

The new Bank Payroll Tax is simple in concept, expensive in application and complex in operation. To assist you in navigating the relevant changes, Alvarez & Marsal Taxand UK has briefly outlined to whom this tax will apply; how it operates; and some of the practical implications and applications.

## BANK PAYROLL TAX – SIMPLE IN CONCEPT

- It is a 50 per cent, one-off tax payable by the Taxable Company (“a bank or building society”) (not the employee) on any bonus which in aggregate exceeds £25,000 per banker. The tax applies to amounts in excess of £25,000.
- Affects Chargeable Relevant Remuneration (“bonuses, no matter how delivered”) awarded to Relevant Banking Employees (“bankers”) between 9 December, 2009 and 5 April, 2010.
- The tax is payable on 31 August, 2010.
- It is not deductible in computing profits or losses for the purposes of corporation tax.

It is only possible to understand the tax if the meaning of each of the key terms is fully analysed, which is why it is difficult to operate. The main points (outlined below) may be subject to change, and further guidance is expected in reaction to anticipated responses from stockbrokers, private equity houses and hedge funds who, as we understand, should not be subject to this new legislation.

## TAXABLE COMPANY EXPLAINED

A Taxable Company is UK bank, a foreign bank operating in the UK or a building society.

The definition of a bank for these purposes is wider than might be expected. It is defined as a company that is authorised under FISMA 2000 (i.e., it is regulated by the FSA), which **wholly or mainly** carries out the following regulated activities:

- Accepting deposits
- Dealing in investments as principal or agent
- Arranging deals in investments
- Safeguarding and administering investments
- Regulated mortgage contracts

A company is considered a Taxable Company if it is a member of a banking group or building society group and is an investment company or financial trading company.

Certain companies are excluded from the definition, namely insurance companies, investment trusts, open-ended investment companies, Friendly Societies and Credit Unions.

Therefore, the definition of a bank is vast and may catch non-banking regulated entities, so careful consideration of the applicable activities is needed.

## RELEVANT BANKING EMPLOYEE

Once it is established that a person works for a Taxable Company, the next step is to identify if they are a Relevant Banking Employee, qualified as:

- An employee of a Taxable Company
- Employed in a banking employment
- A UK resident or the duties are, at **any time**, performed wholly or partly in the UK between 5 April, 2009 and 5 April, 2010.

(Payments through intermediaries may also fall under the rule).

A banking employee is one who has duties that are **wholly or mainly** concerned (whether directly or indirectly) with the regulated activities listed above, or with the lending of money.

Each Taxable Company will have to review the duties each employee has carried out or will carry out during this tax year. If the company determines that an employee does not fall within the tax legislation, then they will need to be able to substantiate it. It may well not be enough to produce the contract of employment showing the contractual duties are not within the definition. It is likely that evidence will need to be produced such that, in practise, the duties are not within the definition. Conversely, if the employment contract shows that someone is carrying out banking duties but, in reality, is conducting other duties, there likely will be a need for very persuasive evidence to the contrary.

### EXPENSIVE IN APPLICATION: CHARGEABLE RELEVANT REMUNERATION

It is now important to calculate the Chargeable Relevant Remuneration paid by the taxable company to the Relevant Banking Employee.

In effect, this includes earnings or a benefit provided by reason of employment:

- Any amount, whether awarded in cash, through a loan, in shares or other equities, or a benefit in kind that is not a regular annual payment, whether payable immediately or on a deferred basis and whether taxable in the hands of the employee or not;
- There was no contractual obligation entered into prior to 9 December, 2009;
- It is not excluded remuneration; and
- The aggregate amounts awarded exceed £25,000.

By way of example, compensation elements will be treated as follows:

Chargeable Relevant Remuneration (if over £25,000)	Excluded Remuneration or Regular Salary, Wages or Benefits
<ul style="list-style-type: none"> <li>• Cash Bonuses</li> <li>• Bonus Deferral Plans</li> <li>• Gold Bullion, Wine, etc.</li> <li>• Loans (interest free, interest bearing)</li> <li>• Company Share Option Plans, Restricted Stock Units, Restricted or Conditional Shares</li> <li>• Contributions to Employee Benefit Trusts</li> <li>• Approved and Non-Approved Pension Contributions</li> <li>• Any combinations of the above that, in aggregate, amount to £25,000 or more</li> </ul>	<ul style="list-style-type: none"> <li>• Annual Salaries</li> <li>• Share Incentive Plan Awards</li> <li>• SAYE Option Awards</li> <li>• Contractual Overtime</li> <li>• Flexible Benefits Offered Under Existing Plans</li> <li>• Season Ticket Loans, if taken annually</li> </ul>

### Potentially Chargeable Relevant Remuneration, Unless Paid Regularly

- Any newly introduced share plans (other than SAYE, SIP)
- Company Share Option Plan, Restricted Stock Units, Restricted or Conditional Shares
- Pension and Retirement Plan Contributions
- Overseas All-Employee Plan (e.g., US Employee Stock Purchase Plan)

## COMPLEX IN OPERATION: COMPANY CHOICES

(1) Pay “bonuses” as usual, and either:

- Pay less to the relevant banking employees; or
- Pay the same amount to the relevant banking employees (i.e., the amount they would have received without the bank payroll tax).

	Cost to Employer		
	Currently (Without BPT)	With 50 per cent BPT	With BPT, but Employer Costs Unchanged
Bonus per Employee	£500,000	£500,000	£319,000
Employer NI	£64,000	£64,000	£40,832
BPT over £25,000	0	£237,500	£147,000
CT @28 per cent	£157,920	£157,920	£100,753
<b>Total Cost</b>	<b>£406,080</b>	<b>£643,580</b>	<b>£406,079</b>
<b>Benefit to Employee</b>	<b>£295,000</b>	<b>£295,000</b>	<b>£188,210</b>

(2) Pay only bonuses of £25,000 and consider paying additional amounts after 6 April, 2010. However,

- Employees will then pay 50 per cent income tax;
- There is a risk employees could be “poached” by other organisations that can pay a “sign on bonus,” which does not appear to be subject to the bank payroll tax; and
- The amounts paid will be deductible for calculating profits and losses for the purposes of corporation tax.

(3) Remuneration Committees must consider:

- The implications of differing bonus amounts payable to employees with a relevant banking employment versus those not employed as such;
- The market environment both from a perspective of what other banks are doing, but also shareholder sentiment, especially in cases in which there is a significant Government holding;
- The likelihood and the risk to the business of a key person or team being poached by the competition; and
- The international landscape.

- (4) Employers should pay careful consideration as to which employees are caught not only as a result of their duties, but also those who have carried out relevant banking duties throughout the tax year; and
- (5) Remuneration Committees and HR departments need to document the decisions they are taking and collate supporting paperwork for inspection by HMRC.

#### **ABOUT ALVAREZ & MARSAL TAXAND UK**

Serving the UK and international corporate tax markets, Alvarez & Marsal Taxand UK LLP offers a fresh, independent and client-focused alternative that delivers the high quality service and proactive advice our clients expect, but without the time consuming audit-based conflict checks required of the Big Four. Our experienced tax advisers are passionate about tax, and about providing responsive, tailored advice that helps mitigate risk, manage tax burdens and drive business performance.

Together with its affiliate in the US, Alvarez & Marsal Taxand UK is part of Alvarez & Marsal, a leading global professional services firm founded in 1983 to provide operational and financial leadership, problem solving and value creation to corporates and stakeholders around the world. Alvarez & Marsal Taxand is also a founding member of Taxand, the first global network of leading tax advisers from independent member firms operating in 50 countries with more than 300 partners and 2,000 tax professionals serving the global business tax marketplace.

To learn more, visit [www.alvarezandmarsal.com](http://www.alvarezandmarsal.com) or [www.taxand.com](http://www.taxand.com)

---

#### **FOR ADDITIONAL INFORMATION, PLEASE CONTACT:**

**Sarah Pickering**  
Managing Director  
Tel: +44 207 663 0445  
[spickering@alvarezandmarsal.com](mailto:spickering@alvarezandmarsal.com)

**Ian Fleming**  
Managing Director  
Tel: + 44 207 663 0425  
[ifleming@alvarezandmarsal.com](mailto:ifleming@alvarezandmarsal.com)