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EXTENDING TAX RELIEF FOR TRIVIAL BENEFITS

Representation by Association of Taxation Technicians in respect of the Autumn Budget 2024

1 Introduction

- 1.1 The ATT considers that the 'trivial benefits' rules - which provide for income tax relief on certain, low value employer-provided benefits such as gifts at Christmas or flowers sent for the birth of a new child need to be updated and refreshed to increase their usefulness and relevance.
- 1.2 We would like to see the rules amended to:
 - Allow relief where an employer reimburses an employee for a purchase which would have qualified as a trivial benefit, had the employer paid for it directly.
 - Increase the £50 limit on benefits, which has remained at the same level since the legislation was first introduced in 2016.
- 1.3 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This representation is written with that background.

2 Our recommendations

- 2.1 We recommend that, where all other relevant conditions are met (see 3.1 below), a benefit should qualify for relief under the trivial benefits legislation regardless of whether the costs of it are paid directly by the employer or an employee is reimbursed. To ensure that the reimbursement only relates to expenditure which would otherwise qualify as a trivial benefit, evidence of the position should be retained by employers in the form of expense reclaims and supporting receipts / invoices.
- 2.2 We also consider that the monetary limit on trivial benefits should be increased. This has been set at £50 since the legislation was first introduced in 2016. The effects of inflation since that date have reduced the overall usefulness of the trivial benefits exemption (see 3.11).
- 2.3 Any potential abuse arising from these suggestions should be limited by the existing anti-avoidance measures for close companies, which limit the trivial benefits which can be provided to directors, and their households / families, to £300 per tax year (see 3.2).

3 Background to our recommendation

- 3.1 The trivial benefits rules in ITEPA 2003 s323A state that no liability to income tax arises in respect of a benefit provided by an employer to an employee (or a member of their family / household) provided all of the following conditions are met:
- Condition A – the benefit is not cash, or a cash voucher.
 - Condition B – the cost of the benefit does not exceed £50.
 - Condition C – the benefit is not provided under salary sacrifice arrangements or any contractual obligation.
 - Condition D – the benefit is not provided in recognition of particular services performed by the employee, or in anticipation of them.
- 3.2 Where a benefit is provided to a director of a close company (or a member of their family / household), a further 'Condition E' must also be met. This states that total trivial benefits provided to that person or a member of their household in a tax year cannot exceed £300.
- 3.3 These rules are beneficial as they allow employers to provide low value benefits to employees without creating an unwelcome tax charge for the employee, or significant administration for the employer. The sort of benefit covered by the rules include:
- A meal to celebrate a staff birthday
 - A small gift at Christmas or other occasional
 - A summer party
 - Flowers to mark a personal event in an employee's life
- 3.4 HMRC's view is that, where an employer reimburses an employee for an expense the employee has incurred on their own account, this cannot qualify as a trivial benefit under ITEPA 2003 s323A. This is on the grounds that condition A is not met, as the employee has received a benefit in the form of cash. The reimbursement is instead treated as a cash payment taxable as earnings within ITEPA 2003 s70, subject to any deduction that might otherwise be due as an allowable employment expense.
- 3.5 As a result, in the absence of any right to a specific deduction for the expense in question, the reimbursement of cash by an employer, to an employee who has bought something for themselves on behalf of their employer is taxable, even if all the other conditions of the trivial benefits rules are met. This can result in inconsistency of treatment, with the same benefit falling to be either taxable or exempt, depending on how it is paid for by the employer.
- 3.6 For example, flu vaccine vouchers given to employees can qualify as a trivial benefit. However, directly reimbursing an employee who has paid for their own vaccine will be taxable. This causes practical problems for employers who wish to provide flu vaccines, as vouchers are not always the right answer - some schemes have closed to new entrants, and not all employees can access the same provider if they work remotely or are not near the applicable chain of pharmacies.
- 3.7 Another area of difficulty in applying the trivial benefits code is where an employee receives a cash reimbursement but is not the recipient of the benefit itself. HMRC's position is that the reimbursement of cash by an employer, to an employee who has purchased a benefit on behalf of the employer, is not covered by the trivial benefits rules.

- 3.8 Again, this throws up some unhelpful inconsistencies. For example, a £40 bunch of flowers given to a bereaved employee would qualify as a trivial benefit for that employee. However, if a colleague makes the purchase and is reimbursed, this would not qualify as a trivial benefit for them. Similarly, team treats (cakes etc.) are treated differently depending on whether the employer makes the initial purchase or chooses to reimburse the employee who made the purchase. As with the flu vaccine reimbursement, while the same benefit is ultimately being provided by the employer, the different means of payment results in different tax treatment.
- 3.9 In practice, we suspect that these distinctions are overlooked – which puts the employer and employee at risk of potential interest/penalties in the event of an enquiry, as well as absorbing HMRC time and resources.
- 3.10 It does not make sense that the same benefit delivered to the same employee should either qualify or not qualify for relief depending solely on how it is paid for. The method by which an employer covers the cost of a benefit should not dictate its tax treatment. Instead, in determining whether a benefit is taxable or not, the focus should be on the nature of the benefit in question.
- 3.11 The possibility of extending exemption to reimbursed flu vaccines was considered in a joint HMRC-HMT consultation *Tax incentives for occupational health* published in July 2023.¹ We strongly support this proposal², and encourage the Government to publish their response to this consultation as soon as possible. However, we also believe that the Government should go further and consider widening the trivial benefits exemption to cover all reimbursement of otherwise qualifying expenditure.
- 3.12 Finally, we note that the £50 limit in Condition B has been in place since the relevant legislation was first introduced in 2016. Based on the Bank of England inflation calculator³, this would now be at least £66 if it had been uprated in line with inflation.
- 3.13 Before the trivial benefits exemption was put into legislation, employers could ask HMRC to treat a benefit as exempt on the grounds it was trivial, with no set monetary limit. We appreciate that a limit may be needed in a statutory exemption which does not require HMRC's pre-approval. However, given recent high levels of inflation, £50 is often too low in practice. Consideration should therefore be given to increasing this cap to a sensible level, preferably in line with inflation.

4 Contact details

- 4.1 We would be pleased to join in any discussion relating to this representation. Should you wish to discuss any aspect of this representation, please contact our relevant Technical Officer, Emma Rawson on atttechnical@att.org.uk.

The Association of Taxation Technicians

05 September 2024

¹ <https://www.gov.uk/government/consultations/joint-hmt-hmrc-consultation-on-tax-incentives-for-occupational-health/tax-incentives-for-occupational-health-consultation>

² See our consultation response: <https://www.att.org.uk/technical/submissions/tax-incentives-occupational-health>

³ <https://www.bankofengland.co.uk/monetary-policy/inflation/inflation-calculator>

5 Note

- 5.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government, and academia.

The Association has more than 10,000 members and Fellows together with over 7,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.