

Employer-supported childcare

Did your heart go out to the self-employed graphic designer who unsuccessfully claimed tax relief for the cost childcare as reported in the Special Commissioners case Sp C 347 (Taxation 20th February p. 498)? As Allison Plager noted the appellant was highly unlikely to win the case with the law as it stands.

At present the opposing stance of UK tax law and the employment and tax credits regulations are a prime example of non-joined-up government. New employment regulations are about to usher in dramatically increased support for parents from 6 April 2003 with the introduction of Paternity and Adoption leave and pay, the enhancement of Maternity leave and pay, and the right for parents of children aged under 6 years to ask for flexible working.

The new Working and Child Tax Credits are also designed to specifically help parents with young children. The basic Child Tax Credit is enhanced by 70% of the amount spent by the parents on approved and registered childcare up to a limit of £135 per week or £200 for more than one child. If the childcare is paid for using childcare vouchers provided by the employer the expense is ignored. To balance this disallowance of the expense, the value of the childcare vouchers provided by the applicant's employer are not counted as part of the claimant's income for the tax credit claim. There's the rub. Childcare vouchers are a taxed as income as a benefit in kind, but are not treated as income for tax credit claims. The consultation paper "Employer Supported Childcare" published by the Inland Revenue on 23rd February 2003 seeks to address this contradiction.

Childcare vouchers are already exempt from class 1 and class 1A National Insurance where they are provided by the employer in line with the Social Security (Contributions) Regulations 2001 reg. 40 and Sch 3 para 7. This exemption has been increasingly exploited to avoid National Insurance by using childcare vouchers in salary substitution schemes. The Inland Revenue are so concerned about the potential abuse of low paid employees who receive a large proportion of their earnings in the form of National Insurance free benefits such as childcare vouchers that they published guidance on salary substitution schemes alongside the employer supported childcare consultation document:

http://www.inlandrevenue.gov.uk/specialist/salary_sacrifice.pdf

The Employer Supported Childcare consultation document proposes that childcare vouchers should be exempt from tax and as well as National Insurance, but the vouchers should only be used to buy approved and registered childcare. This rules out using the vouchers for informal childcare provided by family members or nannies. It is surprising that the current regulations permit childcare vouchers to be used in this way. However in practice most childcare voucher schemes are set-up and operated by either local authorities or commercial nurseries where the care purchased with the vouchers is provided by a registered and approved child-minder or nursery.

The other major proposal is to make it easier for employers to provide access to workplace nurseries by removing the requirement for the employer to be involved in the management of the nursery when the care is not provided on premises occupied by the employer. The consultation paper also suggests that all employer-funded

registered and approved childcare should be free of tax and national Insurance. The types of childcare covered by this exemption would include registered nurseries unconnected with the company, after school clubs, childminders and approved home childcarers.

If you read the last paragraph thinking: “What an amazing give-away, where’s the catch?” you are right, there is a catch. The consultation document proposes limiting the value of tax-exempt childcare funded by an employer to £50 per employee per week. Any value of childcare support in excess of £50 per week would be subject to tax and National Insurance just like other benefits in kind, but the first £50 would be exempt.

The £50 limit would also apply to workplace nurseries that are not run on the employer’s premises. This means that where the employer is involved in the financial funding and management of a commercial nursery to allow it to qualify as a workplace nursery, the childcare provided through that nursery will only be tax free up to £50 per week per employee. However where the company has undertaken to run a nursery itself on its own premises the childcare provided in that ‘in house’ nursery will continue to be free of tax and National Insurance without limit.

Those of you who are in the unenviable position of paying for childcare on a regular basis will know that £50 per week does not go very far. In the Midlands £50 will just about cover after school care for one child for a week, but in London the average nursery fee for a child under 2 years old is £149 per week.

It is admirable that the Government wants to encourage employers to fund their employees’ childcare costs, and it is obvious that an upper limit on the tax free benefit is required or some employees could end up being paid almost entirely in childcare vouchers. However the upper limit needs to be linked to the real cost of childcare and indexed in line with that expense every year. Round sum allowances such as the £8,000 tax-free cap on an employee’s home moving expenses have a habit of never moving from their initial legislative limit.

At present an employer is free to offer most benefits in kind to just a select few of his employees. Free or subsidised food is one exception. If the free food is only available to only part of the workforce, such as the directors, the provision becomes a taxable benefit. However all staff do not have to be provided with exactly the same choice of food, as long as the provision is comparable. The consultation paper suggests that employer supported childcare should be provided on a similar open-to-all basis. The employer will be able to distinguish between the childcare support offered to different employees but all the employees must be able to access some form of employer supported childcare.

Conclusion:

The radical changes proposed in employer supported childcare could result in companies coming under considerable pressure to provide some childcare support to all employees, just as the provision of a company car was an expected perk in the 1980s. This could be a good thing but it is likely to entail increased administration for the employer and may result in some subtle discrimination against parents with young children.

It is also worth noting that the self-employed designer in the Special Commissioners case (Sp C 347) would still not get tax relief on her childcare costs under the employer supported childcare proposals as she is not an employer or an employee. The new regime would add one more pressure point on all self-employed businesses to incorporate and gain access to tax reliefs and benefits not available to the self-employed.

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