TURCAN CONNELL

Briefing Note

Employer Financed Retirement Benefit Schemes (EFRBS)

What is an EFRBS?

- An EFRBS is an unapproved pension scheme set up by an employer to provide retirement or death benefits for senior executives or employees and their families. An EFRBS offers more flexibility than an approved pension scheme.

- The contribution which the employer can make to the scheme and the level of benefit the employee may receive are not restricted by pension funding limits.

- Funds held within the EFRBS for the benefit of an employee do not count towards that employee's lifetime allowance for approved pension schemes. Similarly, contributions made to EFRBS do not count towards the annual allowance for approved pension schemes.

- Unlike approved pension schemes, there are no restrictions on the asset classes which can be held in an EFRBS. It can hold assets of any kind, including residential and commercial property, cash and shares in the employer company.

- For businesses concerned about the impact on business property relief of surplus cash held within their company, but who are also concerned about the tax cost of extracting the surplus cash from the company, an EFRBS may provide a solution.

- Employees who expect to be resident outside the UK when benefits are drawn or who are domiciled outside the UK may find EFRBS particularly attractive.

How does an EFRBS operate?

- An EFRBS is established under a discretionary trust deed and rules.

- The trustees are independent of the employer and can be paid for the services they provide.

Once the employer contributions have been made to the EFRBS, the employer has no control over the funds. The trustees have discretion over the funds, subject to the trust deed and rules and their fiduciary duties as trustees.

How is an EFRBS taxed?

- Pension payments and other benefits from EFRBS are generally subject to tax as employment income.
- Where steps are taken to earmark funds after for particular employees (including ex-employees or prospective employees) the sum earmarked will be liable to tax as employment income.
- Contributions which are not earmarked are not subject to income tax or national insurance contributions until funds are allocated or benefits are paid in the future
- Similarly, contributions which were earmarked before the rules changed on 6th April 2011 are not subject to income tax or national insurance contributions until benefits are paid in the future.
- A corporation tax deduction for contributions to the EFRBS is deferred until a benefit is paid from the EFRBS, or a relevant step taken, giving rise to employee income tax and national insurance liability.
- The trustees are subject to the normal rules for taxation of trust income and capital gains. If the EFRBS is UK resident, the trustees are subject to tax on income at 45% and 28% on gains arising in the EFRBS.
- If the EFRBS is non UK resident, the trustees have no UK income tax liability other than on UK source income and are not liable to UK capital gains tax on disposals.
- Employer contributions to an EFRBS are generally not chargeable transfers for inheritance tax purposes. However, special considerations apply where the employer company is a close company (i.e. under the control of five or fewer shareholders or persons connected to them, or where the controlling shareholders are all directors of the company. Specialist advice should be taken before a close company establishes an EFRBS.

If you would like to discuss the issues involved in setting up, funding and running an EFRBS, please contact Donald Simpson on 0131 228 8111 or by email at donald.simpson@turcanconnell.com or Anne Marie Renz on 0131 228 8111 or by email annemarie.renz@turcanconnell.com

This note is intended as a brief summary of the taxation and legal position of Employer Financed Retirement Benefit Schemes as at June 2014. Taxation is subject to change and depends on the individual circumstances of each client. Legislation is also subject to change. Information provided in this document and any opinions expressed are for general use and not personal to your circumstances, nor are they intended to provide specific advice. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.