

In this issue we look at

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## Editor's welcome

As the nights draw in, and the Christmas lights are switched on across the country, plans for the works Christmas party and secret Santas are being finalised. Let's hope you don't get the novelty brussel sprouts!

Adrian reminds us about the tax rules for gifts to staff and how to deal with staff entertaining and explains the difference between staff and business entertaining, as this is an area we have seen HMRC actively police this year. He has also written his wish list, (which is definitely not just for Christmas), of all the benefits and expenses you can give your staff free of tax and lastly he has put together a list of potential projects for you to consider for your 2020 diary.

Although things have been quite quiet for employment tax this year, we are bracing ourselves for a major event in 2020 - the introduction of the new rules on IR35. We saw changes to IR35 for the Public Sector in 2017 which had a major impact on service supply chains, and next year, similar changes are being rolled out to the private sector. The new rules are complicated, so we have produced an Employer's Update Special, that you can read by following the [link](#).

**Wishing you a very merry Christmas and all the best for 2020!**



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## HMRC and Employee Entertainment

Anything given, provided to or paid for, for employees, should be viewed with caution as HMRC are quick to assume that tax and NIC will be due.

Cash is easy to deal with. A cash present or bonus should be treated as salary and put through the payroll on or before the payment date under Real Time Information.

Other forms of employee entertaining, which include food, functions and parties, as we explain below, are caught by the Benefit In Kind (P11D) tax rules, incurring tax reporting and tax paying obligations.

What it is, who pays for it and how it is paid for, will determine whether it should be reported on a form P11D or through the payroll.

However, there are certain employee benefits at this seasonal (and any other) time of the year you can provide to your workforce without incurring a tax or NIC charge and they don't have to be reported to HMRC either.

### Gold, Frankincense and Myrrh

Staff gifts are a benefit in kind, but if you keep gifts to staff under £50 including VAT, they are regarded as trivial. A trivial gift cannot be in cash and cannot be a reward for work. Provided that you meet these criteria the gift is tax and NIC free in the employee's hands.

The trivial benefit rules apply all year round. So you can give your employees another £50 non cash gift on their birthday, and you don't have to tell HMRC.

You cannot use trivial benefits to cover employee of the month awards and similar rewards. Have you considered giving the afternoon off as a reward though? It may cost you more than £50 but it is completely tax free. There is no limit to the number of these trivial gifts you can give in a year, but Directors in companies with five or fewer shareholders, and their relations, are limited to six per tax year.



### Gifts from third parties

Business gifts that are basically just advertising eg a free sample, or which cost less than £50 and carry a conspicuous advertisement will not cause you a tax issue provided that the total amount to any one person does not exceed £50 per annum. Food, drink and tobacco are excluded though.

If your employees are receiving cash, vouchers or other gifts from your customers, suppliers and contacts at Christmas or any other time, you and the other party may have tax and NIC reporting obligations.

# Party, Party, Party



Business entertainment is separate and distinct from staff entertainment. Entertaining clients, contacts, suppliers and potential clients is business entertaining and shouldn't come with the P11D and tax problems. Issues may arise though where staff numbers are unreasonably large compared to business guests.

Staff entertainment will mean that you will have a tax issue to deal with, unless it is covered by one of the exceptions such as the 'Annual Functions' exemption.

## **£150 Per Head – should be one good Party / Annual Function!**

The annual functions exemption allows you to hold staff functions and parties without incurring tax reporting or paying duties. The function has to be annual and it has to be open to all employees. The exemption is £150 per head in total for the year, not £150 per head per event. You can use the exemption to cover more than one annual event, as long as the total cost of all events is less than £150 per head. The exemption is not an allowance; a Christmas party at £100 a head is covered, but add the summer BBQ at £60 a head and you have gone over the limit. The Christmas party stays within the limit, but the full £60 per head for the BBQ is taxable as a benefit in kind.

Instead of one big event, each department or branch can do their own thing, as long as everyone is invited, but separate department get together at any time, like the monthly sales team drinkies don't qualify and are a benefit in kind.

Don't forget to include all the costs of an event when totting up towards that £150 total. Food, room hire, travel, entertainment, drinks and accommodation. They may be split over credit cards, expense claims, purchase invoices, petty cash claims and cash floats. Anyone with a cash float needs to account for it properly or pay tax on it as salary. The Salesperson of the year award may be given out at the Christmas Party but it can't be included in the £150 annual functions exemption. It remains separately taxable, unless it is very minor.

## **Food Glorious Food**

Food you bring in or provide at an outside venue can be caught as employee entertaining. Food onsite for things like office meetings, working late, the early morning stocktake won't be regarded as a benefit in kind provided that all employees can benefit from free food at some point in the year. This is an exemption called the 'canteen' rules. You do not have to provide

an actual canteen. You can use an external canteen instead, but cafes or sandwich bars and the like will not be exempt.

Once you go off site, the benefit in kind rules will only exempt food if it is in connection with a training course, a business journey, entertaining clients, or covered by the annual functions exemptions.

This is the case no matter what the purpose of the meeting or get together. So, the managers meeting, the monthly sales team get together and the first Friday curry club will be caught as employee entertaining.

## **Chocolates, Bacon Sandwiches and Mince Pies**

HMRC will not seek to charge a benefit in kind for ordinary refreshments. So, tea, coffee, biscuits, cake and fruit, generally available to all staff, won't cause you a tax issue at any time. At Christmas this will extend to all those mince pies and boxes of chocolates doing the rounds, and the celebratory one-off bacon sandwich, but there is a line between refreshments and food.



# Dealing with a Christmas entertaining excess

Employee entertaining that isn't exempt is a benefit in kind, so it should go on a P11D, but this does mean that the employee gets a tax bill and the business a class 1A NIC charge. Alternatively, you could arrange to sweep it all up with a PAYE Settlement Agreement. The business ends up paying all the tax and NIC due, but it avoids the P11D issue. A PSA should be in place before the event, but it can be arranged with HMRC by 5 July following the end of the tax year, although it cannot be done online. Not everything can be included on a PAYE Settlement Agreement though.

## So What's The Problem?

Put simply the rules on employee benefits and entertaining are complicated, so mistakes happen and get repeated. Employees are fallible and things slip through. Stuff gets lost

in sundries nominal codes, mileage is not always accurate, expenses claims are not always detailed enough. HMRC know this and are expert at teasing out employee benefits, vehicle benefits and personal expenses which are not eligible for tax relief. Totting errors up, going back four, maybe six years can come to quite eye watering sums. Your business will be expected to pick up the bill, the interest and the penalties.

In the past we have come across businesses charging the expense to drawings or adding it back in the tax computation. Unfortunately this does not prevent the expense from being a benefit in kind. HMRC are simply unforgiving when it comes to this sort of expenditure. We have seen a tax bill for instance on a Christmas party held for the children of the workforce and let's not forget the food store Iceland, which came a cropper on

National Minimum wage over a voluntary Christmas Savings Scheme!

Your business generates a lot of records in addition to your payroll which HMRC are interested in. If you get selected for a check, HMRC will want to see expense records, mileage claims, lists of company vehicles, purchase invoices, credit card and fuel card statements, petty cash vouchers even. They are looking for employee entertaining, private travel, personal expenditure and especially private fuel.

BHP can carry out a business friendly review of your expenses, be it either a chat, a more in depth Q and A session or a good look at your paperwork and records.

We can also provide training to your staff so they can spot these expensive issues as they arise.

## 2020 diary planner

Looking ahead to the New Year

- Can both the business and the workforce benefit from Pension Salary Sacrifice?
- Is your company car fleet coming up for renewal? So is it time to go Electric or to review your offering and the associated costs?
- Are you prepared for the new off payroll working IR35 rules coming into force in April? You may need to carry out status reviews.
- CIS reverse charging has been delayed, but only until 1 October 2020.
- Do you need assistance with a PAYE Settlement agreement or the annual P11D reports?
- Are you considering outsourcing payroll altogether?
- Is it time for a National Minimum Wage health check? Are you sure that your deductions, timesheets and payroll procedures are not tripping you up with National Minimum Wage?



- Are you looking at restructuring, terminations and redundancies? If so, there are strict tax rules to consider.
- The Employers Allowance of £3,000 will have to be claimed next year and is not available if your annual NIC bill is over £100,000.
- Could your expenses and mileage claims do with a bit of a Spring clean?

# Ho! Ho! Ho! Santa's tax free gifts and benefits

There is a lot of red tape around employee benefits and entertaining, but there are some benefits which are completely tax free. Although they don't come with reporting obligations, they usually do come with qualifying conditions.

The company mobile phone is completely tax free, no matter how much private use is made of it. It must be a company phone on a company contract though.

Car Parking at or near the place of work is tax free for the employee.

Switching to Pension Salary Sacrifice can make a huge dint in your annual NIC bill and bring a bit of New Year cheer to the bottom figure on your employee's pay packet.

Food provided at the workplace can be tax free as refreshments under the canteen exemption mentioned earlier.

If an employee has to work from home under a home working arrangement you can pay them £4 a week tax free for doing so.

Additional leave is tax free, but have you considered a Holiday Days buy and sell programme? Salary sacrifice is a particularly effective tax and

NIC saving vehicle to use when employees want to buy extra days holiday for that once in a lifetime trip.

A company van that is only used for commuting and work is not a benefit in kind. If it is used privately for more than the odd trip to the dump and picking up a paper on the way to work, that turns it into a benefit in kind, the fuel too. So do monitor employee use of your van fleet.

If Santa brought them a new Electric Car for Christmas, charging it up at work is completely tax free.

Staff Training is a great way to invest in the workforce and provided that it is work related and not leisure, or being used as a reward, it is tax free.

Loans for season tickets or that really unexpected event are tax free up to £10,000. Be sure to have an agreement in place in case your employee suddenly decides to emigrate though.

If you are moving or headhunting someone to come and work with you there is a tax free relocation allowance you can pay of up to £8,000. Get in touch for further details as there are a number of qualifications.



Death In Service cover for the workforce is invaluable. Take advice if you are looking at key-man, shareholder and other types of insurances though.

Welfare counselling for ill health/ stress and other similar issues is tax free, but tax and legal advice is not. Providing disability aids and adaptations to the workplace does not create a tax issue. Eye tests for employees using a screen are tax free. The annual flu jab is tax free too.

**However you spend your Christmas we wish you a very safe and happy time.**

**For more information contact our Employer Solutions team**



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