

EMPLOYEE BENEFIT TRUSTS (EBT)

OCORIAN BRIEFING

May 2017

Employee Benefit Trusts ("EBT's") have been around since the mid 1980s and are an increasingly popular approach used by corporates to incentivise, attract and retain key employees. These discretionary trusts are extremely flexible and continue to be used by companies for legitimate remuneration and tax planning structures.

What is an EBT?

An EBT is a discretionary trust established for the benefit of the employees of a company or group of companies. Typically the class of beneficiaries will include all current, former and future employees as well as their dependants.

Importantly, the settlor company is not included within the class of beneficiaries under the trust deed. This provides added comfort to the beneficiaries should the settlor company enter into liquidation or be, in most cases, subject to the demands of its creditors, as it will in most cases have no bearing on the trust and its assets.

Commonly the trustee will be chosen by the company and will generally be a professional trust company although directors of the company or some other trusted individuals have been known to be appointed in that capacity. Either way the trustees must act independently from the company and at all times in the best interest of the beneficiaries.

Role of the trustee

Trustees of EBTs have identical fiduciary accountabilities and responsibilities to that of a private client or family trust structure. The primary responsibility of the trustee is to always act in the best interest of the beneficiaries, and as a result, the reputation, experience and independence of the trustee are all vital ingredients to allow the proper and efficient functioning of the trust.

Why use an EBT?

Whilst EBTs are often used for the creation of an internal market in the shares of a private company and for succession planning, these trusts are also commonly used by listed companies to warehouse shares to hedge against future obligations arising from the granting of incentivisation awards.

The use of an EBT can be particularly attractive to both companies and its employees. For example, companies will often receive favourable tax concessions when contributions are paid out of the EBT which can be very beneficial for incentivisation planning. For employees, the use of an independent trustee provides added comfort that decisions are being made impartially and in the best interest of the class of beneficiaries. In addition, employees of UK companies will generally not suffer an income tax charge unless and until a benefit is provided to or for them from the EBT.

EBTs can be used for a variety of purposes including:-

- All Employee Share Ownership Plans
- Joint -ownership Equity Plans
- Performance, Deferred and Matching Plans
- Phantom Plans
- Warehousing and internal market arrangements
- Nominee arrangements
- Providing an exit route for a founder

Who would use an EBT?

The use of an EBT is particularly attractive to:-

- Companies paying large discretionary bonuses to senior employees seeking a favourable tax position and where the deferral of, for example a corporate tax deduction for contributions is not a concern.
- Companies wishing to incentivise a broad range of employees by providing a competitive and flexible benefits package.
- Companies wishing to create some liquidity and/or a market for their shares to make share ownership more meaningful to employees.

How does an EBT work?

The company does not have legal control over the trustees, the EBT or the funds held in it although the company may make certain recommendations as to the application of and use of the assets. The company would generally fund the EBT either by way of a contribution or a loan which the trustees would invest in accordance with the terms of the trust deed and always in the best interest of the beneficiaries.

Our Experience and Credentials

Our dedicated team has been operating in the employee benefits industry for over 25 years as an independent provider of trustee services to a broad client base ranging from high profile FTSE 100, 250 and 350 companies to private companies and partnerships.

We have broad experience in providing tailor made solutions for our clients where participation ranges from a small number of PDMRs through to multinationals where employee participation exceeds 60,000.

We contribute to a number of industry committees and are regular speakers at leading industry conferences and events and sit on expert trustee panels.

What others say

"We've known and worked with the team at Ocorian for many years. They are reliable and focussed on delivering a superior client experience"

A LEADING GLOBAL INDEPENDENT WHOLESALE, REINSURANCE AND SPECIALIST RETAIL INSURANCE BROKER

"Ocorian have always and will always go that extra mile for clients. Why? Because that is their core attribute. And they never shy away from it. It is the way they like to conduct themselves. It is the mantra they instil in all their staff. And it is what sets them head and shoulders above the rest"

MANAGING DIRECTOR

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FAMILY OFFICE

Ocorian: Who we are

Ocorian is an international, award-winning provider of fiduciary, accounting and administration services to the private client, corporate, funds and real estate sectors. With almost 300 employees and over 45 years' experience, we have a presence in Jersey, Guernsey, London, Dublin, Mauritius, Singapore, Luxembourg and Cayman.

Renowned within the industry for maintaining long term client relationships, we provide experienced, highly skilled people in key markets to ensure that we can support the diverse needs of our international clients.

Ocorian was recognised as the 'Trust Company of the Year' at the annual STEP 2016/2017 awards ceremony

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