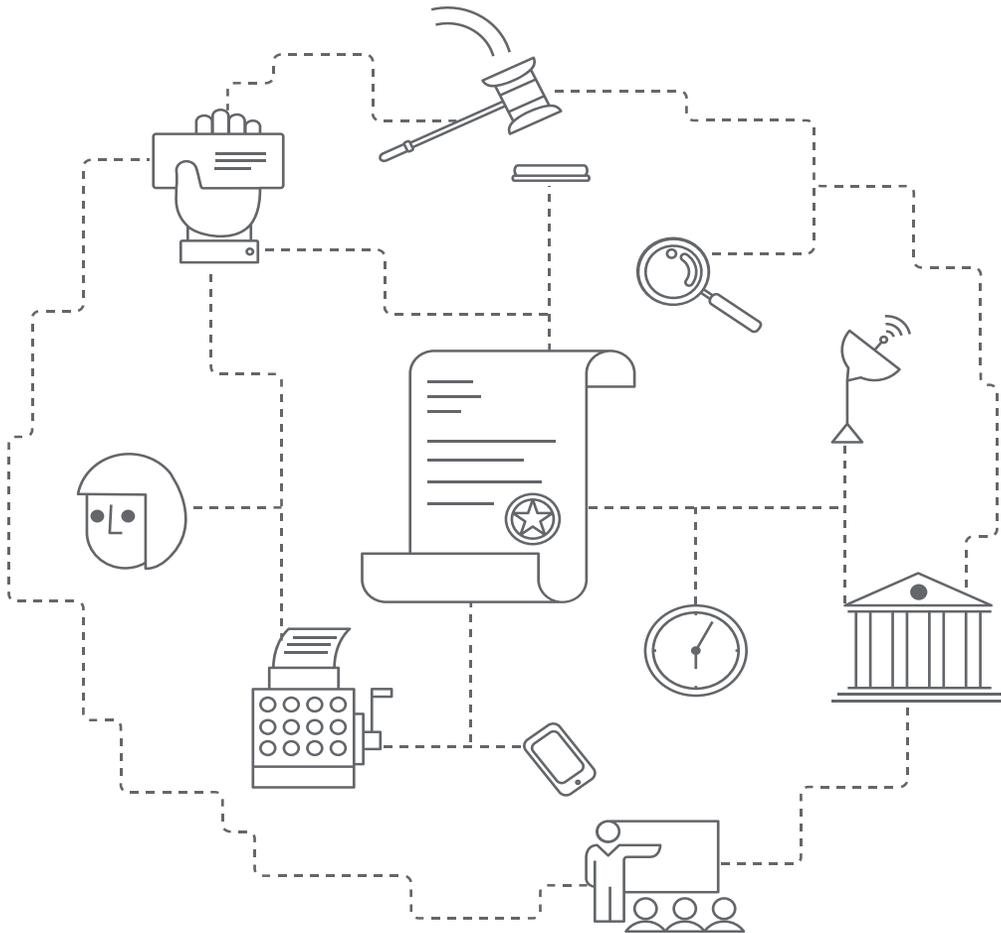


What are the latest ideas and innovative approaches in developing tax-efficient structures for Employee Benefit Trusts (EBTs) and share awards to the advantage of clients?



Take aways

Trusts have been used for tax mitigation since the Middle Ages: Governments view them suspiciously.

I'm a fan of trusts generally and **EBTs**.

Trusts are useful to corporates to give the economic value of shares to employees while retaining some control over those shares.

Finding **trustees** can be difficult.

Not going to cover **EOTs/SIPs**, being a form of **EBT**.

Trusts last a long time

- registration needs to be updated from time to time
- laws change
- check the international position.

Introduction – why bother with EBTs

- An employee benefit trust (EBT) is basically a way to set aside shares, cash or other assets to be separate from the employer company and held for the benefit of employees.
- Trusts have a long history in English law (Statute of Uses in 1535 – Henry VIII).
- Commonwealth countries tended to follow the concept – USA, New Zealand, Australia.
- Some countries have developed trust law with legislation and case law, eg Bermuda and Jersey.
- Some unlikely countries have also adopted trust law, eg Japan and for other countries there is the Hague Convention of Trusts which allows courts in ratifying jurisdictions to make determinations on trusts.

Introduction – why bother with EBTs

EBT USES		ALTERNATIVES
Warehousing shares	<ul style="list-style-type: none"> • create a market • acquire shares from a leaver • enhance liquidity • hedge the cost of shares to be used for various employee share plans • maintain a percentage shareholding by allocating a block of employee shares 	<p>Buy back shares into treasury – but recycling affects dilution limits; buy back procedures awkward; distribution</p> <p>Nominee arrangements</p>
Enabling employees to build up a shareholding over time eg to meet shareholding requirements in a public company or to facilitate succession.	Usually linked with a distribution plan	Shares held by another shareholder short term
Facilitating the potential changes of ownership (growth entitlements) or forfeiture of shares (eg leavers/not meeting performance conditions) - trustee retains legal ownership - beneficial ownership belongs to an individual.	Usually linked with a distribution plan/JSOP	<p>Nominee arrangement</p> <p>Subsidiary/separate corporate holding the shares</p>
Disguising true ownership	not always mischievous - employee confidentiality; trust registration so beneficiaries disclosed to HMRC	

HMRC's consultation on Taxation of Employee Ownership Trusts and Employee Benefit Trusts (closed 26 September) gives a window on some of the cases worrying HMRC.

Non UK resident trustees

- Why you might choose a non-UK resident trustee
 - Lots of reasonably priced professional trustees 'offshore'.
 - Independence is required.
 - International companies and international employees not bound to the UK.
 - Individual trustees or trustee directors are non-resident.
 - Outside scope of UK CGT.

HMRC's consultation on Taxation of Employee Ownership Trusts and Employee Benefit Trusts (closed 26 September) gives a window on some of the cases worrying HMRC.

Tax clearances

- Dividends, contributions, distributions – Sections 1000/1020 CTA 2010 – proposed limited exemption for EOTs (payments for shares, stamp duty and interest). Use for other costs – trustee fees, etc.
- Loans to participators – no relief from section 455 CTA 2010 – what about other arrangements conferring a benefit on participator – section 464A CTA 2010.
- Section 701 ITA 2007 – transactions in securities clearance.

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Connected persons benefiting from an EBT

- *Barker v Baxendale Walker Solicitors* [2017] EWCA Civ 2056; *Bhaur v Equity First Trustees (Nevis) Limited* [2023] EWCA Civ 534 - Connected persons before and after death of a participator sections 13 and 28 IHTA 1984.
- IHT relief only for shares held for two years or more.
- Not more than 25% of eligible beneficiaries should be participators or connected to a participator at the time of transfer. Section 86 IHTA 1984 and 10-year charges.

GAAR - [GAAR Advisory Panel opinion of 2 March 2020: Reducing an estate's value for inheritance tax via subscription for shares in a new company and gifting shares to an employee succession trust - GOV.UK \(www.gov.uk\)](#)

Trustee registrations

01

UK responsibilities – within 90 days of establishment or changes.

02

Changes include increased number of participating employees, change of trustee (residence, nationality, passport details).

03

Non-UK registrations – eg Canada.

Thank you

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