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## **SALARY SACRIFICE: RESTRICTING THE TAX EXEMPTION FOR WORKPLACE CANTEENS**

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### **Who is likely to be affected?**

1. Employers and employees who have structured contractual remuneration arrangements, involving salary sacrifice or flexible benefits, that are intended to allow employees to obtain meals at work partly or wholly free of liability to tax and National Insurance Contributions (NICs).

### **General description of the measure**

2. Section 317 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) provides an exemption from tax under the employment income rules whereby an employer can provide the benefit of free or subsidised meals in a canteen or on its business premises, subject to certain conditions.
3. The Government has become aware that some employers and employees have developed remuneration arrangements involving salary sacrifice or flexible benefits to take advantage of this exemption.
4. These arrangements are intended to allow some employees to purchase meals out of gross pay, and hence obtain a significant tax and NICs advantage over the majority of employees who must purchase their meals using their net pay, from which tax and NICs have already been deducted.
5. Legislation will be introduced in Finance Bill 2010 to amend section 317 of ITEPA to restrict the exemption for the benefit of free or subsidised meals where an employee has an entitlement in conjunction with salary sacrifice or flexible benefits arrangements to employer-provided free or subsidised meals.

### **Operative date**

6. The measure will have effect on and after 6 April 2011.

## Current law and proposed revisions

7. Section 317 of ITEPA removes the tax charge on the provision of meals for directors or employees if the meal is provided in a canteen or on the employer's premises and the following conditions are met:
  - the meal is on a reasonable scale;
  - all employees, or all employees at a particular work location, may obtain a free or subsidised meal (or a voucher for one); and
  - in the case of a hotel, catering or similar business, if free or subsidised meals are provided for employees in a restaurant or dining room when meals are being served to the public, part of the dining area must be designated for staff use only and the meals must be taken in that part.
8. The proposed revisions will remove the tax exemption in circumstances where employees are in effect using a designated amount of their gross remuneration to fund the purchase of food and drink at work.
9. The measure will achieve this by amending section 317 of ITEPA to restrict its application.
10. Firstly, the amendment will prevent the exemption from applying where the provision of free or subsidised meals is linked to a salary sacrifice arrangement in which the employee has agreed to reduce their existing taxable employment income and is to be provided with food and drink (or the means of obtaining it) of a value that is commensurate with the amount of income given up.
11. Secondly, the amendment will prevent the exemption from applying where the provision of free or subsidised meals is linked to a flexible benefits remuneration arrangement which includes the provision of food and drink (or the means of obtaining food and drink) of a value that is commensurate with the amount of income given up.
12. The rules on employment-related benefits will apply in the normal way to the provision of food and drink to which the restriction in the exemption applies. Similarly, Class 1A employer NIC liability will apply in the normal way.
13. The section 317 exemption will continue to apply in relation to general subsidies for canteens that are available to all employees, for example where the employer provides a general subsidy that is reflected in lower prices in the canteen.
14. The existing position in relation to subsidy benefits that are quantifiable but not connected to salary sacrifice or flexible benefits arrangements will not be affected.
15. The Luncheon Voucher exemption for the first 15p for each working day will not be affected.

16. The existing rules will continue to apply to the tax/NICs treatment of other meals at work and working lunches.
17. Arrangements that apportion employment income to meals at work in such a way that it ranks as earnings will be liable to tax and Class 1 NICs under Pay As You Earn as earnings, as has always been the case.

**Further advice**

18. Draft legislation and an explanatory note for this measure will be published on the HM Revenue & Customs website in the New Year.
19. If you have any questions about this change, please contact David McDowell on 020 7147 0175 (email: [david.mcdowell@hmrc.gsi.gov.uk](mailto:david.mcdowell@hmrc.gsi.gov.uk)). Information about Pre-Budget Report measures is available on the HM Revenue & Customs website at [www.hmrc.gov.uk](http://www.hmrc.gov.uk)