



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.

Contacts

Sonia Girgis
+44 20 7920 4118
sgirgis@mof.com

Peter Green
+44 20 7920 4013
pgreen@mof.com

Trevor James
+44 20 7920 4087
tjames@mof.com

About Morrison & Foerster

With more than 1000 lawyers in 16 offices around the world, Morrison & Foerster offers clients comprehensive, global legal services in business and litigation. The firm is distinguished by its unsurpassed expertise in finance, life sciences, and technology, its legendary litigation skills, and an unrivaled reach across the Pacific Rim, particularly in Japan and China. For more information, visit www.mof.com.

© 2009 Morrison & Foerster LLP. All rights reserved.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.