

## **Salary sacrifice and canteen arrangements**

### **Interaction of new rules from 6 April 2011 with HMRC's existing technical arguments**

#### **Summary**

Some employers have put in place arrangements that combine salary sacrifice or flexible remuneration arrangements with the provision of meals at the workplace, typically in a staff canteen. These arrangements seek to make use of the exemption in section 317 Income Tax (Earnings and Pensions) Act 2003 ("ITEPA 2003") for free and subsidised meals provided in a canteen or on the employer's business premises, subject to the satisfaction of certain conditions.

As a result of section 60 Finance Act 2010, with effect from 6 April 2011 the section 317 exemption is prevented from applying to meals which are provided as part of salary sacrifice or flexible remuneration arrangements.

However, HMRC has been challenging some existing and prospective canteen salary sacrifice schemes on technical grounds. The new legislation does not affect existing compliance efforts or change HMRC's view that such arrangements are not effective.

#### **Additional background**

As explained in the Employment Income Manual at EIM21675, HMRC's view is that many canteen salary sacrifice and flexible benefit (or flexible remuneration) arrangements are not within the Section 317 exemption. Instead, they possess features that mean that in reality value is placed at the disposal of participating employees, who can spend the value as they like, within the limitations they have agreed to (e.g. within the staff canteen). The provision of money or value is taxable as earnings and is not covered by the exemption for meals in section 317.

With effect from 6 April 2011, the section 317 exemption is prevented from applying to meals which are provided as part of salary sacrifice or flexible remuneration arrangements. This change in the terms of the exemption makes no difference to arrangements already taxable under the analysis set out in EIM21675. Where the employee is credited with funds or value that rank as earnings, this will take priority over the new rule that prevents the exemption from applying. Otherwise, if the new rule prevents the exemption from applying, the value provided will be taxable as a benefit-in-kind and liable to class 1A NIC.

However, if the employee participates in salary sacrifice or a flexible remuneration arrangement in circumstances where what is provided in return does not rank as earnings, the application of the exemption in section 317 will be restricted with effect from 6 April 2011.

- For further details of the types of arrangements that rank as earnings, see EIM21675.
- For information about the changes to section 317 that take effect from 6 April 2011, see EIM21676 onwards.

#### **Q&A**

- 1. Does the change to section 317 ITEPA mean that HMRC thinks all or most existing arrangements are effective?**

- No. HMRC will continue to challenge any existing arrangements that it considers may not be effective on a case-by-case basis.
- The legislation does not affect the arguments that HMRC has been running in existing compliance cases.

**2. Isn't it unfair that the April 2011 commencement date for the Finance Act 2010 change allowed some employers, who may have ineffective arrangements, a year to review their arrangements whilst other employers remain the target of HMRC compliance or have opted not to implement arrangements?**

- The new legislation will take effect from 6 April 2011.
- This is intended to give employers with **effective** existing arrangements reasonable time to consult their employees, consider their options and make changes to their arrangements, if they so choose. The legislation's commencement date is not a period of grace for all employers with existing arrangements.
- Employers will continue to be subject to technical challenge on the basis of the current legislation where HMRC considers that arrangements are not effective.

**3. In what circumstances does HMRC accept that existing canteen arrangements are effective?**

- As explained in EIM21675, HMRC accepts that the following arrangement does not result in the employee receiving earnings:
  - where there is no link or read across to any pool or diminishing tally of value and where the electronic system is only used to control employees' access to an employer-provided canteen discount or subsidy on any given day. In other words, if the employee does not access the canteen on a given day, the value of any free or subsidised meal that they could have obtained on that day is lost. There is no balance of value left to use on another occasion.