

**Employee Benefits and Expenses – Trivial Benefits exemption
HM Revenue & Customs (HMRC) consultation document
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 We welcome the opportunity to respond to the HMRC consultation document on an exemption for trivial benefits.
- 1.2 We commend the Government and HMRC for providing sufficient time to formulate responses, for holding meetings with interested parties to discuss the consultation, for consulting simultaneously on four connected measures and for issuing a call for evidence on remuneration practices. We note that the Government has also commenced a review of the rules on travel and subsistence.
- 1.3 We support the proposal to introduce a statutory exemption for trivial benefits in kind. This is a proposal which, if structured correctly, should reduce costs and administration burdens for employers of all sizes and HMRC; it should also mean that employees do not face a tax charge on items that neither they nor their employers view as benefits in kind.
- 1.4 We do not agree that non-cash vouchers should be excluded from the exemption. Including vouchers that can be exchanged for goods or services within the exemption will provide employers with flexibility to provide appropriate and appreciated gifts to their employees.
- 1.5 We do not think that there is a need for an annual limit in addition to a monetary cap on an individual trivial benefit. If an annual limit were to be included, we think this should be based on the total annual cost rather than on the number of occasions on which an employee can receive a trivial benefit. We think this approach would be fairer, result in fewer reporting requirements and offer more flexibility to employers and employees.

- 1.6 In principle trivial benefits that fall within the exemption should be totally ignored for tax credits and means-tested benefits. It is important that tax credits and means-tested benefit legislation is amended to ignore or exclude such trivial benefits as income to avoid any complexity or confusion. This is important, as the employee will not have any record of trivial benefits received or their value.

2 About Us

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 Introduction

- 3.1 The spur for this proposal and consultation document is the review of employee benefits and expenses carried out by the Office of Tax Simplification (OTS).¹ Para. 2.6 of the consultation document notes that one of the OTS's recommendations was the introduction of a statutory definition of a trivial benefit in kind together with a set limit. We think it is key to note (as the consultation document does at para. 3.1) that the OTS specifically recommended that the definition should be short, easy to understand and principles based.² We agree with this recommendation, and would prefer a principles based definition to a prescriptive list.

¹ The OTS published their report in January 2014:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275795/PU1616_OT employee_benefits_final_report.pdf

² Para. 5.18, Review of employee benefits and expenses: second report – Office of Tax Simplification (January 2014). The OTS suggested, as a starting point: a benefit that is not cash, but less than £50 in value, and its provision is infrequent or irregular.

- 3.2 The limit would have to be set with the types of benefits to be covered in mind. In addition, we suggest that consideration is given to the administration costs of P11Ds, both for employers and HMRC, and what would be a reasonable limit in practice.
- 3.3 Another key point about a limit on the value of a trivial benefit is that it must be kept up to date, otherwise the exemption will become obsolete and not provide long-term simplification of administration.³

4 Q1 Do you agree that these principles should apply to the definition of a trivial benefit? Are there other principles that you think should apply?

- 4.1 Firstly, we are pleased to see that the Government and HMRC are following the OTS's recommendation that the definition of a trivial benefit should be principles based.
- 4.2 We agree that most of the principles set out at para. 3.2 of the consultation document should apply to the definition of a trivial benefit. We do not have any suggestions for additional principles. We look at a few of the principles in more detail below:

Vouchers / non-cash benefits

- 4.2.1 The first suggested principle is that a trivial benefit will not include cash or a replacement for cash such as a voucher or token. We agree that it should not include cash, but we disagree with the exclusion of vouchers or tokens. We believe, as does the OTS,⁴ that non-cash vouchers should be eligible for this exemption where an employer gives them to an employee instead of a tangible item for religious, medical or similar reasons.
- 4.2.2 For example, an employer might provide one employee with a bottle of wine, but, knowing that another employee is teetotal (for whatever reason, including freedom to choose to be teetotal or vegetarian, for example), provide them with a voucher or token instead. It would be unreasonable and unfair to treat the bottle of wine as a trivial benefit while treating the voucher as taxable if they are provided to the employees in similar circumstances. That could, in fact, amount to discrimination on grounds of religion or disability, since individuals of particular faiths may not drink alcohol and often also cannot eat certain foods, while

³ Classic examples of failing to uprate limits in tax law include the rent-a-room limit of £4,250 which has been in place for over 15 years, and – related to this area of consultation – the £8,500 threshold in relation to 'low-paid employees' and benefits in kind.

⁴ Para. 5.7, Box 5.B: Possible definition for a trivial benefit, Review of employee benefits and expenses: second report – Office of Tax Simplification (January 2014): "A voucher should be acceptable where the employer can show it is given instead of a gift made to equivalent employees for religious or similar reasons."

people with certain medical conditions may also not be able to drink alcohol or eat certain foods.⁵

- 4.2.3 In addition, an employer might be sensitive to the fact that a low-paid employee might value a voucher over a gift. A £10 voucher which the employee can exchange for essential items such as food or clothing might be more appreciated as a true ‘thank you’ than, say, a bottle of wine or box of chocolates.
- 4.2.4 We also believe that the proposal to exclude non-cash vouchers neglects to consider the way transactions have evolved in the ‘digital age’. People shop online for gifts and often this is done by emailing the gift recipient a voucher. For example, if an employer wishes to book a mini spa treatment for an employee who has been working hard, the logical way to do this is to buy a voucher. This is only practical, as the employee can then use the voucher at a time convenient to them. If the employer were to book and pay for it direct, they would most likely have to specify a date and time which might not suit the employee.⁶
- 4.2.5 We therefore recommend that non-cash vouchers which can be exchanged for goods or services are not excluded from the exemption, so that employers have flexibility to provide appropriate and appreciated gifts to their employees.

Salary sacrifice / abuse

- 4.2.6 We agree that it should not be possible for an employer to use the exemption in connection with salary sacrifice arrangements. This is an important principle, as it may assist with tackling some of the abusive schemes that can exploit low income employees.

One-off or irregular benefits

- 4.2.7 We agree that one of the principles should be that the benefit is a one-off or provided irregularly. Often we would associate a trivial benefit with an ‘event’, such as a birthday or Christmas; these are regular, though not frequent, events. We think that the question of whether or not benefits provided on the occasion of such events would be excluded by the principle of irregularity needs to be addressed. We would not expect them to be excluded on this basis, but employers will need clarity on this issue.
- 4.3 While we agree overall with the principles set out at para. 3.2, subject to our comments above, we think that the definition should ideally encapsulate these principles in a much shorter form, perhaps a few, one-line bullet points. There can be guidance to explain the principles in more detail and this guidance must be clear and easy to understand, but the

⁵ Islam considers the consumption of fermented drinks sinful; some people may have alcohol intolerance; people taking long-term medications for ongoing conditions, such as epilepsy and diabetes are usually advised to avoid alcohol.

⁶ Other ‘gift experiences’ are readily available by purchasing a voucher, just one popular example being ‘Red Letter Days’ – see <http://www.redletterdays.co.uk/Home>

OTS suggested that the definition should be short,⁷ and we think this is a key point. We therefore recommend that the draft legislation is consulted on in detail, to ensure that the definition is clear.

5 Q2 What do you think would be an appropriate monetary limit for the definition of a trivial benefit in kind?

- 5.1 We agree with the proposal to include a set monetary limit on a trivial benefit, although we think it is important that such a limit is reviewed regularly to ensure that it continues to match current values and indeed continues to meet the objective of simplification of the benefits system long-term. If the limit is within the primary legislation, there will also need to be a mechanism for its uprating. We therefore recommend including a clause in the legislation to automatically uprate the limit each year.
- 5.2 This could be achieved by, for example, relating the increase to the annual growth in wages, inflation (the Government's preferred measure now being the Consumer Prices Index, we understand) or a fixed amount – or indeed, whichever is the higher of all three such as for the state pension.⁸ To avoid odd numbers, the basic uprating calculation could then be rounded up to the nearest £5. Alternatively, the amount of the limit could be contained in regulations, where it would be easier to change. Nevertheless, we would still recommend including in the legislation a clause specifying that the limit must be kept under review. If an annual increase is considered to be excessive, a triennial review with a view to appropriate uprating could be stipulated.
- 5.3 As an initial limit, we think around £50 per benefit would be suitable. It would be necessary to make it clear in legislation and guidance whether or not the limit includes VAT.
- 5.4 Having a monetary limit could assist some employers, as they can first consider the limit, and if a benefit exceeds the limit, they know it is unnecessary to examine the principles of the trivial benefit exemption any further.
- 5.5 In setting a monetary limit on a trivial benefit, we think that HMRC should take into account the costs of payrolling or completing P11Ds for relatively small, one-off benefits that exceed the limit. For example, if the limit is £50, and an employer provides an employee with a benefit that has a value of £55, and that is the only benefit that the employer provides to its entire workforce in a tax year, then there will be a significant amount of extra administration for that employer simply because the benefit exceeded the monetary limit by £5.

⁷ Para. 5.7, Review of employee benefits and expenses: second report – Office of Tax Simplification (January 2014): “To avoid confusion ... we think there needs to be a short, easy to understand ‘principles based’ definition.”

⁸ See <https://www.gov.uk/state-pension/overview>

- 5.6 In addition, the level of the monetary limit needs to take account of the typical cost of the types of benefit that are generally viewed as trivial.⁹
- 5.7 It will be important to make it clear in guidance for employers that the limit is all or nothing; so, if the limit is £50 and an employer provides a benefit of £55 that would otherwise qualify, the whole £55 is £5 taxable. From the perspective of making the system simpler, it would be better to have the whole benefit being taxable.¹⁰ This would also make more sense from a cost point of view in examples such as that set out at para. 5.5 above.

6 Q3 Do you agree that a higher cost trivial benefit in kind with a lower annual exemption limit would more effectively deliver the Government's intention to simplify the administration of employee benefits in kind?

- 6.1 We do not agree that there needs to be an annual exemption limit in addition to a principles based statutory definition of a trivial benefit and a monetary cap on the value of trivial benefit.
- 6.2 The proposed principles based definition in the consultation document includes that a trivial benefit is provided irregularly and infrequently. This should provide sufficient protection against abuse of the exemption for trivial benefits. In addition, it automatically excludes "low cost benefits that are provided frequently across a tax year"¹¹ from the exemption for trivial benefits.
- 6.3 The whole point of having well-drafted principles based legislation is that you can avoid the need for further measures that introduce complexity and administrative burdens, for both employers and HMRC. The introduction of a principles based statutory definition for a trivial benefit exemption is being proposed on the basis that it will be a simplifying measure and lead to administrative savings for employers and HMRC; the addition of an annual exemption limit would probably reverse all these savings, and therefore essentially render the exercise pointless. Therefore if there is an annual exemption limit in addition to the statutory definition and the cap on an individual trivial benefit, we do not think that the proposal will deliver the Government's intention to simplify the administration of employee benefits in kind.
- 6.4 If we think about what an annual limit would mean for employees, we can also see that it would not necessarily be fair or reasonable as an approach to trivial benefits. Often, employers provide a trivial benefit to an employee because of a 'life event', such as a serious illness, accident, birth, marriage and so on. It is inevitable that if you compare two employees, employee A might experience several such events in one tax year (say four), and consequently receive four trivial benefits from their employer in that year, but none in any

⁹ Typical examples of benefits that are generally regarded as trivial include: a turkey at Christmas; a bouquet of flowers; a bottle of wine; and non-cash vouchers.

¹⁰ As suggested at para. 3.15 ff. of the consultation document.

¹¹ Para. 3.7 of the consultation document.

other tax year; employee B might experience four similar events, but over the period of four tax years, receiving a trivial benefit in each year, each of the same value as those received by employee A. If an annual limit is imposed in addition to the statutory definition and the monetary cap on each trivial benefit, employee B might receive all four of their trivial benefits free of income tax and National Insurance contributions; in addition the employer has no reporting or payment obligations. Employee A, however, might find that only one or two of their trivial benefits fall within the annual exemption, and they therefore face income tax and National Insurance contributions liabilities; the employer will also have reporting and payment obligations.

- 6.5 We suggest that it is not reasonable for the two employees to be treated differently, just because those events happen to occur in different tax years. It would also place the employer in a difficult position, as they would have to explain why they have treated their two employees differently. This type of situation would be particularly awkward for smaller employers. While we accept that life is not always 'fair', we do not think it is sensible to build unfairness into the structure of an exemption, nor do we see a rationale for this.
- 6.6 Commercially, HMRC must accept that the vast majority of employers would not try to abuse a trivial benefits exemption, since as an employee reward mechanism it would only allow low value benefits, and the proposed principles would ensure that this could not be regular, frequent, 'expected' or used in combination with salary sacrifice. In addition, employers would have to justify excessive benefits, given the effect this would have on costs for their business, and therefore budgets and profits.

7 Q4 Do you think that having an annual cost exemption for each employment for each tax year would mean less administration and fewer reporting requirements for an employer?

- 7.1 If HMRC do pursue the proposal to have an annual cost exemption, we think that this should be for each employee, for each employment and for each tax year. Of the possible options put forward, this would probably be the least burdensome administratively. We are pleased that HMRC recognise that a workforce exemption and an employee exemption covering all employments would not be feasible. However, we refer to our points at paras. 6.1-6.6 above – we do not believe that an annual limit on the exemption of any kind is necessary.
- 7.2 In respect of an annual cost exemption, we think HMRC need to be aware that even though an exemption will mean that an employer does not have a National Insurance cost when they provide a trivial benefit, they still have the cost of the benefit itself to bear. We do not believe that employers, particularly small employers, will give out trivial benefits simply to 'use up' the annual cost exemption for each employee for each tax year.
- 7.3 In addition, at para. 3.17 and para. 3.24 of the consultation document, HMRC discuss the annual exemption as though it is something that employees would expect to receive the full advantage of each tax year. This does concern us, as it seems that the consultation document is based on some false premises. HMRC should recognise that, in reality, the

majority of employees do not receive any trivial benefits during the course of a tax year, and many of those that do would not come close to getting the benefit of an annual cost exemption anyway, simply because they do not receive trivial benefits of enough value or number to do so.

- 7.4 Whichever approach is adopted for an annual exemption (cost or numerical), there will be record-keeping requirements for employers. In either case, employers are likely to keep a record of the benefit and its cost, because they will need this information for their normal accounting records. The extra burden will be due to having to put systems in place to gather the information on trivial benefits together, match it to the relevant employee and check it against the limits – this will apply in either case. It is this burden, together with the reporting and payment requirements if the annual exemption is exceeded, which may eliminate the advantages of introducing the statutory definition and exemption.
- 7.5 We think an annual cost exemption would possibly be fairer and simpler than an annual numerical exemption. Based on the illustrations in the consultation document, it would appear that an annual cost exemption will enable HMRC to set a higher cap for each individual trivial benefit than would be set under an annual numerical exemption. It is important that the individual trivial benefit cap is appropriate and set at a sensible level; we think there is a risk that an annual numerical exemption would lead to the individual cap being set at an inappropriate level.

8 Q5 What level do you think an annual cost exemption for each employment should be set at to cover genuinely ‘trivial’ benefits?

- 8.1 As pointed out above at paras. 6.1-6.6, we do not agree with the proposal to impose an annual exemption of any kind. We do not think this is necessary, provided the statutory definition is drafted correctly on a principles basis.
- 8.2 If the proposal is pursued, however, given that there will be a cap on the value of an individual trivial benefit, we think that the level of an annual cost exemption would need to be at least £100 to have any relevance at all and to provide any administrative savings for HMRC and employers.
- 8.3 If an annual cost exemption is introduced, it is imperative that it is reviewed and updated regularly to ensure that it remains relevant in the context of the policy objective of simplification. See our comments at section 5 above relating to the uprating of the individual trivial benefit cost figure, as the same points apply here.

9 Q6 How many trivial benefit in kind exemptions do you think should be allowed per employee in a tax year?

- 9.1 As pointed out above at paras. 6.1-6.6, we do not agree with the proposal to impose an annual exemption of any kind, as we do not think this is necessary, provided the statutory definition is drafted correctly on a principles basis.
- 9.2 We do not support the proposal for an annual numerical exemption. We do not think it is possible to say how many exempt trivial benefits an employee should be allowed to receive during the course of a tax year. As noted earlier in our response at paras. 6.4-6.5, often an employee will receive no trivial benefits during the course of a tax year; during one particular tax year, however, they may receive a few. This is because, often, employers provide a trivial benefit to an employee because of a 'life event'.
- 9.3 We would be concerned that if there is an annual numerical exemption of say three or four benefits, which it would have to be in order to be reasonable, the cap on each individual trivial benefit would be ridiculously low and of no relevance. It would probably result in considerable administrative burdens, and therefore nullify the advantages of the statutory trivial benefit definition and exemption.

10 Q7 What do you see as the advantages/disadvantages of Option 1 in comparison to Option 2?

- 10.1 We do not support the proposal for an annual exemption of any kind. If the proposal is to be pursued, however, we would prefer an annual cost exemption (Option 1).
- 10.2 An annual cost exemption would hopefully mean that if an employee received a relatively high number of trivial benefits (for example employee A at para. 6.4 above), but the benefits were all of a low value, there would be no income tax liability for them, and less administration for the employer and HMRC. We think Option 1 would lead to fairer outcomes between employees, as illustrated by the example we present at para. 6.4 above.
- 10.3 Based on the illustrations, it is probably more likely that reporting requirements, income tax and National Insurance contributions liabilities would kick in earlier under Option 2, an annual numerical exemption. In many cases, given we are dealing with trivial benefits that would fall within the cap for an individual trivial benefit, this would result in significant costs and administrative burdens for employers and HMRC for the sake of very little income tax and National Insurance contributions. The costs may even outweigh the revenues.
- 10.4 The consultation document suggests at para. 3.30 that an advantage of Option 2 might be a lower administrative burden, since employers would not need to aggregate the taxable cost of trivial benefits across the tax year for each employee. Employers should have a record of the cost of each benefit for the purposes of their accounting records; in many cases, this will be the taxable cost of the trivial benefit. We doubt that this additional burden is significant enough to outweigh the advantages of an annual cost exemption compared to an annual numerical exemption.

10.5 We think that it is more likely that the limits will be appropriate and practical if an annual cost exemption is pursued. The illustration for Option 2 suggests a numerical exemption of only two trivial benefits. We think that if Option 2 were to be pursued, this should be at least three, possibly four.

11 Q8 Do you think that an annual cost exemption or an exemption based on the number of trivial benefits in kind would best deliver the Government's intention to simplify the administration of employee benefits?

11.1 As stated above, we think that both an annual cost exemption and an annual numerical exemption would prevent the Government and HMRC from delivering the policy intention to simplify the administration of employee benefits.

11.2 Of the two options, however, we think that an annual cost exemption would be better in terms of delivering simplification. We think that a numerical exemption is more likely to lead to the charging of income tax and National Insurance contributions on trivial benefits of a tiny value, meaning disproportionate administrative, reporting and compliance burdens for both employers and HMRC.

11.3 The best means of delivering the policy intention to simplify the administration of employee benefits is to draft the principles based statutory definition of a trivial benefit correctly and set a sensible cap on the value of an individual trivial benefit. If this is done properly, there is no need for an annual exemption of any kind.

12 Q9 Are there any other aspects that you think the Government should take into consideration in finalising its policy on the introduction of a trivial benefits in kind exemption?

12.1 In finalising the policy, it is important that the Government take into account the nature of trivial benefits carefully, to ensure that any limits set are sensible, practical and reasonable. In addition, they should take into consideration the reasons why employers provide trivial benefits; often an employer will provide a trivial benefit as a result of the employee experiencing a life event, good or bad. As such, we do not think that the vast majority of employers have any interest in exploiting such an exemption.

12.2 There needs to be a clear policy of regular review and uprating when appropriate, otherwise there is a serious risk of the limits becoming outdated and the policy intention of simplification being scuppered.

12.3 We think there is a need for clarification as to the value an employer has to attribute to a benefit when deciding whether or not it is within the limit. In particular, the legislation and guidance should clarify whether or not the value should include VAT. In addition, if the item has been made by the employer, should they take into account the sales price or cost? A further point for clarification is whether or not delivery costs (if relevant) should be included,

for example, if an employer pays for a bouquet of flowers to be delivered to an employee's home address.

- 12.4 Given the reasons for the provision of trivial benefits, employers do not generally wish an employee in receipt of a trivial benefit to face a tax charge. A trivial benefit that meets the proposed principles based definition set out in the consultation document will not have been requested or expected by the employee; it would be difficult for an employer to explain to an employee for whom they have bought a bouquet of flowers on the death of a close relative to explain why they have an income tax bill to pay in respect of those flowers. This is another reason why we are not in favour of an annual exemption limit. It raises another issue, however, and that is that where a benefit exceeds the individual trivial benefit limit, but would otherwise be a trivial benefit, there is an efficient and easy process for employers to include the benefit in a PAYE Settlement Agreement.
- 12.5 In principle, trivial benefits that fall within the exemption should be ignored for tax credits and means-tested benefits. It is important that tax credits and means-tested benefit legislation is amended to ignore or exclude such trivial benefits as income to avoid any complexity or confusion. This is important, as the employee will not have any record of trivial benefits received or their value.
- 12.6 In terms of the possibility of abuse by employers, we recognise that there is a theoretical risk. This should be countered to a significant extent by a sound principles based definitions; in addition, the employer's own commercial considerations will temper this risk.
- 12.7 There will be a need for clear guidance for employers. One idea might be to include a non-prescriptive list, or examples showing items that might qualify. Example would be useful too, as they could provide insight as to the types of events or occasions that HMRC often associates with the provision of trivial benefits. As additional channels of assistance for employers unsure about whether or not a specific item qualifies for the exemption, there could be an online checker or a dedicated helpline.

LITRG
8 September 2014