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**HM Treasury Consultation on Employee Benefits and Expenses:
Trivial Benefits Exemption**

Response from the Employment Lawyers Association

9 September 2014

HM TREASURY CONSULTATION ON EMPLOYEE BENEFITS AND EXPENSES: TRIVIAL BENEFITS EXEMPTION

Introduction

The Employment Lawyers Association ("ELA") is an unaffiliated and non-political group of specialists in the field of employment law and includes those who represent and advise both employers and employees. It is therefore not our role to comment on the political merits or otherwise of proposed legislation, rather we make observations from a legal standpoint.

ELA's Legislative and Policy Committee is made up of both Barristers and Solicitors who meet regularly for a number of purposes including to consider and respond to proposed new legislation.

A working group was set up by the Legislative and Policy Committee of ELA under the chairmanship of Stephen Ratcliffe to consider and comment on HM Treasury's Consultation "Employee benefits and expenses: trivial benefits exemption". Our response is set out below. A full list of the members of the working group is listed at the end of this paper.

1. **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?**

ELA considers that the use of a "principles-based" approach to the definition is likely to be more flexible over time, but offer greater protection from abuse, than a prescriptive list. However, we consider that the suggested complete exclusion of vouchers be revised in favour of an exclusion of vouchers of more than trivial amount, so as to accord with the wider principle.

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

We would suggest a sum in the region of £40.

3. **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?**

Yes, on balance.

4. **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?**

ELA considers that this would require greater administration and reporting requirements than the annual numerical exemption suggested in Option 2, since it will require employers to keep a running log of the exact value of each and every exempt benefit, as opposed to simply recording the number of such benefits.

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

We would suggest a sum in the region of £100.

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

We would suggest up to five, reflecting the various circumstances in which trivial benefits may be provided (e.g. birthdays, Christmas, maternity, leavers, promotions etc.)

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

See response to 4 above.

8. **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?**

ELA considers that the simplicity provided by option 2 is likely to be favoured by employers.

9. **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?**

None

ELA Working Group

Stephen Ratcliffe, Baker & McKenzie LLP – Chair

Bernadette Daley, Cummins Ltd. Law Department

Emma Dickinson

Kevin Gude, Wragge Lawrence Graham & Co

Gitali Melvin, Nuffield Health