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News Bulletin

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New UK Bank Levy on Employee Bonuses

On 9 December 2009, the UK Government announced the introduction of a new one-off 50% Bank Payroll Tax (BPT) that will be payable by a bank on the amount of a bonus to which a banking employee is entitled.

The provisions have a wide application and apply to many businesses operating in the financial services and banking sectors, not just banks, as the name of the tax may suggest. In this regard, banks are defined as including any UK resident trading company that is an authorised person for the purposes of the Financial Services and Markets Act 2000 (FISMA) and whose business involves the regulated activities of accepting deposits, dealing in investments as principal or as agent, arranging deals in investments, safeguarding and administering investments and regulated mortgage contracts, and includes members of a partnership (including an LLP) that meets these requirements. Relevant foreign banks with a UK presence, as well as companies that are members of banking groups are included, as are building societies and financial businesses and holding companies within banking groups. The new provisions are drafted widely to cover a bank's liability to BPT where the bonus arises in respect of services performed for the bank, regardless of who awards the bonus. Treasury has explicitly advised that the levy is not intended to target private equity businesses.

The levy applies to payments made to individuals that are resident in the UK in the current year (2009/10) and if they perform duties for a bank or if they perform duties that are related directly or indirectly to regulated activities.

The charge of 50% is payable by the bank on bonuses made of greater than £25,000 in value and is payable on the amount by which each bonus exceeds the limit. The value may be comprised of money, money's worth, benefits and loans. There is an exception however for awards where the bank has no discretion as to the amount of the bonus, due to a prior contractual obligation to pay a fixed amount. The BPT does not affect the employee's income tax at 40% or national insurance liabilities.

The BPT will apply until 5 April 2010, although HMRC announced yesterday that it is considering extending the scope of the levy to ensure that banks with non-standard year ends that pay bonuses later do not slip through the net.

The new provisions include a number of anti-avoidance measures. These are very broad and include measures that will give rise to a BPT liability if any arrangements are made during the relevant period to provide a reward equivalent to one which would attract BPT either outside of the period to which BPT applies, or in a form which is not subject to the BPT. As the BPT does not apply to regular salary, wages or benefits, one way around the levy could be to pay the bonus in the form of a salary or after a period of a few years, thereby falling outside of the anti-avoidance rules. In this regard, we are not sure whether the measure introduced will change the longer term remuneration practices of the financial services and banking industry as intended.

Businesses operating in the financial services and banking sectors will need to consider the new rules and determine whether they are affected.

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