



Income tax: statutory exemption for trivial benefits-in-kind

Who is likely to be affected?

Any employer who provides to their employees certain low value benefits-in-kind (BiKs) which will, in some circumstances, become exempt from income tax.

Individuals who currently pay income tax on certain low value BiKs provided by their employer, which will become exempt from income tax.

General description of the measure

The measure will introduce a statutory exemption which will allow employers to identify and treat certain low value BiKs provided to employees as 'trivial'. Those BiKs will become exempt from income tax and NICs and therefore not need to be reported to HM Revenue & Customs (HMRC).

Policy objective

The measure is intended to provide a simplification to the current approach for dealing with low value BiKs, whereby employers are required to agree with HMRC whether certain BiKs can be treated as trivial. This is a burdensome process for both employers and HMRC, and is disproportionate to the amounts of tax and NICs involved.

A statutory definition of a trivial BiK will provide certainty to employers as to the treatment of such BiKs, and therefore allow employers to identify them in "real-time", avoiding the need to contact HMRC or report such BiKs on P11D or PAYE Settlement Agreement (PSA) forms after the end of the tax year.

Background to the measure

The measure was announced by the Chancellor at Budget 2014 as part of a package of measures aimed at simplifying the administration of employee BiKs and expenses. This followed the Office for Tax Simplification's review of employee BiKs and expenses, published in January 2014.

A consultation document entitled *Employee Benefits and Expenses – Trivial Benefits exemption* was published on 18 June 2014. The consultation closed on 9 September 2014 and a summary of responses was published on 10 December 2014.

Detailed proposal

Operative date

This measure will have effect on and after 6 April 2015.

Current law

Employers are currently required to report all BiKs and expenses provided to their employees annually on forms P11D or P9D. There is currently no minimum cost threshold for BiKs having a tax charge or NICs liability, but employers can apply to HMRC for agreement to exclude BiKs on the grounds that they are 'trivial'. The arrangements are concessionary under HMRC's collection and management powers: HMRC takes certain factors into consideration when agreeing to such arrangements. When HMRC agrees that the BiKs are trivial, by concession the employer does not have to report them on form P11D or P9D and there is no charge to income tax for the employee nor Class 1A NICs for the employer.

The Income Tax (Earnings and Pensions) Act (ITEPA) 2003 imposes a charge to income tax on employment income. Section 6(1) ITEPA provides that the charge to tax on employment income is a charge to tax on general earnings and specific employment income.

Section 201(2) defines a benefit as 'a benefit or facility of any kind' and defines an 'employment-related benefit' as any benefit other than an excluded benefit that is provided in a tax year to an employee or for a member of the employee's family or household by reason of the employment.

Proposed revisions

Legislation will be introduced in Finance Bill 2015 to introduce a new section into Part 4 of ITEPA – "Section 323A Trivial Benefits from employers" - to provide a statutory definition of a trivial benefit-in-kind. The exemption provides a number of conditions that must be met for a BiK to qualify as trivial, including an upper limit per individual BiK of £50.

The legislation will also amend section 716(2) (alterations of amount by Treasury order) and section 717(4) (negative procedure not to apply to certain statutory instruments) so as to enable the Treasury to make Regulations amending both the upper limit per individual BiK, and the conditions of the exemption, subject to the affirmative resolution procedure.

A Statutory Instrument will be laid to disregard from Class 1 NICs any non-cash vouchers provided that meet the trivial BiKs exemption in section 323A of ITEPA.

A Statutory Instrument will also be laid to extend the exemption to qualifying BiKs provided to former employees, by amending the Employers-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) Regulations 2007.

Summary of impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
	-	-10	-5	-10	-10	-10
	These figures are set out in Table 2.1 of Autumn Statement 2104 as <i>Office of Tax Simplification: Review of Expenses</i> , and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Autumn Statement 2014.					
	These figures also incorporate the Exchequer impact of <i>Income tax: abolition of the £8,500 threshold for benefits in kind</i> and <i>Real time collection of tax on benefits in kind and expenses through voluntary payrolling</i> .					
Economic impact	The measure is not expected to have any significant economic impacts.					

Impact on individuals, households and families	<p>This measure is not expected to have a significant on individuals and households or on family formation, stability or breakdown.</p> <p>Some employees (individuals) will no longer have to pay income tax on certain BiKs currently included on P11D forms. It is not possible however to estimate how many individuals will be affected.</p> <p>The measure is not expected to impact on family formation, stability or breakdown.</p>
Equalities impacts	<p>HMRC does not hold data on the protected characteristics of those affected, but the measure is not expected to have equality impacts on groups sharing protected characteristics.</p>
Impact on business including civil society organisations	<p>This measure is expected to create negligible ongoing administrative savings for those businesses and civil society organisations that provide such benefits, as it will reduce the burden associated with filing P11D and making PSA applications.</p>
Operational impact (£m) (HMRC or other)	<p>The measure is expected to create an administrative saving for HMRC as a result of a reduced number of BiKs recorded on P11D forms and PSA agreements. The administrative savings are anticipated to be negligible.</p>
Other impacts	<p>Other impacts have been considered and none have been identified.</p>

Monitoring and evaluation

The measure will be monitored and assessed alongside other measures in the government's package of employee BiKs and expenses simplifications, through communication with affected taxpayer groups.

The legislation also includes provision for the monetary limit for a trivial benefit-in-kind to be updated in the future. The government will keep the monetary limit under review.

Further advice

If you have any questions about this change, please contact the Employment Income Policy Team (employmentincome.policy@hmrc.gsi.gov.uk).

1 Exemption from income tax for trivial benefits provided by employers

- (1) ITEPA 2003 is amended as follows.
- (2) After section 323 insert –

“323A Trivial benefits provided by employers

- (1) No liability to income tax arises in respect of a benefit provided by, or on behalf of, an employer to an employee or a member of the employee’s family or household if conditions A to D are met.
- (2) Condition A is that the benefit is not cash or a cash voucher within the meaning of section 75.
- (3) Condition B is that –
 - (a) the cost of providing the benefit, or
 - (b) if subsection (6) applies, the average cost per person of providing the benefit,does not exceed £50.
- (4) Condition C is that the benefit is not provided pursuant to relevant salary sacrifice arrangements or any other contractual obligation.
- (5) Condition D is that the benefit is not provided in recognition of particular services performed by the employee in the course of the employment or in anticipation of such services.
- (6) This subsection applies if –
 - (a) a benefit is provided to more than one person, and
 - (b) the nature of the benefit or the scale of its provision means it is impracticable to calculate the cost of providing it to each person to whom it is provided.
- (7) For the purposes of this section, the average cost per person of providing a benefit is found by dividing the total cost of providing the benefit by the number of persons to whom the benefit is provided.
- (8) “Relevant salary sacrifice arrangements”, in relation to the provision of a benefit to an employee or to a member of an employee’s family or household, means arrangements (whenever made, whether before or after the employment began) under which the employee gives up the right to receive an amount of general earnings or specific employment income in return for the provision of the benefit.
- (9) The Treasury may by regulations amend this section so as to alter the conditions which must be met for the exemption conferred by subsection (1) to apply.

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- (10) The Treasury must not make regulations under subsection (9) unless a draft of the regulations has been laid before and approved by a resolution of the House of Commons.”
 - (3) In section 716 (alteration of amounts by Treasury order) in subsection (2), after paragraph (f) insert—
 - “(fa) section 323A(3) (trivial benefits provided by employers),”.
 - (4) In section 717(4) (negative procedure not to apply to certain statutory instruments) after “other care: meaning of “eligible employee”),” insert “section 323A(9) (exemption for trivial benefits provided by employers),”.
 - (5) The amendments made by this section have effect for the tax year 2015-16 and subsequent tax years.

EXPLANATORY NOTE

EXEMPTION FOR TRIVIAL BENEFITS FROM EMPLOYERS

SUMMARY

1. Clause [X] introduces a statutory exemption from income tax for trivial benefits-in-kind (BiKs) provided by employers to employees. BiKs that qualify for the exemption will not incur a charge to income tax nor a liability to National Insurance contributions, and will not need to be reported to HMRC by employers. The exemption replaces concessionary arrangements whereby employers are required to agree with HMRC whether the provision of certain BiKs could be treated as trivial.

DETAILS OF THE CLAUSE

2. Subsection 1 provides for the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) to be amended.

3. Subsection 2 inserts new section 323A into Chapter 11 of Part 4 of ITEPA 2003 (miscellaneous exemptions).

New section 323A Trivial benefits from employers ITEPA 2003

4. New Subsection 1 removes the liability from income tax for a BiK provided by, or on behalf of, an employer to an employee or their family and household, if all of the conditions A-D, as set out in subsection (2) – (5) are met. The definition of an “employee’s family or household” is set out in section 721 ITEPA 2003.

5. New Subsection 2 defines Condition A which provides that the exemption applies only if the BiK is not cash or a cash-voucher as defined in section 75 ITEPA 2003.

6. New Subsection 3 defines Condition B which provides that the exemption only applies if the cost of providing the BiK, or the average cost if subsection (6) applies, does not exceed £50 per person.

7. New Subsection 4 defines Condition C which provides that the exemption only applies if the BiK is not provided as part of a contractual obligation, including salary sacrifice arrangements.

8. New Subsection 5 defines Condition D which provides that the exemption only applies if the BiK is not provided in recognition of services performed by the employee in the course of their employment, or anticipation of such services.

9. New Subsection 6 sets out the circumstances in which average cost may be used for the purposes of determining whether Condition B is met.
10. New Subsection 7 sets out how the average cost per person of any BiK provided to more than one person should be calculated for the purposes of determining whether Condition B is met.
11. New Subsection 8 defines “relevant salary sacrifice arrangements” for the purposes of determining whether Condition C is met.
12. New Subsection 9 provides a power to enable the qualifying conditions, which must be met for the exemption to apply, to be amended by regulations.
13. New Subsection 10 provides that any regulations made using the power contained in new subsection 9 must be made by the affirmative resolution procedure.
14. Subsection 3 adds new section 323A to the provisions listed in section 716 ITEPA 2003. Section 716 provides that sums of money specified in those provisions may be increased by an order from the Treasury. This enables the £50 figure in new subsection (3) to be amended by Treasury order using the negative resolution procedure
15. Subsection 4 makes a consequential amendment to section 717(4) ITEPA, inserting a reference to the new regulation making power contained in new subsection 9. Section 717(4) contains a list of the powers in ITEPA 2003 that are subject to the affirmative resolution procedure.
16. Subsection 5 sets out when the exemption will take effect from.

BACKGROUND NOTE

17. Clause [X] has been introduced to provide an exemption from income tax for qualifying trivial benefits in kind (BiKs) where the cost of providing the BiK does not exceed £50.
18. At Budget 2014 the Chancellor announced a number of measures aimed at simplifying the administration of employee BiKs and expenses. This followed the Office of Tax Simplification’s (OTS) review of employee BiKs and expenses¹.
19. 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;

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

- 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.

20. The trivial BiKs exemption replaces a concessionary practice, whereby an employer is required to agree with HMRC whether a BiK can be treated as trivial and therefore not chargeable to income tax or liable for National Insurance contributions (NICs). A corresponding disregard will be introduced to remove any liability for Class 1 NICs for any qualifying non-cash vouchers provided under the exemption.

20. If you have any questions about this change, or comments on the legislation, please contact Yinka Oyesiku on 03000 585 497, via email at employmentincome.policy@hmrc.gsi.gov.uk, or in writing to Employment Income Policy Team, HM Revenue and Customs, Room 1E, 100 Parliament Street, London, SW1A 2BQ.