

Employer-supported childcare - guidance and FAQs for employers

This guidance outlines HM Revenue & Customs' (HMRC) application and interpretation of the legislation enacted at sections 35 and 36 and Schedule 8 of the Finance Act 2011. The material is provided for your guidance, but is not comprehensive and does not have force of law.

This guidance takes effect fully after Royal Assent to the Finance Act 2011 and once the regulations have come into force. It supersedes all previous guidance published on the effect of the changes enacted under ss35 and 36 and Schedule 8 to that Act. Further guidance can also be found in the Employment Income Manual from EIM21900 onwards at <http://www.hmrc.gov.uk/manuals/eimanual/EIM21900.htm>.

Introduction

From 6 April 2011, there are legislative changes to employer-supported childcare that affect employers who operate a childcare voucher scheme and/or directly contracted childcare. There are no changes to the tax exemption and National Insurance contributions disregard available for workplace nursery schemes.

The purpose of the changes is to even out the amount of Income Tax savings available to all employees joining schemes on or after 6 April 2011 regardless of the marginal tax rate that the individual pays.

Employer-supported childcare schemes are voluntary arrangements. The Government supports these initiatives with the tax exemption and National Insurance contributions 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.

In this guidance, unless otherwise specified, the phrase 'tax relief' means relief for income tax and a National Insurance disregard for employer contributions for both Class 1 (childcare vouchers) and Class 1A (directly-contracted childcare) and for employee contributions for Class 1 (childcare vouchers).

To qualify for the tax relief, four conditions must be met:

- A.** the childcare voucher or directly contracted childcare relates to care for a child who -
 - (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee's expense, or
 - (b) is resident with the employee and is a person in respect of whom the employee has parental responsibility.

- B.** the care must be qualifying child care.

- C.** the scheme must be open -
 - (a) to the employer's employees generally, or
 - (b) generally to those at a specific location,

(but where the scheme is provided through salary sacrifice or flexible remunerations arrangements, this condition will still be met if the scheme is not available to employees with earnings at or near the national minimum wage).

D. for employees joining schemes on or after 6 April 2011 that an estimate of the employee's relevant earnings amount for the tax year must have been made at the required time.

If these conditions are not met, the employer-supported childcare scheme **will not** qualify for tax relief.

We are bringing in salary sacrifice arrangements for our scheme but have a small number of employees on low incomes. If they pay for their childcare through salary sacrifice it will reduce the level of their earnings below the national minimum wage. Is that okay?

No. Legislation relating to the national minimum wage prohibits the level of earnings being reduced to below the minimum amount in these circumstances. You can either choose to exclude these employees from your scheme or continue to provide childcare support for them without requiring a salary sacrifice arrangement.

If, in these circumstances, you choose to exclude employees with earnings at or near the national minimum wage from your childcare voucher or directly-contracted childcare scheme, it will not disqualify your scheme (see condition C above). However, you cannot exclude them from your workplace nursery.

You can run your employer-supported childcare scheme through a mixture of salary sacrifice, flexible remuneration, and salary plus arrangements.

If you decide to exclude your lower earning employees from your scheme they may be able to get help with their childcare costs through the childcare element of the Working Tax Credit from the HMRC website at <http://www.hmrc.gov.uk/taxcredits/start/who-qualifies/children/childcare-costs.htm>.

Note: If you have no employees joining your childcare voucher or directly contracted childcare scheme on or after 6 April 2011, you need not read any further. However, the guidance that follows includes dealing with employees joining your employment under TUPE or COSOP arrangements, or as the result of your company acquiring control of another, which you may find useful.

If you are unsure how to decide if an employee is in your scheme on or before 5 April 2011, the section below will help you decide.

How to decide if an employee is in your scheme on or before 5 April 2011

In order to fall within the former arrangements, an employee must have submitted an application to join a scheme, the application must satisfy all the relevant conditions and the application must have been accepted by the employer, on or before 5 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 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 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 a continuous period of 52 weeks 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, step-parent or have parental responsibility for a child at the time they join your scheme.

I have someone who started working for me on 11 April 2011 - but they applied to join my scheme before 6 April. Can they get tax relief under the old rules?

No, these are tax reliefs for employer-supported childcare, and you were not this individual's employer on or before 5 April 2011.

My employee was on maternity leave when she applied to join our scheme in March 2011 - she has decided not to receive any vouchers until August when she returns to work. Can she get tax relief under the old rules?

As long as your employee had a child at the time when she applied in March 2011, you agreed that she could join the scheme before 6 April, and she could have received vouchers at that point if she wished, she can get tax relief under the old rules.

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 April 2011, then the existing entitlement will continue.

Changes in the value of childcare vouchers or directly contracted childcare received

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

My employee has been in my scheme since 2009. They are shortly changing their work pattern from part time to full time and want to increase the level of childcare vouchers they receive from £30 a week to £55 a week. 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 April 2011, that limit will continue to apply.

Our employee has been in our scheme since 2009. We have a salary sacrifice arrangement in place for childcare vouchers to the level of £55 per week.

However, as the cost of childcare in this area is very expensive, my employee has asked if we can increase the level of salary sacrifice in exchange for vouchers of £100 per week. Will he get tax relief on the full £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 National Insurance contributions, but there will be a tax liability on the employee on the balance of £45 and, because childcare vouchers fall within Class 1 National Insurance contributions, a National Insurance contributions liability on the same amount. And you will have to pay employer National Insurance contributions on the balance of £45 too.

Temporary cessation of childcare vouchers or directly-contracted childcare

An employee can ask to stop receiving childcare vouchers or directly contract childcare temporarily whilst still remaining in your scheme, eg, if your employee only works during school term time and does not need childcare vouchers for the school holidays.

If your employee was a member of your childcare scheme on or before 5 April 2011, you do not have to treat the employee as a new joiner when they resume childcare support from you, providing that the cessation does not exceed a continuous period of 52 weeks.

This also applies to employees who are on maternity leave, long-term sick leave, and those who wish to take a career break, provided the total length of absence does not exceed a continuous period of 52 weeks. Although the legislation specifies a period of 52 continuous weeks, HMRC will accept the use of a full year - see the example which follows.

My employee has been in my scheme since 2008 but has asked to stop receiving childcare vouchers from September this year while he takes a year's career break. When does the temporary cessation take effect, and what date should I use to treat him as coming back into the scheme to calculate the length of the break?

The temporary cessation will start from the date agreed with your employee to withdraw from the scheme and last until the date agreed for resumption of participation in the scheme at which point you (or a third party provider) will begin to issue childcare vouchers again.

If your employee comes to an agreement with you to rejoin the scheme from a given date, but no vouchers as issued until a later date, the period of absence will be taken to last until the date that the vouchers are issued.

Although the legislation specifies a period of 52 continuous weeks, HMRC will accept the use of a full year. 'Year' takes its ordinary meaning, so if the start of the cessation is 26 October in one year, the year would be up on 27 October of the following year.

Exempt amounts for childcare vouchers and directly-contracted childcare - employees who are already members of your scheme before 6 April 2011	£55
Weekly	
Monthly	£243
Annually*	£2,915

*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 limits apply for the level of disregard for employer and employee Class 1 National Insurance contributions for childcare vouchers. Directly-contracted childcare is subject to Class 1A National Insurance contributions, so the limits apply for the level of disregard for employer contributions, there are no employee contributions for Class 1A.

Joining more than one scheme

My employee is going to start working from home for part of the week, but will be in the office for at least three days. She wants to continue using our workplace nursery for days when she is in the office, but also wants to receive childcare vouchers to pay towards a local nursery when she is working from home. Is it possible to do this?

Yes, an employee may receive the benefit of employer-supported childcare both through a workplace nursery scheme and either childcare vouchers or a directly-contracted childcare scheme. However, it is not possible to receive both childcare vouchers and directly-contracted childcare in the same tax week - that is specifically prohibited by the legislation.

We have two companies and an employee who works full-time, but who splits his working week between the two. He says that each company can give him the full value of childcare exemption - is that true?

Yes and no. The legislation specifies that the employee is only entitled to one exempt amount for Income Tax. However, the National Insurance contributions disregard can apply to each employment. If your employee receives childcare support in relation to one employment and the total value exceeds the exempt amount, it is their responsibility to inform HMRC of the facts.

This answer applies equally if your employee works part time for you and part time for another employer not associated with you.

If you have no employees joining your childcare voucher or directly-contracted childcare scheme on or after 6 April 2011, you need take no further action at this point.

Employees joining schemes as new members or returning to a scheme after a break of more than 52 continuous weeks on or after 6 April 2011

You must carry out an estimate of the level of the employee's 'relevant earnings amount' (referred to elsewhere in this guidance as the basic earnings assessment). If you do not, your employer-supported childcare scheme will not comply with the statutory conditions summarised at the beginning of this guidance. As a result, none of the employees who are members of the scheme will be entitled to tax relief, and you will be liable to pay employer National Insurance contributions on the value of the benefit.

The basic earnings assessment is used to identify the level of tax relief on employer-supported childcare that an individual employee is entitled to, it also indicates the value of childcare vouchers or directly contracted childcare that you can provide to that employee without becoming liable to pay secondary Class 1 or Class 1A National Insurance contributions. And for childcare vouchers, it sets the value of the National Insurance disregard for your employee.

Employees who already participate in an employer scheme on or before 5 April 2011 are not affected by these changes unless they cease employment with you; or they leave your scheme and join another; or they take a break from your scheme and the break lasts for longer than 52 continuous weeks. Further details are set out later in this section.

Who will be affected by these changes?

The changes will only affect people joining their employer's scheme on or after 6 April 2011.

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

- they leave your employment (but see 'Changes of employer circumstances' below); or
- they leave your scheme; or
- they receive no employer-supported childcare from you for a continuous period exceeding 52 weeks; or
- their child no longer receives qualifying childcare; or
- they no longer have child that qualifies for the tax relief.

My employee was in my scheme before 6 April 2011 but he resigned at the end of April 2011 to take up employment elsewhere. However, it did not work out and I have re-employed him. He wants to rejoin my childcare scheme - can I treat the break as a temporary cessation?

No. Once the employee left your employment, he has to be treated as a new joiner. Temporary cessation rules only apply where the individual remains in your employment and is guaranteed a return to their job at the end of the break.

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 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 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 -	Higher rate	Additional rate
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employees joining schemes on or after 6 April 2011

Basic rate

Weekly	£55	£28	£22
Monthly	£243	£124	£97
Annually	£2,915	£1,484	£1,166

The same weekly limits apply for the level of disregard for employer and employee Class 1 National Insurance contributions for childcare vouchers. There will be no National Insurance contributions liability (Class 1A employer contributions only) on directly-contracted childcare where no taxable liability arises. Employees do not have to pay Class 1A National Insurance contributions under any circumstances.

How to administer childcare vouchers or directly-contracted childcare schemes for employees who join on or after 6 April 2011

For all employees who join your scheme on or after 6 April 2011, you will need to decide the monetary value of the childcare support you can provide that qualifies for the tax exemption and National Insurance contributions 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 an employee receives.

How to decide if an employee joins your scheme on or after 6 April 2011

If your employee has submitted an application to join your scheme, which has not been accepted by you (their employer) before 6 April 2011, their entitlement to tax relief will be based on the new rules.

In the event that your employee is not entitled to tax relief on or before 5 April 2011, (for example, there was no qualifying child or they had agreed to work for you but had not yet started their employment with you by the 5 April), 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 a full year and HMRC will treat them as continuing to be members of your scheme for that period. That means if they were members of your scheme before 6 April 2011 they can continue to get tax relief under the previous rules. (See 'Temporary cessation of childcare vouchers or directly-contracted childcare', above.)

Change of employer

Where an individual joins a childcare voucher or directly-contracted childcare scheme with a new employer on or after 6 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 a change of employer takes place on a frequent basis. But see 'Changes of employer circumstances', below.

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 (PCT) as part of their post registration training. The PCT they are contracted to work for is their employer - will they be regarded as new joiners if they get employer-supported childcare from their latest 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 acquisition

For the purposes of employer-supported childcare, where a change of employer is triggered by a business merger or acquisition, HMRC will treat the employees affected as not having to be regarded as new joiners to the new employer's childcare scheme if they were in their previous employer's scheme before 6 April 2011. 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 for the tax year in question.

Any employee who joined the previous scheme before 6 April 2011 will still be entitled to tax relief up to the value of £55 per week for as long as they remain within the new employer's scheme. Those joining on or after 6 April 2011 will retain the level of relief that was estimated by the basic earnings assessment at the beginning of the tax year, and will be reassessed in the following year.

The same treatment for employer-supported childcare purposes will also apply where a transfer of staff under a COSOP or TUPE arrangement has taken place.

However, the same treatment will not apply where there has been a formal change of employer through an intra-group transfer.

How do we treat employees who change their employment from another employer to us, but who retain their existing terms and conditions when they come to us?

If, on or after 6 April 2011, your company acquired control of another (employer A) that is providing employer-supported childcare arrangements for its employees, and you want to continue similar arrangements, then the tax relief 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 employer A's childcare scheme before 6 April 2011, you do not have to carry out a basic earnings assessment for them. They will still qualify for tax relief for an amount up to the maximum of £55 per week for as long as they remain in your employment and meet the other qualifying conditions. That remains the position even if, on transfer to you, there is a change to their voucher provider or you contract with a different childcare provider.

For employees who became members of employer A's childcare scheme on or after 6 April 2011, you will not have to carry out a basic earnings assessment when they transfer to you, so you should use the same level of exemption that they already had for that tax year. But at the beginning of the following tax year, you will have to carry out a basic earnings assessment for them.

The basic earnings assessment

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

From 6 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 subsequent tax years. 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 information available at the start of the tax year.

Record-keeping requirements

Employers must keep a record of the basic earnings assessment in case it is 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 April 2011.

As an employer, it is open to you to ask the employee to prepare the assessment, but in that case you would still have to adopt it and take responsibility for it.

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 the appropriate level of tax relief is received in the course of the current tax year, rather than deferring the recovery of any underpayment for up to two years. If you do not carry out the basic earnings assessment **your employee will not be entitled to any tax relief** on childcare vouchers or directly contracted childcare they receive from you. You will also be liable for secondary National Insurance contributions.

You will, in any case, have to account for any Class 1 National Insurance contributions for benefit on childcare vouchers not subject to tax relief by earnings period during the course of the current tax year.

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 (but see 'Earnings and benefits to be included in the basic earnings assessment' later in this section).

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 the 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 tax year. That is required for employers to determine the monetary value of childcare vouchers or directly-contracted childcare that they can provide which 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 offset this by the aggregate of excluded income which will include, except for those employees with estimated earnings of £150,000 or above, the basic standard personal allowance for the year (£8,105 in 2012-13). 'Excluded income' is explained in more detail below in 'Earnings and benefits which should be taken into account in calculating the aggregate of any excluded amounts for the purposes of the basic earnings assessment'.

If the employee has a visual impairment which means they are registered as a blind person, you may also deduct the level of the Blind Person's allowance (£2,100 in 2012-13). It does not matter whether the employee has claimed it or not.

The resulting amount must then be compared to the income tax bands to see if the amount of the relevant earnings exceeds the amount for the maximum level of tax relief. For example taking someone who has no excluded income other than that covered by personal allowances:

Basic earnings £25,000 + taxable benefits £4,800 - personal allowances £8,105

Relevant earnings = £21,695

For most employees, in the year 2012-13, tax relief is available on the following amounts of relevant earnings as follows:

- not exceeding £34,370 - up to **£55** per week
- greater than £34,370 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 Income Tax band for the basic rate and higher rate for 2012-13 respectively. The final bullet point features the additional rate band.

The individual with relevant earnings of £21,695 would therefore fall within the first band and would be entitled to tax relief on childcare vouchers or directly-contracted childcare up to a maximum value of £55 per week.

For completeness, in 2012-13 the calculation for an employee who is a registered blind person would be:

Basic earnings £25,000 + taxable benefits £4,800 - personal allowances £8,105 - blind person's allowance £2,100

Relevant earnings = £19,595

I have decided to continue providing childcare vouchers to the value of £55 per week at least, no matter what the status of employee is and treat them as if they are covered by the tax relief. 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 provision of childcare vouchers whatever the face value is. The legislation does not call for an apportionment of administrative costs in these circumstances.

If you decide not to restrict the level of childcare support you provide to reflect the level of tax relief that your employee is entitled to following the basic earnings assessment, you must report the **value** of the taxable amount of the benefit on a P11D (which, on £55 per week, would be £27 per week for a 'higher rate' earner and £33 per week for an 'additional rate' worker).

If you do not carry out the basic earnings assessment **your employee will not be entitled to any tax relief** on childcare vouchers or directly contracted childcare they receive from you. You will also be liable for secondary National Insurance contributions.

Can I report the National Insurance contributions on a P11D?

Not if it relates to childcare vouchers. Those fall within Class 1 and have to be accounted for on an earnings period basis.

If you have an employee with a restricted entitlement to tax relief on £28 per week, and you pay childcare vouchers of £55 per week, your employee must pay National Insurance contributions on £27 per week, and you will have to make employer contributions on the same amount.

If I restrict the level of childcare support I give to the tax-free amount, so that some employees can have £55 per week and others £28 per week, does this meet the requirement that the scheme is available to all?

Yes. There is no requirement in condition C for the scheme to be available on the same monetary terms to everyone.

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 (salary, wages and fees).
- Guaranteed contractual bonuses - an amount that will be paid as part of a contractual arrangement as long as the employee remains in employment, without any other conditions having to be met, eg, a 'loyalty' bonus or 'golden hello'. **But do not include performance-related or discretionary bonuses.**
- Contractual commission - where the commission represents a contractually agreed proportion of income generated by the employee for the business. This should be based on commission earned with the employer in the previous year, or on an average of two previous years of work with you where commission has been earned, if that produces a more beneficial result. HMRC will accept an estimate on this basis without further enquiry, but employers may be asked to justify any other basis used. This means that where an employee joins your childcare scheme on taking up employment with you, commission will not form part of their basic earnings assessment for the period up to 5 April of that tax year.
- Guaranteed overtime payments - paid whether worked or not (eg, payments of four hours' guaranteed overtime for working every third Saturday, even if the amount of time worked is less or no work is carried out on that day at all). **But do not include overtime payments that are not guaranteed.**
- Location or cost of living allowances, eg London weighting.
- Shift allowances.
- Skills allowances (eg, an allowance for holding a qualification in First Aid).
- Retention and recruitment allowances.
- An 'allowance' here is taken to be a guaranteed/unconditional payment, whereas a 'bonus' may not be.
- Market rate supplements.
- The cash equivalent of any taxable benefits that fall within Part 3 of the Income Tax (Earnings and Pensions) Act 2003, and which are not exempt from income tax under Part 4 of that Act, (eg, a company car made available for private use; fuel provided by an employer for private use in a company car; cash vouchers; employer-supported childcare in excess of tax relief entitlement; living accommodation, etc). **But do not include exempt benefits such as works buses, work-related training, etc.**

(See HMRC's booklet '480 Expenses and Benefits' for examples of taxable benefits you should include in the basic earnings assessment at <http://www.hmrc.gov.uk/guidance/480.htm>, and the 'Employer Further Guide to PAYE and NICs (CWG2)' at <http://www.hmrc.gov.uk/guidance/cwg2.pdf>.)

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.

I am carrying out the basic earnings assessment 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 entire year.

I am carrying out the basic earnings assessment at the beginning of the year but one of my employees (already in my scheme through her first child) is expecting a baby in the next few months). Can I adjust the assessment to take account of her drop in income when she's away on maternity leave?

If you and your employee have agreed the date she will be starting her maternity leave at the time you carry out the basic earnings assessment, you may make an adjustment to reflect this.

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 is not salary and therefore should never be added into the calculation for the basic earnings assessment.

I have a new employee starting in September – do I need to take account of their previous employment earnings and benefits when I do the basic earnings assessment for them?

No. You should carry out the basic earnings assessment for any new employee who applies to join your scheme on or after 6 April 2011 at the point they take up employment with you if later than the beginning of the tax year.

You do not need to take into consideration any previous earnings or benefits from other employments 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 prorate them up to establish the notional annual figure.

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

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

Earnings and benefits which should be taken into account in calculating the aggregate of any excluded amounts for the purposes of the basic earnings assessment

The following items must be taken into account as excluded amounts (see also the guidance that follows):

- Contributions to an occupational pension scheme under 'relief at source' arrangements.

- Contributions to an occupational pension scheme under 'net pay' arrangements.
- donations under 'payroll giving' arrangements.
- Expenses payments which can be excluded from the employee's taxable earnings according to the PAYE Regulations 2003. (This extends further than expenses covered by a formal dispensation.)
- Payments for removal expenses which can be excluded from the employee's taxable earnings in accordance with the PAYE Regulations as long as they do not exceed £8,000.
- An amount equivalent to the basic personal allowance and blind person's allowance (where appropriate) and where estimated earnings are below £150,000 for the year.

(See HMRC's booklet '480 Expenses and Benefits' for examples of expenses payments which should be taken into account in calculating the aggregate of excluded amounts at <http://www.hmrc.gov.uk/guidance/480.htm>, and the 'Employer Further Guide to PAYE and NICs (CWG2)' at <http://www.hmrc.gov.uk/guidance/cwg2.pdf>.)

How do I account for my employees' pension contributions?

You may be sponsoring a pension scheme which will be provided by a third party using **relief at source** arrangements. This means that you account for the employee's contribution by collection from your employee's earnings after deduction of income tax, and pay that to the pension provider. The amount that you collect represents the net contribution and the pension provider then recovers the income tax at the basic rate from HMRC, so that the net contribution plus tax credit is normally added to the employee's pension pot.

For the basic earnings assessment, you should treat as an excluded amount the total amount of contributions that you will deduct and pay over to the pension provider. For example, if the total contribution to the pension pot is £100 a month, you will collect and pay employee's contributions to the third party pension provider of £80 a month and they will recover £20 from HMRC. The amount you should treat as an excluded amount will therefore be based on that £80, and not the full £100. The total for the year will be £960.

This is to ensure you only have to account for the level of contribution that you expect to collect and pay over.

You do not include employer contributions that you pay towards the pension. Employer contributions are neither relevant earnings nor to be treated as excluded amounts.

If you are sponsoring a third party pension scheme through a salary sacrifice arrangement, you must not include in the aggregate of excluded amounts the amount you expect to pay to the pension provider on behalf of your employee. The level of your employee's basic pay will already be reduced by the effect of the salary sacrifice, and you should use the level of the post-salary sacrifice pay for the basic earnings assessment. The amount of contributions that you then pay to the pension provider under the salary sacrifice arrangements will be employer contributions.

If you are running a company pension scheme under **net pay** arrangements, you take the amount of the contribution from your employee's earnings (salary, wages or

fees) before accounting for Income Tax, providing the amount is not above the upper limit for tax relief on pensions.

For the basic earnings assessment, you should include the amount of the contribution in full in calculating the aggregate of excluded amounts. Do not use the adjusted (reduced) earnings figure for the basic salary or wages figure, or you will have made a double deduction.

For example, if the level of the employee's contribution to your company pension scheme is £100 per month, you should include £1,200 in computing the aggregate of excluded amounts to be deducted from the aggregated earnings and benefits when calculating the basic earnings assessment.

How do I treat additional voluntary contributions?

These are products designed to top up an occupational pension scheme, so treat them in the same way as the pensions described above, depending on what type of pension the additional voluntary contribution relates to.

You should also include in the aggregate of excluded amounts to be deducted from the aggregated earnings and benefits the amount you take from your employee's salary or wages under a payroll giving arrangement when calculating the basic earnings assessment.

Payments that your employees make through a payroll giving scheme are deducted from their earnings before tax. This means that employees are given tax relief on their donation immediately - and at their highest rate of tax. The contributions are paid over to an approved payroll giving agency.

It has been suggested that I set up a payroll giving scheme through salary sacrifice arrangements so that there is a National Insurance contributions as well as an Income Tax saving. Can I do this?

Such arrangements would not fall into the category of a payroll giving scheme and the exemption from Income Tax might not apply.

Should I deduct personal allowances from basic earnings?

Yes, see the examples above in 'What does the basic earnings assessment do?' above. HMRC publishes updated figures for comparison every year to reflect statutory changes to personal allowances.

The personal allowance is treated as an excluded amount and the aggregate of excluded amounts should be deducted from the total of earnings and benefits.

What happens if an employer gets the basic earnings assessment wrong?

If you have 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, even if your employee's circumstances change during the course of the year. Where you can demonstrate from your 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 you discover that the initial assessment was incorrect due to an error, eg, you overlooked relevant available information when making the basic earnings

assessment, and, as a result, your employee has received too much tax relief, you can report the taxable benefit provided by reporting it on a P11D.

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

There are no plans to do so at present.

Changes of childcare voucher provider or contracted childcare provider

You can change provider for both childcare voucher and directly-contracted childcare schemes without affecting your employees' tax relief position.

Closure of an existing scheme to new members

If you close your scheme to new members, the scheme will no longer be considered to be 'generally open' to all your employees, or all your employees in a particular location. The scheme would not meet all the required conditions for the tax relief to apply and if you continue to provide employer-supported benefit to some of your employees, it will be fully taxable and subject to National Insurance contributions in the normal way.

Temporary cessation of childcare support

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. They will be treated as remaining in your scheme providing the cessation does not exceed a continuous period of 52 weeks. Although the legislation specifies 52 weeks, HMRC will accept a period of a full year for these purposes.

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 a full year.

What happens when an employee is on a break? When should we do a basic earnings assessment for them?

The legislation stipulates that the time the basic earnings assessment should be carried out either at the point they join your childcare scheme, or at the beginning of the tax year if they are already members of the scheme at that point. Until such time as the break exceeds a continuous period of 52 weeks, the employee remains a member of your scheme, and you should carry out the basic earnings assessment at the beginning of the tax year.

Although the legislation states a continuous period of 52 weeks, HMRC will accept an absence of a full year.

One of my employees is on maternity leave after having her second baby, but already received childcare vouchers under the new rules. At the beginning of the tax year she will only be receiving Statutory Maternity Pay – what should I base the estimate of earnings on for that year?

If you have an agreed date for return to work, you should make the estimate on the basis of splitting the year between the remaining period of maternity leave and the

subsequent return to work. Include the amount of Statutory Maternity Pay and any extra maternity pay that you expect to pay up to the date of return, together with the estimated relevant earnings from the agreed date of return to the end of the tax year.

If you have not agreed a definite date of return, you should make the estimate on the basis of splitting the year on the assumption that the maternity leave will last for a continuous period of 52 weeks.

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 enacted in the Equality Act 2010 to comply with the Equal Treatment Directive, and is not a tax-related issue.