

Press Release

11 November 2004



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Company Directors and ECO participation – are you at risk?

As a result of client engagements for the purpose of our compliance 'Health-Check' service, CBS has recently encountered examples of ECO schemes designed without due consideration as to how the potential participation of the directors of the business should differ from that of other employees.

The ability of a company to provide loans to directors is restricted by the Companies Act 1985 (CA 1985). In summary, under s330 of the CA 1985, a company is prohibited from making a loan or entering into any guarantee or providing any security in connection with a loan made to a director of the company or its holding company or a superior holding company. (£5,000 exemption s335 CA 1985 – also normal course of business)

This legislation also prohibits certain types of transactions made or entered into by relevant companies with their directors ("relevant" means UK incorporated public companies or private companies which are members of a group in which a public company exists). The types of transactions generally prohibited are loans, guarantees, quasi loans and credit transactions.

In addition, the CA 1985 also prohibits a relevant company from arranging or taking part in any arrangement relating to loans and guarantees for its directors. (The rationale behind this prohibition is to prevent a company achieving indirectly that which the other prohibitions prevent it achieving directly). As such, this has undisputed relevance for consideration in the ECO arena whether the nominated finance provider is external or not.

However there are certain exemptions to the general prohibitions stated above. A company can make a loan or loans to a director of it provided that the loans are either in aggregate less than £5,000 or transactions entered into by the company in the ordinary course of its business.

Even in a 'worse case' scenario where directors are excluded from participating in the scheme under the above rules, it is possible to define alternative arrangements that will comply with the CA 1985 stipulations without any erosion of benefit for the relevant individuals as a result.



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About CBS

Car Benefit Solutions Ltd (CBS) is an organisation based in the North West, devoted to the development of cost effective strategies to maximise the perceived value of car benefit for employees whilst minimising the provision cost to the employer. Since their inauguration in July of 2002, CBS have established themselves as a leading authority on structured workplace car schemes and the supplier of choice to several major UK corporates. Their business is dedicated to the design, development, implementation and ongoing management of tax efficient alternatives to the traditional company car.

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