



Low Incomes  
Tax Reform  
Group

A voice for the unrepresented

**Clause 2 and Schedule 2 – Optional remuneration arrangements**  
**Consultation on draft clauses for Finance Bill 2017**  
**Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive summary**

- 1.1 This clause and schedule are designed to remove the income tax and employer National Insurance contributions (NIC) advantages of salary sacrifice schemes (or schemes where the employee can choose between cash allowances and benefits in kind (BIKs)). To support wider governmental objectives, the tax and NIC advantages of a number of BIKs will be protected and will not be affected. These include pensions saving, employer-provided pensions advice, childcare, Cycle to Work and, following consultation, ultra-low emission cars.
- 1.2 We have strong reservations and concerns about the new rules as we think they will almost certainly damage arrangements used by lower income workers, for example NHS nurses who make modest savings by salary sacrificing into a workplace parking scheme.
- 1.3 Whatever the merits of restricting salary sacrifice to a few benefits, the result is also so blatantly unfair to those paid at or near the national minimum wage (NMW), who will be unable to use the 'approved' salary sacrifice arrangements. We therefore strongly recommend that the NMW Regulations should be changed to allow those on the minimum wage to salary sacrifice for certain 'approved' benefits. This would help make the changes more coherent and be fair, especially to those earning minimum incomes.
- 1.4 There are also number of outstanding questions with regards to the draft legislation, mainly around the commencement and transitional provision clause (paragraph 25, Schedule 2), for example, what constitutes a 'variation' and when exactly an 'arrangement' is deemed to come into effect.

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- 1.5 We recommend that the fact that the exceptions also include arrangements related to cessation of employment (e.g. counselling and other outplacement services) – not just pensions, childcare, Cycle to Work and ultra-low emission cars – is clarified and made widely known.

## **2 About Us**

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

## **3 Background**

- 3.1 Salary sacrifice arrangements are mainly used to take advantage of various beneficial tax and NIC rules that exist where employers provide BIKs. In particular, employees pay no NIC on BIKs provided to them by their employer, whereas they would pay NIC (assuming their earnings were above the primary threshold) on any salary paid.
- 3.2 The government has expressed concern about the growth in salary sacrifice arrangements, saying they represent an increasing cost to the Exchequer and create an uneven playing field between employees who benefit from tax advantages because their employers use such arrangements and employees whose employers do not.
- 3.3 Finance Bill 2017 clause 2 and schedule 2 will restrict the range of BIKs that can be included in a salary sacrifice or flexible benefits arrangement, by making the BIK chargeable to income tax and class 1A employer NICs (even if normally exempt from tax and NICs such as workplace parking) at the greater of the amount of salary sacrificed and the cash equivalent of the BIK (as set out in statute).

- 3.4 There will be exceptions for certain ‘approved’ arrangements including those related to pensions, childcare, Cycle to Work and ultra-low emission cars.

#### **4 General comments**

- 4.1 LITRG is concerned that most of those affected by the new rules will be those, for example NHS nurses, on modest salaries making small savings by sacrificing salary into a workplace parking scheme rather than higher paid senior staff using salary sacrifice ‘aggressively’.
- 4.2 More specifically, and with regards to the ‘exception’ from the new rules of certain benefits that the government wishes to promote, LITRG would point out that unless there is an associated change in the NMW law, those who are paid at or near the minimum wage will not be able to participate in such ‘approved’ salary sacrifice arrangements.<sup>1</sup>
- 4.3 One of the concerns about allowing the lowest earners to salary sacrifice has been the risk of their pay dropping below the point at which entitlement to contributory benefits is triggered (the Lower Earnings Limit (LEL)).<sup>2</sup> In practice, this is becoming less and less likely to occur, given the fact that the minimum wage rates are rising much faster than the LEL. Even if earnings did drop below the LEL, National Insurance credits from other sources might be available to effectively restore entitlement (e.g. through registration for child benefit for a child under 12).<sup>3</sup>
- 4.4 Thus, in our view, the ‘risks’ to such employees of using salary sacrifice are largely overstated. Saying that, there would be nothing to stop the government building in a safeguard to stop salary sacrifice pushing an employee's salary below the LEL to ensure their contributions record remains protected.
- 4.5 As such, we recommend that the NMW Regulations should be changed to allow those on the minimum wage to salary sacrifice for certain ‘approved’ benefits.
- 4.6 Without such a change, the ‘fairness’ argument for the new rules is incoherent – particularly when you consider the fact that things like childcare vouchers might be vital to the low-paid being able to work and that most workers are now automatically enrolled into pensions saving.

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<sup>1</sup> Regulation 10 of the NMW Regulations 2015 (SI 2015/621) – apart from living accommodation (for which there is a daily offset), non-cash benefits in kind that are provided instead of wages do not count towards the minimum wage.

<http://www.legislation.gov.uk/ukxi/2015/621/regulation/10/made>

<sup>2</sup> In 2016/17 this is £112 per week, in 2017/18 this will be £113 per week.

<sup>3</sup> See <https://www.gov.uk/national-insurance-credits/eligibility>

- 4.7 Many lower earners are able to afford to salary sacrifice taking into consideration their overall household income. With the correct information about the effects that a reduction in their pay might have on their entitlement to benefits and so on, they should be able to make their own decision.

## 5 Comments on draft legislation

- 5.1 Our reading of the draft legislation (paragraph 21, Schedule 2) is that it the exceptions go further than arrangements related to just pensions, childcare, Cycle to Work and ultra-low emission cars. Much of the narrative about these changes to date has therefore not been thorough and consequently a little misleading.
- 5.2 We recommend that the fact that counselling (and other outplacement services) and retraining courses are also ‘approved’ benefits is clarified and then publicised to employers, as few are likely to read the detail of the legislation.
- 5.3 It seems to us that ‘job-related’ employer provided living accommodation (e.g. that provided for ‘performance of duties’) may also be ‘approved’ due to the fact that the Chapter of ITEPA 2003 that is being amended by paragraph 6, Schedule 2 does not apply to them.<sup>1</sup> While we would welcome such a move, we wonder if it is intentional.
- 5.4 We welcome the fact that pre-6 April 2017 arrangements are to be protected for a period of time (paragraph 21, Schedule 2) and particularly that living accommodation is to be grandfathered until April 2021, given the concerns raised in our consultation response<sup>2</sup> with regards to low-paid carers (who can often choose between taking living accommodation offered by their employer or getting a higher cash wage and arranging their own living accommodation – now, presumably a ‘Type B arrangement’ as described in paragraph 1 of schedule 2).
- 5.5 However, how will this cut-off date work in practice? If an employee agrees to a living accommodation arrangement on say, 25 March 2017 but only moves in in say, May 2017, will this be covered? We assume that it would be based upon the date when the arrangement was agreed rather than commencement of the arrangement, but we recommend that this is made clear.
- 5.6 One condition to secure the transitional protection is that pre-April 2017 arrangements are not varied after that date (paragraph 25, Schedule 2). It is noted that replacement of benefits due to matters beyond the control of the parties and a variation in connection with a person’s entitlement to statutory payments such as Statutory Maternity Pay are carved out as acceptable variations.

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<sup>1</sup> See sections 99 – 101 ITEPA 2003.

<sup>2</sup> <http://www.litr.org.uk/latest-news/submissions/161018-salary-sacrifice-provision-benefits-kind>

- 5.7 However, there will no doubt be other causes of variations. HMRC should ensure that clear guidance on the meaning of 'variation' and 'beyond the control of the parties' is provided and should consider introducing some kind of de-minimis to help protect as many arrangements as possible. For certainty, this de-minimis should be put on a statutory footing.

LITRG  
30 January 2017