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## EMPLOYEE BENEFITS AND EXPENSES – TRIVIAL BENEFITS EXEMPTION

ICAEW welcomes the opportunity to comment on the consultation paper *Employee benefits and expenses – Trivial benefits exemption* published by H M Revenue & Customs on 18 June 2014.

This response of 10 September 2014 has been prepared on behalf of ICAEW by the Tax Faculty.

Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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## MAJOR POINTS

### Introduction

1. We welcome the opportunity to comment on the proposals in HMRC's consultation document of 18 June 2014.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. In 2013 we gave evidence in meetings to the Office of Tax Simplification to help them compile their [interim report on employee BiK and expenses](#) published on 8 August 2013 and their [second report \(formerly called final report\) on employee BiK and expenses](#) published on 14 January 2014. Since then, OTS published on 18 July a note on HMRC's condox on employee BiK published in June 2014 (including this one) and on 31 July another [final report](#).

### General comments

4. We welcome the intention to introduce a statutory trivial benefit-in-kind (BiK) as this will introduce more certainty for employers. However it should not be forgotten that this exercise is supposed to be a simplification, so the rules should be kept as simple as possible. Out of the proposals in the condoc we prefer Option 1, but the imposition of an annual limit introduces complexity which seems unnecessary given the conditions for a BiK to be trivial set out in para 3.2 of the condoc.
5. Where the value of BiK exceed the monetary limits, we recommend that the excess be able to be reported to HMRC in a PAYE settlement agreement (PSA) or P11D, as the reduction in compliance cost for employers of reporting one figure on a PSA rather than completing multiple forms P11D will for employers of several employees probably more than outweigh the greater tax cost arising from the tax having to be grossed up. However, because smaller employers are likely to be more familiar with completing form P11D than applying for a PSA, we would not want to prevent employers from reporting the excess on form P11D if they wish.

## RESPONSES TO CONSULTATION QUESTIONS

### Chapter 3: Detail

#### *Defining a 'trivial' BiK*

**Q1: Do you agree that the principles set out at paragraph 3.2 should apply to the definition of a trivial benefit? Are there other principles that you think should apply?**

6. We consider that the following should be within the definition of a trivial benefit:
  - items that are given not by way of a reward for work but as a mark of personal esteem, which currently employers can obtain HMRC's agreement to their not being a BiK; and
  - vouchers where they are substitutes for something like a Christmas turkey or a bottle of wine for employees who are respectively vegetarian or teetotal.

**Q2: What do you think would be an appropriate monetary limit for the definition of a trivial BiK?**

7. We understand that the unofficial HMRC limit is presently £50 which seems a reasonable figure.
8. We suggest that the primary legislation provides for the appropriate monetary limit to be uprated automatically or by Treasury Order based on the retail price index (RPI) when RPI increases take it up by a multiple of £10 so we are not left with odd and ridiculous amounts.

#### *Annual exemption*

##### *Exemption limit*

**Q3: As set out at paragraph 3.9, do you agree that a higher cost trivial BiK limit with a lower annual exemption limit would more effectively deliver the Government's intention to simplify the administration of employee BiKs?**

9. We consider that all trivial BiK should be allowed up to the annual limit with any excess to be reported and accounted for either via P11D or via a PSA. PSA would be simpler for both employers with multiple employees and HMRC than respectively completing and processing forms P11D/P9D.

*Employee level exemption:*

Option 1: An annual cost exemption per employee at each employment

**Q4: Do you think that having an annual cost exemption for each employment for each tax year as set out in Option 1 would mean less administration and fewer reporting requirements for an employer?**

10. We consider that the annual cost exemption is the simplest proposal in the condoc.

**Q5: Under Option 1, what level do you think an annual cost exemption for each employment should be set at to cover genuinely 'trivial' benefits?**

11. The Republic of Ireland has a trivial benefits limit of 250€. We suggest that the annual cost exemption be equivalent to this figure, say £200.
12. We suggest that primary legislation should provide for this figure to be uprated automatically or by Treasury Order based on RPI when RPI increases take it up by a multiple of £50, so we are not left with odd and ridiculous amounts.

Option 2: An annual numerical exemption per employee at each employment

**Q6: Under Option 2, how many trivial BiKs exemptions do you think should be allowed per employee in a tax year?**

13. No comment, as we do not favour this option.

**Q7: What do you see as the advantages/disadvantages of Option 1 in comparison to Option 2?**

14. We believe that Option 1 will prove simpler for employers because it will be necessary only to track the value, not the value and number, of trivial BiK.

**Q8: Do you think that an annual cost exemption (Option 1) or an exemption based on the number of trivial BiKs provided (Option 2) would best deliver the Government's intention to simplify the administration of employee benefits?**

15. Out of the options outlined in the condoc, we believe that Option 1 will prove simplest for employers and therefore will best meet the government's objective.

**Q9: Are there any other aspects that you think the Government should take into consideration in finalising its policy on the introduction of a trivial BiKs exemption?**

16. As this exercise is supposed to be a simplification, employer obligations need to be kept as simple as possible. The imposition of an annual limit introduces complexity which is unnecessary given the conditions for a BiK to be trivial set out in para 3.2 of the condoc. And employers with multiple employees are likely to prefer to account for BiK in excess of the monetary limits via a PSA rather than P11D, as the simpler reporting and hence lower compliance costs will outweigh the extra tax costs.

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see [icaew.com/en/technical/tax/tax-faculty/-/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx](http://icaew.com/en/technical/tax/tax-faculty/-/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx) )