

Review

Taxation & Benefits



Disguised or deferred remuneration

Further to our previous alerts, the new tax rules on disguised or deferred remuneration will be in force from 6th April 2011. The Finance Bill was published on 31 March and contains 60 pages of detailed legislation to cover this one anti-avoidance measure. The rules are very widely drawn and are likely to catch many normal remuneration practices, such as employee share schemes, as well as the specific tax avoidance schemes being targeted by the Government.

The legislation is complex and the draft HMRC guidance on it is sadly uncertain in many respects. The guidance is very likely to be revisited before the legislation is enacted in the Finance Act 2011. However, given that the rules will be backdated to 6th April, businesses must immediately assess the impact of the legislation on their remuneration structures.

Where the new legislation applies, income tax charges will arise even though the employee may not have received any direct benefit at that time. In most cases credit for this tax paid will be given against a second tax charge when the benefit is actually received. However, there remain some instances when tax will not be repaid even though no overall benefit is received by the employee. For example, where a loan is made to an employee by a third party an early tax charge will arise. After 5 April 2011, even where the loan is repaid in full no repayment of the early tax charge will be made.

Businesses using any of the following remuneration structures could be affected and should seek advice:

- Employee benefit trusts
- Unregistered pension arrangements
- Deferred payments or bonuses
- Employee share schemes where the shares used will not be newly issued
- Loans to employees from a third party
- Assets being available for employee use (such as cars / holiday homes) by a third party

While there are exemptions available for many normal commercial arrangements, it will be necessary for employers to check that their particular benefits package does fit within the detailed rules

Transitional rules will be backdated to 9th December 2010, but the income tax on arrangements caught by such rules is deferred until 2012 and there will be an opportunity to unpick any arrangements that are caught. The transitional rules are largely restricted to employee loans and assets being made available for employee use.

If your remuneration packages have any of the elements described above and you would like advice on the application of the new rules, please contact:

PATRICK FORD
PARTNER: TAXATION & BENEFITS
T: +44 (0)161 830 5014
E: patrick.ford@ssd.com

TIM JARVIS
PARTNER: TAXATION & BENEFITS
T: +44 (0)113 284 7214
E: tim.jarvis@ssd.com

LAWRENCE GREEN
CONSULTANT: TAXATION & BENEFITS
T: +44 (0)121 222 3394
E: lawrence.green@ssd.com

MATTHEW GILES
PARTNER: PENSIONS
T: +44 (0)121 222 3296
E: matthew.giles@ssd.com