

# HMRC declare the EBT Settlement Opportunity will be closed on 31 March 2015



Any company or employee that has taken advantage of an Employee Benefit Trust (EBT) is on notice that HM Revenue & Customs (HMRC) is taking a tougher stance.

Following the recent outcomes in the courts, HMRC is changing the basis it follows to resolve the plethora of tax disputes involving the use of EBTs.

#### **What is changing?**

The Employee Benefit Trust Settlement Opportunity will be closed on 31 March 2015. Up to that date, HMRC will “engage” with companies to reach a Settlement on a civil basis in relation to any payments made to their employees.

After 31 March 2015, HMRC will withdraw the beneficial terms offered under the EBT Settlement Opportunity.

#### **What are the beneficial terms?**

Rather than face the outcome of any future court decision, taxpayers can reach certainty now in their past tax affairs. To do so, any transaction caught under the Disguised Remuneration rules today, is instead taxed as remuneration in the past determined by reference to a trigger date.

Depending on the specific facts of each case, this can mean:

- a lower rate of income tax being applied
- no further employee NIC if the maximum has already been paid
- a refund of any tax already paid on any associated benefit in kind

- corporation tax relief on the amount contributed to the EBT
- corporation tax relief on the PAYE now due
- corporation tax relief of any costs incurred in reaching a Settlement
- Time to Pay arrangements can be built into any Settlement
- all costs are borne by the employer not the employee
- no penalties will be levied

Interest is charged on the late payment of any tax. However, depending on the facts, where the EBT has been in existence for more than 5 years, interest may no longer be due.

#### **What is a trigger date?**

A trigger date is the date when an amount of money was allocated irrevocably to a specific employee.

#### **What will change on 1 April 2015?**

HMRC has not announced any details but it is likely that they will take a far tougher stance and penalties will be applied automatically.

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The penalty regime changed with effect from April 2009. Under the new penalty regime, the taxpayer's behaviour is considered. If the Settlement is over £25,000 and the behaviour is deliberate, the taxpayer can be "named and shamed" on HMRC's website.

## How are penalties to be calculated?

Penalties are to be charged as a further percentage of the tax due and will depend upon the reasons for the error and the potential lost revenue (PLR).

In terms of offshore matters, penalties are levied according to the category of each country and there are three levels of penalty:

- where the income or gain arises in a territory in 'category 1', the penalty rate is the same as the standard penalty
- where the income or gain arises in a territory in 'category 2', the penalty rate is 1.5 times the standard penalty - up to 150% of the tax due
- where the income or gain arises in a territory in 'category 3', the penalty rate is double standard penalty - up to 200% of the tax due

Where the EBT has been administered will determine the territory so for example, if the Trustees are based in the UK, the territory is category 1 and the penalties are therefore up to 100% of the tax due on the PLR.

## Which countries fall in which category?

The full list can be found on HMRC's website but examples include:

- Category 1 includes mainland UK, Isle of Man and Guernsey and Switzerland
- Category 2 includes Jersey
- Category 3 includes Panama

## What might happen next?

HMRC are reviewing their own files and are looking at information already provided to them, specifically the annual returns of those participating in EBTs.

As a result of this review, HMRC are looking to identify any "forgotten liabilities".

## The forgotten liabilities

EBTs are discretionary trusts and are liable to a 10 yearly Anniversary charge equating to an Inheritance Tax (IHT) charge at discounted Lifetime rates of the remaining asset value of the Trust.

## Other potential complications

There are many complications that may need to be overcome including:

- the company may since have gone into liquidation
- the scheme promoter may since have gone into liquidation
- the scheme documentation may not be complete or no longer exist
- the scheme documentation may not be robust
- property companies and other corporate structures (both on and offshore) may have been set up under the EBT

In such cases, HMRC may seek any liabilities that would have ordinarily fallen on the company from the shareholder/directors themselves.

Under the EBT Settlement Opportunity, HMRC will look to work with the taxpayer to overcome these issues rather than prevent a Settlement.

## What can be done?

EBTs can be unwound under HMRC's EBT Settlement Opportunity. Haines Watts has successfully unwound numerous tax avoidance schemes achieving favourable Settlements for all concerned.

Following the unwinding of any EBT, succeeding trusts can be created, allowing for the continuation of wealth protection and other advantages to the individual.

## How Haines Watts can help

We can advise you on the full terms and cost of the revised Settlement Opportunity and the benefits it offers.

We can then negotiate a Settlement with HMRC and give **certainty** to all taxpayers concerned that their tax affairs are fully compliant.

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To find out how Haines Watts can help, call Paul Malin on + 44 (0)7919 375 650 or email [pmalin@hwca.com](mailto:pmalin@hwca.com).

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