



IDEAS | PEOPLE | TRUST



DON'T LET THE TAXMAN SPOIL THE PARTY

NOVEMBER 2021

▶ START

SEASONAL PARTIES ARE BACK!

While opportunities for office parties and other social events have inevitably been curtailed by COVID-19, the value of getting together with colleagues, clients and other business contacts when circumstance allow, is not to be underestimated.

Many businesses now anticipate a steady increase in their business and staff entertaining spend reflecting the need to re-engage with people on a more personal level. And indeed there is renewed enthusiasm, from even the seasoned organiser for making sure that in doing so, their employer is shown at its best and there are no hiccups.

Although perhaps lacking practice of late, a talent for planning good events is never lost. However with new and exciting plans also comes an opportunity to build them even better through ensuring that the tax angles

are not forgotten. That might sound dull by comparison with the food and entertainment but it's an essential ingredient for success both in terms of stretching the budget that bit further and ensuring that the unexpected pitfalls of some complicated tax rules are avoided.

Read on in order to put yourself in the best position to reflect on a successful event!



USING THIS GUIDE

The purpose of this guide is to separate some of the realities from the myths and to explain how, with a little bit of help, you can avoid the pitfalls and use the tax reliefs that exist. If you are aware of any potential tax liabilities (because your event does not meet the criteria for any exemptions) at the event preparation stage, tax is something that can be budgeted for in advance rather than giving you a financial problem after the event.

HM Revenue & Customs (HMRC) consistently review how organisations classify business entertaining and specialist teams of corporate tax, employment tax and VAT specialists carry out specific reviews of entertaining expenditure. This guide gives an insight into how such HMRC teams will view your business entertaining and staff events.

Careful structuring of your event is imperative and involving a tax specialist in the planning phase can minimise the tax issues that may arise, especially for those events that do not fall neatly into one category or the other.

We can help ensure that any headaches from your staff events are caused by enjoying them, rather than by a tax bill that arrives later!



THE JARGON

HMRC has its own set of terms to define business entertaining and staff functions and, as a result, it is necessary to understand some of the jargon involved.



WHAT IS BUSINESS ENTERTAINING?

Whatever your organisation may regard as 'entertaining', it is vital to understand how business entertaining is defined by HMRC. Business entertaining generally covers situations involving clients, contacts, suppliers or other individuals who are not employees of your organisation. In tax legislation, it is defined as:

'...entertainment includes hospitality of any kind, and the expenses incurred in providing entertaining or a gift including any expenses incurred in providing anything incidental to the provision of entertainment or a gift.'

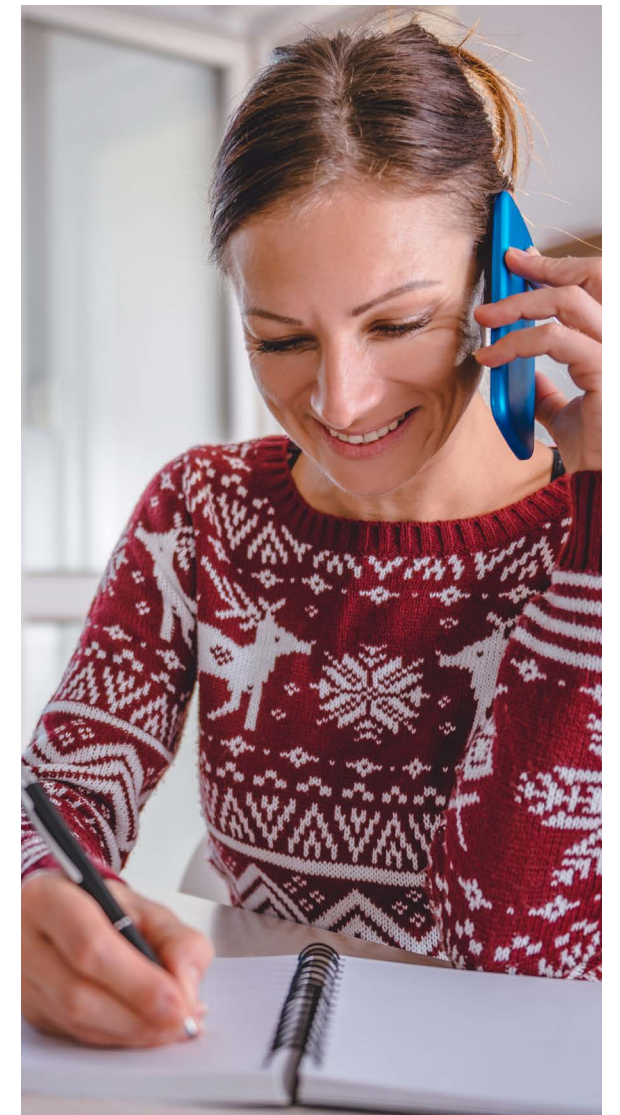
However, the legislation excludes expenditure on entertaining and gifts for employees from the definition of business entertaining unless this is merely incidental to the entertainment of others. It is also worth considering the extent of the definition. HMRC's view is that the whole of the cost of an event must be considered, which can include such peripheral items as travel, accommodation and other ancillary costs.

WHY IS THIS IMPORTANT?

Whatever form your business entertaining (as defined by HMRC) may take – be it a simple dinner, a corporate hospitality event, or an expensive foreign trip – the first principle to understand is that your organisation will receive no business tax deduction for any expenditure in the accounts, nor will it be able to recover any VAT (apart from some minor exceptions). Put simply, whatever the gross cost of your business entertaining is, that is going to be the true cost which your organisation will bear. This also includes the business entertaining expenditure attributable to your employees.

There is, however, a plus to an event being classified as business entertaining. Any of your staff required to attend any such event will not suffer any form of taxable benefit (defined overleaf). The same rule applies to any of your third party guests invited to the event.

Another important point to note is that the level of cost you incur for your business entertaining is immaterial. For the taxman, it is the principle that is important.



THE JARGON

WHAT IS A TAXABLE BENEFIT?

The tax rules relating to employment can be very complex. Everyone is aware that wages and salaries, i.e. cash payments, suffer tax under pay as you earn (PAYE) and national insurance contributions (NIC). In addition, however, employees can also be taxed on any non-cash 'payments' they receive as a result of being an employee – a common example is the company car. These types of payments are called taxable benefits.

WHY IS THIS IMPORTANT?

In tax law, the definition of a taxable benefit is very broad and includes almost anything an employer provides for, or gives to, an employee. Not surprisingly, business entertaining and staff events attract particular attention from HMRC in this regard. If taxable benefits have, in the eyes of HMRC, been supplied, tax is technically due from the employee concerned, who is deemed to have benefited by reason of his or her employment, whether he or she realises it or not! In practice, if a tax liability does arise, HMRC will usually ask the organisation to settle the employee's tax bill and not involve the individual concerned. HMRC sees the settlement of the employee's liability as a further benefit and 'grosses up' the costs involved. However, put simply, the taxes due on benefits become another business cost to be considered when planning an event, together with employer's NIC.

So, when can a taxable benefit arise? Possibly at any event, large or small, when the primary purpose of the event is entertaining staff (not clients, contacts, suppliers and other individuals, as defined on page 3). This could include staff social functions, such as Christmas parties, and even the humble working lunch where employees may not perceive that they are being entertained.

The rules may appear very strict, but where employees are concerned, any expense that is not 'wholly, exclusively and necessarily' for business purposes can be considered to give rise to some form of taxable benefit. Apply this rule to entertaining expenditure and one can see how easily taxable benefits can arise.

So, if taxable benefits have been provided, what will the true cost of the event be? Unlike business entertaining, but as for wages (mentioned earlier), taxable benefits are treated as business expenditure for business tax purposes. The true cost of taxable benefits is, therefore, net of tax relief (which, for most plc and limited companies, will mean a **19%** reduction in the grossed up cost, and up to a **47%** reduction for unincorporated businesses).



THE TAX ISSUES ARISING FROM BUSINESS ENTERTAINING AND STAFF FUNCTIONS ARE COMPLEX AND, TO THE UNINITIATED, MAY SEEM BIZARRE.

AVOIDING PITFALLS

Beyond the jargon, it is also important to be aware that there are a plethora of rules and concessions that can have an impact on your event. Ignore them and they can work against you; work with them and you can reduce your costs. There are a wide range of situations which can arise – far more than we can list here. But we have set out some of the most common entertaining scenarios to illustrate the potential pitfalls and matters to be considered prior to finalising arrangements.

THE STAFF PARTY

The first scenario (and perhaps the most well known) is the annual staff party. Current legislation permits a tax relief in the form of an exemption of £150 (which equates to £125 plus VAT per employee), which can be spread over a number of events in the same tax year provided that each event will be recurring annually. As the tax break was formerly a concession, the potential pitfall to note here is that HMRC will carefully examine any staff party expenditure to see whether all related costs have been included and that the legislation has been complied with.

In order to qualify for the exemption, any event should be open to all staff employed at a particular location. For example, a UK-wide organisation could organise an event in each or only some of its regional offices and not have any tax issues. However, if one group of employees also has an additional exclusive Christmas event, this will be a taxable benefit: because not everyone in the organisation at that location can attend, it does not fall within the terms of the tax relief, whatever the cost. Expenditure on staff parties receives a business tax deduction for the organisation and the VAT can be recovered (subject to any normal restrictions on claiming VAT such as partial exemption, and also assuming that only staff and not

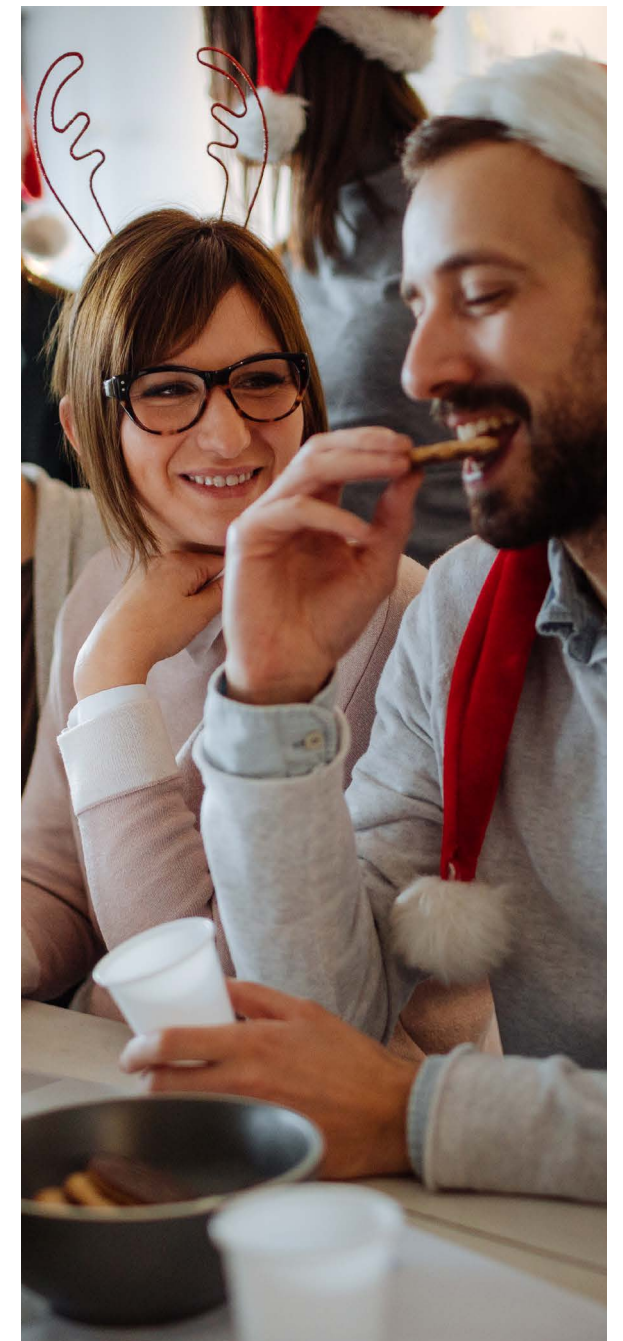
staff plus partners attend). The latter results in a more limited VAT recovery. So, the message is: stay within the terms of the tax break, if you can.

Of course, for many, the traditional annual staff party has been replaced, if only temporarily, by a virtual one and the question arises; does this still qualify for the exemption? The answer, HMRC have pleasingly confirmed, is 'yes' meaning that, to the extent that a structured online event otherwise meets the normal conditions, the associated costs of putting this on which could include food provided/delivered to employees principally for enjoyment at the event should qualify. We would however sound a note of caution in terms of expenses on items which are peripheral to the event and capable of being enjoyed separately.

For organisations with larger budgets, what happens if a single event is more than £150 per head or more than £150 per head is spent during the tax year? In the first instance, the event becomes taxable, in the latter, if one event is under £150 per head, the second event would be taxable in full on the employees attending. However, your organisation will still get a business tax deduction, and you will be able to recover VAT in full regardless of the cost

per employee provided the purpose of the event is to reward good work or maintain and improve staff morale, so the real impact is on budgeting and the tax charge that will arise for the employees concerned. If you have held a series of virtual events during the year to maintain staff morale and are now holding an in person seasonal event, it will be important to keep accurate records of who actually attended each event to check whether the overall costs per head exceed the limit for the year.

Clearly, the staff won't be impressed if they get taxed on their Christmas party so, if you are planning an event that will exceed the exemption, or realise you have gone over the threshold after the event, the tax cost can be met on the employees' behalf through a formal agreement with HMRC which is called a PAYE settlement agreement (PSA) on a grossed up basis. While PSAs are widely used, settling the tax on a grossed up basis means that the tax cost can be broadly equivalent to the cost of the event itself.



AVOIDING PITFALLS

GIFTS

Another related pitfall to avoid involves giving employees gifts at Christmas – or at any other time for that matter. Generally, gifts are taxable but, there is a statutory exemption for ‘trivial’ benefits, a benefit can be given to an employee without a tax or NIC charge arising provided the following conditions are satisfied:

- ▶ The cost of providing the benefit does not exceed £50
- ▶ The benefit is not cash or a cash voucher (e.g. a premium bond)
- ▶ The employee is not entitled to the benefit as part of any contractual obligation (including under salary sacrifice)
- ▶ The benefit is not provided in recognition of particular services performed by the employee as part of their employment duties (or in anticipation of such services)
- ▶ Where the employer is a close company and the benefit is provided to an individual who is a director or other office holder of the company (or a member of their family or household), the exemption is capped at a total cost of £300 in the tax year (i.e. the cost of benefits are £50 or less per benefit and the total cost of all benefits does not exceed £300).

Where the above conditions are not satisfied, the full cost of the benefit (not just excess over £50) is taxed in the normal way, subject to any other exemptions or allowable deductions.

While VAT can be recovered on the purchase of gifts, VAT must be accounted for when these gifts are given away, unless the total cost of any gifts given to that person in any twelve month period is less than £50 (excluding VAT).

Other than gifts HMRC considers are trivial benefits, the only other tax-free non-cash gifts an organisation may be able to give are:

- ▶ Some long service awards, or
- ▶ Some suggestion awards.

In other words, only on very rare occasions!



AVOIDING PITFALLS

SPORTS HOSPITALITY

Sports hospitality has seen a significant increase in recent years and can take many different forms. Our short guide cannot cover all the possible permutations, but we have set out below some of the common issues.

The first hurdle to overcome is that HMRC definitely views sports hospitality involving clients and customers as falling within the definition of business entertaining outlined previously. So a Wimbledon debenture, a marquee at the races, or a box at a football club are all very unlikely to qualify as sales promotion or marketing expenditure although VAT recovery may be possible in limited circumstances. HMRC instructs its staff to be alert for how expenditure on such items is treated in your organisation's accounts. So, when planning for sporting events, be aware the cost you incur will be the true cost to the organisation, with no business tax deduction.

However, once again, as the organisation does not get a tax deduction for sports hospitality expenditure, employees attending events or using facilities like those listed above, with clients in attendance, should not create any tax issues. Equally, the clients being entertained should not see any tax issues arise either.

We use the word 'should', rather than 'will', as HMRC now looks to establish a unit cost for such expenditure by sharing the hospitality cost equally amongst the attendees at an event (e.g. a premiership match). Clients attending would not be taxed, but the taxman will seek a taxable benefit based on the unit cost for any employee who is not attending for a specific business reason. This principle is extended on a 'per day' basis if your organisation hires a hospitality box, or similar facility, on an annual basis. Therefore, if no clients are present, the taxman sees this as no different to the employee being handed a ticket to the match bought at the business's expense – in other words, it's a taxable benefit (although in such cases a business tax deduction may be available).

Similarly, if attendance at a particular sporting event, e.g. a day at the Open, is offered as an incentive to a client's staff who, for example, place a certain level of orders, HMRC is likely to regard this as a taxable benefit and may want to recover grossed up tax and NIC from you or, perhaps worse, your client.

Something else to bear in mind: HMRC often finds that organisations keep very poor records of who uses their hospitality facilities. In such circumstances, it's hard for the organisation to defend an assertion that staff are not benefiting in some way.

With careful planning, and by working closely with a tax adviser, such as BDO, the potential tax impact of using sports hospitality can be minimised and the benefits maximised for all concerned.



IGNORE THE RULES AND THEY CAN WORK AGAINST YOU; WORK WITH THEM AND YOU COULD REDUCE YOUR COSTS.

AVOIDING PITFALLS

TRAINING EVENTS

There are specific tax rules regarding expenditure on training. For tax purposes, 'work-related training' is defined by HMRC as:

'A training course or other activity which is designed to impart, instil, improve or reinforce any knowledge, skills, or personal qualities which:

- ▶ Are likely to prove useful to the employee when performing the duties of the employment or related employment, or
- ▶ Will qualify or better qualify the employee to perform those duties, or to participate in any charitable or voluntary activities that are available to be performed in association with the employment or a related employment.'

Training in general is not a taxable benefit, so staff attending a training event will not suffer tax as a result. Equally, it is not regarded as business entertaining, so the gross cost will get a business tax deduction for your organisation and VAT incurred should be recoverable.

However, some events that most would classify as staff training, such as management away days, or motivational, team building and personal development events can contain elements that, in the eyes of HMRC, can give rise to taxable benefits. As such, care is required when planning them. The main rule is that any entertaining, recreational benefits or facilities that arise, do so on an incidental basis as a result of the training being held. As a simple example, if you have a legitimate training event at a hotel and, as part of the package offered by the hotel, the staff attending the event are allowed free use of the golf course, no taxable benefit should arise. But, if you take staff to the hotel, have a short meeting and then pay for green fees, the taxman will consider the cost to be a taxable benefit.

The potential tax issues should be part of the planning for such events and, if properly considered, should not cause any problems.



AVOIDING PITFALLS

SPONSORSHIP

Sponsorship can range from the multi-million pound deals signed by some major plcs, to a small business spending a small sum supplying a local football team with kit. But again, some common rules apply.

As with training, an organisation will get a business tax deduction for sponsorship expenditure but the sole purpose has to be to promote the business; receiving tickets or other benefits in return could result in a business tax disallowance.

If a director or partner has a personal hobby involvement in the sponsored event, sports club or team, HMRC is likely to take a closer look.

Just like with training events, HMRC may look in more detail at what is involved in the sponsorship package as it may give rise to taxable benefits.

A simple example of this could be the sponsorship of a football club that includes tickets to certain matches. This could result in the same position as we have already outlined with sports hospitality generally, i.e. HMRC seeing the tickets as a form of reward and a taxable benefit for employees who use them.



FREQUENTLY ASKED QUESTIONS



PARTNERS

If a staff member brings his or her partner to a staff function, is the allocation £125 + VAT (£150) each?

The first thing to remember is that HMRC does not view the £150 per head as an allowance. However, if the total cost of an annual staff function, including VAT and any transport or accommodation provided by employer, divided by the number of people attending (staff and non-business guests), is £150 per head or less, no benefit arises. Therefore, when planning an event, if the cost is kept below the £150 per head threshold, (and it is both open to all staff at that location and occurs annually) no tax benefits should arise.



NUMBERS

If an organisation has 500 staff, but expects 400 attendees, is the allowance $500 \times £125 + \text{VAT (£150)}$ each?

In the terms of the legislation, HMRC does not view the £150 per head as an allowance. Therefore, the organisation would have to calculate the cost of the event and divide it by the number of attendees. There is no specific guidance on how an organisation calculates the number of attendees, but a common sense approach should be agreed with HMRC, which should relate to either actual or confirmed attendees, rather than overall employee numbers. Only those who attend the event can have a taxable benefit.



MULTIPLE EVENTS

If an organisation has a summer event and a Christmas party is that £125 + VAT (£150) for each event?

If both events occurred in the same tax year (which runs from 6 April to 5 April), no. If the total cost per head for both functions exceeds £150 per head, they cannot both qualify for tax-free treatment. If the cost per head of each event on its own was not more than £150, either event can qualify for the tax relief, provided it was open to all employees at that location and takes place annually. An employer can choose which event it would be most beneficial to apply the tax break to – the other would then be taxable in full. If the average cost per head of one of the functions exceeded £150, the full cost of the function would be taxable.



TEAM BUILDING

Are team-building events liable?

If the team-building event can be said to fall within HMRC's definition of 'work-related training,' it will not be taxable on the employees and will be allowable expenditure for the employer. There is, however, some scope to apportion any element of the team building that, in the opinion of HMRC, falls outside the scope of the definition.



VAT

Can we claim VAT back on our event?

It depends on who attends the event. If it is all staff, yes. If they bring their partners/guests, recovery is limited to the staff element only. If the staff are acting as hosts to clients (e.g. at a golf day) no VAT is recoverable. However, different rules apply to organisations that arrange hospitality events. Similarly, if the employer is a partnership, e.g. a legal practice, VAT is not recoverable on the partners' costs.

FREQUENTLY ASKED QUESTIONS



BUSINESS OR PLEASURE?

What if a speech is made at a staff function – could that change its definition for tax purposes?

A speech, 'slotted in' at a staff party/function, would not change the purpose of the event, which is to hold a staff party/function. The normal rules would apply. If an employer wished to contend it was a motivational or 'work-related training' event, it would have to meet that definition.



OVER THE LIMIT?

What happens if I go over the limit: are income tax and NIC due on the amount above the £125 + VAT (£150) limit?

No, the whole cost of the event becomes taxable. Therefore, if an event costs £200 per head, the taxable benefit is £200 per head. If that event was attended by 50 staff and their partners, each staff member would be taxable on their guest's cost and their own, and so would have a £400 benefit which would be taxed at their marginal rate. (Unless the benefit was included in a PAYE settlement agreement (PSA)).



TRAVEL

Does the taxable price include transport?

Yes. When calculating the cost of the event, you must include VAT, the cost of transport and/or overnight accommodation, if these are provided to enable employees to attend.



OUR SERVICES

Tax has never had a higher profile and employee remuneration is in the spotlight with regulations that are complex and subject to constant change. Non-compliance can have a potentially significant financial impact, but with a detailed knowledge and understanding of the rules the BDO Global Employer Services team can help support you in ensuring risks are avoided and opportunities maximised.

We specialise in three core areas:



EMPLOYMENT TAX ADVISORY

We help businesses of all sizes to meet their objective of being compliant with all their employment tax responsibilities. With PAYE and NIC accounting for over half of HM Treasury's UK tax take it is little wonder that HMRC continues to focus on this area resulting in increased employer accountability. We can assist with issues ranging from off-payroll workers and IR35, benefits in kind and the Construction Industry Scheme through to salary sacrifice, Apprenticeship levy and termination planning, always offering practical and pragmatic advice.



EXPATRIATE ADVICE AND CONSULTANCY

We can help your organisation with its formal programs to move staff into or out of the UK by providing tax return support, managing international payrolls and providing advice from over 1,000 offices worldwide. We can also advise on the considerations when staff are moving cross-border outside of formal expatriate programmes.



SHARE PLANS AND INCENTIVES

We advise on the design and implementation of bespoke share based and other effective pay/incentivisation arrangements for employees in the UK and overseas.



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