5.3.11

Benefit-In-Kind

Bus, Rail and Ferry Passes Section 118 (5A) and section 118B
Taxes Consolidated Act 1997

Updated August 2016

1. Benefit-in-Kind Exemption

Section 118(5A) TCA 1997 exempts employees and directors from benefit-in-kind taxation where an expense has been incurred by an employer on the provision of a monthly or annual bus, rail or ferry travel pass for the employee or director. Section 118B provides that the exemption may also apply to bus, rail or ferry travel passes obtained under a salary sacrifice arrangement (please see 2 below). This exemption does not extend to the parking element of bus, rail or ferry tickets when purchased as a combined ticket for travel and parking.

To qualify for the exemption the travel pass must be issued by an approved transport provider, as defined in section 118 (5A)(b) i.e.

- A public transport operator within the meaning of section 2 of the Dublin Transport Authority Act 2008 (e.g. Luas, Iarnrod Eireann);
- The holder of a licence in respect of a public bus passenger service under Part 2 of the Public Transport Regulation Act 2009 (e.g. Bus Atha Cliath, Bus Eireann, licenced private bus operators); or
- A person who provides a ferry service within the state, operating a vessel which holds a current valid –
  (i) passenger ship safety certificate,
  (ii) passenger boat licence, or
  (iii) high-speed craft safety certificate,
where the relevant licence or certificate is issued by the Minister for Transport, Tourism and Sport.

2. Salary Sacrifice in the Specific Context of Bus, Rail and Ferry Passes

For the benefit-in-kind exemption to apply, the travel pass must be provided under a Revenue Approved Salary Sacrifice arrangement in accordance with Sect 118B TCA 1997. It is not sufficient for an employer to purchase the relevant travel pass and recoup the expense from the employee. In the specific context of the provision of bus, rail and ferry passes Revenue are prepared to accept that Benefit in Kind provisions will not apply to travel passes provided under an approved salary sacrifice arrangement where the following conditions are satisfied;
1. There must be a bona fide and enforceable alteration to the terms and conditions of employment (exercising a choice of benefit instead of salary) with the consent of the employer.

2. The alteration must not be retrospective and must be evidenced in writing.

3. There must be no entitlement to exchange the benefit for cash.

Note: an employee may enter into a "salary sacrifice" arrangement more than once in a year with the agreement of the employer.

3. Salary Sacrifice Arrangements: General Tax Treatment

The term salary sacrifice is generally understood to mean an arrangement under which an employee agrees with the employer to take a cut in remuneration and in return the employer provides a benefit of a corresponding amount to the employee.

As a general rule Revenue does not regard salary sacrifice arrangements as reducing the employee’s taxable income. If an employee forgoes salary payable under an existing contract of employment in exchange for a benefit, the employee remains taxable on the “gross” income payable. The salary sacrificed will be considered to be an application of income earned by the employee, not an expense incurred by the employer.

This interpretation is supported by case law (see, for example, Heaton v Bell [1969] 46 TC 211 and Parker v Chapman 13 TC 677). This is in contrast to the position where an existing contract of employment is bona fide renegotiated so as to provide a mixture of salary and benefits. In those circumstances the employee will be taxed on what he or she gets, i.e. the cash salary plus the taxable value of the benefit-in-kind, provided the new employment contract involves no right on the employee’s part to choose between cash and benefits.

Similarly, where remuneration is entirely discretionary and the employee has no prior entitlement to it (e.g. a bonus), the discretionary payment may be made by way of a benefit, and be treated for tax purposes as a benefit, provided such an arrangement precedes any “entitlement” to the bonus etc. on the part of the employee.

Where a benefit is fully taxable in the hands of the employee it generally makes little difference in terms of income tax whether the charge is on the “gross” remuneration or on a mixture of cash salary and benefits. Where a benefit is not taxable, as in the case of bus, rail or ferry passes coming within section 118(5A), there is a tax saving to the employee if arrangements can be put in place under which the provision of a bus, rail or ferry pass by the employer can legitimately be classified as a benefit-in-kind i.e. an “expense incurred” by the employer under section 118(5A) TCA 1997. Section 118B of the Taxes Consolidation Act 1997 places on a statutory basis Revenue practice in relation to salary sacrifice agreements for the provision of travel passes under section 118(5A) of the Taxes Consolidation Act 1997.
N.B. There is an exception to this general rule in the case of Approved Profit Sharing Schemes, in the context of approved salary sacrifice arrangements, provided certain conditions are met. See Manual 17.01.02 for further details.