

Entertaining, Annual Staff Parties, Gifts and Non Taxable Benefits etc

With Christmas and Christmas parties approaching, I thought it would be a good time to set out the rules for employers regarding the tax aspects of staff parties (which can be held at any time throughout the year), gifts, entertaining and other tax free gifts and awards.

Annual staff parties

There is a £150 (average cost per person) per tax year limit under which no benefit in kind tax charge arises on the employee in respect of attendance at a staff party/function. There is no requirement for the function to take place at or around Christmas, although many do. The employer has to identify the average cost per function per person, and if there is more than one function, the employer has to establish to which (if any) function(s) the exemption applies. To get the average cost per person requires the inclusion of VAT, accommodation and transport after which the total is divided by the total number of people attending, including non employees. Note that each function must be open to all grades of employees (including security staff, cleaners and the like), although it can be restricted to employees from a particular department, division or site. A function for the directors only would not qualify unless all employees were also directors. Any grade of employee being excluded from a particular function would result in that function being taxable in full on employees attending, with no exemption.

If there is one function and the cost per person exceeds £150, it is a taxable benefit in full as the limit has been exceeded (i.e. there is no ability to deduct £150 from a benefit in kind arising in excess of the annual limit).

If there is more than one function which in total exceed a cost of £150, then the exemption is only available on the function or functions which in total amount to £150 or less. Say there are two functions at £100 and £75. Assuming that the employer determines that the £100 function is exempt but the £75 function is taxable in full then if an employee only attended the £75 function, they would be taxed on the £75 benefit in full. If the employee attended both functions, they would still only be taxed on the £75. Obviously, if the employee does not attend either function or just the one with a cost of £100, no taxable benefit would arise.

Note that the £150 annual function exemption (and the various points below) has no impact on the tax position of the employer. The exemption is a relief from an income tax benefit in kind charge for employees. There is no add-back in the employer's tax computation and the expense is allowable no matter what the impact on the employee. In addition the employer can recover VAT incurred in respect of attendees who are employees (but not in respect of other attendees e.g. partners of employees, customers, suppliers etc).

Gifts

Gifts of cash or monetary value vouchers are subject to PAYE/NI in the same way as ordinary pay.

Most gifts in kind from an employer to an employee are taxable in full via the P11D system with an employers' Class 1A National Insurance liability arising. If the gift can be classed as immaterial, say one bottle of wine a year (even if the cost thereof is up to about £25), it will be non-taxable on the basis of triviality, but regular gifts or one high value gift would have to be declared on form P11D (except in the case of non director employees earning at the rate of less than £8,500 per annum) giving rise to a tax liability on the employee and a Class 1A National Insurance liability on the employer.

VAT can be recovered on gifts to staff where the value of all gifts to any one individual in any twelve month period does not exceed £50 (net of VAT).

Entertaining

The entertaining of customers/potential customers/other business contacts by an employer is not a tax deductible expense for the employer, except that special rules apply to businesses such as hotels where entertainment is provided in the ordinary course of the trade and free/subsidised entertainment is provided to advertise the business, in which case a tax deduction is permitted. Also it

should be noted that basic refreshments provided at a product promotion or client/customer meeting will generally be regarded as allowable provided that the purpose of the event/meeting is not primarily to provide entertainment.

The employer cannot reclaim VAT on the costs relating to entertaining events unless the event is predominantly for staff (or in very limited circumstances for overseas customers in respect of basic refreshments) in which case VAT can be recovered on the costs of staff attendees (but not in respect of non staff attendees e.g. partners) or relevant overseas customers. Entertaining is defined as including any hospitality whatsoever and therefore would include such items as concert tickets or invitations to attend football matches in an executive box. The cost incurred on entertaining is not a taxable benefit on any employees also attending so long as the cost is incurred wholly, exclusively and necessarily in the performance of their duties. This test is generally satisfied if the employee can be said to have acted as a host to the employer's guests.

Following on from the above it should be noted that if VAT is recovered on an item of entertaining on the basis that it relates to staff entertainment then the item is likely to represent a taxable benefit in the employee's hands (unless the annual function £150 exemption applies). Where employees act as hosts to the employer's guests this should not give rise to a taxable benefit but VAT incurred will be irrecoverable.

Subsistence

Meals under this heading are only allowable when associated with genuine business travel away from the normal base of operations. As a general rule, subsistence claimed within the vicinity (usually taken to be a radius of about five miles) of either home or normal business premises are unlikely to be allowable.

Payments under suggestion schemes

As long as the scheme is open to all employees, or to a particular class of employees, the suggestions relate to the activities carried on by the employer, the suggestion was not made at a meeting held for the purpose of proposing suggestions or made in the course of the employee's normal duties, then, subject to the following limits, an award can be made tax free. For an encouragement award (for suggestions with intrinsic merit or showing special effort), the limit is £25. For financial benefit awards (relating to an improvement in efficiency or effectiveness which the employer has decided to adopt and which the employer expects will result in a financial benefit) the limit is half the expected financial benefit in the first year of adoption or one tenth of the expected financial benefit in the first five years of adoption, subject to an overriding maximum of £5,000.

Long service testimonial awards

As long as the award is to mark a period of not less than twenty years service with the same employer, and is not in the form of cash, assets readily convertible into cash, or shares (but shares in the employer itself is permitted), then provided that the value of the award is not more than £50 for each year of service, the award is tax free. As with other gifts to employees VAT can only be recovered where the value of all gifts to any one individual in any twelve month period does not exceed £50 (net of VAT).

PAYE settlement agreements

Where sundry non mainstream taxable benefits (e.g. occasional gifts) are provided the employer can enter into an advance agreement with HMRC to settle any tax due and so avoid the need for P11D entries.

If you have any queries with regards to the above, or would like any further information, please do not hesitate to contact us accordingly.

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