Chapter 11 - Salary sacrifice arrangements

Part 05-01-01k

This manual should be read in conjunction with section 118B of the Taxes Consolidation Act 1997

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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1 Introduction

This manual sets out the tax treatment applicable where an employee enters into a salary sacrifice arrangement with his or her employer.

Section 118B of the Taxes Consolidation Act 1997 (TCA 1997) provides that where the arrangement is a Revenue approved salary sacrifice (as defined in section 2.1 below), the employee will not be liable to Pay As You Earn (PAYE), Universal Social Charge (USC) or Pay Related Social Insurance (PRSI) on the portion of the salary he or she has sacrificed.

Any other benefit provided by way of a salary sacrifice arrangement will give rise to a charge to tax as set out in section 2.2 below.

2 What is a salary sacrifice arrangement?

A salary sacrifice arrangement is an arrangement under which an employee forgoes the right to receive part of his or her remuneration due under the terms of his or her contract of employment, and in return, his or her employer provides a benefit of a corresponding amount to the employee.

Salary sacrifice arrangements that meet the following conditions may be regarded as being effective:

- there must be a bona fide and enforceable alteration to the terms and conditions of employment,
- the alteration must not be retrospective and must be evidenced in writing, and
- there must be no entitlement to exchange the benefit for cash.

2.1 Revenue Approved Salary Sacrifice Arrangements

Where an employee enters into a Revenue approved salary sacrifice arrangement he/she will be regarded as having 'sacrificed' a portion of their salary and will not be liable to PAYE, PRSI or USC on this amount.

Revenue approved salary sacrifice arrangements may only be entered into in exchange for the following benefits:

a) bus, rail or ferry travel passes,

b) exempt shares appropriated under approved profit-sharing schemes, and

c) bicycles and safety equipment.

There are a number of specific conditions attaching to each of the above schemes which must be met in order to avail of the PAYE, PRSI and USC exemption. Additional information in respect of these conditions is available in respective manuals as set out below:

Travel Passes	Tax and Duty Manual Part 05-01-01f
Approved Profit-Sharing schemes	Chapter 10 of the Share Schemes Manual
Cycle to work scheme	Tax and Duty Manual Part 05-01-01g

To qualify for the exemption, the remuneration sacrificed must be from the same year of assessment as the year in which the benefit is provided.

This exemption will not apply where the travel pass, shares or bicycle acquired by way of a salary sacrifice arrangement is provided for the benefit of the spouse, civil partner, dependent or other connected person of the employee, as set out in section 3.1 below.

2.2 Unapproved Salary Sacrifice Arrangements

Where a salary sacrifice arrangement entered into between an employee and his or her employer is for the provision of a benefit other than a travel pass, shares under an approved profit-sharing scheme or bicycle and/or safety equipment, the arrangement will not be a Revenue approved salary sacrifice arrangement.

Where the salary sacrifice arrangement is not a Revenue approved scheme, the employee will not be regarded as having sacrificed a portion of his or her salary.

In such cases, the employee is instead regarded as having applied a portion of his or her income to the benefit acquired, and remains taxable in full on their 'gross' income under Schedule E.

Remuneration is not restricted solely to cash remuneration, but includes all forms of remuneration arising from the holding of an office or employment. This includes bonus payments and any form of discretionary payment.

This treatment applies if an employee forgoes a portion of their remuneration in return for anything other than a travel pass, shares under an approved profit-sharing scheme or bicycle and/or safety equipment by way of any of the following arrangements:

- changing the existing terms or contract of employment,
- creating new terms or a new contract of employment, or
- adapting a new practice, not in writing, relating to the terms and conditions of the employment.

3 Anti-Abuse

The legislation provides for a number of anti-abuse measures to ensure that the provision is only applied in the manner in which it was intended. These are set out below.

3.1 Benefit for Spouse or Connected Person

Where an exempt employee benefit is provided to a spouse, civil partner or other connected person, rather than an employee, it will not be treated as an exempt employee benefit. Instead, the value of the benefit will be treated as salary which has been applied by the employee and will be taxed accordingly.

An individual is connected with another if they are relatives as defined in section 10 TCA 1997. See Tax and Duty Manual Part 05-01-01a for more information regarding connected persons.

Example 1

Brian works in a company and earns €60,000. Brian recently agreed to sacrifice €1,250 of his salary in exchange for a bike and safety equipment to the value of €1,250 purchased under the cycle to work scheme.

Brian does not intend to use the bicycle and equipment as his wife Louise requires a new bicycle to use it to travel to and from her workplace.

As the bicycle and equipment is being provided to a person connected to Brian (his wife Louise), the €1,250 sacrificed by him is considered an application of his income earned. As such, Brian's employer is required to operate PAYE, PRSI and USC to the €1,250 sacrificed.

3.2 Exempt Employee Benefit and Compensating Payment

Where an employee, as part of an arrangement, is provided with both

- an exempt employee benefit, and
- a compensating payment in return for the salary sacrificed

then the exempt employee benefit will not be exempt, and the income sacrificed will be taxed in full.

Example 2

Ava works in a company and earns €32,000 per annum. The company is currently restructuring its remuneration policy and has asked her to take a pay cut of €1,000 per annum in exchange for an annual travel pass issued by an approved transport provider worth €1,000, which she intends to use to commute to work.

Ava will also receive a payment of €1,000 in the first year of this restructuring to compensate her for this change.

As Ava received a compensating payment in return for her salary sacrificed, both the exempt employee benefit (the travel pass) and the compensating payment of €1,000 will be taxed in full.

3.3 Benefit and Sacrifice Must Be in Same Year

The legislation provides that any exempt employee benefit provided for a year before the year of claim will not be effective. Specifically, where income is not paid during the year (e.g. a bonus, commission or other income which only arises after the end of the year) such income cannot be taken into account for the purposes of an exempt employee benefit scheme provided during the course of the year.

Example 3

Andrea works in sales and earns €21,000 a year. Andrea met all her sales targets for 2021 by September 2021 and was advised by her employer that she would be paid a bonus of €1,000 on 1 February 2022 in respect of her 2021 sales targets.

Andrea would like to partake in the annual travel pass scheme at the soonest opportunity and asked HR could she enter into a salary sacrifice arrangement to receive a pass from 1 October 2021 and use her bonus due in February 2022 to cover the cost of same.

As her bonus income is not paid to her until February 2022, she cannot sacrifice her bonus to cover the cost of the travel pass without attracting a charge to income tax on the cost of the travel pass. Her employer would be obliged to operate PAYE, PRSI and USC on the cost of the pass in this instance.

If Andrea asked her employer to enter into this arrangement in 2022 instead, the pass would be an exempt employee benefit and her employer would not have to operate PAYE, PRSI and USC on the cost of the travel pass.

4 Benefit-in-Kind and Salary Sacrifice Arrangements

Where an employer provides a benefit, directly or indirectly, at a cost to that employer, then the resulting benefit is taxed as a BIK or a perquisite in accordance with legislation.

In circumstances where the costs of the provision of a benefit are partly borne by the employer, with the balance borne by the employee under a salary sacrifice arrangement, there will be a charge to tax because of section 118B TCA 1997.

However, the only double charge that could arise would be a BIK charge under section 118 TCA 1997. That charge applies **'to so much of the expense as is not made good to the body corporate by the director or employee...**' - so the 'double charge' would be reduced as the employee has given part of their salary to his or her employer for the benefit received, under the salary sacrifice arrangement.

It should also be noted that all remuneration provided by an employer is taxable unless specifically exempted by a provision of tax legislation.

5 Computational Examples

Set out below are a number of worked examples.

Example 4

Salary forgone equals the value of the benefit, where the benefit is a qualifying exempt benefit:

Without salary forgone		**With salary forgone (€20k)**		
Salary	€100,000	Salary		€100,000
		Salary forgone		(€20,000)
		Total salary		€80,000
		Value of benefit	€20,000	
		less amount made good	(€20,000)	
		Taxable BIK		€0
Taxable amount	€100,000	Taxable amount		€80,000

Example 5

Salary forgone is greater than the value of the benefit, where the benefit is a qualifying exempt benefit:

Without salary forgone		With salary forgone (€20k)		
Salary	€100,000	Salary		€100,000
		Salary forgone		(€20,000)
		Total salary		€80,000
		Value of benefit	€10,000	
		less amount made good	(€20,000)	
		Taxable BIK		€0
		Salary not deemed forgone		€10,000
Taxable amount	€100,000	Taxable amount		€90,000

6 Pension Contributions

Pension contributions paid by an employer in respect of an employee, to a Revenue-approved superannuation scheme, shall not be regarded as a taxable benefit.

However, an employer's contribution to an employee's Personal Retirement Savings Account (PRSA) is regarded as a taxable benefit in the employee's hands and must be taken into account as notional pay for PAYE, PRSI and USC purposes.

Any arrangement under which:

- an employee waives an entitlement to remuneration, or
- accepts a reduction in remuneration,

in return for a corresponding payment by the employer into a pension scheme, is considered to be an application of the income earned by the employee rather than an expense incurred by the employer. Such arrangements are subject to the taxing provisions under section 118B TCA 1997, detailed in this manual.

Example 7

Joan is single, 27 and employed by a major multinational company. She is a member of the defined contribution pension scheme and makes a normal contribution of 7.5% of her basic salary, which is matched by her employer.

The company has a flexible package of benefits in place with a wide range of benefits available. In 2022 Joan selected a Luas & Bus Pass of €1,000, a bicycle provided under the cycle to work scheme (assume she meets the qualifying criteria) of €500 and an additional discretionary contribution by her employer to her pension of €3,500.

Joan also receives a bonus each year and puts approximately 50% of it into her pension by way of an Additional Voluntary Contribution.

Under section 118B TCA 1997 Joan has a tax liability in respect of the discretionary pension contribution.

<u>Salary Package</u>

Basic Salary	€30,000
Flex Package	€5,000
Bonus	€7,500
Total	€42,500

Defined Contributions Pension Scheme

Employee standard contribution (€30,000 X 7.5%)	€2,250
Discretionary employer contribution	€3,500
Additional voluntary contribution (€7,500 x 50%)	€3,750
Total contributions made by employee	€9,500
Pension Contribution Ceiling	€6,375

The pension contribution ceiling is the maximum amount of pension contributions in respect of which an individual may claim tax relief. This is calculated based on an age-related percentage of the individual's total income. In this case, as Joan is under 30, the relevant percentage is 15%. For further details on pension contributions see chapter 3 of Revenue's Pension Manual.

Total Employee Contributions	€9,500
Pension Contribution Ceiling	€6,375
Balance not qualifying for relief	€3,125

Taxable Salary

Basic Salary	€30,000
Flex Package	€5,000
Bonus	€7,500
Total	**€42,500**
Less: Exempt employee benefits	(€1,500)
Pension contribution qualifying for relief	(€6,375)
Pay for Income Tax Purposes	**€34,625**

7 Clarifying if a Scheme is in Operation in a Workplace

Salary sacrifice schemes may also be known as Flexible Benefits Packages or Flexi-Plans. In general, the scheme will require an employee to agree to revised terms in relation to their terms or contract of employment, whereby a benefit is provided in return for a reduction in take-home pay.

The scheme may instead allow an employee to take an additional payment of emoluments in lieu of non-cash benefits or perquisites.

Such schemes may be subject to the salary sacrifice legislation but a review of the arrangements in place would be required to determine the treatment.