



HM Revenue
& Customs

Technical Note: Tax exemption for trivial benefits in kind

Technical Note
9 December 2015

Contents

Page

Introduction

Chapter 1 Summary

Chapter 2 Close companies

Chapter 3 Family and household members

Chapter 4 Former employees

Chapter 1

Summary

From April 2016, the government will introduce a new statutory exemption for low value benefits in kind (BiKs) which meet certain conditions. These ‘trivial’ BiKs will be exempt from income tax and National Insurance contributions (NICs) and will not need to be reported to Her Majesty’s Revenue and Customs (HMRC). The exemption will provide a simplification to the current approach where employers are required to agree with HMRC whether certain low-value BiKs can be treated as trivial. This will deliver administrative savings for employers and HMRC.

To ensure that the exemption is not misused by employees with a significant degree of control over the level and type of remuneration provided by a company, an annual cap will apply in certain circumstances to trivial BiKs provided by close companies.

Amendment has also been made to EFRBS Regulations to ensure the exemption, and the annual cap, applies equally to trivial BiKs provided to former employees.

This document sets out in more detail how the exemption, and the interaction with the EFRBS Regulations will work in practice.

Chapter 2

Close companies

When draft legislation was published as part of the consultation on Finance Bill 2015, concerns were raised by stakeholders that the exemption could be open to misuse. Where all relevant conditions are met, there is no limit on the number of trivial BiKs that can be provided in a tax year. It was felt that this could lead to a risk that the exemption would be exploited by directors and other office-holders¹ of close companies² who had control over their own remuneration and could make arrangements to be provided with a large number of trivial BiKs free of tax and NICs. A similar risk could arise where benefits were provided by a close company to members of a director’s or other office-holder’s family or household, even where they were not employed by the company.

To avoid any risk of misuse in this way, the draft legislation has been amended to include a further condition (condition E) in new section 323A(10) of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA). This condition means that where a trivial BiK is provided to an employee who is a director or other office-holder of a close company, an ‘annual exempt amount’ (or benefit ‘cap’) of £300 applies in each tax year. Where an employee is

¹ As defined in section 5(3) the Income Tax (Earnings and Pensions) Act (ITEPA) 2003

² As defined at section 439 of the Corporation Tax Act (CTA) 2010

a member of the family or household³ of the director or other office-holder, they will also be subject to a £300 cap in their own right. The tax treatment of a trivial BiK provided for an individual who is not an employee but is a member of the family or household of a director or other office-holder is set out in Chapter 3.

The cap will apply to trivial BiKs provided in a tax year and any unused amount cannot be carried forward to the next tax year.

Example 1

Mr and Mrs Smith are directors of a close company and their daughter Jo is an employee.

In October Mrs Smith receives a bottle of wine from the company for her birthday. The cost to the company is £30 and this amount is deducted from her annual cap of £300, leaving her an available exempt amount for any future trivial BiKs in the tax year of £270.

At Christmas Mr and Mrs Smith both receive a gift from the company that cost the company £50 each, and their daughter receives a gift costing £25.

As Mr Smith has not received any other trivial BiKs, the cost of the Christmas gift is deducted from his annual cap of £300, leaving him an available exempt amount for any future trivial BiKs in the tax year of £250.

For Mrs Smith, the cost of her Christmas gift is deducted from her available exempt amount of £270, leaving her an amount to set against any further trivial BiKs in the tax year of £220.

Jo is an employee, but as she is also a member of the directors' family, an annual £300 cap applies to her. The cost of her Christmas gift must be deducted from her cap, leaving her with an available exempt amount of £275 for any future trivial BiKs in the tax year.

Chapter 3

Family and household members

If an employer wishes to provide a BiK to a member of an employee's family or household, it will usually be chargeable to tax on the employee. Under the new exemption, where a trivial BiK is provided to an employee's family or household members by an employer that is not a close company, no tax or NICs will be due, subject to all conditions for the exemption being met.

However, if a close company wishes to provide a qualifying trivial BiK to a person ('P') who is not an employee but is a member of an employee's family or household then, where the employee is either a director or other office-holder of the company or, alternatively, a family or household member of a director or office-holder, the £300 annual cap will apply.

³ Members of a person's family or household are defined at section 721 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003

The amount to be deducted from the employee's annual cap will be the cost of the benefit provided to P, divided by the number of employees who are either directors or other office-holders of the close company, or a member of their family or household.

Example 2

Peter and his brother George, are directors of a close company. They have a sister, Sarah, who is not an employee of the company. At Christmas they are each provided with a turkey by the company, each costing the company £50.

Due to the provision of eligible trivial BiKs earlier in the tax year, Peter has an available exempt amount of £55 (he has already received £245 of eligible trivial BiKs) and George has £95 (he has already received £205 of eligible trivial BiKs).

The available exempt amount for both Peter and George will be reduced by the cost of their own turkeys, leaving £5 and £45 respectively.

As Sarah is not an employee, the cost of her turkey must be allocated equally between any employees who are members of her family or household and directors or other-office holders of the company. This means that an amount of £25 ($£50/2$) will be allocated to each of her brothers and deducted from their available exempt amounts.

Peter will exceed his annual exempt amount of £300, as he only has £5 available. As the exemption is an all or nothing provision, he will be liable to tax on the full allocated amount of £25. George's available exempt amount is sufficient for the allocated amount to be fully covered, and he has £20 ($£45-£25$) available for any future trivial BiKs in the tax year.

Chapter 4

Former employees

There may be occasions where employers wish to provide trivial BiKs to former employees, for example, an invitation to a staff party or the provision of a gift in recognition of a particular life event. Under current legislation, a tax charge will arise under section 394 ITEPA where a benefit is received by a former employee. To ensure that the exemption for trivial BiKs applies to those provided to former employees, changes will be made to the Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) Regulations 2007 ("the EFRBS Regulations").

Example 3

Ms Brown has retired after 25 years' service with the same employer. At Christmas 10 former employees, including Ms Brown, receive a hamper, each of which cost the employer £50. The benefit qualifies for the trivial BiKs exemption and the changes to be made to the EFRBS Regulations will apply the exemption to the trivial BiK provided to Ms Brown.

As well as enabling the trivial BiKs exemption to apply to benefits provided to former employees, the changes to be made to the EFRBS Regulations will also apply the close company restriction. This means that where the former employee was a director or other office-holder of a close company, or a member of the family or household of a director or other office-holder of a close company, the annual cap will apply.

The annual cap will also apply where a qualifying trivial BiK is provided to a person who is not a former employee but is a member of a former employee's family or household, where the former employee was either a director or other office-holder of the company or, alternatively, a family or household member of a director or office-holder. The amount to be deducted from the former employee's annual cap will be the cost of the benefit provided, divided by the number of former and current employees who are either directors or other office-holders of the close company, or a member of their family or household.

Example 4

Mr White and his 2 children are all directors of a close company. After Mr White retires his wife receives a £45 bouquet of flowers from the company on her birthday.

Mrs White has never been an employee of the company, but the benefit cost will need to be set against the annual exempt amount of the former and serving directors as she is a member of their family.

The amount to be allocated against the current director's annual cap is calculated in accordance with section 323B(4) ITEPA and for Mr White, as a former director, the amended EFRBS Regulations apply. The overall effect is that, in calculating the allocated amount in respect of Mrs White's benefit cost, the former and existing directors are taken into account. The amount deducted from the annual cap for each director is £15 (£45/3).