

*Status: Point in time view as at 08/04/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2010, Part 1. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

#### BANK PAYROLL TAX

##### PART 1

##### THE TAX

##### *The tax*

- 1 (1) This Schedule makes provision for taxable companies to be charged to a tax to be known as “bank payroll tax”.
- (2) Bank payroll tax is chargeable on the aggregate of the amounts of chargeable relevant remuneration awarded during the chargeable period to or in respect of relevant banking employees of a taxable company by reason of their employment as relevant banking employees.
- (3) Relevant remuneration awarded during the chargeable period to or in respect of a relevant banking employee of a taxable company by reason of the employee's employment as a relevant banking employee is “chargeable” relevant remuneration only if and to the extent that its amount exceeds £25,000.

##### *Rate*

- 2 Bank payroll tax is charged at the rate of 50%.

##### *“Taxable company”*

- 3 “Taxable company” means a company which—
- (a) is a UK resident bank or a relevant foreign bank,
  - (b) is a company not within paragraph (a) which is a member of a banking group and—
    - (i) is a UK resident investment company or a UK resident financial trading company, or
    - (ii) is a relevant foreign financial trading company, or
  - (c) is a building society or is a UK resident investment company, or a UK resident financial trading company, which is a member of the same group as a building society.

##### *“Relevant remuneration”*

- 4 (1) “Relevant remuneration”, in relation to a relevant banking employee of a taxable company, means anything that—

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- (a) constitutes earnings (within the meaning of section 62 of ITEPA 2003) in relation to the employee's employment by the taxable company as a relevant banking employee, or
  - (b) while not constituting earnings, constitutes a benefit provided by reason of that employment.
- (2) Whether or not the relevant banking employee is chargeable to income tax in respect of anything is irrelevant in determining whether or not it is relevant remuneration.
- (3) Excluded remuneration is not relevant remuneration.

*“Excluded remuneration”*

- 5 (1) “Excluded remuneration” means—
- (a) anything which is regular salary or wages or a regular benefit,
  - (b) anything in the case of which a contractual obligation to pay or provide it to or in respect of the employee concerned arose before the beginning of the chargeable period,
  - (c) any shares awarded under an approved share incentive plan (within the meaning of section 488 of ITEPA 2003), or
  - (d) any share option granted under an approved SAYE option scheme (within the meaning of section 516 of that Act).
- (2) In sub-paragraph (1)(a) “regular”, in relation to salary or wages or a benefit, means so much of the amount of the salary or wages or benefit as cannot vary according to—
- (a) the performance of, or of any part of—
    - (i) any business of the taxable company concerned, or
    - (ii) any business of a person connected with the taxable company,
  - (b) the contribution made by the employee concerned to the performance of, or of any part of, any business within paragraph (a)(i) or (ii),
  - (c) the performance by the employee of any of the duties of the employment, or
  - (d) any similar considerations.
- (3) For the purposes of sub-paragraph (1)(b) a contractual obligation to pay or provide something to or in respect of the employee does not arise until—
- (a) the amount to be paid or provided is fixed or is capable of becoming fixed without the exercise of discretion by any person, or
  - (b) the total amount of things to be paid or provided to or in respect of a number of employees including the employee is fixed or is capable of becoming fixed without the exercise of discretion by any person.
- (4) A contractual obligation to pay or provide something is taken to arise for those purposes even if payment or provision of it is dependent on compliance by the employee with any conditions.

*“Awarded”*

- 6 (1) Relevant remuneration is “awarded” during the chargeable period if—
- (a) a contractual obligation to pay or provide it arises during the chargeable period, or
  - (b) the relevant remuneration is paid or provided during the chargeable period without any such obligation having arisen during the chargeable period,

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but subject to sub-paragraph (3).

- (2) Sub-paragraph (3)(a) of paragraph 5 applies for the purposes of sub-paragraph (1) as for the purposes of sub-paragraph (1)(b) of that paragraph.
- (3) Relevant remuneration is not to be taken to be awarded during the chargeable period by virtue of sub-paragraph (1)(a) if—
  - (a) it is required to be paid or provided at intervals,
  - (b) it is to be paid or provided in respect of contribution, performance or similar considerations only for times after the end of the chargeable period, and
  - (c) the reduction or elimination of a liability to bank payroll tax is not the main purpose or one of the main purposes of any person in assuming the obligation to pay or provide it.
- (4) Sub-paragraph (4) of paragraph 5 applies for the purposes of this paragraph as for the purposes of sub-paragraph (1)(b) of that paragraph.

*“Amount” of remuneration*

- 7 (1) Subject to sub-paragraphs (2) to (4), the amount of any relevant remuneration is—
  - (a) if it is money, its amount when awarded,
  - (b) if it is money's worth, the amount of the money's worth when awarded, or
  - (c) if it is a benefit not constituting earnings, the cost of providing it.
- (2) Where relevant remuneration is awarded to or in respect of an employee by virtue of paragraph 6(1)(a) and its amount is not fixed when it is awarded, its amount is such as it is reasonable at that time to assume would be its amount (in accordance with sub-paragraph (1)) if and when paid or provided.
- (3) Where the market value of any relevant remuneration at the time it is awarded exceeds, or would exceed, what would otherwise be its amount, its amount is that market value.
- (4) Where anything constituting relevant remuneration is or would be, when awarded, subject to any restriction or restrictions, the restriction is, or restrictions are, to be ignored in arriving at its amount.
- (5) For this purpose “restriction” means any condition, restriction or other similar provision which causes the value of the relevant remuneration to be less than it otherwise would be.

*“The chargeable period”*

- 8 “The chargeable period” is the period—
  - (a) beginning at 12.30 pm on 9 December 2009, and
  - (b) ending with 5 April 2010.

*“Relevant banking employee”*

- 9 (1) An employee of a taxable company is a relevant banking employee of the taxable company if—
  - (a) the employment in which the employee is employed by the taxable company is a banking employment, and

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- (b) either—
- (i) the employee is resident in the United Kingdom in the tax year 2009-10, or
  - (ii) the duties of the banking employment are at any time in that tax year performed wholly or partly in the United Kingdom.
- (2) “Banking employment” means an employment the duties of which are wholly or mainly concerned (whether directly or indirectly) with activities to which sub-paragraph (3) applies.
- (3) This sub-paragraph applies to activities which are—
- (a) listed regulated activities, or
  - (b) activities which are not listed regulated activities but consist of the lending of money or of dealing in currency or commodities as principal.
- (4) “Listed regulated activity” means an activity which is a regulated activity for the purposes of FISMA 2000 by virtue of any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544)—
- (a) article 5 (accepting deposits),
  - (b) article 14 (dealing in investments as principal),
  - (c) article 21 (dealing in investments as agent),
  - (d) article 25 (arranging deals in investments),
  - (e) article 40 (safeguarding and administering investments),
  - (f) article 53 (advising on investments), and
  - (g) article 61 (entering into regulated mortgage contracts).
- (5) But an activity is not a listed regulated activity in relation to an employee of a taxable company if—
- (a) the taxable company is an insurance company, or a member of the same group as an insurance company, and the activity is carried on wholly on behalf of the insurance company, or
  - (b) it—
    - (i) is either of the activities described in the provisions mentioned in sub-paragraph (4)(c) and (d), and
    - (ii) is carried on as part of, or wholly in support of, activities of the taxable company, or of a company which is a member of the same group as the taxable company, and the activities consist of acting as discretionary investment manager for clients none of which is a linked entity.
- (6) An employee of a taxable company who spends no more than 60 days in the United Kingdom in the tax year 2009-10 is to be treated as not being a relevant banking employee of the taxable company.
- (7) In determining for the purposes of sub-paragraph (6) whether an individual spends no more than 60 days in the United Kingdom treat a day as a day spent by the individual in the United Kingdom if (and only if) the individual is present in the United Kingdom at the end of the day.
- (8) But in determining that issue for those purposes do not treat as a day spent by the individual in the United Kingdom any day on which the individual arrives in the United Kingdom as a passenger if—

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- (a) the individual departs from the United Kingdom on the next day, and
- (b) during the time between arrival and departure the individual does not engage in activities which are to a substantial extent unrelated to the individual's passage through the United Kingdom.

#### *Multiple employments*

- 10 (1) The threshold of £25,000 in paragraph 1(3) applies whether or not an employee has more than one employment as a relevant banking employee with a taxable company.
- (2) If relevant remuneration is awarded during the chargeable period to or in respect of a relevant banking employee by reason of the employee's employment as such by a number of associated taxable companies, the threshold in paragraph 1(3) in relation to each of the taxable companies is £25,000 divided by the number of the taxable companies.
- (3) For this purpose taxable companies are associated if—
- (a) one of them is under the control of the other, or
  - (b) one of them is under the control of a third person who controls or is under the control of the other.

#### *Payments etc to intermediaries*

- 11 (1) This paragraph applies where—
- (a) an individual personally performs banking services for a taxable company,
  - (b) the banking services are provided not under a contract directly between the individual and the taxable company but under arrangements involving any other person (“the intermediary”), and
  - (c) the circumstances are such that, if the banking services were provided under a contract directly between the taxable company and the individual, the individual would be a relevant banking employee of the taxable company.
- (2) The individual is to be regarded as a relevant banking employee of the taxable company.
- (3) Anything done by the intermediary in relation to the individual which, if the banking services were provided under a contract directly between the taxable company and the individual, would be regarded as the award of relevant remuneration during the chargeable period to or in respect of the individual (as a relevant banking employee) by reason of the employee's employment as a relevant banking employee is to be so regarded.
- (4) “Banking services” means services which are wholly or mainly concerned (whether directly or indirectly) with activities which are activities to which paragraph 9(3) applies.

#### *Arrangements for future payments etc*

- 12 (1) This paragraph applies where—
- (a) arrangements are made during the chargeable period by reason of an employee's employment as a relevant banking employee of a taxable company,

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- (b) the arrangements make provision under which money may be paid, or any money's worth or other benefit provided, to or in respect of the employee in accordance with the arrangements, and
  - (c) were the money so paid, or the money's worth or other benefit so provided, during the chargeable period, it would be relevant remuneration awarded to or in respect of the employee during the chargeable period.
- (2) The making of the arrangements is to be regarded as the awarding of relevant remuneration to or in respect of the relevant banking employee by reason of the employment; and the amount of the relevant remuneration is to be regarded as the amount of any money which it is reasonable to assume will be paid, and any money's worth or other benefit which it is reasonable to assume will be provided, as mentioned in sub-paragraph (1).

#### *Loans*

- 13 (1) This paragraph applies where—
- (a) at any time during the chargeable period a relevant loan is provided to or in respect of a relevant banking employee of a taxable company by reason of the employee's employment as a relevant banking employee otherwise than pursuant to a contractual obligation arising before the chargeable period, or
  - (b) at any time during the chargeable period there arises a contractual obligation to provide a relevant loan to or in respect of the employee by reason of the employee's employment as a relevant banking employee of the taxable company.
- (2) A loan is a “relevant” loan if the main purpose, or one of the main purposes, of providing it, or undertaking to provide it, is the reduction or elimination of a liability to bank payroll tax or any other tax or national insurance contributions.
- (3) The loan is to be regarded as relevant remuneration awarded during the chargeable period to or in respect of the relevant banking employee by reason of the employee's employment as a relevant banking employee; and the amount of the relevant remuneration is to be regarded as the amount which is loaned or (where the amount of the loan is not fixed) the amount which it is reasonable to assume will be loaned.
- (4) A contractual obligation to provide a relevant loan is taken to arise for the purposes of this paragraph even if provision of it is dependent on compliance by the relevant banking employee with any conditions.

#### *Anti-avoidance*

- 14 (1) This paragraph applies where—
- (a) relevant arrangements are entered into by one or more persons during the chargeable period, and
  - (b) the main purpose, or one of the main purposes, of the person, or any of the persons, in entering into the relevant arrangements is a relevant tax avoidance purpose.
- (2) “Relevant arrangements” means arrangements involving either or both of the following—
- (a) the making of a payment of money, or the provision of any money's worth or other benefit, otherwise than during the chargeable period, and

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- (b) the giving otherwise than in the form of relevant remuneration of any reward which equates in substance to relevant remuneration.
- (3) A “relevant tax avoidance purpose” is the reduction or elimination of a liability to bank payroll tax which would exist if—
- (a) in a case within paragraph (a) of sub-paragraph (2), the money were paid, or the money's worth or other benefit provided, during the chargeable period, or
  - (b) in a case within paragraph (b) of that sub-paragraph, the reward were given in the form of relevant remuneration.
- (4) Liability to bank payroll tax is to be determined as it would have been if—
- (a) in a case within paragraph (a) of sub-paragraph (2), the money were paid, or the money's worth or other benefit provided, during the chargeable period, or
  - (b) in a case within paragraph (b) of that sub-paragraph, the reward were given in the form of relevant remuneration.

*No deduction in computing profits*

- 15 No amount of bank payroll tax is to be taken into account in calculating profits or losses for the purposes of income tax or corporation tax.

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