

KEY FACTS

EMPLOYEE BENEFIT TRUSTS

EMPLOYEE INCENTIVE ARRANGEMENTS AND SHARE SCHEMES HELP REWARD, RETAIN AND INCENTIVISE EMPLOYEES, AND ALIGN THE INTERESTS OF EMPLOYEES, MANAGERS AND SHAREHOLDERS IN A COMPANY'S SUCCESS. EMPLOYEE BENEFIT TRUSTS ARE AN IMPORTANT PART OF A COMPANY'S REWARD FRAMEWORK AND A COMPANY'S CHOICE OF TRUSTEE IS INTEGRAL TO THE OPERATION OF THEIR INCENTIVE ARRANGEMENTS.

INTRODUCTION

Employee benefit trusts (EBTs) warehouse assets to act as a hedge against future obligations to provide benefits to employees in accordance with whatever incentive or share schemes a company puts in place for its employees. They enable companies to manage their obligations by pre-funding the EBT with assets over any given time period. This pre-funding can be done through a staged purchase program, ad hoc purchases, or possibly taking advantage of a depressed share price.

EBTs hold a wide variety of assets, most commonly consisting of company shares needed for share schemes, carried interest units, cash or bespoke assets relevant to an employee's performance.

Share and incentive schemes that utilise EBTs include:

- > Incentive plans for private equity-backed companies
- > Phantom and carried interest plans
- > Long-term incentive plans (LTIP), company share option plans (CSOP), joint ownership equity plans and other share option plans for both public and private companies
- > Reward arrangements involving deferral of rewards into investment funds for asset managers
- > Nominee arrangements

Depending on the size and complexity of the incentive arrangements, trustees for EBTs may partner with share plan administrators, technology and payment service providers, brokers, custodians, and legal and tax advisors. They also work closely with internal HR reward teams and company secretaries to deliver benefits.

ADVANTAGES

Much of the legislation governing EBTs is UK-based, however, they still offer an effective warehouse for assets to benefit employees globally from a central repository. Broad powers and flexibility enable EBTs to deliver a wide variety of benefits to companies of every size. This can include granting share options, satisfying share options granted by the employing company, paying non-contractual cash bonuses to employees and variations on these themes.

EBTs facilitate an internal market for the sale and purchase (or recycling) of shares. This benefits private companies where no market for the sale of shares exists and also assists the efforts of listed companies to reduce the impact of award-vesting on average daily trading volumes. EBT assets are ring fenced for employees and are also bankruptcy remote from the employing company.

EBTs assist in managing risks associated with company share dilution limits and investment association guidelines and related remuneration principals, because, unlike treasury shares, EBT shares do not count toward these limits.

KEY QUALIFYING CONDITIONS

An EBT is usually formed as a discretionary trust where the trustee is afforded wide powers to facilitate diverse types of employee benefits. Trustees consider requests and recommendations from the employing company, which may relate to the composition or use of trust assets to facilitate their incentive arrangements (e.g., granting awards, purchasing shares or satisfying awards).

Under the UK legislative framework, EBTs are often established to qualify as an employee share scheme within the meaning of Section 1166 of the Companies Act 2006 and as a trust for the benefit of employees per Section 86 IHTA 1984 (England & Wales Law). EBTs established within these parameters provide certain operational efficiencies and assets benefit from capital gains tax protection whilst they are held in trust. Residents located in the same jurisdiction as the trustee are often excluded from benefit.

Beneficiaries of an EBT can consist of all current and former employees of the employing company and their families. The EBT can however be used to benefit a narrower group of employees, such as senior managers, and/or to fulfil an express purpose.

HOW WE CAN ASSIST

We have provided global independent professional trustee services for more than 40 years. Our long-standing teams in Guernsey and Jersey, both of which are recognised as jurisdictional centres of excellence for the administration of EBTs, have significant experience in providing trustee services regarding employee incentive arrangements and oversight of other reward and incentive service providers that will work alongside the EBT trustee and the company.

If you would like to discuss how we may help you, please contact David Clarke, Steve Turner or James Ramsden.

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