SHARE PLAN PARTNERS

Employee Benefits Trusts (EBTs)

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What is an Employee Benefit Trust?

An employee benefit trust (EBT) is a discretionary trust that has been established by a company to hold assets, in this case shares, to provide benefits to its employees, former employees and their families or dependants. A trust is a separate legal entity that satisfies share option maturities and share award vestings by the company under any share scheme.

How does an Employee Benefit Trust operate?

A trust is established by a 'trust deed', which is minuted and approved by the company's Board of Directors. They are often set up offshore to avoid double taxation and managed independently by trustees. Whilst the company makes recommendations to the trustees, it is at the trustees discretion to approve any recommendation made as they have an obligation (fiduciary duties) to act in the best interests of the trust. The employer gifts shares, often as a result of buybacks, to the trustees who then hold the shares for future employee share plan releases.

How are Employee Benefit Trusts taxed?

Trusts were often used as part of family tax planning to facilitate a long-term deferral or mitigation of tax and NICs, which came under great scrutiny in recent years, resulting in the introduction of the disguised remuneration regime in 2010. This legislation is complex and has resulted in some participants and their employers seeking to resolve challenges from HMRC.

The key issue is with allocating (otherwise known as 'earmarking') shares to an employee, and despite access to these shares remaining at the discretion of the trustees, results in those shares being immediately taxable as employment income on their full value. Steps can be taken to avoid earmarking, allowing share plans to be administered through employee benefit trusts effectively.

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Share Plan Partners Limited. Registered in England No. 08791239. VAT Reg No. 798 1639 61.
T: +44 (0)7838 491 550 | E: ian.muphie@shareplanpartners.com | www.shareplanpartners.com

Why use an Employee Benefit Trust?

An employee benefit trust is a good way to:

- Deliver shares to employees besides using newly issued shares. In order to adhere to dilution limits set for listed companies, shares can be purchased in the market and placed in the trust and used to satisfy company share plans instead.
- ‘Warehouse’ shares, particularly for private companies when a large amount of shares becomes available from a large exiting shareholder. The shares can be acquired and gradually be transferred to employees over a number of years.
- In private companies, an employee benefit trust often provides an internal market for shares.

If you would like to find out more about Employee Benefit Trusts and how they can benefit the operation of your share plans, please get in touch for a FREE consultation.

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