

Disguised remuneration

Present and Future

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The target

- Historical use of EBTs as incentives
- Perceived abuse of EBTs
- Case law
- Statutory reversal

Disguised remuneration

Part 7A ITEPA 2003

- A is an employee or former employee of B
- Arrangement to which A is a party
- The arrangement is a means of providing reward in respect of a current or former employment
- A relevant step is taken by someone other than A or B after 5th April 2011

Relevant step

- Earmarking money
- Payment of money to A or person chosen by A
- Making money or an asset available to A or a person chosen by A

Exclusions

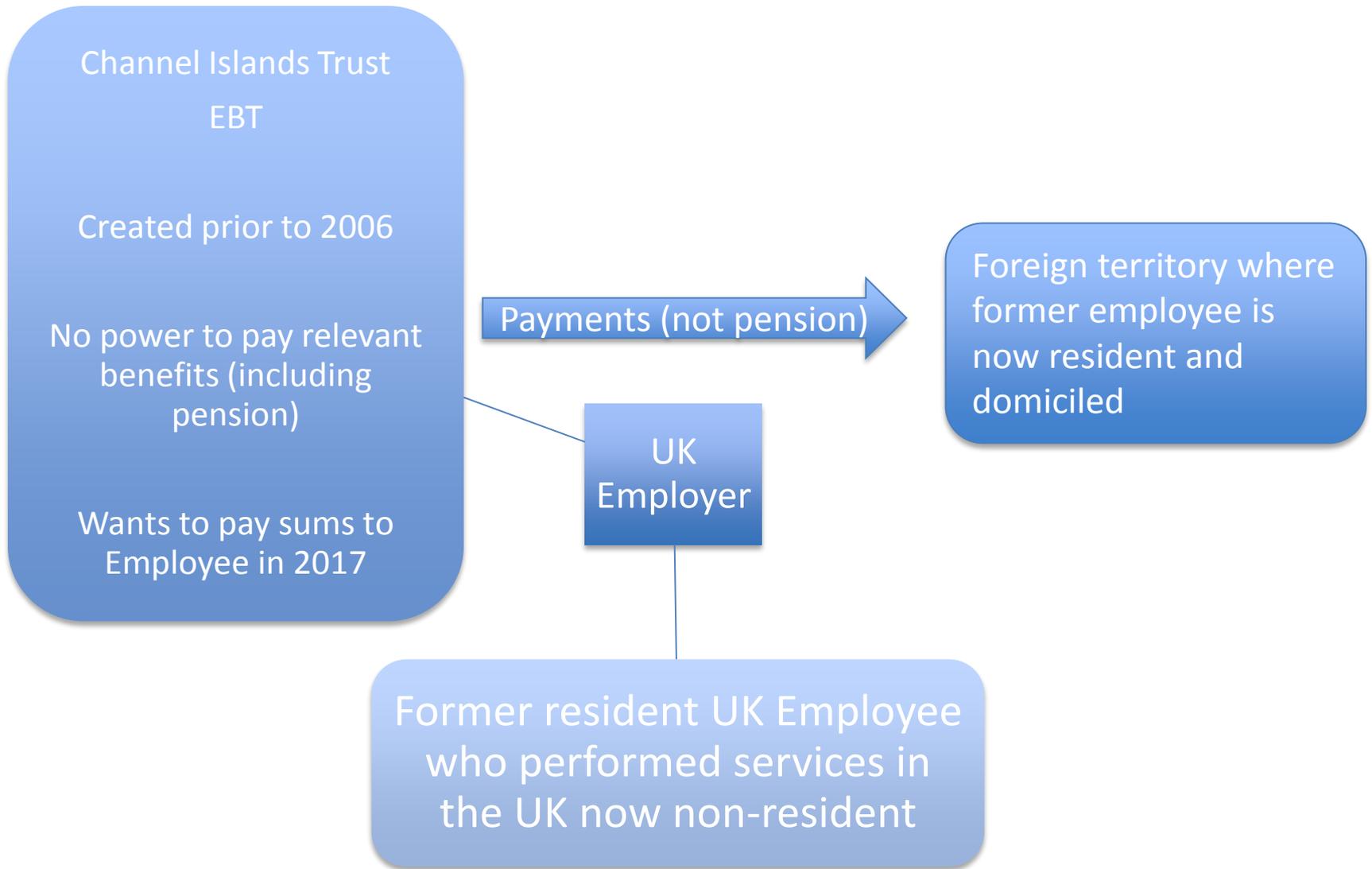
- There are a long list of exclusions for legitimate employment arrangements
- These include the payment of pension income chargeable to tax as such

Problems for pre-2011 schemes

- There are legions of pre-2011 EBTs
- Consider an old EBT drafted to exclude the provision of ‘relevant benefits’ to prevent a charge on contributions going in
- There was no income tax on contributions to scheme.
- Orthodox analysis was that income tax would be chargeable on payments coming out, but not if the employee had become non-resident by then

Example

- F was employee of UK employer and performed services in the UK
- The employer created a pre-2006 EBT (with Channel Island trustees) and contributed sums
- EBT created a revocable sub-fund for F and family



Application of DR rules

- F is a former employee
- There is an arrangement which is a means of providing reward to F
- Payment to F is a relevant step

DR rules apply

- DR rules are not subject to express territorial limit
- No pension exemption either under statute or under any DTC as EBT cannot pay pension
- Even if F had been charged to foreign tax in respect of employer's contribution to EBT, no DTR as DR charge is on different income

Finance Bill 2017

- FB 2017 changes aimed at derailing any DR avoidance arrangements with possibility of retrospective legislation if required

Plugging any alleged holes

- The use of arrangements where the third party does not make the loan
- Employer makes loan to employee and then Trust acquires benefit of loan to employee
- HMRC say this is caught but amendment to put it beyond doubt
- Further, a confirmatory amendment that the release or write off of a loan is a 'relevant step'

Use of close companies

- Another perceived abuse was trying to break the link by using a close company in the arrangement
- The aim being to break the link with employment and to say that the payment arises from rights in the company

DR and close companies

- A must have a ‘qualifying connection’ with B
- An arrangement exists and is for the provision of an A-linked benefit
- B enters into a relevant transaction
- A relevant step is taken by a third party
- Proposed new section 554AA-AE ITTOIA 2005

Restriction of right to deduct

- Employment taxes and NICs must be paid within 12 months of the end of the period in which the employer seeks a tax deduction for the contribution to the DR scheme
- Subject to an overriding time limit of 5 years after the end of the period in which the contribution was made

Proposed amendments to s38 ITTOIA 2005 and s1290 CTA 2009

DR Loan Charge

- A person, P, is treated as taking a relevant step where:
 - P has made a loan or quasi loan to any person on or after 6th April 1999
 - the amount of the loan or quasi loan is outstanding immediately before the end of 5th April 2019

DR Loan Charge

- Postponement for approved fixed term loan
- Existing exclusions will apply
- HMRC Spotlight 36 ‘schemes claiming to avoid the new loan charge’
- HMRC – repay the loan or settle the tax before 6th April 2019

Self-employed DR

- New DR regime for the self-employed
- Self-employed loan charge
- Interaction with DIMF regime for the investment management industry

Disclaimer

- These lecture notes should not be relied on as legal advice and it would be unreasonable to so rely.
- Every client's circumstances are different and the application of the relevant law should be considered in the light of those particular circumstances.