Employee ownership trusts: trustee residence

OMB

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HMRC has clarified the application of the law relating to trustee migration where the trustees of an employee ownership trust cease being UK resident.

Substantial changes to the taxation of employee ownership trusts (EOTs) were included in Finance Act 2025, amending the qualifying requirements for tax relief for EOTs for disposals made on or after 30 October 2024. The capital gains tax relief provides that, if the qualifying criteria are met, disposals of ordinary shares in a company by a person other than a company to a qualifying EOT will be deemed to be for a consideration which gives rise to no gain/no loss. However, if a disqualifying event occurs in the four tax years following the tax year in which the disposal occurs, no relief is available on the disposal and any claim already made is revoked. The result of a disqualifying event is that the original vendors of the shares to the EOT are treated as not being entitled to any capital gains tax relief under Taxation of Chargeable Gains Act (TCGA) 1992 s 236H in respect of their disposal.

Interaction of s 236O and s 80

The CIOT queried with HMRC the effect of a disqualifying event where the trustees of an EOT become non-resident in the four-year period following the disposal into the trust. Where TCGA 1992 s 236O(2)(za), inserted by FA 2025, applies we queried the effect this would have on TCGA 1992 s 80 – as, if s 80 applies, then the trustees would also be treated as disposing of all the shares held by the trust at the time of the migration, and then immediately reacquiring them at market value.

In response HMRC have stated that the rules at s 80 relating to trustee migration are longstanding and predate EOTs, and that it has always been the case that where the trustees of an EOT cease being UK resident then they would be treated as having disposed of and reacquired the assets at market value (in the case of an EOT, the shares in the company). HMRC said that the FA 2025 changes to the EOT rules have not changed this position.

Thus, if such an event were to occur within the four tax years following disposal resulting in relief under s 236H being withdrawn, then the disposal by the vendors to the trustees would be recalculated at market value, meaning that the gain by the trustees on the deemed disposal under s 80(2) would be on any uplift in market value during their period of ownership.

In their response to us, HMRC added that s 236P(3A) (inserted by FA 2025) refers to s 80 because this section explicitly deals with events which trigger deemed disposal/reacquisition by the trustees. In contrast, s 236O deals with consequences on the vendors.

Grace period following the death of a trustee

We also noted the six-month grace period for a temporary breach of the residency or the trustee independence requirements due to the death of a trustee and queried whether this would apply if s 80 applies in the event of a disqualifying event under new s 236O(2)(za).

HMRC responded that the broad effect of s 81 is that where the trustees cease to be UK resident because of a death of a trustee, there is no charge on the deemed disposal/reacquisition of settled property under s 80(1), provided that the UK residency position is ‘restored’ within six months. HMRC said that new s 236O(2A) provides for a similar outcome with respect to the vendor of the EOT-owned

company (that is, to preserve their claim for s 236H relief), provided that the UK residency position of the EOT trustees is likewise ‘restored’ within six months.

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