

Review

Budget 2011



BUDGET NOTES - EMPLOYEE SHARE SCHEMES AND “DISGUISED REMUNERATION”

The 2011 Finance Bill will include the detailed legislation to implement HMRC’s attack on “disguised remuneration”. Draft legislation on this subject was published on 9 December 2010 but this was extremely widely drafted and, if enacted in that form, would have reclassified many normal employee share schemes as tax avoidance arrangements.

The draft legislation introduces the concept of the “earmarking” of assets for the benefit of employees and therefore there are particular dangers for employers that use employee benefit trusts to hold shares for use in employee share schemes.

On 21 February 2011 HMRC announced an updated approach recognising these concerns but it was still not clear that there would be adequate exemptions from the new tax charges for employee share schemes. Squire Sanders Hammonds raised this concern with the Government and HMRC has confirmed through its Budget announcements that as a result of representations received the draft legislation will be amended so far as possible to protect share incentive arrangements and other genuine deferred remuneration arrangements. However, there are indications that the exemptions will not go far enough to exempt all normal commercial arrangements.

HMRC has confirmed that anti-forestalling provisions will apply to some arrangements implemented between 9 December 2010 and 5 April 2011 and that the full legislation will take effect from 6 April 2011.

However, it will not be possible to assess the impact of the new legislation on employee share schemes until the publication of the 2011 Finance Bill, which is expected on 31 March 2011. This means that a rapid assessment of these provisions will be needed before they come into effect – we anticipate issuing further information on this to our clients shortly after the Finance Bill is published. In the meantime employers should continue to be cautious in their dealings with employee benefit trusts and any other arrangements that might be regarded as disguised or deferred remuneration (such as the making of loans to employees).

Please contact your Squire Sanders Hammonds contact to discuss further.

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