PROPERTY DEALERS: WHY NOT SET UP YOUR OWN FURBS?

Patrick C Soares

A FURBS is a Funded Unapproved Retirement Benefit Scheme and it offers a number of attractive tax advantages especially to land dealers who may want to put some money aside for their pensions paying modest tax rates and <u>having an inheritance tax free fund</u>.

A FURBS is usually set up by a company for the benefit of one or two directors who normally have shares in the particular company.

The contributions to the FURBS are normally exclusively made by the company and are modest because they will result in income tax liabilities on the members of the FURBS when they are made (the contributions are treated as salaries) (ITEPA 2003 s.386(1)). NIC would also be in point.

The real attraction in the FURBS is if it uses the settled monies plus borrowings to buy property which comprises part of the trust capital <u>under trust law</u> but is nevertheless traded in for income tax purposes only the basic rate of tax (22%) is payable on the trading profit even though the trust can accumulate income and even though the shareholders in the company which created the FURBS can benefit under the FURBS (see *Carver v Duncan* 59 TC 125).

The FURBS would be similar to an approved scheme (minus many of its restrictions) and will seek to provide a retirement lump sum (this lump sum would be tax free (ITEPA s.395(1)(a), (2) and (4) and s.396(a)) to a member. If the member dies before taking the funds out of the FURBS there is no charge to inheritance tax and the same can be appointed out to his spouse or children without a charge to inheritance tax. It could even be appointed out to a discretionary trust for the benefit of the surviving spouse and children.

Investment income arising in the FURBS, say, bank interest or rents, only bears tax at the basic rate (TA 1988 s.612 and s.686(2)(c)) even though the trust is a discretionary one.

Individuals therefore looking at possible property deals which they may take in their own names (bearing tax at 40% on any profit) or through their company (bearing tax at 30% in the company and further tax when the monies are taken out), should see whether a FURBS will prove more attractive to them.

There are a great number of points to take into account and a number of anti-avoidance provisions lurking in the background but FURBS are attractive propositions. Some FURBS even trade in the land via an LLP, i.e., in partnership under the Limited Liability Partnerships Act 2000 with the FURBS having the benefit of limited liability under the Limited Liability Partnerships Act 2000.

The only fly in the ointment is the Government review of the pensions legislation: see Rev BN 39 17th March 2004. It is difficult to know how the changes will affect FURBS but in para 10 of the above Rev BN it is stated:-

> "Non-registered pension schemes may continue in the new regime, but without any tax advantages. They will be treated like any other arrangement to provide benefits for employees…Transitional protection will be available for pension rights accrued at 6 April 2006 within non-registered schemes."