Ashurst London
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Employer-Financed Retirement Benefits Schemes – the future for executives' pension provision

Pension provision for individuals with incomes of £150,000 or more has come firmly under the spotlight following the announcements in this year's Budget.

From April 2011 tax relief for pension contributions for such individuals will be tapered away. Tax relief will be tapered from 50 per cent to 20 per cent for those earning between £150,000 and £180,000. For those individuals earning over £180,000 tax relief will be restricted to the basic rate of income tax (currently 20 per cent).

Additionally, since 22 April 2009 special provisions have been introduced which prevent individuals "loading" their pension contributions to gain maximum tax relief on those contributions before April 2011.

Faced with this challenging situation, it is necessary for companies to consider whether alternative pension provision options are open to them for individuals who are affected by the tax changes. One particular option is to set up an Employer-Financed Retirement Benefits Scheme (EFRBS). This briefing highlights the key features of such an arrangement.

What is an EFRBS?

An EFRBS is an unregistered pension arrangement designed for those individuals who wish to accumulate benefits outside the registered pension scheme environment.

An EFRBS can take the following forms:

- **A funded EFRBS**: in this arrangement the employer makes contributions into the scheme in advance of retirement.
- **An unfunded EFRBS**: here the employer only makes pension payments to the employee during their retirement. Essentially a promise can be made in either the employee's employment contract or in a separate agreement that pension payments will be made to the employee direct from the employer following their retirement. A provision could be included under a trust scheme, but a nominal value may need to be contributed to the scheme if a new scheme is being established for this purpose.
- **A semi-funded EFRBS**: in this arrangement the employer pays some or all of the employee's pension entitlement under the EFRBS on the employee's retirement (in the same manner as in an unfunded EFRBS). However, the unfunded element is secured by an additional undertaking from the employer or a third party. The undertaking is usually provided by way of a charge over the assets of the employer or by way of an insurance policy from a third party (to which the employer pays a premium).

Why set up an EFRBS?

High earners will avoid the 30 per cent pension input tax charge applicable to them in respect of employer contributions to registered schemes made on their behalf. Employer contributions to EFRBS avoid this charge.

A further major advantage is that neither the annual allowance nor the lifetime allowance regimes applies to contributions to or benefits from an EFRBS, so an EFRBS is a viable option for providing retirement benefits in excess of these restrictions.

Additionally, the trustees have full control of investments and the restrictions on investments which are applicable to a registered pension scheme do not apply to EFRBS.

The tax treatment of EFRBS

Contributions
Employer contributions to an EFRBS will only benefit from corporation tax relief when the benefits are paid. Corporation tax relief is available irrespective of

whether the scheme is funded, unfunded or semi-funded.

If an employee decides to contribute to an EFRBS, they will not benefit from any tax relief. This aspect makes such contributions an unattractive option.

Payment of benefits
When benefits are paid, a tax charge will arise at the employee's highest marginal rate of income tax. Currently at a maximum of 50 per cent this is more favourable than the possible penal 55 per cent tax charge which can apply in respect of a registered pension scheme if benefits or funds are accrued in excess of the lifetime allowance.

Additionally, no National Insurance Contribution charge will arise on the payment of benefits out of the EFRBS provided that those payments fall within certain parameters, broadly being the benefit limits which are applicable to registered pension schemes.

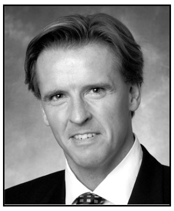
Inheritance tax
Depending on an individual's personal circumstances inheritance tax may also be payable.

In summary

In the light of the 2009 Budget announcements it is increasingly important for companies to consider alternative pension provision for their high-earning employees. An EFRBS offers one such alternative.

If you would like to discuss EFRBS or any other possible options in more detail, please do not hesitate to contact Steven Hull or any other member of the Ashurst pensions team listed below.

Contacts



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