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Employee Ownership Trusts

Autumn Budget 2021 representation on enhancement and anti-abuse measures, funding and other tax issues

by the Chartered Institute of Taxation

1 Executive Summary

1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.

1.2 The employee ownership trust (EOT) structure is used by UK businesses to convert to employee ownership. The EOT, as defined for tax purposes, provides a template for owners and advisers to follow. It benefits from tax reliefs introduced seven years ago, as a result of findings of the Nuttall Review, which removed tax obstacles to the sale of a company to an EOT, created a more level playing field in which the benefits of long-term employee ownership of trading companies might be realised, and acted as a 'nudge' or prompt for owners and their advisers to consider this option. In general, we favour periodic review of reliefs, as of other legislative provisions, to ensure they remain fit for purpose and efficient ways of delivering their objectives.

1.3 Although there remains strong support for the principle and broad outline of the EOT reliefs, there are certain issues with the EOT provisions that appear to create costs for all parties, risks to the revenue and to give only limited prompts within the legislation to the employee engagement from which many of the benefits of employee ownership are understood to derive. These issues include in particular the fact that it seems to be typically if not universally necessary to seek a non-statutory HMRC clearance on the proposed structure of the transaction transferring the company to an EOT, which creates unnecessary work for all parties. We therefore propose consideration is given to limited legislative change to address these issues and to protect revenue. Our favoured proposals (from a wider range of 12 options considered, numbered in the text below) are, subject to formal consultation:

- Confirmation in the legislation that contributions paid by the target company to fund the acquisition are non-taxable in the hands of the EOT trustee/s, which should remove the need for unnecessary clearance activity (*option 1*).
- Legislative amendments in relation to who might be EOT trustees: in particular, a requirement for them to be resident in the UK (*option 3*) and, on balance, a prohibition on former owners forming the majority on the trustee board (*option 6*).
- A further practical issue of immediate concern is the lack of a dedicated designatory code for making the claim for CGT relief for the disposal of shares to an EOT on the self-assessment tax return. Having a more clearly defined process for claiming the EOT CGT relief (*option 9*) would assist compliance and help HMRC to track claims and numbers of EOTs.

1.4 In conclusion, it is the right time for a review of these provisions. We hope that this proactive submission on our part will help to inform thinking on such a review. We would be pleased to work with HMRC and HM Treasury as appropriate on these issues.

2 About us

2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

3 Introduction

3.1 The EOT legislation, enacted in FA 2014, introduced tax reliefs which removed a tax obstacle to the sale of a company to an employee ownership trust, and created a more level playing field in which the benefits of long-term employee ownership of trading companies might be realised. It was enacted very much as a result of the findings of the Nuttall Review – see Supporting the employee-ownership sector (publishing.service.gov.uk) – and we think it reasonable to draw on the work of that review in understanding the broad policy intention.

- The Nuttall Review argued that there were long term benefits to an employee-owned businesses, both to the efficiency of the business and the job satisfaction of those involved in it, derived largely

from the greater engagement of the workforce in the business that employee ownership might typically engender.

- The original Nuttall Review identified that a key obstacle to converting an existing business to employee ownership was the limited availability of external funding to buy out a trading business. CGT relief removed the tax barrier of a 'dry' tax charge on the sale of shares by vendor shareholders to an EOT on a deferred payment basis (vendor funding).
- For similar reasons, inheritance tax (IHT) measures were introduced to ensure that no IHT would arise as a result of any disposal into an EOT, for example at undervalue.
- The legislation also provided for the payment of income tax-free bonuses up to £3,600 per person per year to the employees of a company controlled by an EOT mirroring the tax relief that might be available to employees of conventionally owned public companies through approved employee share schemes.

3.2 We support the systematic evaluation of the impact of tax reliefs and expenditures to ensure enacted measures continue to achieve their policy objective at a reasonable cost. While we are not economists and therefore a quantitative assessment of the efficacy of the current EOT tax reliefs in terms of meeting the government's policy objective is outside our expertise, we are aware, for example, of the recently published 'Employee-owned Businesses Resilience & Recovery Survey March 2021' (https://cdsblog.co.uk/eo-evidence) showing evidence of the resilience of EOTs during the pandemic.

3.3 The EOT structure is intended to be used by UK businesses to convert to long-term employee ownership. This statement of purpose would be consistent with Ministerial and HM Treasury statements at the time EOTs were introduced, for example, in the HM Treasury document referenced above 'These exemptions will enable companies to distribute profits in a tax advantaged way and in turn support the *longer-term interest of employees* in the company'). The EOT, as defined for tax purposes, provides a template for owners and advisers to follow. With increasing interest in EOTs we suggest there is merit in considering whether, in addition to the technical changes proposed below, an opening statement of purpose in the legislation would help to underpin the policy intent of supporting long-term employee ownership. We understand that there are generic considerations which limit the use of such provisions, but this legislation is unusual in being introduced, as a result of a particular policy review and reflecting its objectives.

3.4 In our perception based on the experience of our members there are a number of issues that have arisen over the last seven years:

- Apparently invariably, clearances are sought and given, causing unnecessary work for all parties. Essentially this is because of a lacuna in the legislation in the context of the tax treatment of payments out of the company's profits to fund the acquisition by the trust.
- As a recent development, some advisers appear to recommending EOTs seemingly solely or largely as a tax-planning measure without real commitment to employee engagement. The recommended planning might be to sell to EOT for a deferred price; then wait for the required period to cement tax reliefs, before the trustees sell on to an ultimate purchaser (or into a different ultimate ownership structure such as a float). Most of the sale price is then typically paid back to the original seller CGT free. Trustees in such a scenario might be thought to be having regard in practice largely to the interests of the original seller rather than seeking the employee engagement which is one of the main mechanism through which the broader economic and social objectives of the relief are thought to derive.
- Such a planning approach appears to be coupled with using offshore trustees. While this might in principle be non-tax related (eg conversion of multi-national businesses with employees in many

jurisdictions, not just in the UK; or the perceived quality and regulation of trustees in well run jurisdictions), we perceive that the main reason for this is likely to be that there would then be no further CGT liability for the offshore trustees and, not being a 'section 87 settlement', no imputation of gains to UK beneficiaries. The CGT deferral from the EOT structure thus becomes in effect an outright exemption. We are unclear whether this ability to have offshore trustees was a deliberate policy choice when EOTs were enacted – and those involved in the issue recall being surprised at the time the legislation was introduced. Perhaps it was because of EU freedom of establishment concerns, but if so post-Brexit that is another good opportunity to review this aspect.

- Some structures are established with trustees (not typically offshore) where the vendor (or those connected with the vendor) are the trustees or the majority of trustees. Again, we are unclear whether this was deliberate policy choice, but those heavily involved in the sale of companies to EOTs have concerns that this is leading to trustees taking decisions based on the needs of the vendor in priority to seeking employee engagement.
- Some vendors who might have sold companies to EOTs appear to be put off by having to move away from assets attracting Business Property Relief (BPR) for IHT purposes, to a fully taxable environment (owning deferred consideration) without having the opportunity to invest cash in some alternative fiscally attractive asset. (The same of course applies in principle to conventional sales where deferred consideration is involved, but typically, and inherently, the need for deferred consideration in EOT structures is more widespread and its duration much longer.)
- Under TCGA 1992 section 236H, the CGT relief must be claimed by the vendor shareholders. There is no dedicated route for making that claim on the self-assessment tax return.

3.5 Our objectives for the tax system include a legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences, and greater certainty, so businesses and individuals can plan ahead with confidence. The balanced package of measures proposed support these aims while reflecting what is understood to be current government policy and protect revenue.

4 Funding the acquisition by an EOT – proposal for legislative clarification

4.1 The first issue noted in para 3.4 above was the need for clearances being sought and obtained, almost as a routine, which points to an undesirable level of uncertainty in the legislation, as well as a resource cost. The uncertainty relates to what is almost invariably the deferred consideration for the sale. Payments are required out of profits of the trading company to put the EOT in funds to pay down deferred consideration. Such payments by a trading company to its EOT are generally described as contributions. HMRC has indicated through replies to non-statutory clearances that they would not seek to tax such voluntary contributions as dividends in the hands of the trustees on the basis that the contribution is not a dividend received by a shareholder in its capacity as a shareholder, but a non-taxable contribution received by the trustee in its capacity as a trustee to achieve the purpose of the EOT. (As a matter of company law, it is generally accepted that such contributions can only be made out of distributable reserves of the company, that is, out of its profits available for the payment of dividends, though that fact is not decisive to the tax treatment of the corresponding receipt in the hands of the trustees.)

4.2 Thus, we have an uncertain situation where a payment can only be made, as a matter of law, out of a company's distributable reserves, but HMRC has accepted that the payment should not be taxed as if it were a dividend (distribution), on the basis that it is a contribution received by the trustee in that capacity rather than in their capacity as shareholder.

4.3 A practical impact of the position is that advisers consider it essential to apply to HMRC for a pre-transaction ruling under the non-statutory clearance facility before a sale of a company to an EOT, to ensure that the treatment will be applied. (Without such a clearance, potential trustees might be concerned about taking on the role given the fiduciary duties they would then have.) In the experience of our members HMRC invariably provide this clearance. This points to both a recognition of the underlying uncertainty and an acceptance of the non-taxable status of the contributions in a context where the EOT's function is similar to that of the acquiring company in a management buyout, except in the latter case the contributions from profits will be tax free because there is a corporate group and dividends can be received tax free.

4.4 However, the need for a clearance imposes extra work on trustees, their advisers and HMRC that is, arguably, unnecessary for all these parties. This situation seems unsatisfactory from a legislative and certainty perspective.

4.5 If the payments to the trust in respect of the acquisition of shares were taxable (at income rates up to 38.1%), it would typically undermine the EOT CGT relief, its policy intention and the understanding of the tax position at the time the CGT relief was introduced. Obviously if contributions to the EOT are taxable, given the rates of income tax imposed, it would take considerably longer to repay the debt arising from a sale to an EOT than would be the case if the company had simply been sold to a corporate acquisition vehicle. (In the latter case, a dividend of profits by the target company to the acquiring company will be free of any tax charge.) Such an extension of the payback period would make sales to EOTs considerably less attractive to vendors and, indeed, in many cases would make the transaction non-viable, given vendors' expectations on selling their companies. It is assumed that this position is recognised by HMRC, and it is therefore official government policy to recognise and respond to this fact, as evidenced by the operation of the replies provided to non-statutory clearance applications.

4.6 Our favoured proposal (*Option 1*) is that the interpretation adopted in non-statutory clearances (that where sums are paid by the company as a voluntary contribution to the trust to fund payments of consideration for the acquisition of shares by the trust, the payment of related reasonable commercial rates of interest and related acquisition and administration costs such as stamp duty are not subject to income tax in the hands of the EOT trustee) should be put on a firm statutory footing. We consider this should be a relatively straightforward legislative provision to enact and relatively easily restricted to the specific purpose for which it is intended without disturbing or affecting wider employee benefit trust legislation, or preventing the payment of (taxable) dividends by the company per se.

4.7 The above statutory clarification is only needed in relation to EOTs and not other forms of employee trust: the existing treatment of contributions to employee trusts more generally need not be disturbed. (The EOT will be a majority shareholder and will often be the sole shareholder in a company, in contrast to, say, warehousing trusts used to support employee share and share option plans.) This should protect the revenue from any incremental potential abuse in the wider area of employee benefit trusts as a result of this change targeted at EOTs.

4.8 We do not know to what extent HMRC is content to spend resources on these clearances because of concerns about potential abuse. If so, it would seem preferable in principle to explore the basis of these concerns. The options proposed in section 5 below should provide considerable protection against abuse if option 1 is taken up. Additional exchequer safeguards might include the following:

- A time limit on the payments, so that payments of consideration to the former shareholders must be made within a certain period of the payment to the trustees. This should not be particularly onerous to any of the parties, as the outstanding debt will invariably have an agreed repayment

profile, so there would be no need for the company to make a payment to the trustees other than more or less directly prior to a scheduled payment to the vendor shareholders.

- A provision requiring interest (funded in this way) to be reasonable in all the circumstances, to prevent vendor-financed transactions carrying excessive interest rates. We do not see that such a test should cause any difficulty to the parties to a transaction: there are already a number of tests referring to a reasonable commercial rate of interest within the tax legislation that could be replicated and that are generally well understood (see, for example, CTA 2010 section 1000(1)E(b) and ITTOIA 2005 section 850C(12)). As with the suggestion above, this could be a matter considered in consultation which would be an opportunity to establish whether any protections proposed would be unduly restrictive.

4.9 Our clear preference in this area is for legislative clarification that payments to EOTs to fund deferred consideration and identified related matters should not be taxable in the hands of trustees. Failing that some non-legislative solution such as (*Option 2*) better HMRC guidance on the issue would be an advance on the current situation, but it is questionable whether it would achieve the objective of giving sufficient comfort that conscientious advisers did not feel the need for clearances.

5 Conditions concerning EOT trustees

5.1 Many of the issues reported in para 3.4 above reflect the fact that currently, there are no restrictions as to who may be a trustee of an EOT in order for it to qualify as such. This has the merit of avoiding unduly limiting or distorting the choice of trustees. Given anecdotal evidence of suggestions being made that EOTs should be established as non-UK resident trusts in order to avoid a future capital gain on shares in the target company, including instances of suggested planning where that second sale is in fact the primary commercial objective, it seems reasonable to explore whether conditions might be imposed to better prompt employee engagement, without undue downsides.

5.2 ***Trustee tax residence***

Option 3: It would be possible to amend the 'all-employee benefit requirement', which is central to the EOT's identity, to require the EOT's trustee/s to be resident in the UK. This requirement could be added to the relevant definition as follows:

236J All-employee benefit requirement

e) A settlement meets the all-employee benefit requirement if all the trustees are resident in the United Kingdom and the trusts of the settlement –

This new condition would only apply to EOTs established after the announcement of the change. The definition of an 'authorised transfer' (section 236J (7)) would also be updated to permit transfers only to EOTs with UK resident trustee/s.

5.3 When EOTs were introduced the ability to locate the EOT offshore was unexpected. The tax advantaged share incentive plan has always included a requirement that 'the plan must provide for the establishment of a body of trustees consisting of persons resident in the UK' and the same was expected of the EOT. It is assumed the absence of such a requirement for EOTs was, at least in part, because of EU law: if so, the UK's withdrawal from the EU should remove that consideration.

5.4 We could understand a case for allowing non-UK resident EOT trustees if it were somehow necessary to achieve a conversion to employee ownership of a multinational business. However, it seems likely that there is sufficient internationally competitive professional trustee expertise within the UK for it to remain a commercially attractive option in such situations. Our members have experience of non-UK headquartered groups moving to EOT control using a UK resident trustee company. (It is also accepted that this requirement would in principle be a market distortion, but this is alleviated somewhat by the fact that there are other perhaps greater fiscal incentives for using offshore trustees: while that is not ideal, and arguably operates more than is necessary to protect revenue, it does at least protect the UK from the charge of fiscal protectionism.)

5.5 The treatment of the capital gain as a 'no gain no loss' disposal ensures that the conversion to employee ownership should not be an occasion of crystallising and charging the growth in value of the shares of the company – a tax obstacle to conversion to an EOT is thus removed – but the treatment normally retains the growth in value to date in play to be taxed upon the next disposal. Allowing non-UK resident trustees of the EOT creates an opportunity to take that growth in value out of the scope of UK CGT altogether. It is not clear that Parliament positively intended such an option to be available as distinct from accepted a risk that may have been inevitable within EU constraints: these no longer apply and there is some evidence of the risk of abuse crystallising.

5.6 *Option 4.* An alternative option would be to allow non-resident trusts to be used but to deem them to be UK resident for UK tax purposes. This would be less restrictive of the commercial freedom, for example, to seek professional trustee experience wherever it might be found. However, it would pose difficulties in ensuring enforcement without at least residual secondary liabilities being attached to those onshore (including perhaps, the employees themselves?) which might be unattractive. There might also be issues of such provisions conflicting with double tax treaties. It would seem that this option would be a less effective deterrent to unscrupulous vendors as they would still get their capital gain protected regardless of the effectiveness or otherwise with which subsequent liability was imposed on the offshore EOT, or whether this was only secured by imposing disproportionate consequences on the employees. (Alternatively the vendor themselves might be given a residual liability, but then it is not clear that this would ever be a sufficiently attractive option to take up.)

5.7 *Option 5*: A further alternative option might be to allow transfers to offshore (non-UK resident) trusts to continue to qualify for relief, but introduce rules (along the lines of existing rules on offshore trusts) to apportion gains made by offshore trusts to resident settlors and/or beneficiaries, regardless of whether the EOT would fall under the rules currently. This would less constrain taxpayers' right to seek the best professional trustees for the trust regardless of location. However, it is not clear that such constraints are a problem in practice. On the other hand, it would seem that this option would act as a less effective deterrent to unscrupulous vendors seeking to use conversion to an EOT as the first step in securing a conventional sale tax free: the ultimate capital gain would be apportioned to the (possibly in some cases €) employees. In the case of a premeditated sale by the EOT to a third party, there is a particularly high risk of the tax on the EOT's (apportioned) capital gain being high in relation to the economic benefits to them of a (relatively short in this case) period of ownership.

5.8 ***Should former owners and connected persons form a majority of the trustee board?***

The issue of prompting greater employee engagement is a more difficult one as it is inherently difficult for legislative restrictions to act as a prompt for desirable but positively active behaviour. We presume that the lack of restrictions introduced in the earlier legislation was a deliberate policy choice: the Government was

relying on majority trustee control as the mechanism to promote good employee engagement. (We note that QUESTs under FA 1989 were rarely used because of the prescriptive nature of the conditions.) The key existing mechanism to promote employee engagement, namely the trustee's ability to influence the trading company's conduct, could in principle be enhanced by options such as:

- requiring majority of trustees to be unconnected with the vendor (or strictly, that 'excluded participators' must not form such a majority, or a majority of the board of a corporate trustee) (*option 6*), or
- imposing positive requirements as to the groups from which trustees would be chosen (employees, independents etc) (*option 7*).

5.9 The essence of *Option 6* (that excluded participators must not form a majority of the trustees of the EOT (or of the directors of a corporate trustee) could be added to the definition of 'all-employee benefit requirement' as follows:

236J All-employee benefit requirement

(e) A settlement meets the all-employee benefit requirement if all the trustees are resident in the United Kingdom and the trusts of the settlement —

…, and

€ provided that more than half of the trustees cannot be excluded participators or, if a trustee is a company, more than half of its directors cannot be excluded participators.

The definition of 'director' would be the extended definition in CTA 2010 section 452. This requirement would not be time limited – so excluded participators could never form a majority on the trustee board. Additional provisions would be needed, for example, to ensure that excluded participators do not otherwise, for example, through special voting arrangements have a majority of votes on a trustee body.

5.10 Such a restriction would impede any plan for the transfer of the target company to an EOT to be the first stage of a conventional but tax advantaged sale. It might also help accelerate the EOT's role in relation to underpinning employee engagement. As a result of this change current owners would have to look to employees and/or independents as trustee directors. This makes it more likely the trustee body will focus sooner on employee engagement. Without this change the trustee body might, for example, concentrate on paying deferred consideration to former owners rather than exercising their rights as a controlling shareholder to ensure the company they control has an employee ownership ethos. More broadly, by ensuring that former owners no longer control the company it would help ensure EOTs underpin genuine employee engagement.

5.11 On the other hand, there is a risk of deterring some transactions where for example, the vendor has a genuine commitment to ultimate employee ownership but misgivings about relinquishing control of the business they have built up. We are aware of some situations where vendors have deliberately wanted to remain a majority so as to prevent onward sale and meet the objectives of keeping ownership genuinely for employees. However, the proposal is only that the vendor and those connected with them cannot have a majority, not that the vendor could not be one of the trustees. There would also remain much scope for pursuing other vendor objectives compatible with ultimate employee ownership, such as protection against the risk of an asset stripping or destructive sale of the business, with employee trustees tempted to 'cash in', by building provisions into the trust deed designed to prevent that. Finally, such a provision would closely parallel the position with conventional sales of companies where some old owners are often

retained active and influential within the business, but not in majority control: in practice owners who for genuine non-tax reasons wished to retain a strong interest in the business would likely still perceive a greater chance of maintaining this interest in the context of an EOT than of a conventional sale.

5.12 *Option 7*: Another option (in fact, a range of options) might be to require some (or all, or a majority) of trustees to be independents, as somehow defined, or employees, or some specified combination of the two. The difficulty of this set of options is that it would likely impose more severe constraints on the choice of appropriate trustees, and add complexity and potential pitfalls to the process. It also might not actually promote genuine engagement (in the case of employees) or competence (in the case of independents), as at least some of the trustees might in practice be selected to 'tick a box' required by the legislation. It would also make less intuitive sense than the option of saying to vendors, as option 6 in effect does, 'if you sell, you lose control'.

5.13 *Option 8*: Clearly it is also an option to maintain the status quo as regards trustees, with little statutory constraint. It seems to us however that the initial indications of the risk of abuse materialising – something which besets so many reliefs in time – is sufficient reason to support restrictions which are reasonable in themselves and do not unduly constrain commercial choices – and particularly in the context of the removal of the need to obtain HMRC clearance for a key aspect of the arrangements (as outlined in the previous section).

5.14 On balance we think, subject to consultation, that options 3 and 6 of requiring that trustees be UK resident for tax purposes and preventing a majority of them from being the vendor(s) or persons connected with them, achieves the best balance between allowing commercial freedom while deterring and restricting opportunities for abuse and promoting steps that may assist in securing better engagement.

6 Other tax aspects

6.1 Under TCGA 1992 section 236H, the CGT relief must be claimed by the vendor shareholders. There is no dedicated route for making that claim on the self-assessment tax return. Currently the 20/21 CGT Summary notes appear to indicate that code 'OTH' should be used in box 36 and disclosure of 'full details' made in the white space but it is not clear what details need to be disclosed, if any, in addition to the details specified in section 236H(7). We suggest (*option 9*) that a dedicated code is introduced for claiming the relief instead of the sweep up 'Other' category. Assuming the creation of an additional EOT relief designatory code to insert into an existing box would not involve a significant cost, having a more clearly defined process for claiming the EOT relief would assist compliance and help HMRC to track numbers of EOTs (and related statistics).

6.2 There are other difficulties in practice in making EOTs attractive to some shareholders, particularly those who are older, because on selling their shares to an EOT they replace an asset that is relieved from IHT (Business Property Relief (BPR)) with one (deferred consideration) that is subject to IHT on death even though it has not yet been received. Deferred consideration payment periods can exceed 10 years. Clearly, the vendor shareholders are not free to reinvest consideration, while it remains deferred, into alternative IHT exempt assets. This issue is of particular significance for EOT arrangements in that

- it is much more likely that there will be deferred consideration;
- the length of time that consideration can remain deferred when compared to non-EOT vendor transactions;

- the transfer to an EOT may typically be considered by those of an age profile for whom IHT is a prime consideration.

6.3 One option (*option 10*) is to consider extending 100% BPR to the consideration owed (but as yet unpaid) to sellers by an EOT trustee for a maximum period of say 10 years. It would be important to stress the particular rationale for extending BPR based on the factors noted immediately above to avoid stoking pressure for a wider extension of BPR to deferred consideration. This possibility would however need to be fully evaluated in the context of the wider policy in relation to BPR including the concern articulated by the Office of Tax Simplification that the current BPR regime incentivises business owners to hold on to shares which qualify for BPR until death and does not therefore promote the transfer of family businesses at the most appropriate time for the business.

6.4 A further option (*option 11*) might be to extend the 'undue hardship' instalment provisions in section 228(1)(c) IHTA 1984 to include deferred consideration but this may not sufficiently address the concerns of sellers given the requirement to demonstrate undue hardship.

6.5 As the EOT landscape develops it is possible that a secondary market in EOT debt due to the vendor may emerge. Were that to occur, from a commercial and practical point of view there would be advantages in structuring the debt as loan notes. As a step forward it would assist if (*option 12*) HMRC could publish guidance confirming the tax position if a corporate trustee issues loan notes (*when acting as a trustee*) and, in particular, if there are any circumstances in which the automatic rollover provisions of TCGA 1992 sections 135-137 for the exchange of shares for debt instruments could apply. Our members have received differing views on this last point from HMRC.

7 Acknowledgement of submission

7.1 We would be grateful if you could acknowledge safe receipt of this submission. We would welcome the opportunity to discuss the proposed measures and any additional safeguards it is considered might be required.

The Chartered Institute of Taxation

4 October 2021