

## Trivial benefits exemption and directors (Lecture B1350 – 12.03 minutes)

### *Background*

There are some useful and well-known exemptions from an income tax charge on employment income. A useful income tax exemption is for 'trivial' benefits provided by employers. The exemption is perhaps more helpful and wide ranging than some employers and their employees might assume. For example, the exemption applies to benefits provided to the employee or to a member of the employee's family or household. It also applies where the benefit is provided by a third party on the employer's behalf (e.g., by a related management services company).

There are no Class 1A National Insurance contributions (NICs) on benefits which are exempt from income tax (in SSCBA 1992, s 10(1)(a)). In addition, there is an exception from Class 1 NICs for non-cash vouchers (in SI 2001/1004, Sch 3, Pt V, para 6(da)).

### *Exemption conditions*

The trivial benefits exemption is subject to various conditions contained in ITEPA 2003, s 323A).

- Conditions A to D apply to employees, and
- Conditions A to E apply if the employee is a director or other office holder (or a family or household member) of a close company employer.

The conditions are as follows:

- Condition A is that the benefit is not cash, or a 'cash voucher' as defined in the legislation (in ITEPA 2003, s 75).
- Condition B is that the benefit cost does not exceed £50. The 'benefit cost' is simply defined as the cost of providing the benefit. Alternatively, if the benefit is provided to more than one person and it is impractical to calculate the cost per person (e.g., due to the nature of the benefit, or the scale of its provision) the benefit cost is the average cost per person of providing the benefit. So, the total cost of providing the benefit is divided by the number of persons to whom the benefit is provided. HMRC's Employment Income manual (at EIM21865) features several useful examples of the exemption and benefit calculations.
- Condition C is that the benefit is not part of 'relevant salary sacrifice arrangements' or other contractual obligations. The term 'relevant salary sacrifice arrangements' is defined for these purposes as arrangements whereby the employee gives up the right to receive an amount of general earnings or specific employment income in return for the benefit (ITEPA 2003, s 323A(8)).
- Condition D is that the benefit is not provided in recognition of particular employment services performed by the employee as part of their duties, or in anticipation of such services.
- Condition E (which applies to close company employers where the employee is a director or other office holder or a member of their family or household) is that the benefit cost of the benefit provided to the employee (or the amount allocated to the employee, where the

benefit is provided to a family or household member who isn't an employee) does not exceed an 'available exempt amount'.

A useful feature of the trivial benefits exemption is that the £50 limit in Condition B applies per benefit, not per tax year.

#### *Available exempt amount*

For Condition E, the individual has an available exempt amount of £300.

The benefit cost of 'eligible' benefits (i.e., within conditions A to D) provided by or on behalf of the employer earlier in the tax year are aggregated, together with any eligible benefits earlier in the tax year allocated to the employee in respect of any member of the individual's family or household who are not employees, in calculating the 'available exempt amount'.

If the cost of an additional trivial benefit results in a total cost exceeding the annual cap of £300, none of the benefit that results in the cap being exceeded is exempt (see EIM21869).

#### *Family and household members*

A useful feature of the trivial benefits exemption is that members of the office holder's family or household who are employees of the close company are each subject to their own annual eligible benefits exemption of £300 (ITEPA 2003, s 323B(4)). So, there is a potential attraction in employing family members, such as adult children. 'Eligible benefits' in this context are those benefits which satisfy Conditions A to D mentioned earlier.

Many close companies are family companies (i.e., the directors, other office holders and/or employees of a company are members of the same family). Whilst each employed individual is entitled to their own available exempt amount of £300, the company might also have provided benefits to one or more members of the employee's family or household who aren't employed by the company. In those circumstances, the cost of that benefit is divided between those members of the non-employee's family or household who are directors or office holders, or members of that director's or office holder's family or household, or former directors or office holder of the company or members of their family or household.

#### *Recurring or contractual benefits?*

If an otherwise qualifying trivial benefit is made on a recurring (e.g., annual) basis, could HMRC contend there is effectively a 'contractual obligation' to it, such as under an informal agreement, which fails Condition C?

This possibility cannot be ruled out; each case will depend on the particular circumstances. However, HMRC apparently accepts that just because a gift is provided each year does not necessarily mean that the employee has a contractual entitlement to it; so Christmas or birthday gifts shouldn't normally be challenged (see EIM21867).

What about regular gifts other than at Christmas or on birthdays, or more frequent gifts? HMRC guidance states (at EIM21868): '...if an employer provides their employees with benefits on a regular or frequent basis you should consider whether they are linked to the employee's services.' So it would seem that employers who are regularly or continually generous potentially risk breaching Condition D for exemption purposes.

Even if gifts are non-contractual and non-recurring, they need to be separate benefits to avoid the possibility that they will be aggregated for the purposes of the £50 limit per benefit.

### *Deductions for trivial benefits*

What is the tax position for the employer who provides trivial benefits? The general rule is that the cost of business gifts is not an allowable trading deduction. However, this general rule is subject to certain exceptions.

One such exception is where gifts are provided for employees of the business, unless gifts are also provided for others, and the provision of gifts for the employees is incidental to the provision of gifts for those other persons (ITTOIA 2005, s 47(4); CTA 2009, 1300(4)).

Accordingly, provided the gifts are predominantly provided for employees (as will usually be the case) rather than non-employee family or household members, the provision of benefits within the trivial benefits exemption will generally be tax-deductible for the self-employed, trading partnerships and trading companies.

*Contributed by Mark McLaughlin*