

Bank Payroll Tax

This note outlines our understanding of the scope and practical application of the proposed Bank Payroll tax (“BPT”) announced in the pre-budget report of 9 December 2009. Of necessity it summarises and simplifies the proposals. For more detailed and specific guidance on your own circumstances please contact us.

What is BPT about?

Essentially BPT requires the payer of certain employee bonuses to make a special payment to HMRC equal to 50% of the bonuses. BPT is in effect a penalty levied on the employer to discourage payment of bonuses: as such it is not tax-deductible for the employer and it does not reduce the tax payable on the bonus by the employee.

What payments are affected by BPT?

The legislation applies to certain bonuses paid to certain employees by certain companies. It does not apply to (for example) payments of profit share made to members of LLPs; nor to dividends payable on shares.

Which companies are caught?

Although the tax is called “Bank Payroll Tax” its scope is not restricted to banks as that term is usually understood. For the purposes of BPT, “bank” extends to any company which

- is an “authorised person” under FISMA 2000 s31;
- is either tax-resident in the UK or carries on a trade in the UK through a permanent establishment; and
- carries on a trade regulated under FISMA which
 - includes accepting deposits within the meaning of article 5 of the FISMA regulations; or
 - consists wholly or mainly of dealing in investments (whether as principal or as agent), arranging deals in investments, safeguarding and administering investments, or regulated mortgage contracts (all as defined for the purposes of the FISMA regulations).

It also applies to any company which although not itself authorised under FISMA is an investment company or a financial trading company and is in the same group as a “bank” as defined above. (For completeness, we should add that it also applies to building societies and investment or financial trading companies within a building society group.)

Although the current draft legislation refers only to payments made to employees of “banks” (etc) it is expected that further draft clauses will shortly be published by HMRC governing the application of BPT to payments to employees of partnerships involving “banks” (etc).

If the company is caught, is BPT relevant to all employees?

No. The tax bites only in relation to payments made to employees

- who are tax-resident in the UK or who perform their duties wholly or mainly in the UK and
- whose work is wholly or mainly concerned (whether directly or indirectly) with the activities which bring the employer within the scope of BPT.

In other words, if some of the activities of a company would bring it within the above definition of a “bank” and some would not, it is only payments to employees engaged on the “banking” type activities which are relevant to BPT.

What about payments made via intermediaries?

If an individual would be an employee caught by the rules but for the fact that he provides his services to the company via an intermediary (such as an agency, his own company, partnership or LLP), the company remains liable to pay BPT as if the individual were an employee. However, this must be distinguished from the position where there is no intermediary and the individual is simply in partnership or LLP with the company: in that case there is no actual or deemed employment relationship and BPT does not apply.

Are all payments made to “banking” type employees caught?

No. Broadly speaking, BPT applies only to bonuses in excess of £25,000 which are awarded in the period from 9 December to 5 April 2010.

How is a “bonus” defined?

Broadly, BPT applies to any remuneration other than salary (or benefit in kind) which is fixed and not performance-related. Bonuses in the form of HMRC-approved Share Incentive Plans or SAYE Option schemes are not subject to BPT: all other forms of share award or other non-cash bonus are subject to BPT in the same way as a cash bonus.

What’s meant by “awarded”?

A bonus is awarded when the contractual obligation to pay it arises, or if it is paid without any obligation to pay it having arisen. But if a bonus is fully non-discretionary and is paid pursuant to a contractual commitment entered into before 9 December it is not subject to BPT. The same principle prevents a charge to BPT where a non-discretionary bonus pool is created pursuant to a pre-9 December contractual commitment even though the allocation of the pool between individual employees may be discretionary.

Can I avoid BPT by deferring payment until after 5 April 2010?

No. BPT applies if arrangements are made before 6 April 2010 for a bonus to be paid after 5 April 2010. Similarly loans to employees or contributions to Employee Benefit Trusts will be treated as if they were payment of bonus and subjected to BPT.

Can I simply convert a bonus into additional salary?

There is anti-avoidance legislation which is triggered where a payment is made which is not in the form of bonus but which “equates in substance” to a bonus. It is possible that if a bonus is wholly discretionary it may be justifiable to award a temporary increase in salary but whether this would be effective would depend on the exact nature of the bonus arrangements.

If I pay a bonus which is caught, what BPT will be due?

BPT is charged at 50% of the excess of any bonus over £25,000. Thus if a discretionary bonus of, for example, £100,000 is paid on 21 December 2009, PAYE will be operated in the usual way but the employer will also be required to make a payment of BPT to HMRC of £37,500 (i.e., 50% x [£100,000 - £25,000]). This must be paid to HMRC by 31 August 2010.

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