

## “Disguised Remuneration” – the net shrinks for employee share schemes

On 9 December 2010, HMRC published draft legislation aimed at closing down certain tax planning arrangements for employee bonuses, usually involving employee benefit trusts (EBTs) and loans and/or sub-trusts, which they are terming “disguised remuneration”. The net was cast very widely, and concerns were raised that certain normal employee share scheme and bonus arrangements with no tax avoidance aspects would attract an inappropriate tax charge under this penal anti-avoidance legislation.

HMRC recently published “frequently asked questions” on the draft legislation which go some way to alleviating these fears. However, companies may wish to wait for the final legislation (and further HMRC guidance) before implementing arrangements after 6 April 2011.

In particular, the FAQs confirm the following intentions in relation to problems raised with the legislation:

- normal deferred cash or share bonuses will be specifically excluded from the measures, where the deferred bonus vests or lapses no later than five years from the date of grant;
- normal LTIP awards backed by shares held in an EBT will also escape the measures provided again that they vest or lapse no later than five years from the date of grant;

- shares sold by an employee to an EBT for not more than market value should not give rise to a tax charge under the new provisions;
- a proposed exemption for short term loans is being considered which may ensure that some forms of cashless exercise of options will not be caught by the new measures; and
- awards made by parent companies to employees of subsidiaries will generally be excluded from the scope of the legislation where there is no tax avoidance motive.

However, there are still areas of uncertainty, for example LTIP awards which vest over a period of more than five years. No amended draft legislation has been published to address the issues raised in the FAQs at this stage.

Further details of the proposed legislation can be found here: [http://www.hm-treasury.gov.uk/d/disguised\\_remuneration.pdf](http://www.hm-treasury.gov.uk/d/disguised_remuneration.pdf) and the FAQs can be found here: <http://www.hmrc.gov.uk/budget-updates/disguised-remuneration-faqs.pdf>.

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