

Salary sacrifice arrangements involving cycles and bus passes

Summary

Some employers have implemented salary sacrifice arrangements for cycles and for bus passes with the expectation that the benefits in question are covered by a tax exemption and that there is no employer liability to National Insurance contributions (NICs). In both cases, there are conditions that must be satisfied in order for the exemption to apply. This note explains the approach that HM Revenue & Customs (HMRC) will take for past and current periods where the conditions for the relevant tax exemptions are not satisfied, so that the exemptions do not apply.

This note also refers to the guidance about the actions that employers can take to ensure that the conditions for the cycles exemption are satisfied in future, along with details of a simplified approach to the valuation of cycles transferred to employees at the end of the loan period.

Salary sacrifice arrangements that rely on the employment income exemption for loaned cycles

Background

These arrangements are commonly referred to as 'Cycle to Work' arrangements. As explained in the detailed implementation guidance provided by the Department for Transport [Cycle to Work Scheme - Implementation guidance](#), they take advantage of a tax exemption that allows employers to loan cycles and cyclists' safety equipment to employees as a tax-free benefit.

The exemption can only apply if certain conditions are satisfied. These conditions include a requirement for the cycles or equipment to be available generally to all employees of the employer. This does not mean that every employee has to be provided with a cycle or equipment, just that the offer of cycles or equipment is open to all employees if they wish to take it up. However, there has been some confusion amongst employers about what this means in practice where cycles are only offered through salary sacrifice arrangements and some employees are excluded from access to salary sacrifice arrangements. This may happen because of other statutory considerations, such as ensuring that pay is not reduced below the level of the National Minimum Wage or because of legal barriers to under 18 year olds signing up to the type of agreement typically included in a cycle to work salary sacrifice arrangement.

Both HMRC's recently updated guidance [EIM21664](#) and the Department for Transport's ('DfT') implementation guidance confirm that even if some employees are excluded from salary sacrifice arrangements, the offer of a cycle must still be open to them in order for the exemption to apply.

However, this does not mean that the cycles exemption cannot be satisfied where an employer uses salary sacrifice arrangements. Both the DfT guidance and HMRC's updated guidance include information about how employers can take action to ensure that the condition about the offer of a cycle being open to all employees is satisfied.

What if an employer has a Cycle to Work arrangement in place and some employees are excluded from the offer of a loaned cycle?

As explained above, the condition about availability is not satisfied in these circumstances and therefore the exemption does not apply. HMRC will take the following approach to the exemption in circumstances where the **only** reason that the exemption does not apply is the exclusion of employees aged under 18 years or earning at or around the National Minimum Wage.

- A.** For employees that had entered into Cycle to Work salary sacrifice arrangements by 18 December 2009, the exemption will be treated as continuing to apply until the end of each such employee's current Cycle to Work agreement.
- B.** Any renewal of the current Cycle to Work agreement for another cycle will be treated as a new arrangement and will only be covered by the exemption if all conditions (including the availability condition) are fully satisfied.
- C.** For any employee that had not entered into Cycle to Work salary sacrifice arrangements by 18 December 2009, the exemption will only apply if all conditions (including the availability condition) are fully satisfied.

If employers wish to ensure that the cycles exemption applies to employees who sign up to or renew Cycle to Work arrangements in future, they will need to ensure that they offer the benefit of a cycle across the workforce as a whole.

Where the conditions are not satisfied and are not treated as satisfied for an interim period as outlined in paragraph A above, the employer is responsible for including details of the taxable benefit on form P11D for each affected employee and for accounting for employer's Class 1A NIC liability.

Sale of cycles after end of loan period

The cycles exemption relates solely to cycles that are not sold to the employee. However, an employer or a third party cycle provider may choose to offer the cycle for sale to the employee after the loan has ended. If the employee is able to buy the cycle for less than its market value, the difference will be liable to tax and to employer's Class 1A NIC liability.

If a cycle is then sold to an employee after the end of the loan period it can be difficult to establish the market value. In order to simplify valuation, the latest update to HMRC's Employment Income Manual includes an optional simplified approach to valuing cycles sold after the end of a loan/ salary sacrifice period. See [EIM21667](#) and [EIM21667a](#) for more details.

Where a cycle is not sold to the employee and continues to be loaned beyond the original period set out in the salary sacrifice arrangement, the tax exemption will continue to apply as long as the conditions continue to be satisfied.

Salary sacrifice arrangements that rely on the employment income exemption for support for public buses

Background

HMRC has become aware that the employment income exemption for support for public buses is being used in salary sacrifice arrangements that are aimed at providing employees with bus passes.

These salary sacrifice arrangements are based on an incorrect understanding of the conditions that need to be satisfied in order for the exemption for support for public buses to apply. The main problems that HMRC has seen with bus pass salary sacrifice arrangements are that:

- they do not relate to the provision of direct support for specified bus routes or specified bus services
- even where this sort of direct targeted support is provided, the benefit of free travel is provided by way of an area-wide bus pass (which is not covered by the exemption) instead of being limited to free travel on the particular service for which support has been provided.

The conditions that need to be satisfied for the exemption to apply are summarised in HMRC's guidance at [EIM21855](#).

What if an employer already has a bus pass salary sacrifice arrangement in place?

There has been some confusion about the conditions that need to be satisfied in order for the exemption for support for public buses to apply and HMRC accepts that it has communicated the requirements of some of those conditions less clearly than others. For that reason, HMRC will take the following approach to the exemption where employees have already entered into bus pass salary sacrifice arrangements.

1. For employees that had entered into bus pass salary sacrifice arrangements by 18 December 2009, the exemption will be treated as continuing to apply until the end of each such employee's current bus pass salary sacrifice agreement, provided that the agreement relates to a bus pass that lasts for no more than 12 months.
2. Any renewal after 18 December 2009 of the current bus pass agreement for a new bus pass or to extend the period of the current bus pass will be treated as a new arrangement. It will only be treated as exempt if the conditions of the exemption are fully satisfied and therefore arrangements that rely on area bus passes as opposed to travel on a specific supported bus route will not qualify for exemption.
3. For any employee that had not entered into bus pass salary sacrifice arrangements by 18 December 2009, the exemption will only apply if all conditions are fully satisfied.

Where the conditions for the exemption for support for public bus services are not satisfied and are not treated as satisfied for an interim period as outlined above, the employer is responsible for including details of the taxable benefit on form P11D for each affected employee and for accounting for employer's Class 1A NIC liability.

For more information on how to complete the form P11D use the [Expenses and benefits A-Z](#).

Cycles and buses: what will count as salary sacrifice arrangements entered into by 18 December 2009?

This covers:

- arrangements that were actually operating before the end of 18 December 2009
- arrangements in relation to which the employee and employer had finalised a written agreement before the end of 18 December 2009, provided those arrangements were due to commence no later than 6 April 2010 and that they are limited to the provision of one cycle or to a bus pass of no longer than 12 months duration

Flexible benefit arrangements that allow employees to elect for provision of a cycle or bus pass will be treated in the same manner.

Cycles and buses: what will not count as salary sacrifice arrangements entered into by 18 December 2009?

- Any new salary sacrifice or flexible benefit arrangement entered into after 18 December 2009.
- Renewals of salary sacrifice or flexible benefit arrangements made after 18 December 2009.