

EMPLOYER-SUPPORTED CHILDCARE – GUIDANCE AND FAQs FOR EMPLOYEES WHO ARE PARENTS, STEP-PARENTS OR WHO HAVE PARENTAL RESPONSIBILITY

This guidance outlines HM Revenue & Customs' interpretation of the legislation 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 sections 35 and 36 and Schedule 8 to that Act.

Introduction:

From 6th April 2011, changes were made to the level of tax relief available for Employer-Supported Childcare affecting employees who join schemes involving childcare vouchers or directly-contracted childcare on or after that date. There are no changes to workplace nursery schemes.

Employer-supported childcare schemes are voluntary arrangements. The Government supports these initiatives with the tax exemption and NICs disregard, 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 from income tax and a disregard for NICs for employees in relation to both childcare vouchers and directly-contracted childcare.

THE CHANGES APPLY ONLY TO EMPLOYEES JOINING SCHEMES AS NEW MEMBERS ON OR AFTER 6TH APRIL 2011

Who is affected by the changes?

The changes will only affect you if you join your employer's scheme on or after 6th April 2011.

If you were already a member of your employer's scheme before 6th April 2011 and your circumstances do not change, you will not be affected. You will retain your current level of tax relief until:

- you leave your current employment; or
- you leave the employer's childcare scheme; or
- you receive no employer-supported childcare for a continuous period exceeding 52 weeks; or
- your child no longer receives qualifying childcare; or
- you no longer have a child qualifying for the tax relief, for example, they are older than the upper age limit specified.

If any of these events take place, or you join another employer's childcare scheme or you rejoin your previous scheme after an absence of more than 52 continuous weeks, you will be assessed under the new rules.

What are the qualifying conditions?

The legislation sets out a number of conditions that have to be met in order for the tax relief to apply. These are:

- 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 remuneration 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 6th 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.

I live in the Republic of Ireland and my child goes to a nursery there, but I work for a local authority in Northern Ireland. If I ask to join my employer's childcare voucher scheme, will I get this tax relief?

No. For the tax relief to apply, it must be 'qualifying child care'. The legislation specifies that this is registered or approved care. The UK cannot regulate care that takes place in another country.

I am a low earner, and my pay is just above the National Minimum Wage. My employer has a workplace nursery and a childcare voucher scheme, but runs both through salary sacrifice arrangements – can I join either?

You will not be able to sacrifice amounts of salary if that would take your earnings below the levels specified in the National Minimum Wage legislation. If that is the case, your employer is able to exclude you from the childcare voucher scheme without it affecting the availability of tax relief for others in the scheme.

However, your employer is not able to exclude you from joining the workplace nursery, as there is no provision for the requirement for the benefit to be available to all employees in a location to be made only to those who can enter into salary sacrifice arrangements.

Although it will depend on the number of places your employer has in the workplace nursery, if your application is accepted, your employer will have to make other arrangements for you – for example, to provide the workplace nursery place in addition to your earnings. If your employer will not accept your application to join a workplace nursery because you do not earn enough to enter into a salary sacrifice arrangement, that scheme will not meet the conditions for tax relief to apply for any other colleagues receiving childcare support in that way.

My employer has a childcare voucher scheme but I cannot join it because my earnings are at the National Minimum Wage and there are salary sacrifice arrangements in place. What help with childcare costs can I get?

You may be able to get help with childcare costs through the childcare element of the Working Tax Credit. Details are available on the HMRC website at <http://www.hmrc.gov.uk/taxcredits/start/who-qualifies/children/childcare-costs.htm>.

HOW YOUR EMPLOYER WILL DECIDE IF YOU JOINED THEIR EMPLOYER-SUPPORTED CHILDCARE SCHEME BEFORE 6TH APRIL 2011

In order to fall within the former arrangements, you must have submitted an application to join your employer's childcare voucher or directly-contracted childcare scheme, the application must have satisfied all the relevant conditions and your employer must have been accepted the application on or before 5th April 2011. Acceptance of the application means that you will be entitled to receive either childcare vouchers or directly-contracted childcare and will qualify for tax relief from that date.

You need not have used the childcare support on or before 5th April 2011 to qualify for tax relief under the old rules, but you must have been entitled to receive either childcare vouchers or to use directly-contracted childcare by that date.

In the event that you were not entitled to the tax relief on or before 5th April 2011 (for example, your baby had not been born by that date, or you had agreed to work for your employer but did not start your actual employment until after that date), you will be subject to the new arrangements when you do join your employer's childcare voucher or directly-contracted childcare scheme.

I joined my employee's scheme before 6th April 2011. If I take a break from the scheme, will I fall within the new rules when I rejoin?

You can stop receiving childcare support from your employer for up to 52 continuous weeks whilst still remaining in your employer's scheme under the old rules. We call this a temporary cessation. You might, for example, work only in term times and stay at home with your child during the school holidays and not want to use childcare during the holiday period.

The same treatment also applies if you go on maternity leave, take long-term sick leave, or take a career break – provided the total length of your absence does not exceed a continuous period of 52 weeks, you will remain within the old rules. Although the legislation actually specifies a period of 52 continuous weeks, HMRC will accept the use of a full year.

The temporary cessation will start from the date agreed with your employer to withdraw from the scheme and last until the date you both agree that you resume participation in it, at which point your employer (or a third party provider) will begin to issue childcare vouchers or you will start using directly-contracted childcare again.

If you come to an agreement with your employer to rejoin the scheme from a given date, but do not have childcare vouchers issued to you or do not use directly-contracted childcare from that date, the period of absence will be taken to last until the day that vouchers are issued or directly-contracted childcare is used.

'Year' takes its ordinary meaning – so if the start of your break is 26th October in one year, the year will be up on 27th October following.

I had already started maternity leave when I applied to join my employer's childcare scheme in March 2011, so although I could have received some childcare vouchers then, I decided not to get any until I return to work in August. Can I still get tax relief under the old rules?

As long as you had a child eligible for tax relief on childcare costs at the time you applied to join your employer's scheme, your employer agreed before 6th April that you could join the scheme and you could have received childcare at the time your application was accepted, you can get tax relief under the old rules.

How much childcare support is subject to tax relief under the old rules?

Weekly	£55
Monthly	£243
Annually*	£2915

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

Changes in childcare value

You can alter the value of childcare vouchers or directly-contracted childcare you receive up to the limits shown above without affecting the level of tax relief you are entitled to.

I have been in my employer's childcare voucher scheme since 2009. I am changing my work pattern from part-time to full-time and want to increase the level of vouchers I get from £30 to £55 per week. Will I still be entitled to tax relief on the increased amount?

Yes. Under the old rules the tax relief applies to vouchers up to a value of £55 per week, and because you were already a member of your employer's childcare voucher scheme before 6th April 2011, that limit will continue to apply.

My childcare costs are very expensive and my employers have offered to increase the value of the support I receive from them to £150 per week. Will that affect my tax position?

Yes. Under the old rules the tax relief applies to childcare vouchers and directly-contracted childcare up to a value of £55 per week. Therefore the first £55 worth of childcare support your employers provide will be exempt from tax and NICs, but there will be a tax liability for you on the remaining £95. In the case of childcare vouchers, you will also have a NICs liability on the same amount.

Your employers will have to pay NICs on the £95 whether you receive childcare vouchers or directly-contracted childcare.

Joining more than one childcare scheme

You can 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.

Although both parents may be members of an employer-supported childcare scheme and each receive full tax relief, you cannot, as an individual, receive more than one exempt amount for income tax.

I work for two employers. Can I get the full value of the tax exemption for childcare vouchers from both of them?

The legislation says that you are only entitled to one exempt amount for income tax. However, the NICs disregard can apply to each employment. If you receive childcare support from more than one employer and the total exceeds the exempt amount, it is your responsibility to tell HMRC about this.

A change of employer which is outside your control

If your change of employer is triggered by a business merger or acquisition, HMRC will not require you to be treated as a new joiner to your new employer's childcare scheme. You will remain within the old rules as long as you were in your previous employer's childcare scheme before 6th April 2011. That means you will continue to be eligible to tax relief on £55 per week for the time you remain in your new employer's scheme.

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

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

A change of childcare voucher or directly-contracted childcare provider

Your employer can change provider for both childcare vouchers and directly-contracted childcare without affecting your tax relief position.

WHAT TO EXPECT IF YOU JOIN YOUR EMPLOYER'S CHILDCARE VOUCHER OR DIRECTLY-CONTRACTED CHILDCARE SCHEME ON OR AFTER 6TH APRIL 2011

How do employers know if the tax relief that I am entitled to should be restricted?

If you join your employer's childcare scheme on or after 6th April 2011, or you return to a scheme after a break of more than 52 continuous weeks, your employer must carry out an estimate of the level of your "relevant earnings amount" (referred to elsewhere in this guidance as the basic earnings assessment).

If your employer does not do this, your employer's scheme will no longer meet the conditions set out at the beginning of this guidance. This means that neither you nor other members of the childcare scheme will be entitled to any tax relief.

The basic earnings assessment is used to identify the level of tax relief that you are entitled to. Depending on whether the assessment identifies you as a 'basic rate', 'higher rate', or 'additional rate' taxpayer, the following levels of tax relief apply.

	Basic Rate	Higher Rate	Additional Rate (*)
Weekly	£55	£28	£22
Monthly	£243	£124	£97
Annually	£2915	£1484	£1166

(*) With effect from 6 April 2013 the exempt amount for Additional Rate will increase to £25 weekly, £110 monthly or £1,325 annually.

The same limits apply for the level of disregard for employer and employee Class 1 NICs for childcare vouchers, and for employer Class 1A NICs for directly-contracted childcare. Employees do not have to pay Class 1A contributions under any circumstances.

The Basic Earnings Assessment

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

If you join your employer's scheme on or after 6th April 2011, your employer should carry out a basic earnings assessment when you first join the scheme and then annually at the start of the subsequent tax year. The assessment 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 you is reported by your employer on a Form P11D. It is an assessment made on the basis of information available at the start of the tax year or when you join the scheme.

If your employer does not carry out a basic earnings assessment, **you will not be entitled to any tax relief** on the childcare support you receive.

Can I self-assess my own tax position at the start of the year?

No. Childcare vouchers and directly-contracted childcare are employer-provided benefits and the employer is responsible for carrying out the basic earnings assessment if you join a scheme on or after 6th April 2011.

Your employer may ask you to help prepare the assessment, but he will still have to adopt it and take responsibility for it.

Why can't the earnings figure from the previous year's P60 be used for the basic earnings assessment?

The basic earnings assessment should reflect the expected earnings for the forthcoming year rather than the year just gone.

What if I have a second employment that my employers know nothing about – will I have to tell them?

No. The employer who is offering to provide childcare vouchers or directly-contracted childcare should set your basic earnings assessment only from information on your employment with them – not with anyone else.

What does the basic earnings assessment do?

The basic earnings assessment establishes the estimated level of your relevant earnings for the tax year. This is needed for your employer to set the monetary value of childcare vouchers or directly-contracted childcare provided to you which are subject to tax relief.

It is calculated by adding together your 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 your employer provides to you.

Your employer will also work out the aggregate of “excluded income” which includes the basic standard personal allowance for the year (£7,475 in 2011-12), unless your earnings and benefits total £150,000 or more. Excluded income is explained in more detail under the heading “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”.

Your employer may also include the level of the Blind Person’s Allowance (£1,980 in 2011-12) if you have a visual impairment which means that you are a registered blind person. You may need to tell your employer that you are a registered blind person if you want the amount of the Blind Person’s Allowance excluded.

I am a registered blind person but I have never claimed the Blind Person’s Allowance from HMRC. Can I still ask my employer to treat it as excluded income?

It does not matter that you have not claimed this allowance – you can still ask your employer to treat this as excluded income if they do not already know that you are a registered blind person.

Your employer will compare the resulting amount of relevant earnings to the income tax bands to set the level of tax relief you are entitled to for the year. For example, taking someone who has no excluded income other than that covered by the basic personal allowance –

Basic earnings £25,000 + taxable benefits £4,800 – personal allowance £7,475
Relevant earnings = £23,325

For most employees, in the year 2011-12, tax relief is available on the following amounts of relevant earnings –

- not exceeding £35,000 – up to **£55** per week
- greater than £35,000 but less than £150,000 – up to **£28** per week

- £150,000 or more – up to **£22** per week

If your relevant earnings were similar to the example above, you would be entitled to tax relief on childcare vouchers or directly-contracted childcare of £55 per week.

For completeness, in 2011-12 the calculation for an employee who is a registered blind person would be –

Basic earnings £25,000 + taxable benefits £4,800 – personal allowance £7,475
 – blind person’s allowance £1,980
Relevant earnings = £20,345

Earnings and benefits to be included in the basic earnings assessment

The basic earnings assessment should include the following –

- basic pay as stated in your contract of employment (salary, wages and fees);
- guaranteed contractual bonuses – an amount that will be paid as part of your contractual agreement as long as you stay with the same employer, without any other conditions having to be met;
- contractual commission – where the commission you earn represents a contractually agreed proportion of income generated by you for the business. This should be based on commission earned with your employer in the previous year, or on an average of two previous years of work with your employer where you have earned commission, if that is more beneficial;
- guaranteed overtime payments – paid whether worked or not (e.g. a payment of 4 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);
- location or cost of living allowances, e.g. London weighting;
- shift allowances;
- skills allowances (e.g. an allowance for holding a qualification in first aid);
- retention and recruitment allowance;
- market rate supplements; and
- taxable benefits which your employer has agreed to provide at the date the basic earnings assessment is carried out.

What if the benefits provided by my employer change during the year?

The basic earnings assessment is based on information that your employer has available at the time it is carried out. If you receive more taxable benefits, or change to a taxable benefit that is worth less during the year, this will be reflected in your basic earnings assessment for the following year.

I am a member of my employer’s childcare voucher scheme under the new rules, so she has to carry out a basic earnings assessment for me. If I should have another baby next year, and plan to take maternity leave, can my employer factor my drop in salary into the next basic earnings assessment?

If you and your employer have agreed the date that you will be starting your maternity leave at the time she carries out the basic earnings assessment, the reduced salary can be factored in.

I give up part of my earnings under a salary sacrifice arrangement. What figure will my employer use for the basic earnings assessment?

Your employer should use the post sacrifice figure. When you agree 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.

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

Your employer must take the following items into account as excluded amounts –

- contributions to an occupational pension scheme under ‘relief at source’ arrangements;
- contributions to an occupational pension scheme under ‘net pay’ arrangements;
- donations made under ‘payroll giving’ arrangements;
- expenses payments which can be excluded from your taxable earnings according to the PAYE Regulations 2003;
- payments for removal expenses not exceeding £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.

How will my pension contributions be treated?

Your employer may sponsor a pension scheme using **relief at source** arrangements where the pension will be provided by a third party. This means that your employer collects your contribution from your earnings after deduction of income tax and NICs, and pay that to the pension provider. The amount that your employer collects represents the net contribution and the pension provider then recovers income tax at the basic rate from HMRC – this is normally added to your pension pot.

The level of contribution that the employer collects and pays to the third party will be treated as excluded income.

However, if you contribute to your pension through a salary sacrifice arrangement, the contribution will not be treated as excluded income as the level of your earnings will already have been reduced by the amount of the salary sacrificed.

If your employer runs a company pension scheme under **net pay** arrangements, your contribution is taken from your earnings after NICs has been deducted but before tax is collected, providing the amount is not above the upper limit for tax relief on pensions. Your employer will treat the full amount of the contribution as an excluded item.

What about Additional Voluntary Contributions?

These are additional payments that you can make to top up an occupational pension scheme, so they will be treated in the same way as pensions, depending on what type of pension scheme the additional voluntary contributions relate to.

Payments that you make through a payroll giving scheme are deducted from your earnings before tax, but after NICs has been collected and then paid over to an approved payroll giving agency. This means that you are given tax relief on your donations immediately – and at your highest rate of tax.

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

If your employer has based the assessment on the information available at the time it is carried out, it will be valid until the end of the relevant tax year, even if your circumstances change during the course of the year.

If the initial assessment is incorrect, because it was based on the wrong information, your employer will have to report any overpaid benefits to HMRC on a Form P11D.

Calculating earnings for the basic earnings assessment when an employee has taken a temporary break from work

The legislation stipulates that the time the basic earnings assessment should be carried out either at the point you join your employer's childcare scheme or at the beginning of the tax year if you are already a member of the scheme under the new rules.

How will my employer calculate my earnings when I am on a temporary break from work?

If you are on your temporary break from work (for example, you are taking maternity leave or a career break) at the time that the basic earnings assessment is carried out, and you have agreed a definite date of return with your employer, your employer should make the estimate on the basis of apportioning the year between the remaining period of your break and the subsequent return to work.

Your employer should include any statutory pay or other pay that you are paid whilst absent from work 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 for returning to work with your employer, your employer will need to make the assessment on the basis of apportioning the year on the basis that the break will last for the maximum possible without ending your employment.