



HM Revenue
& Customs

Employee Benefits and Expenses - Introducing a statutory exemption for trivial benefits in kind

Summary of Consultation Responses
December 2014

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Foreword

I am delighted to be able to set out the responses to the benefits and expenses consultations, and very pleased that the package of measures has been so well received. As a package, I think that these measures represent significant simplifications to the tax system and that this will result in cost savings and reduced administration for businesses when complying with their responsibilities as an employer. As a consequence, individuals will have a better understanding of their tax affairs and an improved experience of the tax system.

The introduction of payroll of employer-provided benefits in kind and expenses also represents the next step in allowing customers to interact with the Government digitally and in real time.

Thank you to everyone who has taken the time to reply to these consultations or attend meetings with HMRC. This has been crucial in helping HMRC modify their proposals to ensure that the greatest simplification for businesses is achieved. I would also like to thank the Office of Tax Simplification for their excellent work in this area, which proved invaluable in helping to formulate the initial propositions.

I look forward to continuing work on this package of reforms to make sure that we successfully deliver changes that help to reduce administrative burdens in this area.

A handwritten signature in black ink, appearing to read 'David Gauke'.

David Gauke MP
Financial Secretary to the Treasury

1. Introduction

Background to the consultation

- 1.1 At Budget 2014 the Chancellor announced a number of measures aimed at simplifying the administration of employee Benefits in Kind (BiKs) and expenses. This followed the Office of Tax Simplification's (OTS) review of employee BiKs and expenses¹.
- 1.2 The announcement included a package of four changes which the Government consulted on between 18 June and 9 September 2014. A separate consultation document was published for each and all four consultations ran together for 12 weeks.
- 1.3 The package of four measures consisted of the following:
- Abolishing the threshold for the taxation of BiKs for employees who earn at a rate of less than £8,500 a year ('lower paid' employments), with action to mitigate the effects on vulnerable groups disadvantaged by the reforms;
 - Introducing a statutory exemption for trivial BiKs;
 - Introducing a system of collecting income tax in real time through 'payrolling' of BiKs; and,
 - Replacing the expenses dispensation regime with an exemption for paid and reimbursed expenses.
- 1.4 This document summarises the responses received covering the proposal to simplify the tax system by **introducing a trivial BiKs exemption**, which means employers would no longer be required to report such BiKs on a P11D or through a PAYE Settlement Agreement (PSA).
- 1.5 A series of four consultation meetings took place during July and August 2014 with a range of employers and representative bodies. The Government wishes to thank those who gave their time to participate in these meetings, and to all who have taken the time to send in written responses. These contributions have been invaluable in informing this policy. A list of organisations who submitted written responses is at annex A, and those who attended the consultation meetings is at annex B.

Aim of the proposal – Trivial Benefits in Kind

- 1.6 Currently there is no minimum cost threshold below which BiKs are not taxable. However, employers can agree with HMRC that they can treat certain BiKs as

¹ <https://www.gov.uk/government/publications/review-of-employee-benefits-and-expenses-final-report>

being trivial and therefore excluded from income tax and annual reporting. HMRC takes into account factors such as the cost of providing the BiK, the reason for providing the BiK and the administrative burden that would be created for both the employer and HMRC if the BiK had to be reported as a taxable item.

- 1.7 The aim of this proposal is to simplify, for employers, employees and HMRC, the process of identifying BiKs that should be considered trivial and, therefore, exempt from income tax and from liability for Class 1 or Class 1A National Insurance contributions (NICs). The introduction of a trivial BiK exemption will therefore provide employers with greater certainty and improve transparency within the tax system. It also means that some employers that had not previously agreed with HMRC the treatment of certain BiKs as trivial in the past (as it was more cost efficient just paying the tax) would now for the first time treat BiKs as trivial.

2. Responses

Overview of the consultation

- 2.1 The Government set out its initial ideas about the shape of a possible statutory exemption for trivial BiKs in the consultation document. A series of questions were asked to help to shape the design of the trivial BiKs exemption. The Government suggested that a set of principles would be used to define what a trivial BiK was. The principles outlined in the consultation document were that for a BiK to be considered trivial it:
- must not include cash or a replacement for cash such as a voucher or token;
 - must not be provided on a continual or regular basis across the year, but rather be a one-off or irregular item;
 - should not be a pre-arranged entitlement to a trivial BiK;
 - must be possible to determine whether it is a trivial BiK in ‘real time’;
 - must not be possible for employers to use the trivial BiK exemption in conjunction with any salary sacrifice arrangements; and
 - if it is already covered by an existing statutory exemption, those arrangements will not be disturbed.
- 2.2 The Government sought input from stakeholders on whether these were the right set of principles for defining a trivial BiK and whether the suggested set of principles may cause any practical difficulty for stakeholders when trying to apply them.
- 2.3 The Government also set out its thoughts on having some form of annual cap per person on trivial BiKs, and asked questions about which kind of annual cap stakeholders would prefer and whether a higher trivial BiK cost with a lower annual exemption limit would be preferable.

Analysis of the responses

- 2.4 This section summarises the responses of stakeholders. Rather than address each question in the consultation document in turn, this analysis groups those responses under the key areas that the consultation sought to seek stakeholders’ views on, which were: designing the principles for a trivial BiK exemption; the monetary cap per trivial BiK; and whether or not to include an annual cap for trivial BiKs. This allows for a logical flow through the issues raised and the decisions taken in relation to this exemption.
- 2.5 There were 48 written responses received from individuals, small and large employers, professional bodies, accounting firms and advisory bodies. All respondents welcomed the idea of having a statutory exemption for trivial BiKs and felt that it would provide clarity and fairness for employers on how to treat and administer such BiKs.

Designing the principles for trivial BiKs

- 2.6 The Government asked what stakeholders thought about the principles that were set out in the consultation document (see paragraph 2.1 for details), specifically: **‘Do you agree that these principles should apply to the definition of a trivial BiK? Are there other principles that you think should apply?’**
- 2.7 Respondents agreed that the definition of a trivial BiK should be a principles-based approach rather than a prescriptive list of BiKs that would qualify for the exemption. However, a number of comments were made about some of the principles that were outlined in the consultation.

Vouchers

- 2.8 Of those who commented on the issue of vouchers (which was to exclude vouchers entirely), there were representations from a number of stakeholders, especially from large employers and professional bodies, who felt the Government should include vouchers that cannot be exchanged for cash (non-cash vouchers) within the scope of the exemption. They felt the decision to exclude non-cash vouchers would put some employees at a disadvantage. Not allowing such vouchers instead of, for example, a gift of a bottle of wine, would fail to accommodate different individuals’ personal beliefs or preferences. There was strong feeling that the option of including non-cash vouchers in the guiding principles would allow employers flexibility in this area.

Regularity

- 2.9 It was proposed in the consultation document to restrict trivial BiKs to items that are given on an irregular or a one-off basis, as this was in line with the current guidance given to employers by HMRC under its existing practice for determining whether BiKs can be treated as trivial. This meant that BiK given regularly to employees would not be covered by the exemption. A number of respondents including accounting firms, employers and professional bodies queried the use of the concept of ‘irregular’ , feeling that the term ‘irregular’ was open to different interpretations and that the term would need to be clearly defined.

Pre-arranged entitlement

- 2.10 Another point raised by some respondents, mainly large employers and professional bodies, was how ‘pre-arranged’ entitlements would be identified and treated. An example that was given by a professional body was, *“if employers have a stated policy of providing small gifts on employee’s birthday or at Christmas, events which reoccur every year, would this constitute a pre-arranged entitlement?”*

Other comments

- 2.11 One professional body thought that when considering how a trivial BiK should be defined this might best be determined by distinguishing between BiKs that arise

in recognition of an individual's performance in carrying out the duties of their employment (or to encourage better performance), from those given to an employee as a consequence of being employed by a benevolent employer. They suggested that, *'rewards for specific services performed by the individual as part of their contract of service should not in principle be exempt from taxation. The exemption should be reserved for those items which arise on a purely ad hoc basis and unrelated to the employee's paid performance.'*

Government response

- 2.12 The Government will establish the trivial BiK exemption on a principles basis as it is clear that stakeholders agreed that this provides the appropriate framework. The principles are that the BiK:
- must not be cash or a voucher that is exchangeable for cash.
 - cannot be used in conjunction with any salary sacrifice arrangement or any other contractual obligation.
 - must not be provided to the employee in recognition of particular services performed in the course of the employment or in anticipation of such services.
- 2.13 In response to concerns raised by stakeholders, the Government has made some changes to the principles, to ensure that they provide the clarity required for the exemption to represent a real simplification. This includes allowing non-cash vouchers within the definition of a trivial BiK for the purposes of the exemption, to accommodate an individual's beliefs or preference and to ensure equality of treatment.
- 2.14 The Government has also decided that the concept of whether a BiK is provided "irregularly" or not, would not provide a clear definition that would give employers certainty of treatment. It would not be possible to ascertain in 'real-time' whether a BiK was provided irregularly without reference to other BiKs an employee had received, undermining the simplification intended.
- 2.15 However, the policy intention is still to provide an exemption that allows employers to provide a small number of low cost BiKs to employees, and so a suitable alternative principle was considered. In particular, consideration was given to the kinds of circumstances in which employers currently provide trivial BiKs – these are intended to be related to personal events or to the welfare of the individual, outside of the performance of their duties as an employee. The Government has therefore decided to define a trivial BiK as one which is provided by an employer to support their employees' welfare, and not in recognition of particular services performed by the employee in the course of the employment, or in anticipation of such services.
- 2.16 Finally, the Government has recognised the issue raised by respondents regarding how "pre-arranged entitlements" would apply within the exemption. The Government has decided that for there to be no pre-arranged entitlement, there must not be any contractual obligation to the BiK, including through salary sacrifice. An employer having a corporate policy of providing a BiK at certain points in the year, but without a contractual obligation to do so, would not be caught by this definition.

Monetary cap per trivial BiK

- 2.17 The Government proposed supplementing the principles with a monetary limit for a trivial BiK. This was part of the recommendation made by the OTS which the Government accepted. It therefore sought views from stakeholders on what an appropriate monetary limit would be, specifically: **“What do you think would be an appropriate monetary limit for the definition of a trivial BiK?”**
- 2.18 The vast majority of respondents (87%) supported a monetary limit for an individual trivial BiK, though views varied on what this limit should be. In the consultation document the government used examples with a monetary limit of £30 for illustrative purposes only. Only 12% of respondents felt £30 – 40 was an appropriate monetary limit. A limit of £50-75 was the most popular option (40%) while 25% said it should be £100-150.
- 2.19 The reason given by one large employer for limiting a monetary limit to £30 was that it felt it was important to limit the value of a trivial BiK so as to discourage abuse of the relief. However, it also felt the limit should be uplifted over time in order to avoid *“fiscal drag”*.
- 2.20 In both the written responses and in consultation meetings over the summer, many felt that a limit of less than £50 would be insufficient given that the cost of a bunch of flowers including delivery charges in London currently costs around £40-50. One professional body stated that, *“the monetary limit needs to be set at a high enough level to be worthwhile. We would not expect this limit to be below £50 and would probably be inclined to consider a limit more in the region of £75”*.
- 2.21 Some respondents were of the view that the monetary limit should be £100-£150. For example, one professional body thought that both the individual and annual limit should be set at £100. One accounting firm also said an appropriate monetary limit would be £100 per employee per annum, but that if the intention is not to review the limit regularly they would propose a higher limit of £250, *“in order to provide some future-proofing and enduring utility”*. Notably respondents in this category were mainly accounting firms, large employers, professional bodies and advisory bodies.
- 2.22 Many respondents highlighted a desire to uprate the monetary limit per trivial BiK on a regular basis. Some suggested that the monetary limit should be linked to the Consumer Price Index (CPI). One professional body commented that *“it would be too easy for the exemption to become outdated and too small to be useful”*. Others felt the initial monetary limit should be updated annually based on the Retail Price Index (RPI).
- 2.23 Another professional body agreed with the proposal to include a set monetary limit on a trivial BiK, but felt it was important for such a limit to be reviewed regularly, to ensure that the limit continues to match current value and continues to meet the objective of simplification in the long-term.

Government response

- 2.24 The purpose of setting a monetary limit is to provide certainty about the value of BiKs that can be treated as trivial. In considering what an appropriate limit should be, the Government has balanced reducing administrative burdens for both employers and HMRC, by setting a limit that takes into account the cost of providing those BiKs that employers would consider as trivial, with ensuring that only relatively low value BiKs are covered by the exemption.
- 2.25 The Government has decided to set the monetary limit for an individual trivial BiK at £50. This recognises that a £30 limit, as used for illustrative purposes in the consultation document, would be insufficient for many of the BiKs that employers regularly provide.
- 2.26 To take into account the concerns of some stakeholders that without uprating the limit it may quickly become outdated, the Government will provide a power in the legislation for the monetary limit to be uprated in the future. The Government will keep the monetary limit under review.

The annual cap for trivial BiKs

- 2.27 In the consultation document, the Government proposed having an annual exemption cap which would limit the total value or number of trivial BiKs that an employee could receive in a year. It was felt that an unlimited exemption, (i.e. having no annual cap), would be inappropriate as the exemption was intended for BiKs that are provided irregularly, rather than low cost BiKs that are provided frequently and which should continue to be liable to tax and NICs. The Government then asked the question - **should the exemption include an annual cap per employee? Should this cap be a monetary value, or an item limit? What should the value or limit be set at?**
- 2.28 At the stakeholder consultation meetings there was an overwhelming strength of opinion that not having an annual cap was preferable because of the administrative costs of complying with such a cap. However, the written responses were more balanced as they were equally split between those who were in favour of having an annual cap and those who were not.
- 2.29 One professional body said they believed having an overriding annual exempt monetary limit would provide the clarity that is needed to improve the system of dealing with trivial BiKs. One of the large employers said, *“We believe setting an annual limit with no restriction on the number of individual BiKs [within that limit] would achieve the government’s aims”*.
- 2.30 On the other hand, those who were not in favour of having an annual cap gave varied reasons why they felt there should not be one. Some of the comments made are captured below.

- 2.31 One large employer said “*setting an annual exemption limit would place a new significant workload burden on employers (compared to the triviality of the benefit concerned) as it would mean that every benefit provided to every employee during a tax year would need to be monitored in real time and tracked against other benefits provided to date for that employee, just to establish firstly whether the benefit is trivial, and if so to establish whether the annual limit had been breached. This would be time consuming, resource intensive and unworkable for a lot of organisations, especially larger employers who analyse expenses and benefits on an annual basis not by employee but by benefit type (e.g. staff entertaining) in determining P11D/PSA reporting.*”
- 2.32 A large accounting firm said, “*we feel strongly that any annual exemption limit at the employee level would totally reverse the simplification effect intended by the proposed change. Employers currently do not have any requirement to track on an individual basis whether a previous benefit has been received by the individual and how much this might have cost. Most employers do not have the systems in place to easily or automatically do so. As a consequence, the introduction of an annual cost cap would make the administration of trivial benefits significantly more onerous than at present, and may make it uneconomical for employers to use the exemption altogether*”.
- 2.33 This point was further echoed by one professional body when it said that “*we do not believe [the] proposal [to include an annual cap] will simplify matters from a tracking and reporting perspective. We believe that the simplest approach would be to set a monetary limit per gift without any restriction on the number of gifts or the inclusion of an annual limit. This would enable employers to easily identify those gifts in excess of the monetary limit as being liable to income tax and NIC.*”

Government response

- 2.34 It is clear that many respondents, particularly large employers, believe that having an annual cap will add unnecessary administrative burdens which run counter to the purpose of the exemption to provide simplification. The Government has listened to the views expressed in both written responses to the consultation and face to face meetings, and has decided not to include an annual cap within the exemption.
- 2.35 Despite the even split of opinion on whether to include an annual cap or not, the majority of respondents did express an opinion on whether they preferred a monetary cap versus a cap based on the number of items allow. The majority of those who expressed an opinion preferred a monetary annual cap, whereas only a few thought that an item annual cap was more appropriate.

Higher trivial BiK limit with lower annual cap

- 2.36 The consultation document also explored the balance between the monetary limit for an individual trivial BiK against the value of any annual cap for the total value or number of BiKs that could be covered by the exemption. It proposed that a higher individual BiK monetary limit with a lower annual cap would ensure that more individual BiKs were within the scope of the exemption while restricting the number or total value of BiKs that could be provided to an employee in any one tax year. It then asked the question. **“As set out at paragraph 3.9 of the consultation document do you agree that a higher cost trivial BiK limit with a lower annual exemption limit would effectively deliver the Government’s intention to simplify the administration of employee BiKs?”**
- 2.37 While the Government has decided not to include an annual cap, a number of respondents did comment on the specific question of the balance between the two limits. A summary of the responses to this point is included here for completeness.
- 2.38 In response to this question some respondents reinforced their views on the reasoning for including an annual cap in the first place. One large employer said that *“a higher cost annual benefit with a lower annual exemption would therefore provide the greatest flexibility to achieve this aim and the benefits of being able to provide one meaningful benefit tax free compared to a number of minor benefits should be built in to the design of this exemption”*. Others felt that having an overriding annual exemption would provide the clarity that is needed to improve the system of dealing with trivial BiKs.
- 2.39 A professional body stated, *“If an annual monetary limit is required then, on balance, a higher cost individual trivial BIK limit coupled with a lower annual limit for all trivial benefits received by an employee may be the better option. Too low an individual item limit would catch even the first trivial benefit which would seem counter-productive”*.
- 2.40 Another large employer said that a more pragmatic approach should be taken, bearing in mind the tax at stake. A few respondents felt having a higher trivial BiK limit would work but said the whole idea of having an annual exemption cap would defeat the government’s intention of simplification. Another employer felt that there should be one monetary limit both for the trivial BiK and the annual exemption cap which takes away any complication and it is for the employer to decide how he wants to apply it.

3. Next steps

Implementation

3.1 The Government announced at Autumn Statement 2014 that the introduction of the trivial BiKs exemption will apply from 6 April 2015. Draft legislation is also published today on which comments are also invited. The consultation will run for eight weeks. Guidance will be published in due course to assist employers in implementing and administering the exemption.

3.2 Comments on the draft legislation should be sent to HMRC by e-mail to employmentincome.policy@hmrc.gsi.gov.uk

Alternatively comments may be made by post to the following address.

Yinka Oyesiku
Employment Income Policy Team
Her Majesty's Revenue & Customs
Room 1E, 1st Floor
100 Parliament Street
London
SW1A 2 BQ

Annexe A: List of stakeholders who submitted written responses

We are grateful for all the written responses each of which has been taken into consideration in shaping the details of this policy. Those who submitted written responses to this consultation are shown below, there were two responses from individuals that are not listed here.

Association of Accounting Technicians (AAT)
Association of Chartered Certified Accountants (ACCA)
AGC
Aspen Insurance UK Services
Association of Taxation Technicians (ATT)
BBC Fire Protection Ltd
BDO LLP
BHP Chartered Accountants
BskyB
Cepha Controls
Chantrey Vellacott
Chartered Institute of Taxation (CIOT)
Chartered Institute of Payroll Professionals (CIPP)
Confederation of British Industry (CBI)
Council of Lutheran Churches
Deloitte LLP
Diageo
Employment Lawyers Association (ELA)
E & Y
Grant Thornton
Hull City Council
Institute of Chartered Accountants (England & Wales) (ICAEW)
Institute of Chartered Accountants (Scotland) (ICAS)
Institute of Financial Accountants (IFA)
Integrated Business Centre
IREEN (Electronic Exchange with Government network)
KPMG
Legal & General Group PLC
Leicester City Council
Low Income Tax reform Group represented by CIOT
Mazars
M & A Partners
MJCA
M & S
Nationwide Building Society
Office of Tax Simplification

Open University
Payroll Alliance
Prudential PLC
PWC
Rolls Royce
Scottish Qualification Authority
Siemens
TaxAid
Try Lunn & Co Accountant
Whitefield Tax Ltd

Annexe B: List of stakeholders who took part in consultation meetings held

HMRC are very grateful to those who took time to come and attend consultation meetings held in London during July and August 2014 to give their views on this policy. Those who took part in these meetings were:

Aspen
Association of Taxation Technicians (ATT)
Aviva
BAE Systems
Business Application Software Developers Association (BASDA)
BDO LLP
British Telecom
Capita
CGI
Chartered Institute of Payroll Professionals (CIPP)
Chartered Institute of Taxation (CIOT)
Confederation of British Industry (CBI)
Construction Industry Joint Taxation Committee
Deloitte LLP
Diageo
Easyjet
Gabem Management
Genworth
HP
Institute of Chartered Accountants (Scotland) (ICAS)
ISIS Support Services
KPMG
Low Income Tax reform Group (LITRG)
Midland HR
Nest Corporation
Office of Tax Simplification
Prudential PLC
Toyota GB PLC
University of Birmingham
University of Glasgow