

Bank Payroll Tax – An Update

Ever since the much-publicised announcement of the 50% tax on bankers' bonuses in the Pre-Budget Report on 9 December, it has been clear that the original measure was ill-targeted. Many parts of the financial services industry were concerned that they might fall within the scope of the new tax, even though they were not "banks" in any conventionally understood sense of the word. Following industry representations, HMRC issued a statement over the weekend indicating its current thinking on the scope of the tax.

Where do I find the new statement?

You can access the statement [here](#).

What does the statement add?

The new statement relies heavily on highly technical regulatory definitions to specify which categories of institution are within and without the scope of the tax, limiting "banks" to firms which are:

- deposit takers; or
- "full scope BIPRU 730K investment firms".

Further work will be needed on these definitions before they properly reflect the stated policy. On the basis of the weekend statement, we can draw the following conclusions:

- There is good news for standalone fund managers. Whether they manage hedge funds, private equity funds or other funds, they should be outside the scope of the tax (and it certainly seems to be the intention of the Government that they should be).
- The position relating to fund managers within groups with in-scope entities remains unclear. Our view is that they will still be within the scope of the tax on the basis of the weekend statement, but it may be the case that the policy on this has not yet been finalised.
- Some full service stockbroking firms will remain within the scope of the tax (in particular those who take proprietary risk on their own balance sheets e.g. through market making, proprietary trading or underwriting), even though this seems contrary to the policy of the legislation as originally stated and restated at the weekend. This is particularly odd in light of HMRC's stated intention to remove prime brokers from the scope of the tax.
- Most standalone agency brokers and adviser/arrangers should now be outside the scope of the tax.

However, any entity concerned about the possible application of the tax should check their regulatory authorisations against the latest statement.

I've heard that LLPs are out: is that true?

The original Pre-Budget Report announcement indicated that the Government was still considering the position of such entities. While it looks as if most firms structured as LLPs are outside the scope of the tax (at least in relation to members' payments), there is no further word in the latest statement as to whether the new tax may apply to partnerships (including LLPs) where a bank or member of a banking group is a partner.

Where does this leave firms?

There is no absolute certainty as to the position at this stage. The latest statement expressly notes that it is not yet the Government's final word on who is caught by this tax, so firms should continue to watch for further pronouncements. Furthermore, the measure will not be made law until the next Finance Act, which will almost certainly not receive Royal Assent before late March 2010 at the very earliest, even though it will apply retrospectively from 9 December 2009.

We expect that many firms will rely on this statement when deciding whether to pay bonuses. Firms will no doubt take comfort from the fact that it would be embarrassing for a UK government retrospectively to include entities which have now been stated to be outside the scope of the tax.

If you would like further information or advice on these matters, please speak to your usual contact at Travers Smith or any of the partners named below.

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