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Clients&FriendsMemo

UK Budget 2010: Key Taxation Aspects

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On Wednesday 24 March 2010, the Chancellor of the Exchequer delivered the last Budget of the current UK Parliament in a speech which was dominated by commentary on the state of the UK economy, proposals to provide fiscal stimulus and some clear headline-grabbing announcements to assist the Labour Party's forthcoming election campaign.

While the bundle of Budget press releases and supporting documents contained fewer taxation surprises than in previous years, a continued resolution to clamp down on perceived tax avoidance was readily detectable within many announcements. Foremost amongst these anti-avoidance measures was a tightening of the legislation regarding the release of loans to participators in close companies, revisions of the rules relating to stamp duty land tax and partnerships, confirmation of changes to the risk transfer scheme and disclosure of tax avoidance scheme legislation and the publication of a discussion document focusing on "group mismatch schemes".

In this memorandum, we have set out the details of a number of the key changes in legislation and practice that we expect to be relevant to Cadwalader's clients and friends. Please see our "Speed Read" section below which summarises the key points, each of which is expanded in the lengthier commentaries which follow.

Speed read

- *Bank Payroll Tax:* legislation enacting the Government's proposals regarding bank payroll tax will be introduced in Finance Bill 2010. The tax will not be extended past 5 April 2010.

- *Financial Products Avoidance - Group Mismatches*: an important discussion document looking to establish the principle that intra-group financial instruments should be taxed on a symmetrical basis, with accompanying proposals to neutralise any group tax asymmetries arising through intra-group financial products avoidance. The discussion document proposes that the anti-avoidance measures should be introduced through "principles-based" or "generic" legislation.

- *Worldwide Debt Cap:* Further amendments to supplement those already announced in the Pre-Budget Report.

- *Risk Transfer Schemes:* the proposed restriction of relief for losses arising on schemes involving loan relationships or derivative contracts which are designed to allocate risk to pre-tax but not post-tax profits ("overhedging and underhedging") will be extended to cover schemes involving other instruments held on trading account by financial traders.

- *Double Tax Relief Avoidance:* amendments to the double taxation relief rules and manufactured overseas dividends rules to prevent double relief being claimed in respect of foreign tax.

- *Capital Distributions*: HMRC have confirmed their intention to legislate in the Finance Bill 2010 to extend the rules on the taxation of income distributions received by UK corporation tax payers to UK source capital distributions.

- *Release of Loans to Participators in Close Companies:* tightening of legislation to deny a corporation tax deduction for the amount of the release or write off of a loan advanced to a participator in a close company.

- *Disclosure of Tax Avoidance Schemes:* the scope of disclosable schemes to be widened with the introduction of new "hallmarks". The obligation to disclose will arise at the point at which marketing of the scheme begins as opposed to the current (later) point at which the scheme becomes available for implementation.

- *Stamp Duty Land Tax and Partnerships:* transfers of chargeable interests to partnerships will fall outside the partnerships rules (and may therefore result in SDLT being chargeable on the full consideration) where a partnership relationship between the vendor and the purchaser is "contrived".

- *Stamp Duty and SDRT Relief for Members of Clearing Houses:* legislative changes to ensure that the power to make certain regulations exempting stamp taxation on certain intermediary transactions extends to members of clearing houses, and nominees of such members.

Bank Payroll Tax

HMRC have confirmed in the Budget that legislation will be introduced in Finance Bill 2010 relating to the bank payroll tax ("**BPT**") announced on 9 December 2009 in the Pre-Budget Report. The relevant Budget press release dealing with BPT has confirmed that a number of changes will be made to the draft legislation published at the time of the Pre-Budget Report.

The main changes which have been announced seek to clarify the complicated definition of "taxable company", confirm when relevant remuneration is taken to be "awarded" during the chargeable period for BPT and include detailed machinery provisions for the assessment and the collection of BPT (including provisions for penalties and interest). The relevant Budget press release does not, however, include draft legislation in which these changes are set out in full.

The Budget press release on BPT also describes a number of changes in the draft legislation which have already been announced on the HMRC website and through a detailed series of FAQs on the application of BPT.

There is, however, little additional information in the HMRC press release regarding whether all the open questions relating to the more controversial areas of the application of BPT, including the operation of the draft legislation regarding third party asset management activities, have been conclusively settled. It will be less than ideal, from the perspective of taxing legislation needing to be sufficiently certain, if such questions remain open after the chargeable period of BPT ends on 5 April 2010.

Of considerable importance is the statement in the HMRC press release that BPT will only have effect until 5 April 2010 and will therefore not be extended. This will be welcomed by many in the UK's banking sector. Any sense of relief in this regard by the UK's banks may, however, need to be tempered with the statements made in the Chancellor's speech which confirmed that Britain would actively explore the imposition of a global banking levy at the meeting of the International Finance Ministers in Washington in April 2010.

In this regard, the Chancellor's announcement that an "international systemic tax on banks" is needed and that "such a tax should be internationally co-ordinated" are revealing. The HM Treasury Economic and Fiscal Strategy Report ("**EFSR**") sets out a number of key principles that the Government believes should guide work on an internationally coordinated "systemic risk tax". Emphasis is placed in the EFSR on the need for such a tax to be coordinated internationally in order to minimise competitive distortions and to resolve issues of double-taxation and arbitrage risk. The Government believes that such a tax should complement, not substitute existing G20 regulatory initiatives which are aimed at addressing systemic risk. The Government has expressed concern that an insurance fund could create moral hazard by allowing banks to believe that they have bought protection against future failures. As a consequence, the Government has proposed that the proceeds of such a tax should go into general taxation rather than a stand-alone fund. The proceeds of such a tax should be for national government use, and so the tax should not be seen as an insurance policy to benefit individual institutions. In implementing the tax, account should be taken of the wider regulatory reform programme, as well as the timing and strength of economic recovery to ensure that the impact of any tax is proportionate and measured. The Government has proposed that the tax base should be as simple as possible, whilst still taking account of the characteristics of a firm's business that give rise to systemic risk. The proposed tax will cover all financial institutions that may contribute significantly to systematic risk.

The Government has also emphasised that it is crucial to explore additional measures with respect to those financial institutions that pose the greatest systemic risk to financial stability, including requiring systemically important financial institutions to hold more capital, to limit certain risky activities or investments and the creation of recovery and resolution plans (also known as "living wills").

The Government's proposals as regards a systemic risk tax and complementary regulatory initiatives are similar to those of Mr Dominique Strauss-Khan, head of the International Monetary Fund, who has urged European countries to devise a system of orderly bankruptcy for cross-border banks. It is also revealing that the IMF will report next month on alternative approaches for a global banking levy. Although the chargeable period for BPT is coming to a close, developments regarding a global bank levy or systemic risk tax on banking institutions seems set to continue for some time.

Discussion Document on "Financial Products Avoidance: Group Mismatches"

One of the most interesting announcements in the suite of Budget documents was the proposal by HMRC to consult on the possibility of introducing "generic" or "principles-based" legislation to responding to what HMRC describes as being "group mismatch schemes". As described in the Discussion Document, group mismatch schemes appear to be intra-group transactions which are structured in a way which gives rise to asymmetrical tax treatments as a result of which a tax deducible loss is recognised by one group company but where the group counterparty does not recognise an equivalent taxable profit.

The Discussion Document provides a number of examples of such group mismatch schemes involving financial instruments including loans, shares and hybrid instruments (although quasi-loans, derivatives and manufactured payments are identified in the Discussion Document as also being employed to create the group mismatch).

Group mismatch avoidance is described by HMRC as leading to many disclosures under the Disclosure of Tax Avoidance Schemes legislation. These continuing disclosures have prompted the Government to consider whether addressing the perceived avoidance with "a generic or principles-based approach" may be viable. HMRC perceive that the existing examples of principles-based legislation, in Schedules 24 and 25 to Finance Act 2009 dealing with disguised interest and transfer of income streams respectively, have been successful, noting that "this kind of legislation provides stronger and broader defences against innovative schemes because it is clear that they do not fall within the intentions of the legislation" (paragraph 16 of Chapter 1 of the Discussion Document). Part of the attraction to HMRC of a principles-based approach to anti-avoidance legislation in the area of group mismatches appears to be the prevention of a piecemeal approach to imposing anti-avoidance legislation based on specifically disclosed schemes.

In essence, the Discussion Document describes "principles-based" legislation as being an approach to drafting tax statutes which enshrines in the relevant legislation one, or several, fundamental taxation principles. The principles cited in the Discussion Document in relation to group mismatches appear to be that: (i) connected party loans and derivatives should be treated symmetrically for tax purposes; and (ii) that intra-group loans or derivatives should not be used for the purpose of producing an overall tax loss within a group as a result of transactions which do not give rise to any economic loss in accordance with the "reality" of the arrangements.

The stated aim of HMRC is to neutralise UK tax advantages arising from such group mismatches, thereby offering the prospect of the simplification of existing UK anti-avoidance legislation and the possible repeal of all or part of complex anti-avoidance provisions which effectively undertake the same function but through closely articulated legislation which is vulnerable to the continued evolution of the schemes in question. A significant part of the Consultation Document is devoted to exploring the scope of the application of any remedial legislation and the methods through which the restoration of tax symmetry can be achieved.

Broadly, a tax mismatch arrangement would first be identified in relation to a loan relationship or derivative contract with a connected company. A tax mismatch arrangement would be present if it would be reasonable to assume that the arrangement, or any part of it, or any transaction entered into a result of it, was designed to secure either (a) a reduction in the group's rate of UK tax as a result of the differing tax treatment of the loan or derivative by the group companies; or (b) where the tax treatment of the loan or derivative is contingent on any matter, a possible reduction in the group's effective rate of UK tax as a result of that contingency (unless the contingency gives rise to an equivalent likelihood of an equal increase in the group's rate of tax). There are references in the Discussion Document to the adoption of a "counterfactual assumption", which appears to be a requirement to consider a hypothetical position in absence of the offending connected party transaction, and also references to the relevant arrangement needing to be "designed" with a group mismatch in mind.

HMRC are less prescriptive in the Discussion Document regarding the possible approaches to taxing the group loan relationship or derivative contract debits or credits arising from the transaction in question once it is established that such debits or credits fall within the group mismatch provisions. Alternative approaches are suggested including treating the loan or derivative through which the mismatch arises as a "tax nothing", imposing symmetrical treatment on the connected counterparty and cancelling the UK tax advantage created.

The Discussion Document sets out a number of areas on which respondents views are sought (with the deadline for comments being 31 May 2010), including whether the provisions should be limited to a domestic UK context, whether transactions with non-UK parties should be included, whether structured finance arrangements which fall outside the scope of loans or derivatives should be included and how the legislation will operate in tandem with other key anti-avoidance rules. HMRC have also taken considerable effort to emphasis that any draft legislation would be introduced only "after thorough consultation" (paragraph 21 of Chapter 1 of the Consultation Document). In the event that the outcome of the initial consultation is favourable, HM Treasury and HMRC will publish draft legislation as part of the 2010 Pre-Budget Report with an intention to enact the relevant legislation in Finance Bill 2011.

The Discussion Document, including the examples given of perceived group mismatches, deserves careful study. It remains to be seen whether the emphasis in the Discussion Document on "principles-based legislation" follows the path eventually taken in Finance Act 2009, as opposed to the novel but controversial form of "principles-based legislation" first proposed by HMRC regarding financial products avoidance in December 2007. A key concern with legislation based on a set of "principles" remains whether the articulation of such principles is sufficiently clear in the draft legislative provisions, and whether such provisions can deliver sufficient clarity to avoid the dislocation of legitimate commercial activity.

In this regard, it is considered that it will be particularly important to be able to identify with certainty the group arrangements which are motivated by the desire to create a tax mismatch and distinguish such arrangements from legitimate commercial transactions where the tax attributes may be attractive but remain a component of a wider package in which the tax features are subordinated to the economic benefits of companies being within a group.

Worldwide Debt Cap

Further amendments are being made to the UK's worldwide debt cap legislation which came into effect for accounting periods beginning on or after 1 January 2010. (These provisions are being rewritten to Part 7 of the Taxation (International and Other Provisions) Bill 2010).

Currently a group which is "large" (i.e. it includes a member which has not less than 250 employees and an annual turnover of €50 million or more and/or an annual balance sheet total of €43 million or more) is subject to rules which restrict the deductibility of interest for UK corporation tax purposes, where the "UK net debt" of the worldwide group exceeds 75 per cent. of the "gross debt" of the worldwide group.

The "UK net debt" of the worldwide group is, essentially, the aggregate of the net indebtedness of each company which is resident in the UK or carrying on a trade in the UK through a permanent establishment. The "gross debt", in similarly broad terms, is the sum of all indebtedness of the group, as disclosed by its balance sheet.

Once within the rules, the excess of what is termed the "tested expense amount" over the "available amount" is disallowed as a deduction against income for corporation tax purposes. The disallowance may then be allocated to particular UK companies within the group at the option of the group. The tested expense amount is the sum of the excess of the financing expenses over the financing income for each UK company (or UK permanent establishment). The "available amount" essentially equates to the gross consolidated finance expense of the group.

In the Pre-Budget Report, amendments were announced which largely excluded securitisation companies from the scope of the rules. However, while securitisation companies are expressly excluded from the definitions of "UK group company" and "relevant group company" (thereby removing securitisation companies from the scope of the 75 per cent. gateway test), they are not currently excluded from the definition of "worldwide group" which has the effect of bringing the financing expense of group securitisation companies within the scope of the "available amount" calculation. Securitisation companies will now be removed from the scope of that calculation.

Further changes are also proposed:

(i) A power will be added to make regulations which permit UK companies (or companies with UK permanent establishments) which are party to capital market arrangements to transfer any corporation tax liability arising as a result of the worldwide debt cap to another group company.

(ii) The 75 per cent. "gateway test" is to be widened to include "long term arrangements" (which do not have the legal form of loans) which give rise to an interest like return.

(iii) It will be made clear that a worldwide group will not arise by reference to, or include, an "ultimate parent" which is a limited liability partnership. Currently, an ultimate parent can be any "corporate entity", the definition of which could include a limited liability partnership.

(iv) Distributions by industrial and provident societies, which are normally treated as interest for tax purposes, will not be treated as financing expenses of those companies.

Risk Transfer Schemes

In the 2009 Pre-Budget Report, draft legislation was published which is intended to restrict relief for losses arising from certain transactions involving loan relationships and derivative contracts which arise as a result of the fluctuation of any exchange rate, price index or any other index, price or value.

HMRC is concerned that multinational groups of companies are able to use structured finance arrangements (which over-hedge or under-hedge risks using loan relationships and derivative contracts) to give rise to a risk-free return or lower borrowing cost on an after-tax basis as a result of the availability of relief for losses on those arrangements to the UK corporation tax paying members of the multinational group. The excess of any loss (for tax purposes) over the real economic loss of the scheme will be ring fenced under the proposed legislation and will only be available for relief against profits arising from the same scheme. Unrestricted loss relief is therefore limited to the real economic loss arising from the scheme.

The Government announced in the Budget press release addressing risk transfer schemes that it intends to augment the proposed legislation, which is to take effect for accounting periods beginning on or after 1 April 2010, with a power to make regulations which extend the scope of the rules to schemes which do not involve loan relationships or derivative contracts but involve other instruments which are held on trading account by financial traders.

Double Tax Relief Avoidance

Legislation is to be introduced in Finance Bill 2010 to counter continued tax avoidance using the UK's complex and closely articulated double tax relief provisions. The rules will be amended to ensure that taxpayers will only be entitled to a credit in respect of foreign tax on income where the gross amount of the income (including the foreign tax) is brought into account for UK tax purposes.

HMRC also proposes to widen the scope of section 804ZA of the Income and Corporation Taxes Act 1988 ("**ICTA 1988**") (which is being rewritten to section 81 of the Taxation (International and Other Provisions) Bill 2010) which currently allows HMRC to issue counteraction notices which cancel the effect of certain prescribed arrangements falling with Schedule 28AB of ICTA 1998 to cover the following schemes:

(1) which seek to claim credit for foreign tax where a deduction for foreign tax against the gross income receipt has already been allowed (resulting in double relief in respect of the foreign tax);

(2) which rely on the fact that the legislation, in some cases, only requires foreign tax to be "payable" as opposed to actually being paid before relief against UK tax can be claimed (HMRC hopes to render schemes which rely on this distinction ineffective by denying credit for foreign tax where that foreign tax is negated without being paid);

(3) where a person takes a step or omits to take a step which has the effect of increasing the double tax relief claim.

Finally, the manufactured overseas dividend regulations will be amended to close down schemes being used by financial traders which result in double relief being obtained for foreign tax. The change is effected by the Income Tax (Manufactured Overseas Dividends) (Amendment) Regulations 2010 (SI 2010/925) which were made on 24 March 2010 and apply to manufactured overseas dividends made, or treated as made, on or after 14 April 2010.

Capital Distributions

HMRC have confirmed their intention to legislate in the Finance Bill 2010 to extend the rules on the taxation of income distributions received by UK corporation tax payers to capital distributions. Until 2005 is was possible to argue that all UK source distributions were of an income nature unless treated as capital under specific legislation. An example of this would be a distribution in the course of a winding up which was specifically treated as a capital distribution under section 209(1) of the ICTA 1988. However, under the provisions of section 383(3) of the Income Tax (Trading and Other Income) Act 2005 ("**IT(TOI)A 2005**"), all distributions of a UK company were treated as income for income tax purposes, irrespective of whether the distribution was of a capital nature. Although HMRC's long standing practice was to treat UK source distributions as income, that practice was difficult to sustain after the enactment of IT(TOI)A 2005 and not possible after the reforms of the taxation of dividends in Corporation Tax Act 2009 ("**CTA 2009**").

Under section 931A(2) of CTA 2009 distributions of a capital nature were clearly excluded from the general exemption from corporation tax available for income distributions by UK or non-UK resident companies. Capital distributions would therefore be subject to corporation tax on chargeable gains, except where falling within an exemption such as the substantial shareholdings exemption or where some other relief applied.

HMRC announced on 24 February 2010 that Finance Bill 2010 would contain provisions to enable UK source capital distributions to fall within the exemption from corporation tax on distributions in CTA 2009, thereby "making it unnecessary to consider difficult boundary issues between income and capital" (paragraph 8 of HMRC Budget Notice 5 entitled "Capital Distributions"). The announcement in the Budget does little to amplify the announcement already made, but does confirm that the legislation will have retrospective effect (presumably to the date of introduction of the exemption from UK corporation tax for UK source distributions with effect from 1 July 2009, although this is regrettably not stated in the Budget press release or the 24 February announcement) and that UK companies will be able to elect for the legislation not to apply retrospectively, such as in circumstances where such retrospective application would lead to an increased tax liability.

The Budget announcement does not answer a number of questions initially raised in conjunction with the HMRC announcement on 24 February, such as identifying the starting date for the non-retrospective aspect of the proposed legislation and confirming whether all, or only certain specified, distributions of capital will come within a widened exemption from corporation tax. It seems likely from the focus in the 24 February announcement and the relevant Budget press release that the treatment of capital distributions by non-UK companies will not be changed, and that this will continue to depend on the identification of whether the distribution being pad is of an income or capital nature (as was considered in the recent decision in *First Nationwide v HMRC* [2010] UKFTT 24).

Release of Loans to Participators in Close Companies

Legislation will be included in Finance Bill 2010 to deny a corporation tax deduction for the amount of the release or write off of a loan advanced to a participator in a close company. The change is motivated by an asymmetry in the loan relationships legislation when compared with other provisions relating to close companies and their participators.

Close companies are defined in section 439 of Corporation Tax Act 2010, broadly being a company which is under the control of five or fewer participators or participators who are directors. A "participator" is defined as a "person having a share or interest in the capital or income of the company" (section 454 CTA 2010), including loan creditors. The relationship between a close company and its participators is subject to a number of special tax rules which seek to eliminate any tax advantages which might arise from the fact that the close company is controlled by its participators.

The provision of a loan or the advancing of money by a close company to a participator, or to an associate of a participator, results in a corporation tax charge of 25 per cent. of the amount of the loan or advance being imposed on the company. In the event that the loan or advance is released or written off, under current law the company may be entitled under the loan relationships regime (subject to anti-avoidance rules) to a full deduction against its corporation tax liability provided that (as is normally the case) the release or writing off of the loan or advance constitutes an expense being recognised for the purposes of UK GAAP in the accounts of the close company in question.

HMRC have announced that with effect from 24 March 2010 no deduction for corporation tax purposes will be allowed in respect of the release or write off (in whole or in part) of a loan or advance made to a participator. This brings the release of a loan or advance by a close company to a participator into line with the treatment of dividends extracted by a participator from a close company (where the company would receive no corporation tax deduction from the payment of the distribution).

HMRC have accepted that the proposed change will simply restore the treatment of loan and advances made to participators in close companies to the position before 2002, at which time extensive changes were made to the definition of "connected persons" in the loan relationships legislation. Importantly, the complex rules from 2002 regarding the meaning of "connected persons" for the loan relationships regime are not being resurrected; the changes proposed in the Budget therefore only return to the 2002 position and do not replicate the earlier legislation.

Following the implementation of the changes proposed in the Budget, the position of the participator will remain unchanged for income tax purposes. Such a participatorwill continue to be treated as having received income of an amount equal to the loan or advance which is released net of income tax at the dividend ordinary rate (sections 415 to 417 IT(TOI)A 2005). Accordingly, an individual participator should continue to be in a symmetrical position were they to receive a dividend from the close company (taxed as investment income on the participator, with an attendant tax credit, and no further liability unless the participator is a higher rate tax payer) compared to benefiting from the release or writing off of a loan made to them.

Disclosure of Tax Avoidance Schemes

The current disclosure of tax avoidance scheme ("**DOTAS**") rules at Part 7 of Finance Act 2004 are to be amended by Finance Bill 2010.

The rules require promoters of certain tax avoidance schemes and, in some cases, users of those schemes to disclose details of the scheme to HMRC, which then allocates a scheme reference number to the person notifying the scheme, which must be reported on the tax return of the user. Only schemes which bear certain "hallmarks" described in regulations are notifiable.

The scope of the DOTAS rules are to be widened in certain respects:

(1) It is proposed that schemes will become notifiable at the point at which the promoter first communicates a fully designed scheme to a third party for the purpose of obtaining clients of that scheme. Currently notification is generally only required when the notifiable proposal becomes "available for implementation" by the taxpayer. The amendments are intended to ensure that the obligation to notify HMRC arises as soon as the marketing of the scheme begins.

(2) Those who introduce clients to notifiable schemes will now be made subject to a requirement to notify HMRC of the name and address of the promoter who provided them with the details of the scheme.

(3) Promoters will be required to provide HMRC with periodic information about their clients who implement notifiable schemes (subject to grandfathering).

(4) The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 will be revised to include new "hallmarks".

(5) Penalties for failing to comply with disclosure obligations will be increased.

Further consultation on these proposals is, however, expected.

Stamp Duty Land Tax and Partnerships

Further anti-avoidance measures will be introduced to combat continuing avoidance of stamp duty land tax ("**SDLT**") using the SDLT rules which apply to partnerships set out at Schedule 15 of Finance Act 2003.

Where property is transferred into a partnership by an existing partner or a person which joins the partnership, the charge to SDLT is limited in its application to a notional transfer of that part of the market value of the chargeable interest in land transferred which corresponds to the proportion of the chargeable interest held by the other partners who are unconnected with the transferor after the transfer.

As from the 24 March 2010, it is proposed that the rules under Schedule 15, which restrict the SDLT charge to the SDLT which would be due on the notional transfers, will be disapplied in the case of certain schemes which create "contrived" partnership relationships between the vendor and purchaser.

Stamp Duty and SDRT Relief for Members of Clearing Houses

The stamp tax legislation contains powers to enable regulations to be made to deal with any stamp duty and stamp duty reserve tax consequences of the various mechanisms used in capital markets. The intention in the legislation is to ensure that tax or duty is paid only once in respect of an investor trade where there is only one seller and one purchaser when the transaction is looked at as a whole, regardless of the number of intermediaries acting as principals in the transaction. Numerous regulations have been made to facilitate clearing functions under these provisions, each of which, very broadly, exempts agreements to transfer and transfers of UK securities to the central counterparty or a clearing member of an exchange when acting in that capacity.

HMRC have announced in the Budget these regulations are to be clarified. The powers granted to HMRC in section 116 and 117 of Finance Act 1991 to make regulations currently extend to transactions involving an exchange, a member or nominee of an exchange, a nominee of a member of an exchange, a clearing house, or a nominee of a clearing house. Transactions involving members of clearing houses, and nominees of such members, are not currently included in the regulation making powers through express provision. A concern was raised in December 2009 by the Select Committee on Statutory Instruments that certain recent statutory instruments had extended to circumstances not permitted under the enabling legislation, causing confusion. Legislation will therefore be introduced in Finance Act 2010 to provide that the power to make regulations in section 116 and 117 of Finance Act 1991 extends to members of clearing houses, and nominees of such members, to place the matter beyond doubt. HMRC have also announced that such legislation shall be retrospective, ensuring the amendments are deemed to always have had effect and thereby removing any concern regarding the legitimacy of recent statutory instruments.

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If you have any questions regarding the foregoing, please contact:

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