

Employee Benefit Trust (EBT), Settlement Opportunity

Frequently asked questions (FAQs) – August 2012

Introduction

These FAQs are designed to help our customers consider how the terms of the EBT Settlement Opportunity (see the link below) apply in practice to the facts of their EBT arrangement(s) and help them understand how their liabilities will be calculated. HMRC recognise that the EBT arrangements put in place by employers can be wide and varied. For that reason, it would not be possible to outline here how the Settlement Opportunity applies in every particular situation. The answers below therefore reflect the general principles that we will apply in dealing with the broad spectrum of EBT cases that exist. Similarly, not every element of the guidance covered here will apply in every circumstance.

Where we agree settlement, the terms must be consistent with HMRC's published Litigation and Settlement Strategy (LSS - see the link below). This means that we will secure the right tax liability consistent with the law, fairly and even-handedly across all our customers in a way which minimises costs. The aim of these FAQs is to provide our customers with information about the general framework which HMRC will use to settle EBT liabilities while giving us the flexibility needed to take account of the specific facts and circumstances of individual cases. This includes considering the actions of both HMRC and the employer and HMRC's view of case law as it develops.

HMRC wants to encourage our customers to discuss with us how the facts of their particular EBT arrangement(s) fit within the Settlement Opportunity. Even where customers consider there is no benefit for them to settle with HMRC now and instead prefer to await the outcome of any possible litigation, we recommend that they come and talk to us so that we can discuss with them exactly how the Settlement Opportunity may apply to their EBT arrangements. This is because customers may not appreciate the benefits of settlement to their particular circumstances.

[Employee Benefit trusts, Settlement Opportunity](#)

[Litigation and Settlement Strategy](#)

A glossary of abbreviated terms and acronyms used in the FAQs is at the end of this document.

1 EBT settlement generally

1.1 I am an employer with an EBT arrangement but I did not respond to the EBT Settlement Opportunity by 31 December 2011 – what happens now?

HMRC's continued preference is to settle EBT cases by agreement. So we would encourage you to contact us to discuss how the facts

of your particular case fit within the terms of the Settlement Opportunity.

Delaying settlement could mean that you end up paying more, as interest continues to build up. You can minimise interest by making a payment on account, but we would recommend that you talk to us to see if we can reach an agreed settlement.

If you decide not to talk to us, we will continue to enquire into your EBT arrangement(s), and proceed to litigation where appropriate and in line with the LSS.

1.2 Why is HMRC offering the EBT Settlement Opportunity?

The EBT Settlement Opportunity means you can engage with HMRC to settle your EBT case by agreement without recourse to litigation. This will minimise costs to both you and HMRC.

The new disguised remuneration legislation puts beyond doubt that such arrangements or schemes do not work (see Question 1.3). If you are concerned with how your arrangements will be affected by the new legislation, you can respond to the Settlement Opportunity to obtain certainty now about your tax liabilities.

Where you want to settle by agreement within the terms of the Settlement Opportunity, the settlement will be based on the position if we were to litigate. In practice this means that the settlement will include all the Pay as You Earn (PAYE) tax and National Insurance Contributions (NICs) where we have protected HMRC's position or the position is capable of being protected ('the protected liabilities'). The settlement basis will therefore vary from case to case depending both on the protected liabilities and the individual facts of the case but will help you to bring all strands of your case up to date. We would therefore encourage you to contact us to discuss whether we can reach an agreed settlement.

If you have taken a 'relevant step' under the disguised remuneration legislation before you reach a settlement with HMRC, we will explain your liability under the disguised remuneration legislation.

1.3 What is the disguised remuneration legislation?

This legislation was enacted in July 2011 and will apply to EBTs and similar structures from 6 April 2011 (with certain transactions also being brought within the new legislation if they were carried out between 9 December 2010 and 5 April 2011 inclusive).

The legislation tackles third party arrangements used for the purposes of disguising remuneration in order to avoid or defer income tax and NICs or to circumvent the annual and lifetime allowances in registered pension schemes. Broadly speaking, if

third party arrangements are used to provide what is in substance a reward or recognition, or a loan, in connection with the employee's current, former or future employment, then an income tax charge arises.

The legislation can be mainly found in Part 7A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003).

Regulations also came into force on 6 December 2011 to charge Class 1 NICs on amounts chargeable to tax under the disguised remuneration legislation. The Social Security (Contributions) (Amendment No.5) Regulations 2011 (SI 2011/2700) amended the Social Security (Contributions) Regulations 2001 (SI 2001/1004), inserting new regulation 22B and new paragraph 2A of Part 10 of Schedule 3.

1.4 Is it true that some agents are able to negotiate better settlements than others?

No. The settlement basis for each case or scheme will depend on the facts of that particular case or scheme. Because of this, two cases perceived to be similar may get different results. This is because the details of the case may be sufficiently different to lead to different taxation outcomes. We have a national policy for managing and handling the EBT Settlement Opportunity, which will be dealt with consistently and in line with the LSS.

1.5 My agent says that HMRC's view of EBTs is not correct and I don't have to pay any tax or NICs on the arrangement?

HMRC recognise that issues regarding EBTs can be complex, which is why we want to talk to you about your particular EBT. We have successfully challenged, through the courts, arrangements that use EBTs. We believe this supports our approach regarding the taxation of EBTs and we are continuing to litigate EBTs. The Government also introduced the disguised remuneration legislation from 6 April 2011 (including 'anti-forestalling rules' that apply to certain transactions between 9 December 2010 and 5 April 2011 inclusive) which aims to put the taxation of arrangements using EBTs beyond doubt. Under this legislation you may be subject to a tax charge in respect of EBTs that existed prior to 2011 if you take what is known as a relevant step – for instance making a loan from accumulated funds or transferring an asset, such as a holiday home, to a current or former employee. You may therefore wish to discuss your EBT arrangement(s) with HMRC to see what settlement may be possible.

If you decide not to talk to us, we will continue to enquire into your EBT arrangement, and we will progress enquiries to litigation where appropriate. How this will operate in practice depends on what stage the enquiry into a particular scheme or case has reached. If we need further information to progress our enquiry then you can

expect us to make informal and, if necessary, formal requests for this information and/or documentation. We may also consider asking other parties for information, in the usual way, if we feel that it is necessary and appropriate.

If you decide not to talk to us and we have all the information we need then we will consider taking steps to progress cases towards litigation. In cases where we are in time to do so, we may issue further notices, which could include Regulation 80 determinations, Section 8 decisions, Corporation Tax and Income Tax assessments or Section 9A enquiries into individual directors / employees' self assessment returns.

1.6 Is it true that HMRC are considering further refinements to the EBT Settlement Opportunity and that these will include discounts as an incentive to settle?

No. The EBT Settlement Opportunity parameters are consistent with the LSS and means all customers are clear about how their liabilities arise and how cases can be settled consistently across HMRC. Settling now will mean you understand how the new disguised remuneration legislation (see Question 1.3) may affect you in the future and how any 'paragraph 59 agreement' (see Question 2.3) will apply to your circumstances.

1.7 I am an employer. I am interested in the EBT Settlement Opportunity because I do not want to become involved in possibly costly litigation. Will my settlement liability differ if I decide to settle by agreement rather than go down the litigation route?

Where HMRC settles EBT liabilities by agreement, the terms of the settlement must be consistent with the LSS. This means that the settlement will take account of the individual facts of your particular case and will be based on the legal analysis of those facts that HMRC would rely on if HMRC were to litigate it through the courts. By adopting this approach, HMRC will secure the right tax liability consistent with the law and fairly and even-handedly across all our customers in a way that minimises costs for both sides.

Other than interest and litigation costs the liability under a settlement agreement is therefore unlikely to be less than in litigation. However a settlement agreement can provide greater relief from a Part 7A charge than is possible through litigation. A settlement agreement can provide relief from a subsequent Part 7A charge on a 'relevant step' that is referable to funds contributed to/allocated within an EBT where HMRC has not protected the PAYE and NICs due on those contributions/ allocations and consequently the PAYE and NICs is not enforceable. See Questions 2.3 – 2.4 below. This is not possible outside of a settlement agreement and consequently PAYE and NICs will be chargeable pursuant to Part 7A

on the full value of such a 'relevant step', irrespective of the outcome of the litigation.

1.8 I am an employer and I want to settle my EBT liabilities based on an EBT 'Proportional Employee Tax Settlement' – what should I do?

An EBT 'Proportional Employee Tax Settlement' is a contract settlement between HMRC and the employer to settle all of the tax and NICs for some of the participants/beneficiaries. There may be circumstances where it is necessary for the trustee and/or the employee to be a party to the settlement also. The EBT Proportional Employee Tax Settlement relates primarily to the PAYE and NICs but can also cover Corporation Tax (CT), Inheritance Tax (IHT), investment return liabilities and benefits code tax where appropriate.

The EBT Proportional Employee Tax Settlement will not settle all tax and NIC liabilities arising from your EBT. HMRC will continue to formally progress, and if necessary litigate, enquiries relating to the proportion of employee earnings not included in the agreed settlement.

This type of settlement is likely to apply when an employer wants to settle with HMRC but the EBT arrangements are such that the employer needs trustee or beneficiary agreement to settle with HMRC (for example so that the employer can reclaim the amounts of tax and NICs paid from the trustees), but not all beneficiaries want to settle.

If you feel that these circumstances apply to you, or any of your employees, then you or your agent should contact the HMRC caseworker dealing with your tax affairs to discuss this.

1.9 I am an employer and a PAYE determination has already been made covering all the participants in my EBT. However, I wish to settle only in relation to some of those participants. Will the existing determination be cancelled and a new determination made in relation to the non-settling participants? If so, what happens if HMRC are out of time to issue a new determination?

HMRC will not cancel an existing PAYE determination. This will remain in place so that HMRC can continue to formally progress, and if necessary litigate, enquiries relating to the proportion of employee earnings **not** included in the settlement agreement. For further information about settlements involving a proportion of participants - EBT Proportional Employee Tax Settlements - see Question 1.8 above.

1.10 I want to use the Liechtenstein Disclosure Facility (LDF) to settle my EBT liabilities - what should I do?

If you think your case meets the criteria you should contact the LDF Helpdesk in the normal way.

You should be aware that exits from the EBT after the LDF settlement may give rise to further liabilities as outlined in sections 3 and 4 of these FAQs.

[Liechtenstein Disclosure Facility \(LDF\): Help and advice](#)

1.11 I am an employer. My EBT is not presently under enquiry with HMRC. Can I still approach HMRC to settle any amounts due under the terms of the EBT Settlement Opportunity?

Yes. The EBT Settlement Opportunity gives all employers or companies who have used such arrangements an opportunity to settle their EBT liabilities so that they can obtain certainty about their tax affairs going forward and how their arrangements will be affected by the disguised remuneration legislation. Question 2.3 below considers how a 'paragraph 59 agreement' can be reached in these circumstances.

1.12 I am an employer. Will I have to pay interest as part of the EBT settlement agreement? If so, how will it be calculated?

The law requires a person to pay the correct amount of tax by the due and payable date and that late payment interest is applied when the person does not fulfill this obligation. In the case of an EBT settlement agreement, interest will be due on any protected outstanding liabilities and will be included as part of the settlement agreement.

Late payment interest runs from the due date for payment until the date when the amount is paid.

Where a customer agrees to settle their EBT liabilities with HMRC, the amount of the interest will depend on the facts of that particular case. Full late payment interest will be charged on protected liabilities. No interest will be charged on unprotected liabilities included in any settlement by way of voluntary restitution.

Interest is recompense for the loss of use of money over time, it is not a penalty.

Customers can minimise any interest charge by making a payment on account.

1.13 I am an employer. If I settle my EBT liabilities with HMRC as part of the Settlement Opportunity, will I be charged a penalty?

Only in exceptional circumstances will HMRC seek to apply any penalties on cases which are settled as part of the EBT Settlement Opportunity.

1.14 How many years will HMRC go back in terms of seeking PAYE and NICs on allocations within the EBT?

The settlement will include all the years and liabilities where we have protected HMRC's position or the position is capable of being protected within normal time limits. It may also be necessary for voluntary restitution of unprotected years in order to benefit from full relief from a charge under the disguised remuneration legislation (see the answers to Questions 2.3 – 2.4). The settlement details will therefore vary from case to case depending both on the protected liabilities and the individual facts of the case.

Schedule 39 Finance Act 2008 gives the normal time limit for making an assessment to recover tax that has been:

- under-assessed or under-declared, or
- over-repaid or paid or credited

as 4 years from the end of the relevant tax period.

In certain circumstances the time limits for assessing are extended beyond the normal time limit of 4 years from the end of the relevant tax period to 6 years or 20 years from the end of the relevant tax period.

For more information about the assessing time limits see the Compliance Handbook chapter 50000 onwards – see the link below.

The collection of arrears of NICs is subject to the Limitation Act 1980 or the Limitation (Northern Ireland) Order 1989 (SI 1989 No 1339). The Limitation Act and its Northern Ireland equivalent restricts the time allowed to enforce payment of a debt by civil proceedings to 6 years from the date the debt became due.

[Compliance Handbook](#) chapter 50000

1.15 I am an employer. At no point have I disclosed my operation of an EBT to HMRC. If I come forward under the EBT Settlement Opportunity, will the PAYE settlement cover the last 4 years or will HMRC seek to include earlier years on the basis of careless or deliberate behaviour?

HMRC will seek to recover tax and NICs for all years which can be assessed and you may want to make a voluntary restitution for other years.

Please see the answers to Questions 2.3 – 2.4 which explain generally how cases may be settled under the EBT Settlement

Opportunity and how the amount paid or accounted for under the 'paragraph 59 agreement' will be calculated in these circumstances.

1.16 I am an employer. All of the contributions made to, and sub-fund allocations made by my EBT were made more than 4/6 years ago and you have not raised assessments or determinations or protected your right to recover NICs (ie all the relevant years are closed for PAYE/NICs). Is the EBT Settlement Opportunity relevant to me?

Yes. Please see the answers to Questions 2.3 – 2.4 which explain how you may make voluntary restitution under the EBT Settlement Opportunity and the circumstances when HMRC will consider entering into a 'paragraph 59 agreement'.

1.17 I am an employer. My EBT has previously made distributions or allocations to sub-funds/sub-trusts subject to PAYE and NICs. Are these going to be reopened?

Where the correct amount of PAYE and NICs in respect of distributions from EBTs or allocations to sub-funds/sub-trusts has already been accounted for, HMRC will not reopen that particular distribution or allocation.

You may wish to engage with the HMRC caseworker or Customer Relationship Manager dealing with your tax affairs to agree what the position is in respect of paragraph 59 of Schedule 2, Finance Act 2011.

1.18 I am an employer. My EBT is already subject to an enquiry and PAYE/NIC determinations/decisions have been issued. These determinations/decisions are currently under appeal - what will happen to them as part of the settlement?

Under the EBT Settlement Opportunity, cases may be settled by way of contract settlement or closure notice. The method of settlement will vary from case to case depending on the facts of that particular case.

Where all the agreed settlement duties and interest payable are included in a contract settlement, the PAYE/NIC determinations/decisions under appeal will normally be informally discharged as part of the settlement process. All the EBT liabilities included in the settlement agreement will then be payable under the terms of the settlement contract.

Where it is agreed that the case will be settled by closure notice then the appeals against the PAYE/NIC determinations/decisions will be formally settled by agreement and the related duties released for payment as appropriate.

If the employer reaches an EBT Proportional Tax Settlement with HMRC (see the answer to Question 1.8), the PAYE/NIC determinations/decisions will remain in place. This is to allow HMRC to continue to formally progress and if necessary, litigate, enquiries relating to the proportion of employee earnings not included in the agreed settlement.

1.19 I am an employee. My employer has not entered into an agreement under the EBT Settlement Opportunity. Will HMRC discuss the position with me with a view to reaching agreement in these circumstances?

Employers are legally obliged to operate PAYE tax and NICs on earnings paid to their employees. Where an employer has not operated PAYE/NICs on the allocation of funds from an EBT, any settlement which HMRC enters into under the terms of the EBT Settlement Opportunity will normally be made with the employer as the employer is responsible for paying the PAYE/NICs to HMRC.

In some circumstances you, as an employee, may be party to a settlement agreement which HMRC has made with your employer, for example, in an EBT Proportional Employee Tax Settlement.

If you would like to discuss how to settle any liabilities that relate to your earnings then you should speak to the HMRC caseworker dealing with the case.

1.20 I am an employer. Will any further PAYE, NICs, interest or penalties be payable in relation to my EBT – either by me or my employees – if I reach a settlement with HMRC?

HMRC will consider each case on its own facts and will enter into settlement on the basis that employers are given certainty regarding the substantive issue of PAYE/NICs on earnings and interest included in the settlement. See Question 1.13 regarding penalties. Certain schemes may have other consequences depending on the structure and steps taken (see Non Resident Trust and IHT questions which are covered at sections 3 and 4 below).

Further PAYE/NICs may be due if earnings have not been paid within the period covered by the settlement but are subsequently paid. For example, if you have previously reached a CT only settlement on the basis that earnings were not paid, PAYE/NICs will be due in future if earnings are subsequently paid (see Question 2.10).

Where an agreed settlement with an employer may result in additional liabilities in respect of any of the employees, HMRC will highlight these issues so that the employer can advise their employees as appropriate.

For EBT Proportional Employee Tax Settlements see Question 1.8 above.

2 PAYE/NICs and CT Deductions

Paragraph 59 Agreements

2.1 If I accept the terms of the EBT Settlement Opportunity and agree to settle on the earnings basis, when does the PAYE/NICs liability arise for the purposes of calculating liability?

HMRC's view is that where there is a link to employment income at the time the funds are allocated either formally or informally to a specified employee and his/her family trust beneficiaries, those funds become earnings on which PAYE and NICs are due and should be accounted for by the employer. HMRC has explained this further in Spotlight 5 – see the link below.

[Spotlight 5](#)

Each case will depend on its own facts and the evidence of allocation of trust funds specific to that case. For many EBTs, the evidence of formal allocation and therefore the point at which PAYE is due is when the funds go into the sub-trust.

Depending on the facts of the particular case, alternative PAYE trigger points may arise. These can include for example, but are not restricted to:

- the point where an employee is contractually entitled to receive the payment
- where the payment of trust funds is communicated to the employee in such a way that he/she is entitled to the money before it goes into the main EBT
- when there is evidence of allocation of funds within the main EBT

Where the EBT does not use a sub-trust and there is no evidence of alternative PAYE/NICs trigger points, HMRC may be prepared to accept that liability arises when money or assets come out of the EBT to the directors/employees. This is often in the form of a loan. We use this as a reasonable method of measuring informal allocation of the EBT funds to establish the point at which the income charges might apply.

When liability arises in any particular case will depend on the facts of that case. This is the reason why HMRC, as part of the enquiry into the EBT arrangements, needs to obtain all the relevant documents and information so all the facts can be established and decide when is the correct time to apply PAYE/NICs.

2.2 The trust deed in my case provides that the employers secondary NICs shall be paid out of the trust funds. Does this affect how I calculate the amount of PAYE and NICs chargeable on the earnings?

Where the trust deed provides that the employer's secondary NICs liability shall be paid by the trust, and this obligation was in place at the time of the allocation which gave rise to the earnings charge, then the amount allocated represents secondary NICs plus earnings. The PAYE and primary NICs are then deducted from the reduced earnings figure.

Example

The rate of employers secondary NICs is 12.8%

An amount of £100 is allocated to a sub-fund for a specified employee

The allocation of £100 equates to the employee's earnings plus employers secondary NICs at 12.8%

The fraction used to calculate the amount of earnings subject to PAYE and employee's primary NICs is:

$$£100 \times 100/112.8 = £88.65$$

PAYE and employees primary NICs are due on the reduced earnings figure of £88.65.

2.3 When will HMRC enter into an agreement to which paragraph 59 of Schedule 2 Finance Act 2011 applies (a 'paragraph 59 agreement')?

HMRC will consider the facts of each case on its merits in deciding whether to enter into a 'paragraph 59 agreement'. The following examples show the types of factors HMRC will take into account, and apply reasonably and consistently in reaching its decision on the scope of any agreement, which in turn will directly affect the extent of any relief.

Whilst the fact pattern of individual cases may fall within the guidance and examples below, HMRC will only enter into settlements where the value will be reasonable in view of the circumstances of the case. All settlements will be subject to normal governance procedures that are tailored to the size of the case, to ensure compliance with HMRC's responsibilities under collection and management powers and the LSS.

The objective of paragraph 59 is to allow HMRC to agree settlement without seeking tax twice on the same value and also without

seeking to tax something where HMRC had sufficient information within normal time limits to protect the liabilities but failed to do so.

Any such agreement is entered into purely for the purposes of paragraph 59 and Part 7A and does not have any read across into the availability and timing of any corporation tax deduction or income tax deduction which will need to be considered separately.

Where the following statutory requirements are met HMRC will consider entering into a Paragraph 59 agreement.

1. Prior to 6th April 2011 a relevant step within section 554B of ITEPA 2003 - earmarking of a sum of money or an asset - was taken ('the pre 6th April 2011 step'), and

2. The employer and/or employee agrees with HMRC that the pre 6th April 2011 step is to be treated as earnings of the employee from employment with the employer ('the earnings') and pays or otherwise accounts for the amount due under the agreement.

Both the agreement and payment or accounting of the amount due under the agreement must happen before the relevant step within sections 554C or 554D of ITEPA 2003 taken on or after 6th April 2011 ('the chargeable step') takes place. Additionally the chargeable step must be referable to the earnings in order to benefit from the 'paragraph 59 agreement'.

Example

In July 2007 the employer paid £250,000 to an EBT and in August wrote to the trustees suggesting an allocation of the contribution to sub-funds for specified employees. The contributions were allocated in the way the employer suggested. For the purposes of paragraph 59 this is the 'pre-6th April 2011 step' in 1 above.

The contributions are invested and remain in the sub-funds.

In 2013 the trustees wish to distribute the funds and wind-up the trust. The distribution will be the chargeable step (within section 554C).

The value of the funds at this time is £300,000; that is the original amount allocated of £250,000 plus investment income of £50,000. If this amount was distributed then PAYE and NICs would have to be accounted for on £300,000 pursuant to Chapter 2 of Part 7A of ITEPA 2003 and Regulation 22B of The Social Security (Contributions) Regulations 2001.

Before the funds are distributed the employer reaches an agreement with HMRC that the allocations to the sub-funds in August 2007 should have been treated as earnings of the

employee. The employer accounts for the PAYE and NICs due on the £250,000 allocated to the sub-funds.

The £50,000 investment income is not subject to PAYE and NICs but may be subject to charges on investment returns as set out in the questions at section 3 below.

When the trustees distribute the sub-trust funds in 2013 the value of the chargeable step under section 554C will reduce to nil after relief under paragraph 59.

2.4 How will the amount paid or accounted for under the agreement be calculated?

Relief under paragraph 59 will be given in accordance with and calculated by reference to the principles below.

The amount 'paid or accounted for' under the 'paragraph 59 agreement' will be the full amount of tax and NICs chargeable on the earnings plus any interest due in the following situations

- for years which are within normal assessing time limits for making determinations/decisions and taking action to recover NICs
- for years protected by determinations/decisions and where we have taken action to recover NICs

The amount to be 'paid or accounted for' under the 'paragraph 59 agreement' will be the voluntary restitution of the full amount of tax chargeable on the earnings in the following situation:

- for years which are outside normal assessing time limits but HMRC was **not** provided with sufficient information within the ordinary time limits to make determinations

No amount will need to be 'paid or accounted for' under the 'paragraph 59 agreement' in the following situation:

- where the earnings are treated as received in years which are outside normal assessing time limits and HMRC had sufficient information to make determinations or decisions for those years within normal assessing time limits but accepted that no PAYE and NICs were due.

2.5 What is 'sufficient information'?

In determining whether sufficient information was made available for HMRC to make determinations or decisions, HMRC will consider each year in accordance with the principles set out in Statement of Practice 8/91.

The principle is whether on the basis of the information provided they could be expected to be aware of the need to issue determinations and/or decisions. In particular it will be necessary to decide, taking a reasonable and commonsense view of the matter, whether a taxpayer or his adviser would consider that a competent Inspector, in examining the accounts and computations or other information provided in respect of the employer's liability to account for PAYE and NICs, would have addressed his mind to the point at issue. This will be so only if the point was clearly and fully described so that its significance to determine the employer's liability was clearly and immediately apparent.

If further information would have been required before it could reasonably be expected that an officer would reach a final decision on liability to PAYE and NICs, HMRC would not accept that the question of a liability to PAYE and NICs should be regarded as having been agreed.

What is important is

- that the information available on either the CT returns/accounts or that was otherwise provided to HMRC by the employer, including during any Employer Compliance Review, included details showing that sums had been attributed to or allocated to an individual employee, so an earnings charge under section 62 ITEPA 2003 would arise.

Information that is limited to the existence of an EBT or contributions to an EBT is not considered sufficient for HMRC to raise regulation 80 determinations or section 8 decisions.

The following examples concern the situation where HMRC is out of time to raise regulation 80 determinations or take action to recover NICs and the information referred to is the information that HMRC had available within normal time limits.

Example where sufficient information was provided

Example 1

There was an Employer Compliance review at which the payments to the EBT were discussed. Details of allocations to sub-funds in that year and the 3 previous years were provided to HMRC. The officer referred the information to the Corporation Tax Inspector, but took no further action and closed the review without issuing determinations. All 4 years are now outside normal time limits.

Sufficient information was provided for HMRC to see that amounts had been allocated to individuals and to make protective determinations. HMRC may enter into a 'paragraph 59 agreement' for all 4 years without voluntary restitution.

Example 2

The company accounts show a payment to an EBT and the CT computations show it added back. An enquiry is opened into various aspects of the computations and during the enquiry it is disclosed that amounts are allocated to individual sub-funds within the EBT, but that the only payments from the EBT were by way of loans at a commercial rate of interest. No further action was taken.

The information provided was sufficient for a decision to be made that PAYE should have been accounted for on allocation to the sub-funds. HMRC may enter into a 'paragraph 59 agreement' without voluntary restitution.

Examples where insufficient information was provided

In these cases there is insufficient information to determine whether or not amounts have been allocated to individuals such that they can be considered 'earnings' and PAYE/NICs are due. HMRC will not enter into a 'paragraph 59 agreement' without voluntary restitution of the full amounts of PAYE chargeable on the earnings.

Example 3

Contributions to an EBT are included in a composite deduction for 'wages, salaries etc' in the accounts and CT computations.

Example 4

The company accounts show a deduction for a payment into an EBT. There is no other commentary in the accounts or CT computations.

Example 5

The company accounts show a deduction for a payment into an EBT. There is no other commentary in the accounts. The CT computations show that all or part of the EBT contributions have been added back by applying Section 43 Finance Act 1989/Schedule 24 Finance Act 2003 or section 1290 Corporation Tax Act 2009.

Example 6

The accounts and computations show a contribution to the EBT with no additional comment. The P11Ds show loans to employees, but make no reference to the EBT.

2.6 I have some years where section 8 decisions for the NICs have been made, but no regulation 80 determinations for PAYE and HMRC did not have sufficient information to raise regulation 80 determinations within normal time limits. Will

HMRC enter into a 'paragraph 59 agreement' for these years?

HMRC will enter into a 'paragraph 59 agreement' in these circumstances provided that the NICs are paid as required under the section 8 decision and that the full amount of tax that should have been paid on the earnings, is paid or accounted for under the agreement (by way of voluntary restitution). See Question 2.4 for the position where there was an earlier full disclosure of the allocation of funds.

2.7 I have some years which are out of time to raise regulation 80 determinations and section 8 decisions and for which HMRC did not have sufficient information within the normal time limits to identify the pre 6th April 2011 step as giving rise to earnings . Will HMRC enter into a 'paragraph 59 agreement' for these years?

HMRC will enter into a 'paragraph 59 agreement' in these circumstances provided that the full amount of tax that should have been paid on the earnings, is paid or accounted for under the agreement (by way of voluntary restitution).

2.8 If the amount due under the 'paragraph 59 agreement' is the full amount of PAYE and NICs chargeable on the earnings, can I offset against that amount a CT deduction that was disallowed (or not claimed) at the time?

For the purposes only of calculating the amount due under the 'paragraph 59 agreement', where the full amount of PAYE and NICs chargeable on the earnings is being paid or accounted for under the 'paragraph 59 agreement', either pursuant to existing regulation 80 determinations or section 8 decisions or by voluntary restitution, HMRC may consider (assuming relief has not already/will not be given elsewhere) agreeing that payment of the PAYE and NICs may be accounted for in part by an amount equivalent to any CT deduction that may/would have been available had the PAYE and NICs been properly paid at the time.

2.9 I am an employer. If I agree to settle on the earnings basis, what will happen to any income tax or NICs paid by me or my employees on benefits in kind charges which arose in connection with the amounts contributed to the EBT?

Where HMRC enters into an agreement to settle on the earnings basis and settlement is reached before a relevant step under the disguised remuneration legislation is taken, the settlement terms will give credit for benefit in kind charges which have arisen and been paid in connection with the amount that has been contributed to the EBT (for example, on a beneficial loan), provided that the full amount of tax and NICs that should have been paid on that

contribution as earnings is paid or accounted for under the agreement.

Credit will be given by deducting the income tax and NICs paid on the benefit in kind charges from the PAYE and NICs due under the settlement agreement on the understanding that neither the company nor the employees will make any future claims for repayment of these sums.

Any credit in respect of benefit in kind charges included in the settlement agreement will be treated as having been paid for the purposes of paragraph 59.

Where a relevant step under the disguised remuneration legislation is taken before settlement has been reached, HMRC will not give credit for the benefit in kind charges which have arisen on amounts (for example, on beneficial loans) before the charge under Part 7A arises.

CT Deductions

2.10 Why are HMRC continuing to settle some cases on the basis of denying a CT deduction when they have stated that most EBTs should be settled on the earnings basis?

Each case or scheme will have been offered settlement terms based on their individual circumstances and the evidence currently available in those cases. In cases where the CT deduction is in point and we feel there is an argument to deny that deduction then we will consider pursuing those cases on that basis. If we are unable to settle these cases by agreement then we will consider litigating on the CT point only.

Example

A contribution is made by a company to an EBT. The money is not allocated to an individual or received by them in any way. The money is then loaned directly back to the company. The company has claimed a CT deduction in respect of the EBT payment. In such a case no earnings event has yet occurred. The company would be offered the CT basis for settlement in respect of the year in question. Of course a later event or sequence of events may trigger a PAYE and NICs charge.

2.11 HMRC are currently enquiring into my EBT. As part of the EBT Settlement Opportunity they have offered to settle based on denying/deferring the CT deduction. I think the enquiry should be settled on the earnings basis – what should I do?

If you think the earnings basis is appropriate in your ongoing case you should discuss this with the caseworker dealing with your

enquiry. You will need to explain to HMRC why you think the earnings basis applies and provide the documents and information to support this view. HMRC will then consider whether there is evidence of earnings and if it is appropriate to offer to settle on that basis.

2.12 I am an employer and want to agree a settlement on the earnings basis. I will pay all PAYE/NICS charges for all years. In what circumstances might HMRC deny me a CT deduction for my EBT contributions?

The starting point for HMRC on the question of whether or not a CT deduction is due and the extent to which that deduction is due is fiscal symmetry. That is to say where PAYE and NICs is being paid in respect of an underlying EBT contribution HMRC will not usually seek to resist a claim to a CT deduction provided any claim has been made, or can be made, within time.

Question 2.13 below deals with the situation concerning whether overpayment relief may be available if a claim for a CT deduction is otherwise out of time.

2.13 If, as an employer, I settle my PAYE and NICs EBT liabilities with HMRC and I am out of time to claim a CT deduction for EBT contributions, can I get overpayment relief?

A company may claim overpayment relief for any period provided it meets the conditions and is within time to do so. Whether or not a company can make a valid claim for overpayment relief in respect of its EBT contributions for earlier years will be considered and discussed as part of the settlement process.

Where an employer pays the PAYE and NICs and this is not recovered from either the employee or trustee, normally a CT deduction may be claimed for the whole of the further PAYE and NICs. This is usually claimed during the accounting period in which it is expensed in the accounts but by current concession (see the link to HMRC's Business Income Manual at BIM47090 below), may be claimed in the earliest possible year to which it relates if the year is under enquiry, or otherwise capable of amendment or overpayment relief is due.

[HMRC Business Income Manual: BIM47090](#)

2.14 Where I am due a CT deduction for the contribution to the EBT because I am paying PAYE/NICS on allocation, when is this deduction to be taken? Is it the year in which the allocation is made or the year in which the settlement is agreed?

The starting point for CT liability is profits computed according to Generally Accepted Accounting Principles (GAAP). If the CT year is

open or otherwise capable of amendment then the CT deduction for the amount of contribution on which PAYE/NIC is paid is due as follows:

- In the year expensed when computing GAAP profits if the contribution gives rise to both an employment income tax charge and a NICs charge in either that year or within 9 months of the year end
- If the contribution gives rise to both an employment income tax charge and a NICs charge at a time later than 9 months of the year end then in the year in which the employment income tax and NICs charges arise.

2.15 If, as an employer, I settle my PAYE and NICs EBT liabilities with HMRC can I claim a CT deduction for the PAYE and NICs paid and if so, when?

Where an employer pays the PAYE and NICs and this is not recovered from either the employee or trustee, normally a CT deduction may be claimed for the whole of the further PAYE and NICs. This is usually claimed during the accounting period in which it is expensed in the accounts but by current concession (see the link to HMRC's Business Income Manual at BIM47090 below), may be claimed in the earliest possible year to which it relates if the year is under enquiry, or otherwise capable of amendment or overpayment relief is due.

[HMRC Business Income Manual: BIM47090](#)

2.16 I am an employer. All of the distributions from my employees' EBT were funded by contributions made by an offshore member of my group. Am I liable for PAYE/NICs? If so, am I entitled to a CT deduction in respect of the contributions?

There are an extremely wide variety of EBT arrangements and facts. The answers to such a question will be very fact specific and touch on many issues including residency, location of duties being performed and transfer pricing etc. This type of question cannot be covered generically as an FAQ. If you have such a case please discuss it with the caseworker covering the enquiry.

As a general point the starting point for CT liability is profits computed according to GAAP – so a pre-requisite for a CT deduction is that the contribution must be expensed in the employer's trading profits computed in accordance with GAAP.

The fact that the contributions to the EBT were made by an offshore member of your group may not relieve you of liability for any PAYE/NICs due on any distributions from the EBT. As mentioned above, there are many possible funding arrangements for the contributions into an EBT and an equally large number of ways in

which those funds can then be distributed to employees. The PAYE/NICs treatment will depend on the facts and you should discuss this with your caseworker but it is likely that the EBT would be treated as your intermediary at the point where it makes a payment to the employee or holds property on behalf of the employee (including at any point where it decides to allocate any funds to a sub-trust in the employee's name). If the Trustees of the EBT do not operate PAYE/NICs, then the responsibility would fall on you as an employer. Further details are included at HMRC's Employment Income Manual, EIM11810 (see link below).

[EIM11810](#)

Section 222, Section 223 and grossing up

2.17 Will there be a charge under section 222 ITEPA 2003?

A payment of earnings by a trustee will give rise to a 'notional payment' within section 687 ITEPA 2003 unless the trustee deducted income tax from the payment and accounted for it to HMRC. Section 222 potentially imposes a charge on the individual when a 'notional payment' is made.

A charge under section 222 will arise on the employee if the employee does not make good to the employer the amount of income tax due on the notional payment within 90 days of the date when the payments are made. The section 222 charge should be returned through Income Tax Self Assessment.

Where the facts of the case in a settlement agreement show that the contributions to the EBT are earnings, there will be no charge under section 222. This is because the payments are not made by an intermediary and therefore are not 'notional payments'.

However, where the facts show that the allocations to a sub-fund gives rise to an earnings charge then section 222 may apply, because the payment is made by an intermediary, in this case a trustee.

If within 90 days of the of the allocation being made there is a legally enforceable obligation in place on the part of the trustee to indemnify the employer for any tax and NICs due as a result of the allocation, HMRC will accept that this is making good for the purpose of section 222 provided that the tax and NICs are accounted for to HMRC.

2.18 I will be the subject of a charge under section 222 ITEPA 2003, but only for past years. What charge applies to me?

If there is an open enquiry into your return for the year in which the charge arises then it will be included in any settlement/closure of that enquiry.

If there is no open enquiry then we may raise a discovery assessment. A discovery assessment can only be made if one of the following two conditions is fulfilled

- the officer could not have been reasonably expected, on the basis of the information made available to him or her, to be aware of the underassessment when the enquiry window closed or a completion notice was issued
- the further tax that is due arises from the careless or deliberate behaviour of the taxpayer, or a person acting on his or her behalf – the time limit

The time limit for raising such assessments is generally 4 years from the end of the year of assessment; unless there has been careless or deliberate behaviour.

So, for example, during 2012 -13 we can assess that year and the 4 preceding years; 2008 – 09 onwards.

2.19 Does section 223 ITEPA 2003 apply?

Section 223 may apply where the employer has made a payment of earnings to a director and pays the tax due under PAYE. It may impose a tax charge where the employer fails to deduct or recover the tax in question from the director. However, this section does not apply to all directors. Directors who are full time working directors with no material interest in the company are excluded from a section 223 charge.

Where the facts of the case in a settlement agreement show that the actual contributions to the EBT are earnings there may be a charge under section 223.

However, where the facts of the case in a settlement agreement show that the actual allocations to a sub-fund give rise to an earnings charge then section 223 will not apply, because the payment is made by an intermediary, in this case a trustee.

2.20 Should contributions be grossed-up?

The gross sum is the contribution to the EBT or allocation to the sub-fund as appropriate. So if, for example, £100 is contributed or allocated it is that figure we will use as a starting point in our calculations (see however Question 2.2 above for the calculation of secondary NICs in certain cases).

3 Non-Resident Trust

Note – unless otherwise stated, all legislation references are to the Income Tax Act 2007.

3.1 As the Non-resident Trustee of an EBT do I have to report any of the income that I receive to HMRC?

This will depend on the source of the income that you receive. In broad terms if you receive UK source income you will be liable to income tax on this. Where an EBT is a discretionary trust you will be liable to tax under s479 – the special rate for trustees' income.

3.2 If I have received income as the trustee of a non-resident EBT how do I notify HMRC of this?

You can contact HMRC's Trusts & Estates Non-resident Trust staff on 0845 604 6455 and they can advise accordingly. Alternatively you can write to:

HMRC Trusts & Estates
Non-Resident Trusts
Ferrers House
PO Box 38
Castle Meadow Road
Nottingham
NG2 1BB

3.3 If the non-resident EBT realises gains from the disposal of investments will the trustees be liable to capital gains tax in the UK?

Trustees of non-resident trusts are not liable to UK capital gains tax because they are not resident in the UK. To be liable to capital gains tax in the UK in respect of trust gains the trustees would have had to be resident in the UK for part of the particular tax year in question.

3.4 I am the beneficiary of an offshore EBT and I have received distributions from the EBT out of the trust income derived from its investments. Am I taxable on this distribution?

The beneficiary of a discretionary trust who has received a discretionary income payment will be liable to UK income tax on this. This should be returned as untaxed foreign income on your Self Assessment Return. The distribution may also be caught under the disguised remuneration legislation at Part 7A ITEPA 2003. Please see Question 3.9 below on the interaction with Part 7A ITEPA 2003.

Where trustees have accumulated income and added this to capital before distribution to beneficiaries, the distribution is not taxable as foreign source income. In these circumstances the distributions are

taxable as capital payments under s731 to the extent that they can be matched with relevant income. See Question 3.9 below

3.5.1 What do I need to do to claim a credit for tax paid by the trustees of my EBT?

You may be entitled to receive a credit under ESC B18 if you receive a discretionary income distribution from the trustees of an offshore EBT of which you are a beneficiary if the trustees have suffered tax on the income that they have received. The beneficiary should show the income that they have received on the foreign pages of their tax return and should contact HMRC Trusts & Estates Non-resident Trusts (see Question 3.2 above), about claiming relief under ESC B18. The beneficiary should also notify their own tax office that they wish to make a claim for relief. Relief will be granted on a claim made within five years and ten months of the end of the year of assessment in which the beneficiary received the payment from the trustees. The concession applies if the trustees have made trust returns giving details of all sources of trust income and payments made to beneficiaries, have paid all tax due and keep available for inspection by HMRC any relevant tax certificates. If the relief is due HMRC Trusts & Estates will calculate the amount of relief due and will notify the beneficiary's tax office accordingly.

3.5.2 My sub-trust includes income from which UK income tax was deducted at source and which has since been capitalised. If I receive a distribution from the trust, will I be entitled to a credit for the tax withheld from the trust income under ESC B18, even though I have received a capital payment?

If you receive a capital payment from your offshore EBT then ESC B18 will not be applicable to provide a credit for any tax paid by the trustees on the income they received. This is because ESC B18 only applies to payments made out of trust income. You will be liable to income tax on the capital payment under s731 to the extent that the capital payment can be matched with available relevant income in the trust. If the trustees have paid tax on trust income as it arises the amount of available relevant trust income will be reduced by the amount of the tax paid and so can reduce the amount of relevant trust income available to match against the capital payment you have received. For example if the trustees have received income of £100 on which they have suffered tax of £50 the available relevant income will be £50. If the trustees capitalise the income and in a later year make a payment to you of £100 out of trust capital then only £50 of this relevant income will be available to match against the capital payment of £100 and you will pay tax on the amount of £50.

3.5.3 What conditions must the trustees of my EBT have complied with for me to obtain a credit for tax paid by the trustees of my EBT under ESC B18? Do these conditions include a requirement that any IHT trust returns be up-to-date?

The conditions that the trustees of your EBT must have complied with for you to obtain a credit for tax paid by the trustees under ESC B18 are as follows:

- The trustees must have made trust returns giving details of all sources of trust income and payments made to beneficiaries for each and every year for which they are required; and
- The trustees must have paid all tax due and any interest, surcharges and penalties arising; and
- The trustees keep available for inspection any relevant tax certificates.

The conditions only specify that the trustees must have made returns giving details of sources of trust income and payments to beneficiaries for each year. IHT returns relate to settled property as opposed to discretionary income, and are not a requirement for fulfilling the conditions of ESCB18.

3.6 Is it possible for an offshore EBT to be caught by the Transfer of Assets legislation contained in s714 to s751?

In broad terms there are two charges under the transfer of assets legislation; the income charge at s720 and the benefits charge at s731. The income charge applies in relation to the transferor of the assets into the EBT provided that they are ordinarily resident in the UK, have the power to enjoy the income of the person abroad (ie the income of the EBT) or they are entitled to receive a capital sum as a result of the transfer. The benefits charge applies if a person other than the transferor receives a benefit. The amount of the beneficiary's liability is restricted to tax on the lower of the value of the benefit received or the relevant income that has arisen as a result of the transfer.

For the income charge to apply the employee must be considered to be the transferor. This can occur if the employee has transferred a right to receive income to the EBT i.e. they had made the decision for the funds to be paid in to the EBT or where they procured the transfer. This will be dependent on the facts of individual cases but by way of example may include the situation where an individual employee had a contractual right to receive a bonus which he indicated should be paid to the EBT or where a company is controlled by its directors/shareholders and they arrange for the setting up of an EBT which is predominately for their benefit.

The benefits charge can apply if the employee is not considered to be the transferor, but receives a benefit from the EBT and is ordinarily resident in the UK. The benefit can be a cash distribution, the provision of an interest free loan or the use of a trust asset.

3.7 What if I receive a benefit, such as a loan, from the EBT that is within the scope of s.731, but which is taxed as a benefit of my employment?

If the benefits charge under s.731 is potentially in point, but the benefit provided is also assessable to income tax under the employment income legislation, for example as a benefit in kind, s.732(1)(e) prevents double charging as the charge under s.731 will only apply if you are not liable to income tax on the benefit under any other legislation.

3.8 I understand that the trustees of the offshore EBT will not be liable to capital gains tax on any gains realised by the EBT, but as a beneficiary of the trust will I be liable to capital gains tax on such gains?

There are certain sections of the Taxation of Capital Gains Act 1992, which seek to attribute gains arising in overseas trusts to the settlors and beneficiaries of overseas trusts. However, with regard to EBTs provided that the EBT is a commercial arrangement and there is no element of bounty present these sections will not apply and you will not be liable to capital gains tax on any capital distributions arising within the EBT. If however, you receive a capital payment from the EBT and there is unmatched relevant income the capital payment may be subject to income tax under s.731 to the extent that it can be matched with the relevant income.

3.9 My employer established an EBT with a sub fund of which I am a beneficiary. I now want to wind up this fund and have the original contribution made by my employer and any investment income and capital growth distributed to me. What are the tax implications of doing this?

The tax treatment will depend on whether or not your employer has entered into an agreement with HMRC in relation to the original contributions made. You should also see Question 4.15 on IHT exit charges below.

If no agreement was reached with HMRC the winding up of the arrangements and the distribution of the funds will be treated as a relevant step under Part 7A ITEPA 2003 and will be taxed accordingly. s732(1)(e) means that in these circumstances there will be no charge under s731 even where there are capital payments that can be matched with relevant income.

However, if a previous agreement has been entered into between your employer and HMRC, Paragraph 59 Part 7A acts to reduce the chargeable step under the disguised remuneration legislation by the amount previously treated as earnings under the terms of the settlement. It also reduces the chargeable step by the amount of investment income and capital growth. So there will be no charge

on the distribution of the funds under Part 7A ITEPA 2003 but the investment income distributed to you will be taxable as outlined in Questions 3.4 to 3.5.3. For most EBT arrangements any capital growth will not be subject to capital gains tax (see Question 3.3 above), however, to the extent that the capital distribution can be matched against relevant income arising within the structure there may be an income tax liability under s731 on the distribution.

3.10 I am an employee. How will I be taxed on the income and gains arising on the amounts held within my sub fund? Will this be dealt with in the settlement my employer is reaching with HMRC?

You will need to confirm the basis of settlement with your employer as whether or not the income and gains arising on the amount held in your sub-fund are included in a settlement reached with HMRC will depend on the nature of the settlement reached.

Where there is a settlement of legacy PAYE/NIC liabilities with HMRC this would provide relief from a charge under Part 7A of ITEPA on the income and gains but such income and gains may still be chargeable to tax in a number of ways, and you should refer to Questions 3.4 and 3.6 above. If you are considered to be the transferor for the purposes of s720 (see Question 3.6 above) then you will be liable to tax on the income as it arises in the EBT to the trustees. If you receive an income distribution from the EBT then you will be liable to pay income tax on the distributions in the year that they are received by you (see Question 3.4 above). If the trustees capitalise the income and you receive capital payments from the trustees you will be liable to income tax on the capital payments to the extent that they can be matched with the relevant income within the EBT (see Question 3.6 above).

With regard to the taxation of any gains arising within the EBT the taxation treatment is dependent on who is the settlor of the trust (see Question 3.8 above).

If however a settlement is reached on the basis that a relevant step under disguised remuneration occurred after 5 April 2011, the value of which includes the trust income and gains then the income and gains will be taxed as part of the disguised remuneration charge.

3.11 What will I need to include in my personal tax return when I am the beneficiary of a 'relevant step' as defined in Part 7A ITEPA before my employer reaches agreement with HMRC on settlement and in future after the settlement?

Where, after 5 April 2011, your employer is negotiating an agreement with HMRC on a legacy PAYE/NICs basis it would be unusual for the trustees to agree to take a 'relevant step' before the settlement is agreed and PAYE/NICs accounted for because this is

prejudicial to obtaining paragraph 59 relief on the 'relevant step' taken.

If you do receive a distribution of investment returns after 5 April 2011 but before your employer has agreed the earnings settlement with HMRC this will be a 'relevant step' under Part 7A and will be taxed as such. No paragraph 59 relief will subsequently be available in respect of this distribution. Your employer / former employer will need to account for PAYE and NICs on the value of the 'relevant step' and you will need to include the value of the 'relevant step' in Box 1 or Box 3 of the Employment pages in your tax return or in the Additional Information pages for a post-termination 'relevant step' (in Box 3 of the section in the Additional Information pages on 'Share schemes and employment lump sums, compensation and deductions and certain post-employment income.').

If the 'relevant step' takes place after an earnings settlement with HMRC, the taxation of the 'relevant step' will depend on whether or not - and the extent to which - it represents the earnings covered by the settlement, together with any capital or income return on those earnings. If the 'relevant step' wholly represents the earnings covered by the settlement, together with any return, then as long as all tax due under the settlement has been paid by the time the 'relevant step' is taken, you will not need to include anything in the Employment pages of the SA return (or in Box 3 of the section on 'Share schemes and employment lump sums, compensation and deductions and certain post-employment income'). However, you will need to make a return of the investment income and gains on your tax return as follows: for an income distribution you should declare the amount received as foreign income on your return (see Question 3.4 above). If any of the trust income has been subject to tax then you may be able to claim relief for any tax paid by the trustees under ESC B18 (see Question 3.5 above). A capital distribution then this will be subject to tax under s731 to the extent that there is any available relevant income arising within the trust which the capital payment can be matched with (see Question 3.9 above) – you will need to ask the trustees for this information if not already provided.

If part of the 'relevant step' does not relate to earnings covered by the settlement or if the return on those earnings includes contrived or uncommercial amounts, then that part of the 'relevant step' will be subject to tax under Part 7A and you will need to make entries in your SA return, using the same pages & boxes as apply to a 'relevant step' made before a settlement agreement is reached.

4 Inheritance Tax (IHT)

Whilst HMRC views the payments into an EBT as remuneration, the use of discretionary trusts in these arrangements also gives rise to IHT liabilities. This is not double taxation, but a reflection of the

more general position where taxed or untaxed income is settled into discretionary trusts within the relevant property regime for IHT.

If you need to contact HMRC regarding the IHT relating to EBTs then the contact details are:

By Post: EBT IHT Team
Trusts & Estates
Meldrum House
15 Drumsheugh Gardens
Edinburgh
EH3 7UB

By email: ebtiht.settlementmailbox@hmrc.gsi.gov.uk

Unless otherwise stated, all legislation references are to the Inheritance Tax Acts 1984

4.1 I am an employer and want to know whether I will be liable to IHT on the payments I made into my EBT.

Payments into EBTs by close companies can in some circumstances give rise to IHT entry charges. Entry charges occur where a close company makes a transfer of value by which the value of its estate is worth less after the transfer than it was before. Where entry charges are in point there may be relief at 100% where the company is a non-investment company and the funds settled into the EBT are not excepted assets. RCB 18/11 sets out the entry charge and relief in detail

<http://www.hmrc.gov.uk/briefs/inheritance-tax/brief1811.htm>

4.2 What is the importance of S86?

If the trust deed satisfies s86, the relevant property charges that apply to most types of trust for IHT do not apply. Broadly, the trust deed must ensure that the EBT is capable of benefitting 'all or most' employees and persons of a class defined by reference to marriage, civil partnership, relationship to or dependence on that person. Often where the EBT trust deed satisfies s.86, money allocated to sub-trusts does not because the allocated funds are not usually held for all or most employees. This is the case even if the sub-trusts are revocable.

4.3 If I am chargeable for the transfer into trust, what is the most common relief which may be due?

Business Property Relief ('BPR') can be due at 100% if the transfer of value can be attributed to relevant business property. Relevant business property includes a non-investment business carried on by a company of which cash is an asset. Where cash is transferred from the business into the EBT and the transfer of value can be

attributed to a reduction in the company's relevant business property then BPR may be due. This is only where the cash is not an excepted asset and all the other conditions for BPR are met.

4.4 Are there any exceptions to the type of transfers that qualify for BPR?

Yes, the main exceptions are:

- where the company's business is excluded – for example where the company's business consists of wholly or mainly of making or holding of investments;
- the property has not been held for the requisite period of time, and
- where the property transferred is an excepted asset. Excepted assets are those which are neither used wholly or mainly for the purposes of the business throughout the qualifying period nor required at the time of the transfer for future use for those purposes. Excepted assets are defined at s112 and the minimum period of ownership is specified at s106.

4.5 The funds in our s.86 EBT have been transferred to sub-trusts for the benefit of particular employees. Is there an IHT charge?

Where the EBT satisfies s.86, and the sub-trusts do not, a transfer from the EBT to the sub-trusts can attract a charge under s.72. This is sometimes called the 'flat rate charge' and is calculated on the number of complete calendar quarters the funds have been in the EBT before transfer – 0.25% for every complete calendar quarter in the first ten years– but transfers within the first quarter are not chargeable. It is unusual for a transfer to be made from a EBT that qualifies under s.86 to a non-qualifying sub-trust after the first ten years, but where this is the case the percentages for the flat rate charge can be found in s.70(6).

4.6 Does the charge on property being transferred from an s.86 EBT to non-qualifying sub-trusts just apply to s.86 EBTs set up by close companies?

No. It applies to EBTs regardless of whether the settlor is a plc, a close company or an individual. Although the charge that arises on property being transferred into an EBT ("the entry charge") is only chargeable on close companies or individuals, once property has been transferred into an EBT the trust charges will apply equally to all EBTs and their sub-trusts.

4.7 Although the sub-trust is for an individual employee's benefit, it is revocable. Will it still be covered by s.86?

If the sub-trust only benefits an individual and their family it is unlikely to satisfy s.86. The wording of s.86 is very clear in that for a trust to qualify the settled property must be held on trusts with the class comprising of "all or most" of the employees. Where sub-trusts are for the benefit of a named individual and their family, it cannot be said that the settled property (i.e. the assets in that sub-trust) are being held for the benefit of all or most of the employees at that time, so s.86 will not apply.

Where the sub-trust can be revoked, it is possible for the sub-trust to be terminated and for the settled property comprised in the sub-trusts to revert and be held once again under the trusts of the original EBT, which qualifies under s.86. However, revocation in this way does give rise to a charge under s.65.

When considering whether settled property is held on s.86 qualifying trusts it is important to consider what the terms of the current trust applying to the property are at the relevant time. If the trusts applying to the settled property, do not satisfy s.86 then the sub-trust will be subject to the relevant property charging regime. It does not matter that the terms of the trust might change in the future.

4.8 There are reliefs available against the entry charge, are there any reliefs available against the flat rate charge?

Yes there are, but in limited circumstances. Where the transfer giving rise to the flat rate charge is also treated as income for the purposes of income tax at that time then relief under s.70(3) will mean that IHT is not payable under the flat rate charge. In practice relief will be given under s.70(3) when agreement is reached with HMRC that earnings charges occurred at the point of allocation to sub-trusts, and PAYE/NICs are accounted for.

Relief will not be due where there is no income tax charge at the time the s.72 charge arises, so if PAYE/NICs are not payable on allocation a charge will arise under s.72.

4.9 Does the flat rate charge under s.72 apply to any other transactions?

Yes. If you are the participator in a close company and have received a loan on non-commercial terms or a payment out of the s.86 EBT there will be a charge under s.72(2)(b) on the number of complete calendar quarters the funds have been in the EBT before the transfer – 0.25% for every complete calendar quarter in the first ten years. Where the loan was made in the first quarter, the transfer is not chargeable.

4.10 When calculating the IHT ten year anniversary charge under s.64 what is the start date of the trust – that of the EBT or the date when sub-trusts were created?

The date to be taken is the date the EBT was created.

4.11 Why is the relevant date for the ten year anniversary the date of the EBT rather than the date of the sub-trusts when the property was not 'relevant property' whilst in an EBT which qualifies under s.86?

The ten year charge arises ten years after the property first became settled property. To reflect the fact that settled property may not have been 'relevant property' for the full ten years, relief from the s64 and s65 charges is given by reducing the rate of tax charged to reflect any full calendar quarters during the 10 year period for which the property was not relevant property, rather than by altering the date of settlement.

4.12 The EBT has a number of sub-trusts. Does this mean that I need to calculate the IHT on each sub-trust individually?

No. The EBT and sub-trusts are one settlement as sub-trusts are usually an allocation of the EBT funds. Any calculation will need to take into account all the property contained in the one settlement; the EBT and any sub-trusts, and then charge tax on the event concerned.

4.13 The EBT trust deed allows for the payment of the PAYE and NICs by trustees. Is this exit from the trust to settle this liability subject to IHT?

Trust deeds vary and some contain an obligation for the trustees to pay PAYE/NICs whilst others contain only a power. Where the trustees are obliged to pay PAYE/NICs on behalf of settlor/employer then there will not be an exit charge arising on the funds used to make that payment as this obligation is a liability of the trust and the trustees have a lien over the property contained in the settlement. Where the trust deed only allows the trustees to pay the PAYE/NICs rather than obliging them to do so then we consider that our 'collection and management powers' will enable us to extend the same treatment where the PAYE/NIC is actually paid by the trustees, but not where the PAYE/NICs is paid or recovered from another party.

4.14 Does the existence of the lien mean that there will be a reduction in the charge at the time of the ten year anniversary under s64?

The charge under s64 is based on the value of the relevant property at that time. Whether the lien should be taken into account in

arriving at the value of the relevant property will depend on the facts of the case, as will any value attributed to it.

4.15 Is it correct that there is no IHT exit charge where the EBT is collapsed and we have entered into an agreement with HMRC under paragraph 59, schedule 2, Finance Act 2011?

No. s65(5)(b) prevents an exit charge arising on a payment which is (or will be) income of any person for any of the purposes of income tax. Where agreement is reached with HMRC under paragraph 59 it is on the basis that the charge to employment income tax arose at an earlier point in time, for instance on allocation to sub-funds/sub-trusts. So where the relevant step is referable back to the employment income covered by the agreement, this means that the value of the 'relevant step' at the time the structure is collapsed is reduced so that the property leaving the settlement is not income at that time. There is nothing under the IHTA that prevents an exit charge arising where the payment out of the trust was an amount which was previously income for the purposes of income tax.

4.16 I am paying the PAYE/NICs on exiting the structure. Does this mean that there will be no IHT exit charge?

If the income tax payment is in respect of a current year liability to income tax then s65(5)(b) does prevent an IHT exit charge arising on the same amount. However, where the payment is being made on funds leaving the structure but the actual charge to income tax relates to an earlier tax year then this relief is not available.

4.17 The company which set up the EBT is incorporated abroad. What effect does this have on the IHT charges?

Where property initially settled is non-UK assets and remains so, it will be excluded property and not subject to IHT charges. However, where the assets in the trust have changed, which may include loans to beneficiaries, then any assets that are situated in the UK will be subject to the same IHT charges as outlined in these FAQs.

4.18 There is a capital payment under the trust and there is not sufficient relevant income which means that there isn't matching of the balance of capital under s731 Income Tax Act 2007 (benefits charge). Is this payment also subject to IHT?

S65(5)(b) says that there will not be a charge to IHT on an amount which is (or will be) income of any person for the purposes of income tax. S731 ITA creates an income charge and so IHT will not be payable on the same amount provided that the charge arises at the time of exit. If the capital payment is not subject to a charge under s731 in the year it is made then there will be an IHT charge which will arise on exit.

4.19 Is a loan made by the EBT treated as an asset of the trust for the purpose of the ten year anniversary charge and on any exits?

Yes. The right to recover the loan is an asset of the trust and will be taken into account at the time of the ten year anniversary charge. The writing off of a loan from a sub-trust will give rise to an IHT exit charge under s65.

4.20 Can s151 apply to EBTs and if it does what are the effects?

Where the EBT was established before 6 April 2006 and included some provision for superannuation benefits then it may meet the definition of a sponsored superannuation scheme in s 624 ICTA 1988 and therefore come within the terms of s151 IHTA as it was immediately prior to 6 April 2006. Where this is the case the EBT and any sub-trusts with similar terms may not be subject to the ten year anniversary and exit charges discussed in these FAQs. The funds will be fully protected on and after 6 April 2006 if no further contributions have been made to the EBT. Where further contributions have been made, there are provisions for calculating a protected proportion of the fund assets representing the 6 April 2006 fund

IHT nil-rate band for EBTs

4.21.1 How many nil-rate bands for IHT purposes does an EBT have?

Each EBT has only one nil-rate band.

4.21.2 The contribution to the EBT was made by a close company which had more than one participator. Does this mean that the EBT has a nil-rate band for each of the participators?

No. The participator's nil-rate band is only relevant when calculating the charge that is apportioned to each participator on the transfer of value that they are treated as making into the EBT (e.g. the entry charge). The actual transfer was by the company so once the property is settled, the EBT itself only has one nil-rate band for the purposes of ten year anniversary and exit charges under s64 and s65.

4.21.3 The EBT has a number of sub-trusts. Does each sub-trust have its own nil-rate band?

No. The sub-trust is usually an allocation of funds within the EBT. So there is still just one trust and any dealings with the sub-trusts are taxed as one trust which has only one nil-rate band.

4.21.4 What is the nil-rate band for IHT?

A list of the nil rate bands can be found here:

<http://www.hmrc.gov.uk/rates/iht-thresholds.htm>

When preparing any calculation remember that you need to use the nil-rate band in force at the date the charge arises.

4.21.5 What effect does the nil-rate band have on the payment of IHT in respect of any trust?

The payment of IHT is based on the value of the trust property at the time the charge arises. Where the total value of the property within the relevant charging period (i.e. each ten year period from the date of the commencement of the EBT) does not **in total** exceed the nil-rate band then IHT will not be due. In order to ensure that this is the case you need to take into account any previous exit charges that have arisen in this relevant period.

The fact that the trust property exceeds the nil-rate band during the relevant period does not, in itself, mean that IHT is payable, but given the number of different factors that must be taken into account for the s.64 and s.65 calculations, you will need to go through the calculation to establish whether a liability arises.

The excepted settlement rules which will help you consider whether IHT will be payable and can be found here:

<http://home.inrev.gov.uk/ihtmanual/IHTM06123.htm>

Full details on the calculation of these charges can be found here:

<http://www.hmrc.gov.uk/manuals/ihtmanual/IHTM42000.htm>

4.22 Who is liable for IHT charges?

S201 sets out who the person chargeable for IHT on a chargeable transfer of settled property. These include:

- the Trustees of the settlement (s201(1)(a)),
- any person for whose benefit any of the settled property or income from it is applied at or after the time of transfer (s201(1)(c))
- the settlor - where the transfer is made during the life of the settlor and the trustees are non resident (S201(1)(d))

HMRC considers that s201(1)(d) includes a corporate settlor whilst the company is in existence. S44 (1) defines settlor as including

'person', and s5 & Schedule 1 of the Interpretation Act 1978 indicates that references to 'person' include 'body corporate' unless a contrary intention appears. The phrase 'during the life of the settlor' in s201(1)(d) does not suffice to indicate a contrary intention.

4.23 When is a beneficiary (employee) liable for IHT in respect of an EBT?

Where there is:

- a charge arising under s65 on a distribution to a beneficiary; or
- a distribution of income or capital or the granting of a beneficial loan to a beneficiary following a ten year anniversary charge arising under s64; or
- a distribution of income or capital or the granting of a beneficial loan to a beneficiary following a s65 charge otherwise than on distribution (for example where that charge arose because the sub fund is being amended to comply with s86); or
- a beneficial loan to a beneficiary is outstanding at the time of a ten year charge;

the beneficiary has liability for the earlier IHT charge under s201(1)(c).

The beneficiaries liability under s201(1)(c) is concurrent with the Trustee liability and with Settlor (employer) liability where the Trustees are non-resident at the time of the transfer

4.24 Where an employer either itself pays the IHT to HMRC, or puts the EBT in funds to do so, will this trigger a further employment income tax (or NICs) charge in relation to any of the beneficiaries of the EBT?

Question 4.22 above sets out the person liable for IHT on a chargeable transfer of settled property and Q 4.23 above sets out the circumstances where a beneficiary may be liable to IHT.

Where the beneficiary (employee) is not liable for the IHT, the employer discharging the IHT is neither earnings nor a benefit to the employee. This would usually be the case where for instance an IHT charge arises when funds are revoked from a non s86 sub fund to the main EBT, or where the terms of a sub fund are amended such that the property ceases to be relevant property, or there is a Ten Year Anniversary charge.

HMRC accepts that as long as the employer meets the IHT charges as part of agreeing settlement of earnings with HMRC that the payment of the IHT by the employer is not earnings or a benefit. In recognition of the complexity and number of beneficiaries involved in some EBTs, HMRC will adopt this approach on a first exit for a given beneficiary within 6 months of the earnings settlement if the proposed exit and the fact that the employer will meet the IHT

exit charge are included in principle in the terms of the agreement. Subsequent exits or exits beyond 6 months will be subject to the paragraph below.

Where the beneficiary retains his or her salary/bonus in the EBT after the settlement then the employee is continuing to benefit from having their bonus in a trust. In these circumstances payment by the employer of IHT on an exit in future is likely to trigger a further employment charge.

4.25 How is HMRC dealing with cases where HMRC have not made a 'Discovery'?

HMRC will try to agree the liability to IHT with the liable persons, but if we cannot agree then HMRC is not barred from formally determining the matter using a Notice of Determination.

HMRC can issue a Notice at any time. The only criterion is that it appears that a transfer of value has been made.

4.26 I have previously made HMRC aware that there is a sub-trust but HMRC has previously taken no action in respect of the IHT consequences.

A person liable to IHT in respect of settled property must make a return of the chargeable event on form IHT100 and pay the tax

due. It is a responsibility of the liable persons to make their return, there is no requirement for HMRC to prompt the submission.

If you have previously given HMRC all the facts relevant to a specific transfer of value or other chargeable event for IHT and HMRC has clearly and unambiguously advised you that IHT is not due on that occasion then, depending on what happened afterwards, you may be able to rely on our advice in respect of that transfer, even if the advice was incorrect. HMRC is not bound by incorrect advice unless the criteria in our Admin Law Manual at ADML1300 are met (see the link below).

[ADML1300](#)

HMRC advising or accepting that a specific transfer of value does not give rise to an IHT charge (e.g. on the creation of the trust) has no bearing on the potential for any other IHT charges that may arise in connection with the trust.

4.27 I have been concerned with the making of a settlement which should have notified to HMRC under s218. What should I do if I have not notified HMRC?

If you have not disclosed details of the names and addresses of the settlor and trustees of the settlement then you should contact

HMRC's EBT IHT Team (see contact details above) to disclose the details and explain why you failed to do so at the correct time (within three months of the settlement date).

4.28 Why are HMRC charging IHT when we are accounting for all of the other taxes based on a realistic view of the events which 'looks through' the discretionary trusts?

IHT is a tax on transfers of value and other chargeable events. If the creation of a discretionary trust is valid in law then the charges on trusts in Part 3 of IHTA follow, unless the trust is a bare trust (TSEM 1563 and CGM 34321). See the links below.

[TSEM1563](#)

[CG34321](#)

4.29 What are the time limits for making an IHT100 return to HMRC and paying the tax?

Liable persons have up to one year after a chargeable event to report it to HMRC using form IHT100.

The following table shows the deadlines for payment:

Chargeable event occurs	Tax due
January	31 July
February	31 August
March	30 September
1 - 5 April	31 October
6 - 30 April	30 April (next year)
May - October	30 April (next year)
November	31 May (next year)
December	30 June (next year)

4.30.1 Can IHT and the trust taxation liabilities be included in employer settlements?

Yes. It is possible for IHT and other trust taxation to be dealt with as part of the overall settlement or they can be settled separately. In terms of convenience, ease of administration and bringing all outstanding matters up to date, the settlement can include IHT along with other duties – PAYE, NICS and CT.

4.30.2 How far back does HMRC intend to pursue Inheritance Tax liabilities that may have arisen? Does it matter if I have disclosed the existence of the trust and sub-trusts?

Where an Inheritance Tax account (IHT100) has not been delivered in respect of a specific chargeable transfer, HMRC are only limited in pursuing the tax due by the general time limit of 20 years commencing on the date of the chargeable transfer [S.240(6) and (7)]. The majority of EBTs under investigation by HMRC were created in the last 20 years and so the statutory time limit is unlikely to extinguish any liability.

Unlike other taxes, there is no lower time limit for cases where the facts necessary to establish a tax charge have been disclosed.

Where IHT accounts were delivered, shorter time limits (4 or 6 years) are granted where any additional IHT liability is in point. (s240(2)(4)).

4.30.3 If HMRC are out of time to assess PAYE and CT but there is an IHT liability, do I still need to consider a settlement in relation to IHT?

Yes. If you do not settle the Inheritance Tax then we will pursue the liable persons for any Inheritance Tax that is due.

4.30.4 Will HMRC expect me to include interest and penalties in respect of IHT in any settlement?

In cases where the only Inheritance Tax is the exit charge under s.65 on the winding up of the trust as part of agreeing the settlement of all EBT liabilities with HMRC, there will be no interest or penalties because there has been no late payment and no failure to make a return.

Where past chargeable transfers have been made (e.g. past exits and ten year anniversary charges) interest will be due on any Inheritance Tax unpaid by the normal due date.

Where past chargeable transfers have been made and you have not delivered an IHT account to HMRC then the only applicable penalties are the penalties for a failure to deliver an account (or potentially more than one penalty for more than one account if there has been more than one chargeable transfer).

Penalties for failure to deliver an account are

- o £100 when the account becomes six months overdue,
- o a further £100 when the account becomes 12 months overdue, and
- o up to £3,000 when the account becomes 12 months overdue.

If IHT is owed on a chargeable transfer for which you have not delivered an account then you should deliver an account or settle the IHT with HMRC without further delay. HMRC will consider whether liable persons have a reasonable excuse for the failure to deliver an account when discussing figures for settlement. Penalties may be issued where we identify IHT that has not been paid on chargeable transfers and the liable persons have not approached us with a view to settling the IHT liability.

If you have delivered an account in respect of a chargeable transfer and that account is incorrect then other penalties could be due, including a tax-gearred penalty. Please discuss any cases where an incorrect account has been delivered with HMRC's EBT IHT Team, see contact details above.

As a general point, given that business property relief will usually apply on the transfer into Trust and that in most cases there has neither been a charge under s65 (assets ceasing to be relevant property) or the property has been held in a settlement for less than ten years (s64) then the incidence of late accounts and the potential consequences of interest and penalties in respect of the IHT liabilities is likely to be limited.

Inheritance Tax Examples

Example 1

Food processing company set up an EBT, on 5 December 2007 and on 6 December 2007, transferred £8,500,000 into the EBT. The main EBT trust deed is S86 compliant.

Although the company is close, it qualifies for 100% business property relief so there is no entry charge.

On 21 December 2007, all the funds in the EBT were allocated to 40 sub funds for the benefit of 40 individual beneficiaries. The sub trusts do not satisfy S86, so a S72 charge on property leaving an employee trust could apply. However, the allocation to the sub fund occurred within the first quarter and is therefore excluded from the S72 charge.

The sub trust deed included a clause which allowed the property held in each sub trust to revert to the main EBT trust. On 30 April 2011 this clause was activated in all of them and the entire £8,500,000 reverted to the main trust.

Once the property is in the sub trusts, the relevant property charges may apply. The exercise of the revocable clause in the sub trust is treated as an exit and chargeable under S65, so the deemed chargeable transfer is £8,500,000. This is because property is ceasing to be relevant property. The EBT has one nil rate band, and for 2011 it was £325,000.

There are no related settlements and the actual rate of charge is 5.771%. There are 13 relevant quarters between 5 December 2007 and 30 April 2011, so the IHT proportionate charge due under S65 is £159,412.

There is no relief under S65(5) because there is no matching to the IHT charge. The PAYE charge applied on the allocation of the funds to the sub trust, not at the point at which the funds reverted to the main EBT.

Example 2

An engineering company set up an EBT on 8 January 2006. The main EBT is S86 compliant. On the same date it pays £6,550,000 into the EBT.

The company is listed, so there are no entry charge considerations.

On 6 September 2006, it allocates funds from the EBT to 25 sub trusts for individual employees. The sub trusts do not satisfy S86, so a S72 charge on property leaving an employee trust could apply. There are two complete quarters between the funds being allocated and exiting, giving rise to a charge of 0.5% (0.25% per quarter) x £6,550,000 = £32,750 plus interest.

However, the company has taken advantage of the Settlement Opportunity and has agreed a PAYE charge on the allocation of the funds to the sub trusts. This IHT charge is fully relieved under S70(3)(b) and no IHT is due.

On 31 March 2011, the company decides to collapse the EBT and sub trusts, which means that there is a charge on the value of property ceasing to be relevant property. The EBT has one nil rate band and for 2011 it is £325,000. There are no related settlements, and the actual rate of charge is 5.702%. There are 18 relevant quarters between 8 January 2006 and 31 March 2011, so the IHT proportionate charge due under S65 is £168,075.

There is no relief under S65(5) because there is no matching to the IHT charge. The PAYE charge applied on the allocation of the funds to the sub trust not at the point at which the funds reverted to the main EBT and has relieved the charge under S72.

Example 3

An investment and property holding company set up an EBT on 1 January 1996. The main trust deed is S86 compliant and an initial sum of £400,000 is paid into the EBT.

The company is close, there are 2 participators with a 50% shareholding. The company does not qualify for business relief so there is an entry on the £400,000 paid in. At January 1996, the nil rate band was £154,000 per participator so the charge is 20% x £92,000 = £18,400 (£9,200 per participator.)

The property is allocated to sub trusts for the benefit of 10 individual employees on 15 February 1996. The sub trusts do not satisfy S86, so a S72 charge on property leaving an employee trust could apply. However, the allocation to the sub fund occurred within the first quarter and is therefore excluded from the S72 charge.

The property is left in the sub trusts and at 1 January 2006, a ten year anniversary charge under S64 is due on the value of the settlement at this date. The property in the sub trusts is now worth £1,000,000 and the charge is 4.35%, the tax due is £43,500.

Glossary of abbreviated terms and acronyms used in the FAQs

Unless it says otherwise, acronyms or abbreviated terms used in the FAQs are defined as follows:

Acronym or term used	Definition
BPR	Business Property Relief
CGM	Capital Gains Manual
CT	Corporation Tax
Disguised Remuneration legislation	Part 7A ITEPA 2003
EBT	Employee Benefit Trust. This includes similar arrangements such as Business Benefit Trusts (BBT); Employer Self Trusts (EST); Family Benefit Trusts (FBT) and Guardian Benefit Trusts (GBT)
EBT PET	EBT Proportional Employee Tax Settlement – see the answer to Question 1.8
FAQ	Frequently Asked Questions
HMRC	HM Revenue & Customs
IHT	Inheritance Tax
IHTA	Inheritance Tax Act 1984
ITA	Income Tax Act 2007
ITEPA	Income Tax (Earnings & Pensions) Act 2003
LDF	Liechtenstein Disclosure Facility
LSS	Litigation and Settlement Strategy
NICs	Primary and Secondary National Insurance Contributions
NRT	Non Resident Trust
'paragraph 59 agreement'	An agreement to which Paragraph 59 of Schedule 2, Finance Act 2011 applies.
Part 7A	Part 7A ITEPA 2003
PAYE	Pay As You Earn income tax
Protected liabilities	PAYE liabilities for which HMRC has or is within normal time limits to raise regulation 80 determinations and NICs liabilities for which HMRC has or is within normal time limits to issue proceedings for recovery.
Sub-trust	References to sub-trusts includes sub-funds and vice versa

Section 222	Section 222 ITEPA 2003
Section 223	Section 223 ITEPA 2003
TSEM	Trusts, Settlements and Estates Manual
Unprotected liabilities	PAYE liabilities for which HMRC is outside normal time limits to raise regulation 80 determinations and NICs liabilities for which HMRC is outside normal time limits to issue proceedings for recovery.