

Changes were made to employer supported childcare in April 2011. These changes reduce the exempt amount for childcare vouchers and directly contracted childcare for some employees who join an employer's scheme on or after 6 April 2011. Guidance for employers and employees is available on the HMRC website, go to www.hmrc.gov.uk/thelibrary/esc-qa.htm

What are the exemptions?

- 1 There are three exemptions from Income Tax and NICs for the benefit of childcare provided or supported by the employer. The rules are similar but each exemption works differently. In summary, no tax will apply in the following circumstances where the qualifying conditions are met.
 - a) The employee is provided with childcare in a nursery or playscheme on premises made available by the employer or for which the employer is at least partly responsible for financing and managing the scheme. Where the relevant conditions are met the whole cost of the benefit is exempt from tax and NICs – see *Employer provided nursery or playscheme* below.
 - b) Childcare vouchers are provided to employees up to the relevant exempt amount – see *Childcare vouchers* below.
 - c) Other childcare made available to the employee up to the relevant exempt amount – see *Other employer supported childcare* below.

Where the value of the childcare voucher or other childcare provision exceeds the relevant exempt amount the excess is taxed and liable to NICs. If childcare is provided that does not comply with the qualifying conditions, it is taxed in full and liable to NICs.

For those employees who join an employer's scheme on or after 6 April 2011 the employer will have to make an estimate of the employee's earnings in order to work out the relevant exempt amount. More information about the estimation of earnings can be found on the HMRC website, go to www.hmrc.gov.uk/thelibrary/esc-qa.htm

An employee is only entitled to one exempt amount in a tax week. For example, if the relevant exempt amount is £55 and an employer provides childcare vouchers of £55 in a week for use at a local nursery, and provides £55 of after school care, the employee will only be entitled to receive one exempt amount of £55. All amounts in excess of the limit will be liable to tax and NICs

Tax-free childcare voucher allowance

Pay and benefits	Maximum weekly voucher order	Maximum monthly voucher order
Less than £42,475	£55	£243
£42,475 to £150,000	£28	£124
£150,000 or more	£22	£97
Pre-6 April 2011 scheme member	£55	£243

Employer provided nursery or playscheme

- 2 Nursery or playscheme places, provided by the employer are exempt from tax and NICs if:
 - the employer alone make premises available for the nursery or playscheme, or
 - the employer, jointly with others, for example, voluntary bodies, local authorities or with other employers make premises available, and
 - the nursery places are offered in a scheme open to either all of the employer's employees, or all of the employer's employees at the location where the scheme operates.
- 3 For a jointly run nursery or playscheme to qualify:
 - it must be on premises made available by one or more of the participants in the joint scheme, and
 - the employer must be wholly or partly responsible for financing and managing the nursery or playscheme.
- 4 Whether the nursery or play scheme is provided by one employer, or through a joint scheme, tax exemption will only apply if the facilities comply with any legal requirement for local authority registration.

Meaning of 'making the premises available'

- 5 The employer, or one of the participants in a joint scheme, must make the premises available by either:
 - using premises that are part of the employer's, or another participant's, existing freehold or leasehold property (or equivalent in Scotland), or
 - acquiring premises specially, by freehold or leasehold, or by hiring suitable premises on licence, for example, a local hall.
- 6 Providing the employer, or one of the participants in a joint scheme, makes the premises available, the facilities can be anywhere but the nursery or playscheme cannot be provided on premises that are wholly or mainly used as a private dwelling.

Section 318

Section 318(6)

Meaning of 'wholly or partly responsible for finance and management' in a joint scheme

- 7 Overall, the employer's role in financing and managing the provision of childcare must be a real one. The employer must be accountable for the provision, and liable to be called to account if things go wrong.

'Finance' requires a commitment to provide capital and funding for the nursery or playscheme. It requires more than buying in places from a commercial nursery and may be met where, for example, the employer:

- agrees to meet a set proportion of the overall cost of providing the care, or
- provides financial guarantees to a joint committee or joint company, or
- gives a long term undertaking to pay a fixed periodical contribution (for example, for the cost of a given number of places) which is calculated to ensure the overall financial viability of the care facility.

'Management' means more than being occasionally consulted about the broad policies that apply to a particular nursery or playscheme. It does not necessarily mean day-to-day management or direct responsibility for care of the children. However, it does require close involvement by the employer in:

- appointing and monitoring the performance of those engaged to look after the children
- the extent of the care provided
- the allocation of places, and
- financial management.

The management involvement can be through an in-house committee, or an associated company or partnership set up for the purpose.

- 8 Places will be exempt in nurseries and playschemes where sub-contractors provide the day-to-day childcare, so long as the conditions governing the provision of premises or the responsibility for finance and management are met.

Provision of nursery or play scheme places to other employees

- 9 Spare places in a qualifying nursery or playscheme can be given to people who are not the employer's employees without affecting the employees' tax position.
- 10 If places in a nursery on the employer's own premises are provided to another employer's employees who are working at that location, they will also be exempt from tax on the value of the provision.

Childcare vouchers

- 11 Childcare vouchers up to the relevant exempt amount are exempt from tax providing:
- the vouchers are used to pay for qualifying childcare
 - the employee is a parent or has parental responsibility for a child, and
 - the vouchers are offered in a scheme that is (subject to one exception) open to all employees.

For the exception, please see the explanation of 'open to all' at paragraph 22.

- 12 If childcare vouchers are provided with a value in excess of the relevant exempt amount, only the excess is chargeable for tax.

Other employer supported childcare

- 13 Other qualifying childcare up to the relevant exempt amount provided by the employer for the use of employees is exempt from tax and NICs where:
- the provision is provided for a qualifying child, and
 - the provision is offered in a scheme that is (subject to one exception) open to all employees. For the exception, please see the explanation of 'open to all' at paragraph 22.
- 14 Other employer supported childcare includes childcare purchased by the employer directly from the childcare provider for the use of the employer's employees. An example of this is a place in a commercial nursery contracted by the employer and made available to the employee for his/her child. It does not include the payment by an employer of an employee's own childcare bill or a cash allowance paid to the employee towards his or her childcare costs.
- 15 If the cost to the employer of providing the childcare exceeds the relevant exempt amount only the excess is chargeable for tax.
- 16 If the employer pays a retainer, but no care is provided, the exemption is not due and the benefit is chargeable to income tax and NICs. An example of this might be if the child is away on holiday and the nursery requires a retainer. As no care has been provided, the exemption is not due for that period.

Definitions

Meaning of child

Section 318(B)

- 17 A qualifying child is
- a child up to 1 September after their 15th birthday, or
 - a child up to 1 September after their 16th birthday if the child is on the blind register or came off it in the last 28 weeks, or if the parent receives Disability Living Allowance for the child, and
 - the child is the employee's child or is a child living with the employee for whom he or she has parental responsibility.

Section 318B(5)

- 18 Parental responsibility means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child's property.

Meaning of qualifying childcare

Section 318C

19 Qualifying childcare

The rules seek to ensure that only childcare which meets nationally recognised standards will attract the exemptions from Income Tax and NICs. In general terms, the childcare must be registered with or approved by the relevant authorities. The rules are complex because different statutory powers apply to England, Wales, Scotland and Northern Ireland.

20 Registered childcare

Childcare provided away from the child's home must be registered:

- in England and Wales for children up to and including 7 years
- in Scotland for children up to and including 16 years
- in Northern Ireland for children up to and including 12 years.

Registered childcare within the United Kingdom consists of:

In England only

- A person registered under Part 3 of the Childcare Act 2006. This will include persons on the following registers operated by Ofsted
 - The Early Years Register
 - The General Childcare Register — compulsory part
 - The General Childcare Register — voluntary part
- **Schools** – care provided by the governing body of a school is approved if it takes place
 - outside normal school hours (this means the normal hours of compulsory education adopted by the school as appropriate for the age of the child)
 - on school premises, or
 - on premises that are covered by the inspection of the whole school activity by Ofsted or the equivalent inspection body for certain independent schools
- **Other care providers** – a domiciliary worker or nurse from an agency registered under the Domiciliary Care Agencies Regulations 2002 providing childcare in the child's home.

In Wales only

- a childcare provider registered in accordance with Part 2 of the Children and Families (Wales) Measure 2010
- out-of-school hours childcare, provided by a school on the school premises, or by a Local Authority
- a person approved under the Approval of Child Care Providers (Wales) Scheme 2007 providing childcare in the child's home or if several children are being looked after, in the home of one of the children
- a domiciliary worker or nurse from an agency registered under the Domiciliary Care Agencies (Wales) Regulations 2004 providing childcare in the child's home
- a foster parent in relation to a child other than one whom the foster parent is fostering but only in those cases where due to the age of the child the care provided does not fall within the first and third bullet points in this section.

In Scotland only

- a childcare provider registered by the Scottish Commission for the Regulation of Care
- out-of-school hours childcare clubs registered by the Scottish Commission for the Regulation of Care
- childcare provided in the child's home by, or introduced through, childcare agencies, sitter services and nanny agencies which are required to be registered.

In Northern Ireland only

- Child minding or day care in accordance with Part XI of the Children (Northern Ireland) Order 1995
- out-of-school hours childcare, provided by a school on the school premises, or by an Education and Library Board or
- a person approved under the Tax Credits (Approval of Home Child Care Providers) Scheme (Northern Ireland) 2006 providing childcare in the child's home
- a foster parent in relation to a child other than one whom the foster parent is fostering but only in those cases where due to the age of the child the care provided does not fall within the first and third bullet points in this section.

Outside the United Kingdom (UK)

Childcare provided outside of the UK cannot generally be accepted as 'qualifying childcare' as it is outside of the jurisdiction of UK inspection and registration. The only exemption to this is childcare provided by a person approved under a Ministry of Defence accreditation scheme abroad.

Childcare that is not 'qualifying childcare'

'Qualifying childcare' does not include care provided by a relative of the child in the child's own home. This includes relatives who are registered or approved childcare providers. For these purposes a relative means:

- parent
 - step-parent
 - foster parent
 - grandparent
 - aunt or uncle
 - brother or sister
- whether by blood, half-blood, marriage or civil partnership.

Childcare provided by relatives can be qualifying childcare in the following circumstances:

- the relative is a registered or approved childcare provider
- the care is provided away from the child's own home
- the care is provided to non-related children in addition to the related child or children.

Meaning of 'open to all'

- 21 Childcare should be offered under a scheme to which all employees are eligible to apply. The condition does not mean that every employee who wants a childcare place in a scheme must receive a place. Employers may need to prioritise places if more employees apply than the number of places available. How childcare places are prioritised is up to the employer but the scheme should not exclude members of your staff from applying for a place on the basis of:
- grade or position
 - level of salary (subject to one exception)
 - length of service
 - gender.

- 22 Similarly, childcare voucher schemes should be generally open (subject to one exception) to all employees. The condition is not, however, breached if any of the employer's employees cannot participate in the scheme due to:
- not having any eligible children
 - not using eligible childcare
 - no advantage being gained in accepting vouchers in place of cash pay

The exception is that the 'open to all' condition is not breached where employees who earn on or near the National Minimum Wage (NMW) are unable to join an employer's scheme due to the requirement to safeguard payment of the NMW in full.

The exception does not apply if childcare is provided in a nursery or playscheme. For the workplace nursery exemption, the 'open to all' condition is breached if workers who earn on or near the NMW are prevented from joining the employer's scheme due to the requirement to safeguard payment of the NMW in full.

*Sections 270A(5)
and 318A(5)*

Section 318(8)

Meaning of 'tax week'

- 23 A 'tax week' means one of the successive periods in a tax year beginning with the first day of that tax year and every seventh day after that. The last day of a tax year or, in the case of a tax year ending in a leap year, the last two days is treated as a separate week.

Record keeping

24. The employer should maintain a record of the childcare or childcare voucher scheme rules (for example, letter to all employees or staff handbook) as evidence of meeting the availability condition.
25. Employers are responsible for ensuring that the exemptions are only applied where the full conditions are met. Employers should be satisfied:
- that the child for whom the childcare costs arise is a qualifying child, and
 - that the childcare provided is registered or approved and that this has not expired.
26. HMRC will accept that employers have done all they can to be satisfied that the conditions have been met if the employer follows these steps:
- made available the scheme rules and included in them that employees must notify the employer of any changes in their circumstances, including in their childcarer's registration or approval status.
 - maintained a record of the child's name and date of birth for whom the childcare costs met by the vouchers arise.*
 - maintained a record of the childcarer's registration or approval number/copy of current letter of approval along with a record of when the registration/approval is due to expire.*
 - a process is in place to account for tax where registration or approval of the childcarer has lapsed.

**If a childcare voucher provider company administers the scheme on behalf of the employer they can, by arrangement with the employer, obtain and hold this information as long as the employer has access to it.*

Employers can check whether a childcarer's registration or approval is valid

In England

Ofsted (Office for Standards in Education, Children's Services and Skills):

- go to www.ofsted.gov.uk
- phone 08456 40 40 40.

In Scotland

Social Care and Social Work Improvement Scotland:

- go to www.scswis.com
- phone 0845 600 9527.

In Northern Ireland

The Health and Social Services Trust:

- go to www.nidirect.gov.uk/childcare

In Wales

Care and Social Services Inspectorate Wales:

- go to www.wales.gov.uk
- phone 01443 84 84 50.