

**Exemption from income tax for trivial benefits provided by employers
Consultation on draft clauses for Finance Bill 2016
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 We welcome the opportunity to comment on the draft legislation to introduce a statutory exemption from income tax for trivial benefits in kind (BIKs) provided by employers to employees.¹ We have previously contributed to the Office of Tax Simplification (OTS) review of employee benefits and expenses and responded to HM Revenue & Customs' (HMRC) consultation document on an exemption for trivial benefits that closed on 9 September 2014.
- 1.2 We supported the proposal to introduce a statutory exemption for trivial BIKs – if structured correctly, it 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 BIKs.
- 1.3 We welcome the fact that the statutory exemption will be principles-based and will apply to both income tax and National Insurance contributions (NIC).² In addition, the definition is brief with only four conditions (or five when certain employees of close companies receive

¹ Draft clause 8 of Finance Bill 2016.

² See the draft of The Social Security (Contributions) (Amendment no. X) Regulations 2016 published alongside draft clause 8 of Finance Bill 2016, which amends the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004).

the BIKs) and objective. As a result, we think that the draft legislation will meet the aim of the proposal to simplify the identification of benefits that should be considered trivial and, therefore, exempt from both income tax and NIC.

- 1.4 We think that the decision to place a monetary limit of £50 on each individual benefit is reasonable, and welcome the inclusion of provision for future uprating of this limit.³ We recommended the inclusion of a clause specifying that the limit must be kept under review – this has not been taken up.⁴ It is important that the limits are kept up-to-date, otherwise the exemption will become obsolete very quickly and not provide the long-term simplification of administration which this is designed to achieve.
- 1.5 We note that there is no mention of the effect of the exemption in relation to tax credits, Universal Credit and means-tested benefits. Legislation for tax credits, Universal Credit and means-tested benefits should be amended, if necessary, to ensure that exempt trivial benefits are ignored for these purposes. This is important, as the employee in receipt of the trivial benefit will have no record of its value.

2 About Us

- 2.1 The 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 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 Draft clause 8, section 3 of Finance Bill 2016, which amends section 716 of the Income Tax (Earnings and Pensions) Act 2003.

⁴ <http://www.litrg.org.uk/latest-news/submissions/140909-employee-benefits-and-expenses-%E2%80%93-four-consultation-documents>

3 General comments

- 3.1 We are pleased to note that some of the points made by LITRG (and other groups) in our response to the consultation that closed in September 2014 have been taken on board.⁵ In particular, we welcome the decision to include vouchers that cannot be exchanged for cash within the exemption – this is important to ensure fairness for all, to prevent discrimination against certain groups of employees and to provide flexibility for employers.
- 3.2 We did not think that there was a need for an annual limit in addition to a monetary cap on an individual benefit, and it is pleasing to see that this point has been accepted for the general rule. We think this approach will be fairer and simpler administratively for employees and employers.
- 3.3 We note that there is an annual cap of £300 where the employer is a close company and the employee in receipt of the BIK is a director or officer-holder (or a member of such a person's family or household). Although we were not in favour of a generally applicable annual cap, we agreed that if such a cap were introduced, it should be based on total cost, rather than on the number of BIKs received. The annual cap appears to be targeted in a sensible manner.
- 3.4 We think that the removal of the proposed principle of providing a benefit "irregularly" helps to make the principles-based exemption more objective. We welcome the proposal to include the condition that the benefit must not be provided in recognition or anticipation of employment duties.

4 Comments on draft legislation

4.1 *Exemption from income tax for trivial benefits provided by employers*

- 4.1.1 We note that the proposal in draft section 323A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) is for four conditions (five conditions where the employer is a close company for particular employees). The draft exemption is principles-based and relatively brief, which we welcome. The proposed exemption should prove simple to operate and understand, for employers and employees.
- 4.1.2 We welcome the inclusion of draft section 323C ITEPA 2003, which ensures that changes in the conditions must be made under the affirmative procedure for secondary legislation. We would hope any changes in the conditions would be consulted upon. We note that, in contrast, amendments to the £50 monetary cap and the £300 annual exempt amount will be able to be made using the negative resolution procedure, under section 716 ITEPA 2003. We think this is a reasonable approach, as it will facilitate uprating of these monetary limits as appropriate. We think it is important that HMRC keep the limits under review so that these

⁵ <http://www.litrg.org.uk/latest-news/submissions/140909-employee-benefits-and-expenses-%E2%80%93-four-consultation-documents>

powers are used appropriately; this will help to ensure that the limits do not become obsolete and that the simplification provided by the exemption endures.

- 4.1.3 We note that the draft legislation is due to take effect from 6 April 2016. We think that this is acceptable, since it is a simplification and easement for HMRC, employers and employees, and the changes involved are relatively simple to understand.⁶ We trust that there will be appropriate communications in advance about the changes to ensure that all employers are aware of them.

LITRG
25 January 2015

⁶ In addition, the implementation has already been delayed – initially the intention was to introduce a statutory exemption with effect from 6 April 2015.