Briefing

BURGES SALMON

Budget 2016

March 2016

Incentives and employment tax update

The March 2016 Budget will probably become best known for the introduction of the Sugar Levy. However it also contained a host of changes for employers. This briefing note summarises the key provisions employers need to be aware of and, if you would like any more information please contact a member of the incentives team or your normal Burges Salmon contact.

Employee Share Schemes

One of the most significant changes in the taxation of employee share awards since the introduction of Employee Shareholder Status (ESS) has been the introduction of a lifetime limit of £100,000 on the gains from ESS which will be exempt from capital gains tax. This limit applies on the disposal of shares acquired under the terms of ESS agreements entered into on or after 17 March 2016.

This is a logical way of addressing the use of ESS by key executives where it has been utilised to shelter significant gains from tax, rather than being used to provide smaller packages of shares to wider workforces and thereby reduce employment red tape. In the meantime the top rate of capital gains tax has been reduced to 20% meaning that the maximum CGT benefit from an ESS arrangement is reduced to £20,000 so more potential participants may question whether it is worth giving up their employment rights for such a sum (or less). As such we may see more key employees seeking equity incentives which enable them to qualify for Entrepreneur's Relief.

In addition, as part of the provisions introduced to simplify employee share schemes, new rules will apply to those participating in an Enterprise Management Incentive (EMI) plan where a rights issue takes place on or after 6 April 2016: the share identification rules will apply such that the new shares will be treated as acquired at the same time as the original shares.

Salary Sacrifice Schemes (Flexible Benefits)

The Government is considering limiting the income tax and NIC benefits of salary sacrifice arrangements to certain key benefits – these would include pensions, health-related benefits (such as the Cycle to Work Scheme) and child care.

The potential implications for the very large number of companies which operate flexible benefits schemes should not be underestimated as potentially income tax and NIC is operated on a notional salary figure and benefits which would be tax free if provided outside a salary sacrifice arrangement are brought into the charge to tax/NIC.

Tackling Disguised Renumeration

The Chancellor stressed that the attack on tax avoidance schemes would continue but he did not elaborate other than to set out new provisions relating to "disguised remuneration" and the use of Employee Benefit Trusts (EBTs) and other 3rd parties. The new provisions will include the insertion of a Tax Anti-Avoidance Rule (TAAR) into the disguised remuneration legislation (Part 7A Income Tax (Earnings & Pensions) Act 2003), with effect from 16 March 2016 which will seek to ensure that no scheme can be used to avoid tax where there is a connection with a tax avoidance arrangement.

The other change applies to remove the transitional relief on investment returns on amounts of disguised remuneration within EBTs where a settlement has not been agreed with HMRC prior to 30 November 2016.

Companies or employees still operating disguised remuneration schemes should consider the potential impact of these new measures. There will be a consultation in Summer 2016 to which such companies may wish to contribute.

Termination Payments

The Chancellor announced the termination of the employers' NIC break on termination payments. Changes were not as wide ranging as could have been expected from the potentially expensive measures suggested in the consultation document released last summer (but that does not mean that further changes will not be announced as the Government has the chance to digest the substantial volume of comments received in response to the consultation). In the meantime, the first £30,000 of termination payments remain tax and NIC free.

Amounts over £30,000 will be subject to employERs NIC but will remain free of employEEs NIC. This does not apply until 6 April 2018 so plenty of time to plan and perhaps include more employer payments into pension arrangements to save NIC.

Continued

Further consultations on payments in lieu of notice, compensation payments and foreign service relief should be expected.

Public Sector Bodies engaging workers via Personal Service Companies

From April 2017 new rules take the next step from the 2015 procurement policy applying to certain public sector bodies to require the deduction of PAYE and NIC on payments where IR35 applies (contrary to the current position where the personal service company (PSC) is required to deduct PAYE and NIC).

From the proposals in the Budget, it appears that the key points are as follows:

- Where a public sector body engages a worker via a PSC, the public sector body must assess whether IR35 applies (as is currently the case under the procurement policy).
- If IR35 applies, the public sector body must deduct PAYE and NIC. This is a departure from the current position: i.e. the IR35 rules which currently apply generally and going forward will continue to apply in the private sector.
- Where there is an agency or other intermediary is involved, the body nearest to the PSC in the chain of service providers will be responsible for deducting PAYE and NIC whether or not they are a public sector body.
- HMRC will provide a range of online tools in order to assess whether IR35 will apply – we do not yet know whether these will be based on the Employment Status indicator but it seems likely that there will be similarities.
- A consultation will be undertaken to clarify matters such as what constitutes a "public sector body" and the form of the online tools.

No change from the present procedures are currently required, and public sector bodies have a year to put in place the new arrangements to make payments to IR35 companies via the payroll going forwards.

Other previously announced changes

- Trivial benefits-in-kind costing less than £50 will be exempt from income tax and NIC from 6 April 2016.
- Workers employed via intermediaries will no longer benefit from tax relief on home to work travel and subsistence. This puts them on a level footing with employees.
- Income from sporting testimonials and benefit matches for employed sportsmen/women will be subject to income tax from April 2017. In certain circumstances a £100,000 exemption may apply.

More details will be available as the Finance Bill progresses through Parliament, but if you have any queries in the meantime, please speak to your usual Burges Salmon contact.

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