

## WRITTEN MINISTERIAL STATEMENT

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### **Anti-Avoidance: Disguised remuneration**

Following the Written Ministerial Statement on 6 December 2010 and as announced at the June Budget, the Government is introducing legislation to tackle arrangements involving trusts or other vehicles used to reward employees which seek to avoid or defer the payment of income tax or National Insurance Contributions (NICs). The arrangements covered include the provision of a tax-advantaged alternative to saving beyond the annual and lifetime allowances available in a registered pension scheme. In many cases, these third party arrangements allow an employee to enjoy the full benefit of a sum of money paid or assets provided while arguing that, because of the structure of the arrangements, there is no legal right to the money or assets. This argument is used to support a proposition that income tax and NICs is due (if at all) only on the use of the money or assets during the period of the employee's employment and not on their full value.

The legislation inserts a new Part 7A into ITEPA 2003. The legislation ensures that where a third party makes provision for what is in substance a reward or recognition, or a loan, in connection with the employee's current, former, or future employment, an income tax charge arises. Income tax is charged on the sum of money made available and on the higher of the cost or market value where an asset is used to deliver the reward or recognition, for example by transferring or otherwise making available an asset for the employee's use and benefit as if the employee owned the asset. The amount concerned will count as a payment of employment income and the employer will be required to account for PAYE.

There will be protection for specified types of arrangements involving third parties – including registered pension schemes, approved employee share schemes and ordinary commercial transactions. The tax treatment of benefits packages which are available across the employer's workforce will also be unaffected by the measure, provided that the benefits are genuinely available to substantially all employees and cannot be accessed by only specially selected individuals.

The legislation will take effect from 6 April 2011 and apply to rewards, recognitions or loans which are earmarked for the benefit of an employee, or former or prospective employee, or otherwise made available on and after that date.

In addition, anti-forestalling provisions apply to the payment of sums (including loans) and the provision of readily convertible assets for the purposes of securing the payment of sums (including loans) where the sum is paid or the asset is provided between 9 December 2010 and 5 April 2011 where, if paid or provided on or after 6 April 2011, they would be caught by the legislation.

The anti-forestalling charge will arise on 6 April 2012 if sums paid have not been repaid, or readily convertible assets used to secure the payment of a sum have not been returned before that date, or not otherwise charged to tax under section 62 of ITEPA 2003. Any sum paid to which these anti-forestalling provisions apply, less a deduction for any amount which has been repaid, will count as employment income and the employer will be required to account for income tax under PAYE as if the amount concerned was a payment made on 6 April 2012. The value of any readily convertible asset provided (to which the anti-forestalling provisions apply) will also count as employment income, subject to the operation of PAYE by the employer as if the amount concerned was a payment made on 6 April 2012.

Regulations will be brought forward to apply National Insurance Contributions to the amounts charged to tax by this legislation.

Further details are contained in a draft explanatory note published on HMRC's website today, together with the draft legislation.

HM Treasury  
9 December 2010