

Draft legislation on “Disguised Remuneration”

On 9 December, the Government published draft legislation which is designed to block certain arrangements which involve using employee benefit trusts (EBTs) to defer or avoid income tax or NICs. The legislation is mainly targeted at family benefit trusts and some employer-financed retirement benefit schemes (EFRBS).

An income tax charge will arise on the value of a sum of money or an asset when it is:

- “earmarked” for an employee;
- transferred to an employee, including as a loan; or
- otherwise made available to an employee.

There are exemptions for tax-favoured approved and EMI share plans, for grants of unapproved share options and other rights over shares and for loans made on ordinary commercial terms. However, we believe that the current proposed legislation is drafted much too widely to be workable. It could, for instance, result in an early income tax and NICs charge for deferred bonuses and some types of conditional and phantom share awards.

The new provisions will take effect from 6 April 2011, but there are anti forestalling provisions which apply to payments made between 9 December and 5 April.

MM&K is participating in discussions with ifs ProShare and other advisers’ groups and will be making submissions to the Government to suggest improvements to the proposals.

We will provide more detailed advice shortly to those of our clients whom we think will be potentially affected by the new legislation. In the meantime, please contact us if you have any questions, concerns or comments.



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