PAYROLL BRIEFING

OCTOBER 2021

SALARY SACRIFICE AND PENSION CONSIDERATIONS

With reference to the initial briefing issued on Salary Sacrifice, which can be found here, this briefing gives some more specific guidance on salary sacrifice and pensions, together with the associated considerations when an employee is on maternity leave.

Payments Into Pension Schemes

Employers should always check with their pension provider that the pension scheme in place permits salary sacrifice arrangements, which results in employer only pension contributions and no employee pension contributions. This is generally fine, but should be confirmed. Similarly, employers should check that the pension scheme in place can accept a combination of both employee/employer contributions and employer only contributions, as some employees may not want to participate in a salary sacrifice scheme when considering the pros and cons of participating in such a scheme.

As mentioned in the initial briefing, as well as regular salary sacrifice amounts being paid into a pension scheme, one off bonuses can be sacrificed into a pension scheme. As always with a salary sacrifice scheme, it is important to ensure that the paperwork supports the sacrifice and this is completed in advance of the amount being sacrificed.

Employer Provided Pension Advice

Each year, an employee is entitled to £500 per annum of employer arranged tax free pension advice, which is often financed by a salary sacrifice, either as a one off contribution or paid for over a period of 12 months. To be considered tax free, the pension advice must be available to employees generally or to employees generally at a specific location. The exemption also covers advice being given which is tailored to specific circumstances of nearing retirement, either through age or ill health.

Please note that the amount referred to above is in addition to the tax free allowance of another £500 of pension advice from a registered financial advisor, and which can be taken up to three times in an individual's lifetime. This can be paid by withdrawing funds from the employee's pension pot, being a defined contribution pension scheme or a hybrid pension scheme with a money purchase or cash balance element, with no associated tax consequences. To qualify for the tax free status, the money must be paid directly from the pension pot to the financial advisor.

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Maternity Leave and Pension Contributions – legal advice may be needed

Employee benefits must continue to be provided throughout a period of maternity leave, i.e. the entire 52 weeks if the full period is taken. Any non – cash benefits must be provided throughout this entire maternity leave period, even where the employee is no longer entitled to any pay. However, whether or not this rule applies to pension contributions (and child care voucher arrangements) under a salary sacrifice scheme is not clear for any unpaid additional maternity leave taken. There is an exception for the provision of benefits made for "employer related benefit schemes", which states that these specific benefits only need to be provided during paid maternity leave.

The social security legislation provides that employers only need to maintain the pension contribution levels for the ordinary maternity leave and any *paid* additional maternity leave. This means that the employer pays both the employee and employer pension contributions in line with the pre maternity levels. However, once an employee is taking unpaid additional maternity leave, there is no obligation on the employer to pay pension contributions. This view is taken by HMRC, the Department for Business Innovation & Skills (BIS) and The Pension Regulator. However, there is some doubt as to whether this complies with European employment law, under which we are still currently governed. There is no overriding guidance as to which law takes precedence and, if an employer does not offer enhanced pension contributions during this unpaid additional maternity leave, such that the pre maternity level contributions are not maintained, we would suggest that legal advice is sought.

Conclusion

Making pension contributions by way of a salary sacrifice is the most common way that salary sacrifice arrangements are implemented by employers. As long as the supporting paperwork is in place, and the employees have considered the implications of entering into such an arrangement, in the vast majority of cases the result is advantageous for both the employer and employee.

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