

## CHRISTMAS PARTIES AND FESTIVE GIFTS

I think we were all hoping that this year's Christmas parties would be more 'normal' following last year's restrictions, but developments with Coronavirus over the last few weeks have perhaps cast some doubt on that. Whatever kind of festive celebrations you may be planning for your workplace, whether it be a traditional meal and party, virtual get-together or individual gifts etc., employers will need to consider the tax and National Insurance implications of such benefits. After all, there's nothing more festive than sitting down to examine the tax legislation before you commit to that party!

Further to confirmation from HM Revenue & Customs (HMRC) last year, it is also the case that the existing annual party benefit exemption will apply to virtual festivities just as it does to the usual Christmas meals etc. and will also include gifts etc. consumed at the annual function. In view of this extension, it is worth recapping on the rules regarding the various exemptions available to annual functions and the like.

### Income Tax and National Insurance

Where Christmas parties (virtual or otherwise) are concerned, there is an exemption for employees from both Income Tax and National Insurance up to a cost of £150 per head. The exemption applies to an annual party or similar annual event provided for the employees, e.g. a Christmas party or summer barbecue. There can be more than one event during the year and the exemption can still apply, as long as the combined cost of the events is no more than £150 per head. The events also need to be open to all employees either within the firm as a whole or at a particular location or office of the firm.

It is worth clarifying that the £150 per head limit is not an allowance to be set against the cost if the cost exceeds £150, but rather if the cost per head exceeds that sum then the full cost is usually taxable on the individual as a benefit in kind and liable to Class 1A National Insurance.

Furthermore, the £150 limit is per attendee so if partners of staff members attend then the total cost of the event should be divided by the total number of attendees when considering the £150 limit.

### VAT Position

When considering the total cost of such events for the purposes of Income Tax and National Insurance purposes above, it is the VAT inclusive cost of the party or event that must be considered. However, there are further VAT complications which may need to be addressed when reclaiming VAT on the cost of a staff party.

As a general rule, any VAT incurred on the cost of entertaining non-staff, e.g. clients/customers, suppliers and other business contacts, is not reclaimable. Therefore, it is only the element of the cost of the staff party which directly relates to employees, i.e. excluding spouses/partners etc, on which VAT can be reclaimed. Most businesses will therefore need to keep a list of attendees to the party to identify those who are staff members and those who are not in determining what proportion of the VAT can be reclaimed.

### Christmas Gifts

The 'annual function' rules mentioned above do not in isolation apply to any gifts provided to staff members, but it is worth remembering that there is a special exemption which HMRC give to so called "trivial benefits". These trivial benefits can be provided to staff without the employee being taxable on the value of the gift or the employer having a duty to report the benefit.

A benefit is treated as trivial if it meets all of the following conditions:

- the cost of providing the benefit must not exceed £50;
- the benefit must not be cash or a "cash voucher", but gift vouchers should be fine;
- the employee must not be entitled to the benefit contractually (including as a result of salary sacrifice); and
- the benefit must not be in recognition of services performed by the employee as part of their employment.

It is important to note that if the cost of the benefit exceeds £50, even by a very small amount, the whole sum becomes chargeable to tax, not just the excess. The exemption should however mean that the "average" turkey, bottle of wine, chocolates or gift vouchers can be provided to staff without there being any tax implications of doing so.

Somewhat generously, the exemption applies to each individual benefit in isolation and there is no limit on the number of trivial benefits an employee may receive in the tax year, unless he or she is a director of a close company (the typical small company controlled by five or fewer individuals). In the case of such directors there is an aggregate annual cap of £300.

It is worth noting that the annual function exemption and the trivial benefits exemption can work alongside each other, so employees can be invited to a Christmas party, allowable under the annual function exemption (subject to the criteria mentioned above) and also be given £50 of, say, gift vouchers, covered by the trivial benefits exemption.

*Whatever your plans may be for the Christmas party season, or the festivities generally, may we take this opportunity to wish you all a happy and healthy Christmas, and a prosperous New Year.*

*The above is for general guidance only and no action should be taken without obtaining specific advice.*

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