Department for Transport

Cycle to Work Scheme implementation guidance

October 2009

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Introduction

To promote healthier journeys to work and to reduce environmental pollution, the 1999 Finance Act introduced an annual tax exemption, which allows employers to loan cycles and cyclists' safety equipment to employees as a tax-free benefit. The exemption was one of a series of measures introduced under the Government's Green Transport Plan. The following guidelines clarify how organisations can take advantage of the exemption to implement a Cycle to Work scheme that encourages employees to cycle to work and allows employers to reap the benefits of a healthier workforce.

These notes are for guidance only and reflect the tax position at the time of writing and the law as it relates to the provision of consumer credit. The tax exemption refers to cycles and cyclists' safety equipment *loaned* to employees by employers. However, where salary sacrifice arrangements are used, Cycle to Work schemes must be regulated hire agreements between the employer and the employee. The terms 'hire' and 'loan' are therefore both used in these guidelines.

1. Who is eligible?

Employers of all sizes across the public, private and voluntary sectors can implement a tax exempt loan scheme for their employees. To maximize the benefit of implementation, it is desirable that participation in a scheme should be as broad as possible. To qualify for the tax exemption, the cycles and cyclists' safety equipment loaned by the employer under the scheme must be available to employees generally with no groups of employees excluded.

The test of available to employees generally can have implications for employers with staff who are under 18 years of age or on or near the National Minimum Wage. See Section 6 and 9 for information about what this means.

2. What equipment is included under the tax exemption?

Eligible equipment includes cycles and cyclists' safety equipment. The tax exemption defines a "cycle" as 'a bicycle, a tricycle, or a cycle having four or more wheels, not being in any case a motor vehicle' (192(1) of the Road Traffic Act 1988 (c.52)). An electrically assisted pedal cycle can be included under the scheme.

Cyclists' safety equipment is not similarly defined in the legislation and a common sense approach should be taken to the equipment provided. This could include:

- Cycle helmets which conform to European standard EN 1078
- Bells and bulb horns
- Lights, including dynamo packs
- Mirrors and mudguards to ensure riders visibility is not impaired
- Cycle clips and dress guards
- Panniers, luggage carriers and straps to allow luggage to be safely carried
- Locks and chains to ensure cycle can be safely secured
- Pumps, puncture repair kits, cycle tool kits and tyre sealant to allow for minor repairs
- Reflective clothing along with white front reflectors and spoke reflectors

It is the employer's choice what safety equipment is offered, but you may wish to confirm with your local tax inspector whether the equipment you provide falls within the tax exemption.

3. What value of equipment can be supplied?

There is no limit on the total value of the equipment including the cycle. It is possible to loan two cycles to one employee if, for example, that employee needed a cycle at either end of a train journey between their home and place of work. (However, please see Section 9.1 where the Office of Fair Trading (OFT) has advised that the group consumer credit licence will cover schemes up to a value of £1,000.)

4. Scope of tax exemption

The exemption removes the tax charge that would otherwise apply to cycles and cyclists' safety equipment loaned to employees provided the following conditions are met:

- Ownership of the equipment is not transferred to the employee during the loan period;
- Employees use the equipment mainly for qualifying journeys;
  i.e. for journeys made between the employee's home and workplace, or part of those journeys (for example, to the station), or for journeys between one workplace and another
- The offer of the use of a loaned or provided cycle (i.e. one for which ownership is not transferred to the employee) is available across the whole workforce, with no groups of employees being excluded. This does not necessarily have to be through a Cycle to Work salary sacrifice arrangement.

The tax exemption only applies when an employee mainly uses the cycle and cyclists' safety equipment for qualifying journeys. A qualifying journey for an employee means a journey, or part of a journey,

- between his or her home and workplace, or
- between one workplace and another,

in connection with the performance of their duties of employment. So, for example, cycling to and from the station to get to work would qualify. In this case, 'mainly' means that more than 50% of use of the cycle and safety equipment must involve a qualifying journey.

Employees are not expected to keep mileage logs but employers should make clear to them that if they do not use the cycle mainly for qualifying journeys, they may lose the benefit of the tax exemption. In that event the employer would have to report the benefit in kind on form P11D, and account for Class 1A NICs, in the normal way. The employee would be liable for the tax due on the benefit in kind.

5. Setting up a Cycle to Work Scheme

To help employees take advantage of this tax-free benefit, an employer can simply buy a cycle and cyclists' safety equipment and loan it to an employee for qualifying journeys to work. As a business expense, the cost of providing this equipment is reduced by claiming the VAT incurred under the normal rules, and by making use of any capital allowances available. This arrangement means that the employee's normal salary arrangements are not affected and is sometimes referred to as a 'salary plus' arrangement. It may be, however, that the employer wants to recover the cost of providing the cycle and safety equipment loaned to the employee. Usually this would be done through a salary sacrifice arrangement.

5.1 Salary Sacrifice

A salary sacrifice happens when an employee gives up the right to receive part of their cash pay due under their contract of employment. A salary sacrifice is neither a deduction from salary nor is it a charge on salary, it is where the employee agrees to accept a lower amount of salary – usually in return for the employer's agreement to provide some form of non-cash benefit (in this case the loan of cycle or cyclists' safety equipment). For a benefit such as a loaned cycle, where there is a specific tax exemption, the employee can receive the benefit in kind free of tax instead of salary on which tax and Class 1 NICs would also have been fully payable. As the benefit is covered by a tax exemption, the employer will not have to account for Class 1A NICs. For example: if it is assumed that the employee is loaned equipment worth £500 over a period of eighteen months they could sacrifice £6.41 per week from their gross salary. Net of tax and NICs this would be £4.42 for a basic rate taxpayer (20% income tax plus 11% NICs) and £3.78 for a higher rate tax payer (40% income tax plus 1% employee NICs). See section 6 for important considerations to communicate to your employees on salary sacrifice and section 10 for details on the role of HMRC. For fuller guidance on salary sacrifice you may wish to view the HMRC website http://www.hmrc.gov.uk/specialist/salary_sacrifice.pdf

5.2 Employer's NICs

Where costs of loaning equipment to the employee are offset through a salary sacrifice arrangement, the employer will save Secondary Class 1 NICs (at up to 12.8%) on that part of the employee's gross salary sacrificed. For example, if an employer was to loan a cycle worth £500 over eighteen months, the employee would sacrifice in total £500 of gross salary generating Employer's NIC savings of £64 per employee.

5.3 Deductibility for the employer

Employers who purchase cycles and cyclists' safety equipment for loan to their employees will be able to treat the cost as capital expenditure and claim capital allowances in the normal manner.

For most businesses expenditure on cycles and cyclists' safety equipment will qualify for the Annual Investment Allowance (AIA). The AIA allows businesses to write off 100 per cent of qualifying capital expenditure up to £50,000 each year against the businesses' taxable profits.

Where the AIA is not available or the total capital expenditure on plant and machinery exceeds the annual limit, expenditure on cycles and cyclists' safety equipment can be added to the main capital allowances pool and qualify for writing down allowances at 20 per cent per annum.

For example:

- Cost of cycle in year 1 = £500
- Amount of capital allowance due in year 1 is £500 x 20% = £100
- Amount of capital allowance due in year 2 is £400 x 20% = £80
- And so on at 20% per year on the reducing balance.

For expenditure incurred in the year 2009-2010 all businesses can claim the temporary 40% first year allowance (FYA) on their spending on most plant and machinery, which can include cycles and cyclists' safety equipment, for any expenditure not covered by the AIA.

For example:

- Cost of cycle in year 1 = £500
- Amount of FYA due in year 1 is £500 x 40% = £200
- Amount of capital allowance due in year 2 is £300 x 20% = £60
- And so on at 20% per year on the reducing balance.

From the employers point of view as long as it is a business asset the employer can continue to claim capital allowances until the whole cost has been written off regardless of how long it is used in the cycle scheme.

More details on plant and machinery capital allowances can be found here

http://www.hmrc.gov.uk/ct/forms-rates/claims/capital-allowance.htm

Where the cycles and cyclists' safety equipment is leased, the leasing costs will generally be deductible as an expense in computing the business profits. Your auditors or tax advisors will be able to determine the specific accounting treatment and calculate the tax deduction available. Please note those organisations that do not currently pay tax (e.g. public sector employers) will not be able to claim a deduction (see Section 7 for VAT treatment).

6. Things to consider in relation to salary sacrifice arrangements

For a salary sacrifice to be effective for tax and National Insurance (NICs) purposes:

- The potential future remuneration must be given up before it is treated as received for tax and NICs purposes; and
- The true construction of the revised contractual arrangement between employer and employee must be that the employee is entitled to lower cash remuneration and a benefit in kind. For example the loan of a cycle and cyclists' safety equipment.

6.1 The National Minimum Wage (NMW)

An employer may loan cycles and cyclists' safety equipment to all employees but a salary sacrifice arrangement cannot be used if in so doing the employee's gross pay drops below the NMW.

The Government has asked the Low Pay Commission to consider the position of the low paid in relation to the provision of benefits in kind. Similar considerations apply to Cycle to Work schemes. Employers are advised to check the Low Pay Commission website at http://www.lowpay.gov.uk/ to check progress.

In situations where an employer has staff near the NMW we would suggest the employee be offered a lower value cycle package and/or a longer than usual hire period to avoid the salary dropping below, and therefore being excluded from the Scheme. To illustrate this, if an employer provided a cycle that costs the employer £170, together with safety equipment that cost £38, the total cost would be £208. If the employee sacrificed a total of £208 of salary over a two year period, this would result in a sacrifice of £2 of salary per week, which would (depending on hours worked) be achievable for employees earning at least a few pence per hour above the NMW hourly rate.

Where employees are paid at NMW employers could consider offering a loan bike without salary sacrifice, or a pool of bikes for those staff, to avoid them being excluded from the offer of a cycle.

6.2 Benefit entitlement

Where a salary sacrifice arrangement is used, the gross pay of the employee is affected, which in turn impacts upon their tax and NICs. As entitlement to some benefits is based on the amount of NICs that are paid and others on earnings, entering into a salary sacrifice arrangement may affect an employee's current or future entitlement to a range of benefits. Although the likelihood is that any effect will be small, employers need to clearly communicate to their employees what the sacrifice will mean in practical terms – in particular the effect, or potential effect, that a reduction in their cash pay may have on:

- any pension scheme being contributed to (in particular this may be important if an employee is nearing retirement and has a final salary pension scheme);
- entitlement to contribution-based benefits like the State Pension;
- entitlement to earnings-related benefits like Maternity Allowance;
- entitlement to work-related payments like Statutory Sick Pay.

A salary sacrifice will not necessarily have an impact on entitlement to holiday pay and bonuses, which are usually calculated separately using the previous higher rate of pay

A fuller explanation of the potential impact on benefit entitlement should be obtained from http://www.hmrc.gov.uk/specialist/salary_sacrifice.pdf

6.3 Withdrawing from a Cycle to Work Arrangement

The consequences for withdrawing from the Cycle to Work scheme will depend on the terms of the agreement for the loan of the equipment. This is a matter for the employer and employee to agree, particularly where the employee has agreed to a salary sacrifice in exchange for the loan of the cycle and or cyclists' safety equipment.

The employer should clearly communicate the terms of the agreement to employees prior to their signing a Cycle to Work agreement. Particularly if, should they leave the employment for any reason during the period in which they are sacrificing their salary for the loan of cycle and cyclists' safety equipment, the employer may require the employee to pay compensation. This compensation may be to the extent that the employer's costs have not been offset by the non-completion of the term of the salary sacrifice arrangements.

A deduction from salary or similar charge to staff in compensation for non-completion of salary sacrifice arrangements for the loan of cycles and cyclists' safety equipment is outside the scope of VAT. It is not consideration for VAT purposes and no output tax is due from the employer and the employee is also not required to pay VAT (see section 7).

7. VAT

Where an employer purchases or leases cycles and cyclists' safety equipment, VAT will be incurred on the cost, barring crash helmets which are zero rated, at the point of purchase or on leasing payments for that equipment. Where the equipment is for use in a Cycle to Work scheme for employees, HMRC accept the VAT incurred is for the purpose of the business of the employer and may be treated as input tax, subject to the usual rules on VAT recovery. The benefits to business are seen as attracting, retaining and motivating employees and promoting a healthier workforce. However, where a participating employer is either not 'in business' – this may apply to charities and public sector bodies – or the employer's business is partially exempt, input tax recovery may be wholly or partly restricted. For fuller guidance on the recovery of VAT, please refer to HMRC website http://www.hmrc.gov.uk or contact HMRC National Advice service on 0845 010 9000.

Provided the equipment is loaned to the employee for no charge or under a salary sacrifice arrangement then no output tax is due. "Salary sacrifice" occurs where an employee foregoes part of their salary for optional benefits provided by an employer. Employees choosing to take a benefit have their employment contracts amended or enter into new contracts in order to reflect the new provisions and reduce gross salaries accordingly. The "reduction" does not represent consideration for a supply. It is, however, important to note that "salary sacrifice" is not the same as deduction from salary. Where a charge is made against a salary and deducted from it the charge is consideration for the benefit given in return and output tax is due in the same way that it is for any supply made for a consideration.

For fuller guidance on "salary sacrifice" please refer to the HMRC web site http://www.hmrc.gov.uk/specialist/salary_s

If at the end of the salary sacrifice period the employee is given an option to purchase the equipment and they choose to do so then any charge made will be liable to VAT.

8. Can the employee keep the cycle at the end of the loan period?

There should be no automatic entitlement for the employee to take ownership of the cycle and cyclists' safety equipment at the end of the loan period. If the loan agreement (technically a hire agreement under the Consumer Credit Act 1974 (CCA)) allows for ownership of the cycle and cyclists' safety equipment to pass to the employee upon the exercise of an option, the doing of any other specified act by either party to the agreement, or the happening of any other specified event, the resulting agreement is likely to be hire purchase in which case the tax exemption available for a loaned cycle may not be available.

However, at the end of the loan period, the employer may choose to give the employee the option to purchase the equipment. Typically this would be offered at substantially less than the original value of the equipment, but to prevent a taxable benefit in kind arising as a result of the transfer of ownership the employee must pay the employer the full market value of the equipment. No tax relief is available to the employee for the purchase so, where the price is recovered from salary, it must be deducted from their net salary. VAT will also be payable on the purchase price by the employee on the supply by the leasing company or the employer as owner of the equipment.

Where the employer has claimed capital allowances on the original capital expenditure any sums received for the sale of the cycle or cyclists safety equipment must be brought into account as disposal proceeds in the main capital allowances pool.

Alternatively, the employer may wish to allow their employees to continue to use the cycles and cyclists' safety equipment you have supplied after the initial loan period has ended, without transferring ownership. As long as the employee continues to meet the conditions of the tax exemption (see section 4 above) no tax charge will arise.

For fuller guidance on transfer of ownership, you may wish to refer to the HMRC website http://www.hmrc.gov.uk.

9. Consumer Credit Law

The view of the OFT is that an agreement for the loan of a cycle or cyclists' safety equipment under a Cycle to Work scheme, whether or not coupled with a salary sacrifice arrangement, is a regulated agreement under the CCA. Help and advice on the CCA for individual businesses are available from local authority Trading Standards Services.

9.1 Consumer Credit Licence

Any employer entering into the scheme will need the cover of a consumer credit licence. In order to facilitate the scheme the OFT has issued a group consumer credit licence designed to cover employers setting up Cycle to Work schemes so that employers need not apply individually for credit licences for this purpose. Employers will be covered by the group licence so long as they are undertaking activities within its terms. The group licence covers only consumer hire business, (not the making of hire-purchase agreements – see below) for the purpose of providing employees with bicycles and or bicycle equipment up to the value of £1000, including VAT and not taking into account any income tax exemption under an employee benefit scheme, that is, the market price the employer pays or seeks to recover from the employee by way of hire charges.

If employers also undertake regulated business other than that described in the group licence or wish to offer packages in excess of £1000, they will need to obtain a standard licence to cover that business. The Cycle to Work Group Credit Licence can be seen at http://www.oft.gov.uk/Business/licence/group.htm

9.2 Setting up the Agreement

To be eligible for the tax exemption available for loaned cycles and cyclists' safety equipment and comply with the CCA, the agreement must be a hire agreement and NOT a hire purchase agreement. Guidance on the form and content of the consumer hire agreement are available on the OFT's website[1].

An employee has a unilateral right to terminate the hire agreement after 18 months under s.101 of the CCA. Notice of termination may be given to the employer before that point but the minimum period of notice must be either 3 months or

1 http://www.oft.gov.uk/advice_and_resources/resource_base/legal/cca/agreements/

1 interval of payment, whichever is the shorter. These agreements may only be terminated before 18 months if the hire contract provides for this. Employees leaving the scheme early will be liable for any outstanding payments.

Whilst employers may apply to the OFT for an exemption from the statutory right to terminate the agreement at 18 months, employers are advised that the OFT's view is that s.101 provides an important protection for consumers, and it will not usually be in the hirers' interest to be tied to an agreement in this scheme for more than 18 months.

9.3 Not Hire Purchase – dealing with what happens to the cycles and cyclists' safety equipment at the end of the hire period

Under a salary sacrifice scheme it is open to employers to sell ex-rental equipment. It is recognised that employers will often wish to do this, because it makes the scheme more attractive to employees. However, in order to obtain the benefit of the tax exemption the employers must not suggest that either the employee or any other person will later have the option to buy the equipment they have hired. Moreover, if the employer states that the employee will or may have this option, then the agreement will fall within the definition of hire purchase in section 189 of the CCA and may not attract the tax benefit. In addition, these agreements will fall outside the scope of the group licence and without the cover of a credit licence the employer may commit a criminal offence. The employer may at a later date exercise a discretion to sell to the employee.

We therefore advise employers that they can indicate in accompanying literature that ex-rental equipment may be sold for market value **but they should make it clear that they cannot commit themselves to doing so, either to the hirer or to his nominee. Any subsequent sale must be pursuant to a separate agreement, entered into after the conclusion of the hire.**

Ultimately only a court can decide whether the agreement is hire or hire purchase.

9.4 Cancellation Rights

In addition to the employees' rights to termination provided by section 101 of the CCA, a regulated consumer hire agreement may also be subject to a statutory cooling off period. The agreement will be cancellable if oral representations are made to the employee by the employer and the agreement is subsequently signed away from business premises. In such circumstances the agreement is subject to additional formalities. The rules in relation to agreements cancellable in this way can be found in sections 67 to 73 of the CCA.

An employee may also have the benefit of additional cancellation rights provided by the Consumer Protection (Distance Selling) Regulations 2000 (the Distance Selling Regulations). If the contract for the hire of the cycle or cyclists' safety equipment makes use of distance communication up to and including the moment at which the contract is concluded, then the Distance Selling Regulations may apply, for instance, if the contract is sent to the employee by post for execution or information about the scheme is relayed by telephone or electronic means and there is no face to face contact between the parties – see OFT guidance for details.

9.5 Advertising Requirements

The advertising of the scheme by the employer to the employee must comply with the advertising regulations made under the CCA. The requirements for the advertising of consumer hire agreements are detailed in the Consumer Credit (Advertisements) Regulations 2004 and guidance on this is due for publication on the OFT website.

The Control of Misleading Advertisment Regulations 1988 go beyond the hire aspect of the advertisement and require employers to ensure that their advertisements are not misleading, that is, it must not affect their economic behaviour by deceiving or being likely to deceive the persons to whom it reaches.

9.6 Under-18s

Employers may not wish to enter into consumer credit /hire agreements with employees under 18 because of the law relating to contracts with minors. In such a case it is possible, however, for an adult to act as a guarantor.

10. Authorisation of a Cycle to Work scheme

A Cycle to Work scheme that takes advantage of the 1999 tax exemption does not require the prior approval of HMRC. Similarly, prior approval by HMRC is not required where salary sacrifice arrangements are used to offset cost. However, once a Cycle to Work scheme is in place an employer might want to check with HMRC that tax and NICs do not have to be accounted for on the amount sacrificed.

HMRC will advise on the tax and NIC consequences of a salary sacrifice scheme only after it has been put in place. Employers may wish to run a small pilot and get HMRC advice on its consequences prior to full roll-out. This may be particularly valuable for an organisation looking at a large-scale implementation. Salary sacrifice is a matter of employment law, not tax law. The nature of an employee's contract is a matter for the employer and the employee. However, since such arrangements necessarily affect the contractual rights of both parties, they would be well advised to obtain professional advice on whether the proposed arrangements achieve the desired result. Further details can be obtained from: http://www.hmrc.gov.uk/specialist/salary_sacrifice.pdf

11. How long does a Cycle to Work scheme have to run for?

There is no fixed time period for which cycles and cyclists' safety equipment must be loaned under a Cycle to Work scheme. Similarly, there is no fixed time period for which a salary sacrifice scheme must run where one is used to offset the cost of loaning the cycle and cyclists' safety equipment.

If the salary sacrifice is ineffective (see chapter 6), tax and NICs will be payable on the pre-sacrifice salary. The loan period may be agreed at the outset between the employer and employee and the salary sacrifice agreed to run for the duration of the loan. At the end of the loan period the employer and employee may agree to revert to the pre-sacrifice salary.

If a salary sacrifice arrangement is to be in place for longer than 18 months an employee has the right to terminate that arrangement early at any point after the first 18 months has expired. Employers wishing to obtain an exemption from the statutory requirement that enables employees to take this course of action must apply to OFT for a derogation order.

12. Insurance

Employers and employees need to consider insurance. Even though employers own the cycles and safety equipment, it may be more practical for the employee to have the cycle covered under their own house and contents insurance as long as they advise their insurer that their employer has an interest in the cycle. Alternatively, the employer may consider adding them to their insurance agreement with their own insurers. This needs to be determined and set out in the agreement between the employer and the employee.

13. Mileage Allowance

Employers can pay up to 20 pence per mile tax free to employees who use their own cycles for business travel. Journeys between home and work are not business travel for this purpose.

Any employee considering joining a Cycle to Work scheme will need to consider whether they would prefer to use their own cycle and be able to claim up to the 20p per mile tax free for any business miles they travel, as opposed to having a cycle loaned to them by their employer.

Employees cannot claim the 20p per mile tax-free mileage allowance for business travel if they use a cycle loaned to them by their employer.

14. Encouraging More Cycling to Work

The Cycle to Work tax efficient scheme should be seen as part of a series of measures to reduce commuting by car through making cycling more attractive. There still may be a number of barriers for employees who would like to cycle to work. It might be the need for suitable parking facilities or somewhere to shower and change; it might be a lack of confidence on the road or knowing the most appropriate routes – some employees may not have been on a bike since their school days.

The Department for Transport has launched the Cycle to Work Guarantee to encourage more employers to overcome these barriers by signing them up to:

- Secure, safe, and accessible bike parking facilities for all staff who want them;
- Good quality changing and locker facilities for all staff who want them;
- Offset the cost of cycling equipment and save on the tax through the 'Cycle to Work scheme';
- Bike repair for cyclists on or near site;
- Training, reward and incentive programmes to achieve targets for more cycling.