

Can festive celebrations be tax free? (Lecture B1408 – 17.03 minutes)

Annual parties or similar social functions

HMRC has agreed a concession for annual parties and other similar social functions, but not one-off events, which are open to all staff and cost in total no more than £150 (including VAT) per head, including guests.

The annual event, or annual events, must be open to all employees or if the employer has several sites then open to all employees at each site. An event for selected employees would not be covered by the concession and so must be reported on the same basis as a one off event – see below.

The employer must work out the total cost, with VAT, of all the annual events. This is then divided by the total number of people attending – both employees and non-employees. All costs incurred on each event must be recorded in order to consider whether the figure of £150 is exceeded and so will include:

- Venue hire;
- Dinner and drinks;
- Gifts to staff;
- Free bar before and after dinner;
- Entertainment on the night – band, Magician, singer, cartoonist;
- Travel to and from venue;
- Overnight accommodation.

Where the total cost of the party is less than £150 per head, it falls within the concession.

But if the cost of the event exceeds £150 per person the whole event is subject to tax and NIC. The employer cannot take the cost per head, of say £180, then deduct the first £150 leaving only £30 to be subject to tax and NIC. The employer will report the events liable to tax and NIC on form P11D section M or agree with HMRC to include in the PAYE Settlement Agreement (PSA) if one in place with HMRC.

Multiple events

Some employers may put on several annual events in a year on a regular basis. They may want to celebrate Diwali, Eid, Christmas with their employees and in addition arrange a summer barbeque. The concession will apply to multiple events as long as the rules are met – regular annual events, open to all employees and cost of all the events does not exceed £150 per head.

Example

The Christmas party costs £120 per head and the barbeque costs £75 per head so in total £195. The £150 figure is therefore exceeded. The employer would use the concession against the event costing £120 leaving the £75 to be reported on the P11D section M or under a PSA.

Example

In the above example 50 employees attend both events, 10 attend the Christmas party only and 2 attend only the barbeque.

The treatment would be:

- 50 Employees – taxed on £75 or £150 if they took a guest;
- 10 employees – nothing to report as party covered by the concession;
- 3 employees – taxed on £75 or £150 as that event is not within the concession.

Virtual parties

HMRC confirmed that annual party exemption can apply to costs relating to virtual parties in the same way. The expenses of hosting a virtual party including entertainment, equipment and refreshments will be exempt.

One-off events

A one-off event, such as celebrating 25 years of the business, would not qualify under this concession. It would be taxable as staff entertaining and should be reported on form P11D section M or considered for inclusion in the PSA if the employer has one agreed with HMRC.

Where an employer gives gifts instead of holding a party, such as non-cash vouchers or hampers, these could be covered by the trivial benefit exemption depending on cost. Alternatively, the employer might consider putting into a PAYE Settlement Agreement, PSA or report on the P11D section M.

Trivial Benefits

From 6 April 2016 a statutory exemption was introduced which allows employers to treat certain low value benefits in kind (BiKs) provided to employees as “trivial” and so there is no requirement to these to report to HMRC. The exemption sets a number of conditions that must be met for a BiK to qualify as trivial, including an upper limit per individual BiK of £50.

All of the following conditions must be met:

1. The cost of providing the benefit does not exceed £50, including VAT;
2. The benefit is not cash or a cash voucher;
3. Employee must not be entitled to the benefit as part of contractual obligations;
4. The benefit is not provided in recognition of services performed by the employee as part of their employment duties

Examples of trivial benefits would include a store voucher, bottle of wine, box of chocolates, flowers, champagne, gift voucher, a turkey, a food hamper or other kind of gift provided the cost does not exceed £50 including VAT.

Any non-cash voucher would be as a trivial benefit if it met all the conditions. So a voucher of up to £50 as a birthday gift or a Christmas gift would be exempt. The benefit can be given to recognise a life event: birthday, wedding or the arrival of a new baby.

In the case where the cost of the trivial BiK exceeds the £50 limit, or is given as part of contractual obligation, or is given in recognition of services, it is fully taxable and must be reported on P11D section M or added to the PSA if one set up with HMRC.

Example

An employer gives a £30 gift voucher to the employee that meets their sales target for the month. Whilst the value is below the £50 trivial benefit limit, it has been given in recognition of services as so becomes a taxable benefit.

How many trivial benefits can be given in a tax year?

There is no annual cap on how many trivial benefits an employee can receive in a tax year but there is an annual cap for office holders of close companies.

Where the employer is a close company, there is an annual cap of £300 for trivial benefits provided to office holders of close companies and their family members. Those affected by the cap will only be able to receive, tax free, an annual maximum of £300 of trivial BiKs. If the £300 cap is exceeded, the excess is reported on P11D section M or added to the PSA if agreed with HMRC.

Referring to EIM21869, a close company is one broadly under the control of 5 or fewer participators and their associates, or under the control of directors who are participators and their associates.

Examples

Director A receives seven benefits of £50 each: Following the rules above, the first six (totalling £300) are tax free, but last benefit must be reported on the P11D or under the PSA.

Director B receives these benefits, as follows: five benefits of £50, then one of £40, then one of £45 and finally a benefit of £10.

The five £50 benefits plus the next benefit of £40 total £290 and so are tax free as they are covered by the £300 limit. The £45 benefit is taxable as takes the total over £300. However, the last £10 benefit can be used to top up the £290 benefits to £300 and so, it too, is tax free.

PAYE Settlement Agreements (PSAs)

All employers can agree a PSA with HMRC, regardless of their size. It is a flexible arrangement under which an employer can settle with one payment, the income tax and NIC liability on three types of expenses and benefits in kind – minor, irregular or where it is impracticable to operate PAYE. It is not intended to be an alternative to operating PAYE so cannot be applied to the payment of wages and salaries. Additionally, a PSA cannot be used to cover major benefits such as cars and fuel provided to an individual employee, loans or shares.

Once a PSA has been agreed with HMRC no entries are required on form P11D for the items covered. But employer will pay tax on the benefit plus employer's Class 1B NIC on the grossed-up value of the benefits in the PSA.

Amending and Updating PSAs

From April 2018 once a PSA is agreed and in place the agreement will stay until the employer needs to change it or the employer or HMRC cancel it. HMRC can withdraw a PSA if it can be established that the employer is operating outside the agreed terms or the employer fails to account for tax under the agreement. During the course of the tax year, employers can alter their PSA, if necessary.

It is important to review the scope of the PSA in case items need to be added. Any amounts under a PSA which are subject to Class 1 NIC remain liable to payroll NIC until the PSA is agreed. If the PSA is agreed Class 1B NIC is payable by the employer and the employer/employee Class 1 liability ceases.

For example, if an employer intends to give employees vouchers at Christmas, not within trivial benefit limits, and plans to include these in a PSA, the PSA needs to be in place before the vouchers are given to the employees. If it is not, then Class 1 is due on the vouchers in the pay period in which they are given.

What benefits can be included under the PSA?

PSAs will apply to expenses payments and benefits which are "*minor*", or if not minor are either payable on an "*irregular*" basis or where it is "*impracticable*" to apply PAYE or apportion the benefit between the employees receiving the benefit. These terms have not been defined as the regulations require the employer and the tax inspector to agree where payments fall within the terms.

Minor benefits and expenses

An expenses payment or benefit in kind can be dealt with as a PSA if it is 'Minor', either in the sum paid or the type of benefit provided.

This means it must be decided whether an expense or benefit is minor in value, but the nature of the item and the circumstances in which it is paid will also be taken into consideration. For example: small long-service awards, employee's use of pooled car, late night taxis, staff entertainment, gift vouchers and small gifts outside trivial benefit.

Irregular benefits and expenses

An item can be included in a PSA if it is paid Irregularly. In this case the inspector will look at the nature of the item, the normal frequency of payment and how often it was paid or given to the employee. The inspector will generally look at how often the item is provided in the year, items provided to the same employees each year are unlikely to satisfy this test. For example: relocation expenses which exceed the £8,000 tax exempt threshold or one off gifts which are not minor.

Impracticable expenses and benefits

This is relevant where it is impracticable for the employer to operate PAYE on it or to identify how a shared benefit should be allocated to the employees for P11D purposes. Here employers must be able to show that record keeping would be time consuming and disproportionate in view of the number of employees concerned and the nature of the item. For example: shared cars or vans, corporate subscription to a gym or health club, hairdressing services or Christmas party.

Tax

When calculating the tax due on the benefits under a PSA employers have to ascertain the value of the expense or benefit provided including VAT, the number of employees receiving the expense or benefit and the marginal rates of tax to be used. Where some employees are basic rate taxpayers and others pay 40% or 45% the benefit must be grossed up separately for each group of employees. Scottish tax rates should be used for Scottish taxpayers.

Class 1B employer's NIC

This is payable, at 13.8% from 6 April 23. It is calculated on the value of the items including VAT, and then grossed up for tax.

The completed PSA calculation must be filed with HMRC by 31 July following the end of the tax year.

HMRC will agree and confirm the tax and NIC liability between 6th July and 19th October and payment is due no later than 19th October, or 22nd if paid electronically.

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