

FINANCE BILL 2015 DRAFT CLAUSES – EXEMPTION FROM INCOME TAX FOR TRIVIAL BENEFITS PROVIDED BY EMPLOYERS

Response by the Association of Taxation Technicians

1 Introduction

1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to comment on the draft clauses *Exemption from income tax for trivial benefits provided by employers*, published on 10 December 2014, with a view to inclusion within the Finance Bill 2015.

1.2 The ATT previously responded to the prior consultation issued on 18 June 2014, entitled *Employee Benefits and Expenses – Trivial Benefits Exemption*. The remaining part of this section will briefly recap on that consultation and will summarise the comments made by the ATT.

1.2.1 Principles to apply to the definition of a trivial benefit

HMRC proposed six principles that would form the basis for a definition of a trivial benefit:

- (i) It should not include vouchers or any replacement for cash.
- (ii) The benefit should not be provided on a continual or regular basis across a tax year but should, instead, be a one-off or irregular item.
- (iii) There should be no prearranged entitlement to a trivial benefit.
- (iv) The benefit must be capable of being determined in real time.
- (v) A trivial benefit cannot be paid in conjunction with any salary sacrifice arrangement.
- (vi) The trivial benefit exemption will not be necessary for a benefit already covered by a statutory tax exemption.

In brief, the ATT proposed that vouchers ought to be included within the definition. We agreed with the principles at (ii) – (iv) and principle (vi) above, but sought some clarity on specific scenarios that ought to be covered in guidance material.

We had some reservations about principle (v).

1.2.2 An appropriate monetary limit for the definition of a trivial benefit

The ATT proposed a value in the region of £75.

1.2.3 **An annual cost exemption for each employment**

The ATT was in favour of having a monetary annual cost exemption to limit the provision of trivial benefits to any one employee in any tax year.

- 1.3 We have taken the time to set out above the parameters of the original consultation as we find that the draft legislation and the final decisions made by HMRC as covered in the *Summary of Response* document, issued on 10 December 2014, have resulted in a policy that is quite far removed from what was being discussed.

In section 2 below, we provide our detailed commentary on the draft legislation and cover other points of concern arising from the change of direction the policy appears to have taken.

2 **Our comments**

2.1 **The definition principles**

- 2.1.1 We are pleased to see that HMRC has responded to the feedback provided through consultation in deciding to include non-cash vouchers within the definition of a trivial benefit as many such trivial gifts are indeed provided this way.

- 2.1.2 We are, however, concerned about the significant change that HMRC and the Government have decided to make to the definition of a trivial benefit.

Under existing practice, an employer can apply to HMRC to have a benefit considered as trivial:

“on the grounds that the cash equivalent of the benefit to the employer is so trivial as to be not worth pursuing” (EIM21860)

However, as stated in the *Summary of Responses* document:

“the Government is defining a trivial benefit-in-kind as one which is provided by an employer to support their employees’ welfare”

This new definition has been reflected in the draft legislation with the inclusion of Condition D at subsection (5) of 323A. The effect of this clause will be to exclude anything that is being given as a token of appreciation even if it is at a very nominal value (below the £50 threshold) and is a one-off.

- 2.1.3 Benefits agreed as being trivial in the past may not now be considered trivial under the new definition and raises the question as to how this affects previous agreements for, say, items given to employees every year at Christmas or which reoccur on a yearly basis but not more than once a tax year. Would these be regarded as made to support staff welfare? If not, will employers now have to start recording these items on a P11D form and will employees be taxed on such gifts?

- 2.1.4 We were in support of the principle that a trivial benefit should be one that is paid irregularly or is of a one-off nature. We believe that this is in keeping with the current understanding employers and employees have of what is a genuine trivial benefit. Now that this principle has been removed from the definition, and HMRC have opted not to have an annual cap, it would appear to us that an employer can make as many trivial gifts of £50 or less to an employee as they like. We believe that this is potentially open to more abuse than the original proposal to cap the amount of trivial benefits any employee should be given in a tax year by their employer.

HMRC seem to be pre-occupied with ensuring that employers cannot use this legislation to disguise actual remuneration and appear to have lost sight of a large part of why the trivial benefits rule existed in the first place – so as to avoid the uneconomical and burdensome practice of reporting tax and NIC on a relatively low value item.

- 2.1.5 HMRC's decision to remove from the definition of a trivial benefit the principle of it having an irregular or one-off nature has been attributed to the fact that it would not fit in with the prospect of taxing the benefit in real time through the payroll system. The argument is that you can only determine if something is irregular or a one-off in hindsight at the end of the tax year. We are not certain that this argument would stand up to scrutiny in all cases, but in any event, the payrolling of benefits is currently scheduled to only apply to four benefits, none of which would fall into the category of being a trivial benefit. Therefore, we do not see the immediate link here.

- 2.1.6 HMRC's concern that employers will abuse this legislation has also resulted in the inclusion of Condition C at subsection (4) of 323A which states that the benefit must not be

“provided pursuant to a relevant salary sacrifice arrangement or any other contractual obligation.”

As we commented in our response to the original consultation, salary sacrifice arrangements are common modern practice in today's flexible employment market. We had hoped that HMRC would first complete its review of remuneration practices to ensure that it fully understood how and why salary sacrifices are used. We think Condition C will cause a lot of confusion amongst employers and this could result in the under-use of the trivial benefit exemption. We hope that HMRC intends to provide adequate guidance in this area to assist employers in determining whether their salary sacrifice arrangements prohibit the use of this exemption.

2.2 **An appropriate monetary limit**

- 2.2.1 We are disappointed that the monetary value of a trivial benefit has been set at only £50. We would have much preferred to see this at a level of £75 - £100 as we believe £50 is too low and will prevent many trivial benefits paid in excess of this amount from being included within this exemption.

This will lead to many benefits having to be recorded on P11D forms where the tax yield could be considered uneconomical when compared to the work involved by the employer and HMRC staff.

If, in future, such benefits can be taxed through the payroll (where they do not qualify as a trivial benefit), then this would be more efficient. However, there are no current plans in the near future, as far as we are aware, to include any benefits other than the four mentioned in 2.1.5

above within the voluntary payrolling of benefits scheme. Until then, we believe such a low monetary figure will result in more work for employers.

2.2.2 We recognise that HMRC have included within the legislation the power to alter this monetary figure by regulation and are committed to keeping this under review, as stated in the *Summary of Responses* document. We are pleased to see this within the legislation and trust that HMRC will use this power appropriately to raise the monetary limit in the not too distant future.

2.3 **An annual cost exemption for each employment**

2.3.1 We thought that the suggestion of having an individual monetary limit and an annual cap on the amount of trivial benefits that an employer could provide to any employee in any one tax year was a really good idea. We thought that the two limits combined together ought to offer HMRC the safeguards it required to ensure that true remuneration was not being passed to employees under the guise of trivial benefits.

2.3.2 Overall, we feel that the original proposals HMRC made in the 2014 consultation stood a better chance of properly simplifying the procedure for employers and HMRC in dealing with trivial benefits, whilst at the same time addressing HMRC's concerns about abuse of the exemption.

What we have now been offered in the draft legislation does make things simpler for HMRC in that they no longer have to provide resources to deal with requests for the trivial benefits treatment to apply. However, we do not believe it has simplified matters for employers. We actually think the draft legislation, as it currently stands, is in real danger of making life more complicated for employers by

- creating confusion over what is covered by the exemption and the interaction with salary sacrifice arrangements and
- imposing additional burdens by having to declare and tax benefits that are currently treated as trivial but will cease to qualify under the new definition.

We are not at all convinced that it represents an improvement to the current system. In our opinion, there will need to be a great amount of detail covered in guidance to run alongside the draft legislation if the proposals are not amended.

3 **Summary**

3.1 We have been fairly critical of the current draft legislation in this response. The reason for this is that we have been presented with proposals that differ significantly from those envisaged in the initial consultation. We are concerned about the confusion that will be created and the extra burdens that will be placed on employers by proposals that are scheduled to commence in just nine weeks' time.

We now think that 6 April 2015 is too soon to bring in this exemption and that there should be a delay until 6 April 2016. This would enable all four of the measures that were announced in the same package last summer to be brought in together. We believe that this makes more sense, not least in that HMRC have always said that the measures should be viewed as a package and not in isolation. Furthermore, and most importantly, it should also allow adequate time for guidance to be prepared and shared with employers. We also ask HMRC to consider if there is scope to rethink some aspects of the policy in light of the comments we have made.

3.2 **Contact details:**

Should you wish to discuss any aspect of these comments, please contact our relevant Technical Officer, Alison Ward, on 07762 947 910 or at award@att.org.uk.

Yours sincerely

Paul Hill
Chairman, ATT Technical Steering Group

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 over 7,500 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.