

Disguised Remuneration: Employee Benefit Trusts (EBT'S) and Employer Funded Retirement Benefit Schemes (EFURBS)

On December 9, 2010 the Government introduced proposals (with draft legislation) intended "to tackle arrangements involving trusts or other vehicles used to reward employees, which seek to avoid or defer the payment of income tax or national insurance contributions".

While this is only draft legislation at this stage (with comments to be received by February 9, 2011), it is likely that the proposals will be introduced and will come into effect from April 6, 2011. There are anti-forestalling provisions which are introduced to prevent steps being taken after December 9, 2010 and before April 6, 2011.

Nonetheless, there may be opportunities which exist for certain planning steps to be taken before April 6, 2011 which may prove effective, though the final form of the legislation may restrict these opportunities.

The proposed thrust of the rules will be to determine whether funds within such an arrangement are "earmarked (however informally)", in which case from April 6, 2011 such sums will be subject to income tax and NICs. Consequently, the measure of taxation will not be on the "benefit" that an employee receives, but rather the full amount of the sums allocated. It will therefore be important that no further allocations are made from April 6, 2011 to avoid any funds being or becoming earmarked. The common practice of trustees making loans to employees will no longer be workable without payment of tax and NICs.

In addition, new rules will seek to clarify the position of ex-employees who have moved abroad and who, in the past, have sought to move themselves outside the employment taxation provisions.

The draft legislation does imply that existing arrangements will be "grandfathered" (until such time as a further step is taken). However, until such time as the precise rules are known, nothing can be certain in this sphere.

Any clients who do have EBT or EFURBS arrangements will want to review these arrangements carefully and to see whether, in fact, they should be unscrambled altogether (whether with effect from April 6, 2011 or potentially April 6, 2012) or maintained and monitored.

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This Article states the law as at 1 February 2011. It is, however, provided for general guidance only and the author accepts no responsibility for any reliance placed upon that general guidance in specific circumstances. If you want to know more about personal or corporate tax planning issues please contact Patrick on the details above.

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