

**Tax exemption for trivial benefits in kind: draft guidance
Consultation on draft guidance for the Employment Income Manual
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 We welcome the opportunity to comment on the draft guidance on a new statutory exemption from income tax for trivial benefits in kind (BIKs) to be included in the Employment Income Manual (EIM).¹ We have previously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 documents on an exemption for trivial benefits.²
- 1.2 We supported the proposal to introduce a statutory exemption for trivial BIKs – 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 The guidance broadly reflects the draft legislation and while comprehensive, is also generally user-friendly and clear. We welcome the inclusion of examples and in most cases these are used effectively.

¹ <https://www.gov.uk/government/publications/tax-exemption-for-trivial-benefits-in-kind-draft-guidance/tax-exemption-for-trivial-benefits-in-kind-draft-guidance>

² LITRG submissions are available to be viewed on the LITRG website at <http://www.litrg.org.uk/latest-news/submissions>

- 1.4 We think that some sections of the guidance could be expressed more clearly, however; this is particularly the case when dealing with the apportionment of the cost of a trivial benefit to an employee or office holder. We also think that additional examples could usefully be included, such as in the explanation of the contractual obligation condition and that existing examples could be improved, such as Example D concerning vouchers.

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 Comments on draft guidance

- 3.1 As a general point, the exemption applies to a "benefit". It would be helpful if the guidance could define the term "benefit". While many benefits will be single items, such as a meal, a bunch of flowers or a gift voucher, on occasion, an employer will provide two items simultaneously, for example wine and chocolates. In such an instance, will there be two separate benefits that can be considered separately (as to whether or not they meet the conditions), or will there be one benefit, which therefore might exceed the £50 cost and not be a trivial benefit?
- 3.2 In EIM21865, Example C, we think the clarity of the final sentence could be improved.³ This currently reads "The benefit of the £15 bottles of wine can be covered by the exemption

³ <https://www.gov.uk/government/publications/tax-exemption-for-trivial-benefits-in-kind-draft-guidance/tax-exemption-for-trivial-benefits-in-kind-draft-guidance#eim21865---particular-benefits-exemption-for-trivial-benefits---conditions-to-be-satisfied---the-cost-of-the-trivial-benefit>

since the cost does not exceed the trivial benefit financial limit but not the benefit of the £140 bottles of wine provided to the directors.” We suggest amending it to read, “The benefit of the £15 bottles of wine can be covered by the exemption since the cost does not exceed the trivial benefit financial limit, **but the benefit of the £140 bottles of wine provided to the directors cannot be covered by the exemption.**”

- 3.3 The heading for EIM21866 reads “**particular benefits: exemption for trivial benefits - conditions to be satisfied - cash and non-cash vouchers**”.⁴ Given that cash and cash vouchers are not exempt, but non-cash vouchers are potentially exempt (subject to meeting the other conditions), we think that the draft heading is confusing, mixing non-exempt and exempt benefits together. The text beneath the heading seems to deal mainly with non-cash vouchers, but see our comments below at paragraph 3.4. We think a more suitable heading would be “**particular benefits: exemption for trivial benefits - conditions to be satisfied – not cash or cash vouchers**” or “**particular benefits: exemption for trivial benefits - conditions to be satisfied – cash and vouchers**”.
- 3.4 Within EIM21866, Example D covers gifts of wine and the alternative of a gift voucher (non-cash voucher). Both items are potentially exempt (subject to meeting the other conditions). Given this section of the manual is intended to explain that cash and cash vouchers are not eligible for the exemption, it would be helpful to include either or both of these items within the example. For instance, a further alternative could be given of a cash voucher of £25, which would not be exempt. Alternatively, the section could include an additional example, involving cash and / or cash vouchers.
- 3.5 EIM21867 concerning the contractual obligation condition does not include an example.⁵ We think it would be helpful to draw up an example involving a contractual obligation, whether salary sacrifice or otherwise, and contrasting that with a regular, but non-contractual benefit, such as one provided to staff at Christmas.
- 3.6 The fourth paragraph of EIM21869 concerning directors and other officers of close companies reads as follows, “This means that the total cost of separate trivial benefits provided by the company that are exempt from tax is limited to a maximum of £300 in any tax year.”⁶ This needs to be further clarified, since the £300 is a limit that applies to each

⁴ <https://www.gov.uk/government/publications/tax-exemption-for-trivial-benefits-in-kind-draft-guidance/tax-exemption-for-trivial-benefits-in-kind-draft-guidance#eim21866---particular-benefits-exemption-for-trivial-benefits---conditions-to-be-satisfied---cash-and-non-cash-vouchers>

⁵ <https://www.gov.uk/government/publications/tax-exemption-for-trivial-benefits-in-kind-draft-guidance/tax-exemption-for-trivial-benefits-in-kind-draft-guidance#eim21867---particular-benefits-exemption-for-trivial-benefits---conditions-to-be-satisfied---contractual-obligation>

⁶ <https://www.gov.uk/government/publications/tax-exemption-for-trivial-benefits-in-kind-draft-guidance/tax-exemption-for-trivial-benefits-in-kind-draft-guidance#eim21869---particular-benefits-exemption-for-trivial-benefits---directors-and-other-officers-of-close-companies>

director or other officer; it does not apply to the company as a whole. As currently drafted, the guidance suggests the company may provide no more than £300 exempt trivial benefits to all its employees in a tax year.

- 3.7 EIM21870 requires redrafting in a number of places.⁷ The final sentence of the fourth paragraph reads “Members of the office holder’s family or household who are employees of the same close company are **also** each subject to their own annual cap of £300.” We question whether the word “also” should be present here. The inclusion of “also” in the draft guidance suggests that such a person’s benefits not only count to their family member’s annual exempt amount but also their own annual exempt amount – i.e. the benefit is counted twice and affects the annual exempt amount of more than one person.
- 3.8 The fifth paragraph (sentence two) of EIM21870 reads “Where this is **also** the case and a trivial benefit is provided to a member of their family or household who is not an employee or office holder of the same company, apportion the cost of the benefit between the office holders and employees equally.” We question the need for the word “also” in this sentence, since it does not add to the meaning.
- 3.9 Example M in EIM21870 lacks clarity. Given the wording of the fourth paragraph (see paragraph 3.6 above) and the wording of this example, it is unclear whether the director and employee have each used up £20 of their annual exempt amount or have each used up £40. We would expect it to be only £20, but the final sentence of the example is ambiguous. We suggest rewording to something like “£20 is allocated against each of their annual exempt amounts – this reflects the cost of the bottle of wine that each of them received.”

LITRG
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⁷ <https://www.gov.uk/government/publications/tax-exemption-for-trivial-benefits-in-kind-draft-guidance/tax-exemption-for-trivial-benefits-in-kind-draft-guidance#eim21870---particular-benefits-exemption-for-trivial-benefits---directors-and-other-officers-of-close-companies---members-of-their-family-or-household>