

To: Our Clients and Friends

December 10, 2009

New (Temporary) 50% Bank Payroll Tax In The United Kingdom

The Government announced yesterday that between December 9, 2009 and April 5, 2010, the award of bonuses to bank employees will render the bank liable to a new "bank payroll tax".

The amount of the tax will be equal to 50% of the amount by which the bonus (or aggregate bonuses) awarded to the particular employee, in that period, exceeds £25,000.

The tax referable to all such awards will be payable in one lump sum on 31 August 2010. The Government has however reserved the right to extend the period of the charge, and keep the tax in place until certain regulatory changes affecting banks have come into force.

Draft Legislation

Draft legislation has been published. As drafted, liability to the new tax will arise, subject to the £25,000 threshold, when a "taxable company" makes an "award" of "relevant remuneration" to a "relevant banking employee", in the four month chargeable period above.

"Taxable company" means a company that:

- a) is a UK resident bank or a relevant foreign bank; or
- b) is a company not within (a) that is a member of a banking group, and is either a UK resident investment company or financial trading company, or is a relevant foreign financial trading company.

Building Society groups are also brought within the definition.

"Relevant remuneration" means anything that constitutes earnings (as defined) or otherwise constitutes a benefit provided to the employee. The definition will also include loans, if the main purpose, or one of the main purposes, of providing the loan is the reduction or elimination of bank payroll tax or any other tax.

Relevant remuneration however specifically excludes:

- a) regular salary or wages or a regular benefit; and
- b) anything to which the employee becomes entitled pursuant to contractual arrangements (not involving the exercise of any discretion by the employer) existing prior to 9 December 2009; and
- c) certain shares or share options awarded under tax-approved arrangements.

An "*award*" of relevant remuneration is made when:

- a) the remuneration is actually paid or provided to the employee; or
- b) a contractual obligation to pay or provide it arises; or
- c) arrangements are made under which earnings or other benefits may be paid or provided to the employee which, if actually paid or provided during the period when the tax applies, would be relevant remuneration. The quantum of the award in this case is the amount "which it is reasonable to assume will be paid or provided".

A "*relevant banking employee*" means an employee of a taxable company if:

- a) the employment concerned is "banking employment"; and
- b) either the employee is UK resident in the tax year 2009/2010 or the duties of the banking employment are at any time in that tax year performed wholly or partly in the UK.

A "banking employment" is one the duties of which are "wholly or mainly concerned (whether directly or indirectly) with activities that are "relevant regulated activities" or if not such, consist of the lending of money."

The definition "relevant regulated activity" is by reference to regulations under the Financial Services and Markets Act 2000 which cover accepting deposits, dealing in investments as principal or agent, arranging deals in investments, safeguarding and administering investments, and entering into or administering regulated mortgage contracts.

Additional points on the Draft Legislation

1. The "taxable company" definition

The reference to "a UK resident bank" and "relevant foreign bank", in this definition, is in fact to any company which is an authorised person for the purposes of the Financial Services and Markets Act 2000, and whose activities (or activities in the UK in the case of a non-resident company with UK permanent establishment) consist wholly or mainly of relevant regulated activities, or include the accepting of deposits. The definition excludes certain companies, including insurance companies, investment trusts and open-ended investment companies.

A company is a "member of a banking group" if it is (or was immediately before December 9, 2009) a member of a group, and meets (or met) certain other conditions. The members of a "group" will, broadly, comprise the principal company and companies which are, directly or indirectly, at least 75% subsidiaries of that principal company. But a company will only be a member of a banking group if:

- a) the principal company of the group is a UK resident bank or a relevant foreign bank; or
- b) the principal company is not UK resident but its activities (or those of a partnership of which it is a member) consist wholly or mainly of what are relevant regulated activities in the UK or include the accepting of deposits, and any member of the group is a UK resident bank or a relevant foreign bank; or
- c) the principal company is an investment holding company of another company, and that other company would be within (a) or (b), save that it is not in fact the principal company.

A company which leaves a banking group may, in certain cases, be treated as remaining a member for the purposes of this tax.

2. The "relevant banking employee" definition

Where an individual performs services for a taxable company via another person, but would be a relevant banking employee of the taxable company if engaged directly, the individual "is to be regarded as a relevant banking employee of the taxable company". The way this deeming provision will fit with the legislation is not clear.

3. Anti avoidance

Where "relevant arrangements" are entered into by any persons, the main purpose, or one of the main purposes, of which is the reduction or elimination of a liability to bank payroll tax, liability to this tax will still crystallise. The arrangements in question refer to the payment of earnings or provisions of other benefits otherwise than in the period up to April 5 2010, or "the giving otherwise than in the form of relevant remuneration of any reward which equates in substance to relevant remuneration".

4. Non deductibility of bank payroll tax

It is stipulated that the tax will not be allowed as a deductible expense in computing profits for the purposes of UK corporation tax.

Information contained herein is not to be considered as legal advice. Such information is also based on draft legislation published by the UK Government which may change prior to enactment or may not be enacted at all. Specific advice should always be obtained in connection with any proposed transaction involving the award of bonuses and other remuneration. This memorandum may be construed as an advertisement or solicitation. ©2009 Bryan Cave LLP. All rights reserved.