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HMRC EBT Settlement Opportunity still available

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CATEGORY:
ARTICLE

Following the introduction of the disguised remuneration rules in 2011 HMRC has promised to vigorously pursue existing employee benefit trusts ('**EBTs**') on the basis of its long held view that income tax and National Insurance Contributions (' **NICs**') should have been payable when funds were allocated to an EBT.

In 2011 HMRC launched the EBT Settlement Opportunity (the ' **Settlement Opportunity**') which offers employers the opportunity to settle such tax liabilities, thereby avoiding the risk of a time consuming and costly HMRC enquiry and potentially allowing for distributions to be made from the EBT and the EBT to be wound up.

It is clear from HMRC's highly publicised settlement with JP Morgan Chase and from our own experience acting for employers, employees and trustees that settlements can be reached on extremely advantageous terms. The Settlement Opportunity therefore warrants detailed consideration.

The Settlement Opportunity

To take advantage of the Settlement Opportunity income tax and NICs must be paid by reference to when funds were allocated to an EBT. Interest will be charged but penalties will be waived.

Where funds were allocated to an EBT in years outside the statutory time limits ('out of time years') no income tax or NICs need be paid. The statutory time limit for income tax is 4 years and for NICs is 6 years. Income tax and NICs should therefore only be due for years where HMRC has protected its position or is capable of doing so within normal statutory time limits ('in time years').

A credit will be issued for any future charges under the disguised remuneration rules (known as a paragraph 59 agreement). However, where sufficient information was not provided to HMRC when funds were allocated to an EBT, HMRC may ask for voluntary restitution of income tax and NICs before issuing a credit.

Advantages of the Settlement Opportunity

- Where allocations to an EBT were made in both in time and out of time years, the overall tax burden can be spread and the effective rate of tax can be substantially reduced for all.
- Funds will be taxed at the income tax rate in force when the funds were allocated to an EBT, which for many older EBTs will be 40% rather than 45%.
- Employers will be able to claim a corporation tax deduction if one has not already been claimed.
- Future distributions from the EBT will not be subject to further income tax or NICs under the disguised remuneration rules.
- HMRC is also of the view that funds allocated to sub funds should be subject to inheritance tax. Any such potential inheritance tax liability can be included within the settlement.
- Employers and employees will no longer face the possibility of expensive and uncertain litigation with HMRC.

Partial Settlement

HMRC has also indicated that it is willing to negotiate partial settlements where some sub funds wish to benefit from the Settlement Opportunity while others do not.

Loans

Many employees have received loans from an EBT. A loan written off after death is not subject to income tax and the value of the loan has previously provided a deduction from the employee's estate, thereby sheltering inheritance tax. To date this has been an incentive for employees not to enter the Settlement Opportunity. However, new provisions in the Finance Act 2013 prevent such loans from providing a deduction from the employee's estate unless the loans are repaid on death, which would place the funds used to repay the loans back within the scope of the disguised remuneration rules and subject to income tax and NICs upon eventual distributions. A major incentive for many employees with outstanding loans to reject the Settlement Opportunity has therefore been removed.