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# EMPLOYER-PROVIDED/EMPLOYER-FUNDED CORONAVIRUS ANTIGEN TESTS

## Budget Representation by Association of Taxation Technicians

### 1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to make representations in relation to the 2021 Budget.
- 1.2 Further to the measures introduced in Finance Bill 2021 in respect of coronavirus testing - which introduced temporary income tax and National Insurance Contribution (NIC) exemptions for employer-provided COVID-19 antigen tests for 2020-21 and 2021-22 and provided the power to the Treasury to extend that exemption to future years if required- we consider that there would be a public benefit in introducing a wider-ranging and enduring exception from benefit-in-kind charges for employers who pay to test their employees for highly transmissible diseases.
- 1.3 A potentially simple approach to achieve this would be to amend the existing power contained in section 26 of Finance Act 2021 which allows the Treasury to extend the exemptions for coronavirus (SARS-CoV-2) testing to future years, so that the Treasury also has the power to apply the exemptions to other transmissible diseases.
- 1.4 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 response is written with that background.

### 2 Background to our proposal

- 2.1 If an employer bears the cost of an employee's COVID-19 antigen test, HMRC's view<sup>1</sup> is that (absent the specific exemptions now provided) this results in a taxable benefit-in-kind equal to the cost of the test. A benefit-in-kind arises where the employer bears the cost upfront (as HMRC considers none of the long-

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<sup>1</sup> See heading 'Current law' in November 2020 policy paper ['Income Tax and National Insurance contributions exemption for employer-provided coronavirus antigen tests'](#). We consider that there are in fact circumstances in which the test could be considered to be wholly, exclusively and necessarily for the purpose of the employee's duties, with any related health benefit being incidental that but it would be preferable for the matter to be put beyond doubt and not a matter of potential disagreement with HMRC.

standing exemptions from the benefits-in-kind legislation apply), and also where the employee incurs the cost and the employer reimburses it as HMRC does not view such tests as meeting the 'wholly, exclusively and necessarily' criteria in S336 (1)(b), ITEPA 2003 for the purposes of the employee's duties. This could result in income tax/NIC consequences for employee and employer and additional administration for the employer.

- 2.2 As a result, the Government provided specific measures, ultimately included in legislation in section 26 of Finance Bill 2021 and in sections 3 and 10 of the Social Security Contributions and Benefits Act 1992 (SSCBA), to provide temporary relief from the usual benefit in kind rules for employers who pay for or reimburse an employee for a COVID-19 antigen test in tax years 2020-21 and 2021-22. Helpfully, the legislation also includes a power to allow the Treasury to extend these exemptions to future years – but only in respect of testing *'which detects the presence of a viral antigen or viral ribonucleic acid (RNA) specific to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)'*.
- 2.3 We consider that there is no public benefit in discouraging employers from paying for employees' tests in situations where there is a rapidly spreading, dangerous disease. The current pandemic is not the first coronavirus to spread rapidly throughout the human population and it therefore makes sense to allow the Treasury a wider power not just to extend the exemptions for SARS-CoV-2 testing, but also to add additional diseases as and when it is determined necessary.

### 3 Contact details

- 3.1 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, Helen Thornley on [atttechnical@att.org.uk](mailto:atttechnical@att.org.uk).

## The Association of Taxation Technicians

29 September 2021

### 4 Note

- 4.1 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 9,000 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.