due to merger or business reorganisation**

Where a change of employer is triggered by a business merger or reorganisation, the employees affected will not be regarded as new joiners in the employer’s childcare

support scheme. Where participation in the previous employer's childcare scheme predates any merger or reorganisation, the employee will retain his or her existing level of tax relief.

This also applies where a transfer of staff under a COSOP or TUPE arrangement has taken place.

**How do we treat employees from another employer who retain their existing terms and conditions?**

If after 6<sup>th</sup> April 2011 your company acquires control of another company that is providing employer supported childcare arrangements for its employees then the exemption will continue to apply for those employees in the same way as it did immediately before your company acquired control. This means that if they were already members of their employer's childcare scheme before 6<sup>th</sup> April 2011, you do not have to carry out a basic earnings assessment for them. They will still qualify for exemption for an amount up to the maximum of £55 per week. This remains true even if that company then decides to change the voucher provider.

If after 6<sup>th</sup> April 2011 your company acquires a business (or part of a business) from another company so that employees come to you under TUPE terms who were already members of their employer's childcare scheme before 6<sup>th</sup> April 2011 then you may treat the exemption as continuing to apply for those employees in the same way as it did immediately before your company acquired the business. You do not have to carry out a basic earnings assessment for them. They will still qualify for exemption for an amount up to the maximum of £55 per week.

## **The Basic Earnings Assessment**

### **When do employers have to carry out the basic earnings assessment?**

From 6<sup>th</sup> April 2011, the basic earnings assessment for an employee joining your childcare voucher or directly contracted childcare scheme on or after that date should be carried out when they first join your scheme and then annually at the start of the tax year. The assessment then remains **valid** for the **whole of the relevant tax year**.

The annual assessment cannot be deferred until later in the year when final information on taxable benefits provided to the employee is reported on form P11D. It is an assessment made on the basis of the information available at the start of the tax year.

### **Record-keeping requirements**

Employers must keep a record of the basic earnings assessment in case they are required in the course of any compliance work by HMRC.

HMRC does not stipulate the format of these records, but they must contain sufficient information to show how the individual's basic earnings assessment has been calculated. Checking the information will form part of HMRC's normal compliance work.

**Can an employee self-assess their own tax position at the start of the year rather than the employer?**

No. Childcare vouchers and directly contracted childcare are employer provided benefits and the employer is responsible for carrying out the basic earnings assessment for those employees who join an employer's childcare scheme on or after 6<sup>th</sup> April 2011.

**Can the basic earnings assessment be disregarded and replaced by a declaration of the benefit received on form P11D?**

No – the purpose of the basic earnings assessment is to ensure that, wherever possible, the approximate level of exemption is received in the course of the current tax year, rather than deferring it for up to two years.

**Can the earnings figure from the previous year's P60 be used for the basic earnings assessment?**

No – the basic earnings assessment should reflect the expected earnings for the current year rather than the previous year. They should be based only on employment with you, and should not include details of any other employments. The P60 is an aggregate of all employment income.

**If a member of my staff works for me full-time, but also tutors at a local college in the evenings, do I have to account for that income as well?**

No – the basic earnings assessment should reflect only employment income from employment with you – not with anybody else.

**What does the basic earnings assessment do?**

The basic earnings assessment establishes the estimated level of relevant earnings for the year. That is required for employers to assess the monetary value of childcare vouchers or directly contracted childcare they can provide that is subject to tax relief.

It is calculated by adding together your employee's basic earnings and some other components (explained in "Earnings and benefits to be included in the basic earnings assessment, below), plus any taxable benefits that you provide for your employee. You then allow most employees the basic standard personal allowance for the year (£7,475 in 2011-12) to see if the amount of the relevant earnings exceeds the amount for the basic level of tax relief. For example:

Basic earnings £25,000 + taxable benefits £4,800  
**Relevant earnings = £29,800**

Depending on the level of the relevant earnings, for the tax year 2011-12 tax relief is available on the following amounts as follows:

- not exceeding £42,475 – up to **£55** per week
- greater than £42,475 but less than £150,000 – up to **£28** per week
- £150,000 or more – up to **£22** per week.

The amounts in the first two bullet points represent the standard personal allowance for 2011-12 plus the income tax band for the basic rate and higher rate for 2011-12 respectively. The final bullet point features only the additional rate band as there are no personal allowances at this level of income.

The individual with relevant earnings of £29,800 would therefore be covered by the first limit and would be entitled to tax relief on childcare vouchers or directly contracted childcare up to the value of £55 per week.

**I have decided to continue providing childcare vouchers to the value of £55 a week at least, no matter what the status of my employee is. When I work out the ‘cost to the employer’ do I need to apportion the administrative costs too?**

We doubt that there is any significant difference in the administrative costs associated with the provisions of childcare vouchers with a face value of £55 and those with a value of £300. In addition, the legislation does not call for an apportionment of administrative costs in these circumstances.

If an employer decides to continue giving £55 worth of vouchers to all employees, regardless of their status following the basic earnings assessment, the cash value of the benefit would be £27 (that is £55 less the exempt amount of £28) or £33 (£55 less the exempt amount of £22) for ‘higher rate’ and ‘additional rate’ earners respectively.

**I understand I can report the ‘overpaid’ benefit on a P11D at the end of the year. Can I do the same for NICs?**

No. NICs in excess of the level of the disregard for childcare vouchers (either £27 or £33 a week in this example) should be accounted for in each pay period.

### **Earnings and benefits to be included in the basic earnings assessment**

The basic earnings assessment should include the following:

- basic pay as stated in the employee’s contract of employment;
- guaranteed bonuses;
- commission (based on the previous year’s commission income or an average of the previous two years, if lower);
- London weighting or other regional allowances;

- guaranteed overtime payments (e.g. payments of 4 hours' guaranteed overtime for working on Saturdays, even if the amount of time actually worked is less);
- shift allowances;
- special payments for specialist qualifications (e.g. First Aiders);
- taxable benefits that would fall within Part 3 of the Income Tax (Earnings and Pensions) Act 2003, and are not exempted under Part 4 of that Act (e.g. a company car made available for private use; free fuel provided by an employer for a company car; cash vouchers; employer-supported childcare in excess of £55 per week; living accommodation, etc.)

The taxable benefits to be included in the calculation should be those that you are contracted to provide at the date that the basic earnings assessment is carried out.

**How do I account for changes in the amount or value of a taxable benefit?**

The basic earnings assessment is based on information that you have available at the time it is carried out. If your employee receives more taxable benefits, or changes to a taxable benefit that is worth less (for example, if there is a change in your employee's company car in-year) this will be reflected in the basic earnings assessment in the following year.

**How do I account for pension-related deductions?**

In a situation where, say, an employee has 10% of their salary deducted at source as contributions to a registered pension scheme, you should use the reduced level of pay when carrying out the basic earnings assessment, providing that the amount is not above the upper limit for tax relief.

The same will apply if your employee makes payments to you through Additional Voluntary Contributions (AVCs).

If your employees make their contributions through a salary sacrifice arrangement, the basic earnings assessment will be based on their post-sacrifice income.

The same treatment will also apply to deductions under payroll giving.

**I am carrying out basic earnings assessments at the beginning of the tax year but know that some of my employees will be made redundant in the next few months. Should I make an adjustment for this?**

No. Carry out the basic earnings assessment on the basis that they will be employed by you for the full year.

**I provide my childcare scheme through salary sacrifice arrangements – what salary figure do I use?**

You should use the post-sacrifice figure. Where an employee agrees to enter into a salary sacrifice arrangement, the level of earnings for the basic earnings

assessment is always reduced. The amount sacrificed should not be added to the basic earnings assessment.

However, you should take into account any taxable benefit you provide to the employee as part of the arrangement – for example, if you provide vouchers with a value of more than £55 each week.

### **Earnings and benefits to be excluded from the basic earnings assessment**

- performance-related or discretionary bonuses;
- overtime payments that are not guaranteed;
- excluded earnings such as pension contributions; employee share schemes and charitable donations through payroll giving;
- exempt benefits such as works buses; approved mileage allowance payments; work-related training, etc.

### **Changes in pay after the basic earnings assessment has been carried out**

You should assess the employee's pay at the time they first apply to join your childcare scheme and at the beginning of each subsequent tax year that the employee remains a member. This will fix what level of exempt childcare support the employee is entitled to receive for the relevant tax year. The basic earnings assessment applies from the time the basic earnings assessment is carried out to the end of the tax year (a complete year when carried out at the beginning of the tax year) and is not affected by increases or decreases in their pay.

If your employee's pay changes during the course of the year, this may mean that the amount of exempt childcare support your employee is entitled to receive will change from the start of the following tax year, when you carry out the next basic earnings assessment for them.

You will need to carry out a basic earnings assessment at the beginning of every tax year as long as the employee remains as a member of your childcare voucher or directly contracted childcare scheme.

#### **I have a new employee starting after 6<sup>th</sup> April 2011 – do I need to take account of their previous employment earnings and benefits?**

No. You should carry out a basic earnings assessment for any new employee who applies to join your scheme on or after 6<sup>th</sup> April 2011. You do not need to take into consideration any previous earnings or benefits from other employment that your employee may have received in that tax year. Calculate the estimated earnings from the point at which the employee joins your company and pro-rata them up to establish the notional annual figure.

For example, if your employee joins your scheme on 6<sup>th</sup> October and will earn £26,000 between then and 5<sup>th</sup> April in the following year, divide 365 by the number of days from the date of joining the scheme and 5<sup>th</sup> April (182) to establish the relevant multiple, and multiply the earnings by that figure. In

this case, the level of notional income for the year will be £26,000 x 2 to give the level of notional earnings for the year at £52,000. The employee will be treated as a higher rate taxpayer and restrictions to the value of tax exempt childcare will apply.

### **What happens if the employer gets the basic earnings assessment wrong?**

If the employer has based the assessment on the information available at the time it is carried out, then it will be valid until the end of the relevant tax year, until such time that the next basic earnings assessment is carried out. Where the employer can demonstrate from their records that the level of exempt childcare support has been given as a result of the assessment on this basis, it will be accepted by HMRC as correct.

If the employer gets the initial assessment incorrect due to a failure to use relevant available information and, as a result, the employee has received too much tax relief, the employer can report the additional benefit paid by reporting on a P11D.

**Will HMRC provide any online or CD ROM calculators for employers to use when carrying out the basic earnings assessment?**

There are no plans to do so at present.

### **Change of voucher provider**

If the employer uses a third party childcare voucher provider, the employer can change provider without affect the employee's status as an existing scheme member.

### **Closure of an existing scheme to new members**

If an employer closes a scheme to new members after 6<sup>th</sup> April 2011, the scheme would no longer be considered to be "generally open" to all employees. The scheme would not meet the requirements for the tax relief to apply.

### **Temporary cessation of childcare vouchers**

An employee can ask to stop receiving childcare vouchers temporarily whilst still remaining in your scheme – for example, if your employee only works during school term time and does not need childcare vouchers during school holidays. You do not have to treat the employee as a new joiner when they resume receiving childcare support from you, providing that the cessation does not exceed a continuous period of 12 months.

This also applies to employees who are on maternity leave, long-term sick leave, and those who wish to take a career break – providing the total length of absence does not exceed a continuous period of twelve months.

**Do I have to continue providing childcare while my employee is on maternity leave?**

Yes. The position is that employers must provide all contractual non-cash benefits during statutory maternity leave. This applies even if the benefit is normally provided under a salary sacrifice arrangement. Statutory payments must be paid in full and cannot be paid in kind.

This is a requirement of employment law under the Equal Treatment Directive and not a tax-related issue.

**If a higher rate earner goes on maternity leave and they are an existing member of my childcare scheme, how much childcare support qualifying for tax relief can I give? Currently they get £28 per week.**

You can give the same level of childcare support as you did before they went on maternity leave up to the time they return to work and that will continue to qualify for tax relief. At the point they return to work you should carry out a basic earnings assessment if the date of their return from maternity leave is in a different tax year.