

Briefing note

Disguised Remuneration

This briefing note is aimed at individuals who have made use of loans from EBTs (or similar structures) since 1999, and at trustees who are looking after EBT structures which have been used as a method of remunerating employees.

The UK Government has for many years been working to ensure that it receives what it sees as its fair share of tax in relation to everything a person receives as reward for their employment.

From the mid-80s through to the early 2000s, a relatively common method used by employers, employees and contractors was so-called 'loan schemes' which sought to reduce or eliminate the liability to income tax and National Insurance Contributions ("NICs").

Although there were a number of variations on the general theme, these largely involved the employer making a payment into a vehicle such as an Employee Benefit Trust ("EBT"), Remuneration Trust, or Employer Funded Retirement Benefit Scheme ("EFRBS"). This vehicle would then make discretionary payments, often in the form of loans, to members of staff, usually in accordance with suggestions from the employer.

The Government's response

In December 2010, the Government introduced what are commonly known as the 'disguised remuneration' rules. The most common application of these rules is in relation to the aforementioned loan schemes, however the way the legislation is put together means that the tax point at which the liability can fall due may be even earlier than when the loan amount is paid to the employee, and could be triggered when the money is 'earmarked' to be applied for the employee's benefit.

Further developments

Subsequent to the introduction of the 2010 rules, schemes have become increasingly complex, however HMRC have been dogged in their pursuit of individuals and companies involved, and have gone so far as to pursue criminal action in extreme cases. Cases prior to 2010 were widely felt to be outside the reach of the existing legislation.

However, HMRC won their most significant victory in the widely-reported 'Rangers' case, where the court decided that the amounts provided to the EBT by the employer met the definition of 'earnings' for the purposes of income tax and NICs, and therefore should be taxed at the point where they were allocated.

Following this victory, HMRC were expected to press home their advantage and issue significant amounts of Follower Notices, ordering taxpayers in similar positions to 'follow' the court's decision. Whilst a number of notices were issued, these have perhaps not been of the volume that were initially expected. The deadline for HMRC to issue these notices is 5 July 2018.

However, HMRC's arsenal was bolstered in late 2017 by the introduction of the '2019 loan charge'. This charge will impose a tax on any outstanding loans received from remuneration vehicles (EBTs, EFRBS and remuneration trusts) made after 5 April 1999, which remain outstanding at 5 April 2019. Whilst the liability will initially lie with the employer through PAYE, there are a number of circumstances where this can be transferred to the employee and recovered through the income tax provisions (notably from a Guernsey perspective, where the employer is a non-UK company).

For taxpayers with significant loan balances outstanding, this will mean a significant, one-off, tax charge in 2018/19, which may push them into the additional rate tax bracket (along with any outstanding NICs and other salary related deduction increases such as Student Loan deductions).

This will mean that a significant number of taxpayers will be in a position where they have a greatly increased tax bill as a result of arrangements that may be 20 years in the past. HMRC have estimated that 50,000 taxpayers will be impacted, with an additional tax receipt of £1.88bn forecasted (nearly £40,000 per taxpayer).

Resolution opportunities

The loan charge may be avoided if the loan is repaid in full ahead of 5 April 2019. Repayment must be in cash, and not part of an avoidance scheme. HMRC have repeatedly stated their opinion that 'loan busting' schemes do not work, and they have said they will aggressively challenge those who seek to utilise them.

HMRC have offered a number of settlement opportunities in recent years, however with the April 2019 loan charge date looming, the latest round will almost certainly be the final opportunity to settle. The deadline for approaching HMRC has recently been extended from 31 May 2018, to what is likely be the final date, 30 September 2018. HMRC will have had to have received the relevant information ahead of that date, so engagement with them as soon as possible is vital.

Most importantly, doing nothing is not an option – HMRC's information gathering powers are wide, and force trustees and employers to disclose relevant information. Taxpayers should ensure they are in a position to make an informed decision on the best course of action for them.

Our offering

At Fitzroy, we can advise on all aspects of disguised remuneration, including whether settlement would be right for you. If you would like to have a confidential discussion to assess your options, please contact David or Ben directly using the contact details below.

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