Finance Bill 2024: Employee ownership trusts

OMB Employment Tax

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Following a consultation in 2023, the October 2024 Budget unveiled proposals to reform the rules surrounding employee ownership trusts within the Finance Bill 2024-25. The changes focus largely on the capital gains tax relief from which business owners can benefit when placing their businesses into employee ownership trusts and tightening up on potential abuses. The CIOT submitted a response to these proposals.

The CIOT's latest response was largely positive, many of the Finance Bill proposals being in tune with suggestions the CIOT made in the 2023 consultation. The prompt for the 2023 consultation was HMRC's concerns that employee ownership trusts (EOTs) were being abused by those wishing to benefit from the capital gains tax (CGT) relief (the 'no-gain/no-loss' treatment when transferring a controlling stake of a trading company into an EOT), yet showed little intention of prolonging the business for the benefit of employees. The CIOT shares the view that any abuse of process or vehicle should be discouraged but expressed some reservations about the Budget proposals.

First, the CIOT questioned whether the employees are the focus of these changes. The changes largely revolve around the criteria for the business owner’s CGT relief. In addition, despite the CIOT’s calls for an increase in the level of the £3,600 income tax-free bonus payments to employees, this is not changed, and bonuses remain subject to National Insurance contributions.

Second, we have concerns about the proposals surrounding the funding of the EOT. The company, whose shares are being placed into the EOT, will usually fund the trustees’ acquisition but clearance would be sought from HMRC that those monies paid from the company are not treated as distributions. The 2023 consultation had proposed removing the need to request clearance and the Finance Bill includes a corresponding statutory relief (in the form of a deduction against the liability for the distribution) for certain costs. However, the scope of that relief is very narrow, being limited to the cost of the shares themselves and immediate ancillary costs such as stamp duty and loan interest. Also, that relief must be claimed by the trustees – something which is likely to cause a significant administrative burden and impose compliance obligations with which trustees will not be familiar. Costs outside the scope of the relief (including recurring ones) funded by the company will, in the first instance, remain taxed as distributions. Also, with a specific allowance in the legislation for trustees’ costs, there is some doubt as to whether HMRC would accept a clearance application for the funding of fees outside the relief, such as those for finance arrangements, professional trustees and professional advice/transactions.

The CIOT’s recommendation is that the relief should be automatic and widened to cover all relevant costs concerning the funding and operation of the EOT or, alternatively, that relevant funding be treated as deductible company expenses for corporation tax purposes.

The CIOT’s response to the changes within the Finance Bill 2024-25 can be found here: www.tax.org.uk/ref1423

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