

newsbrief

July 2021



EVENTS

Webinar - Esop Sofa: *newspad* review – Thursday August 12 at 11:00am.

We hope you will join us **Thursday August 12 at 11:00am** for our regular panel discussion when guests, Sonia Gilbert, partner at Clifford Chance, Arran Simpson, partner in Deloitte's reward practice and a plan issuer company share plan manager (to be announced), chew over the pick of issues raised in this and next month's editions of *newspad* - it's our business. The discussion highlights the **Centre's response** to the Treasury's Call for Evidence, on whether and how more UK companies should be able to access EMI schemes. The Centre's evidence urged chancellor Rishi Sunak to reboot EMI by tearing up its archaic and increasingly irrelevant rule book.

Here is our library of broadcasts:

Building Back Better With Your Employees Through Shared Ownership; **EOTs: The Credible Alternative To Succession**; **The Role of Employee Share Schemes In Achieving The UN Sustainable Development Goals**; **Esop Sofa: Hot Topics In Employee Share Ownership - Newspad Review**; **Beyond Brexit: EU-UK Social Security Contribution Rules**; **Esop Sofa: Hot Topics – newspad Review**; **The Share Valuation Worked Examples Group In The Changing Valuation Landscape**; **Looking Ahead To 2021: Moving Beyond Brexit In Financial Services Regulation**; **Insights Into Share Valuation for Employee Share Schemes: Revealed Through Dynamic Case Studies**; **Lessons From**

Lockdown: Re-Assessing How You Manage Share Plans In A Digital Way; **Employee Share Schemes: Innovative Communication Strategies Guaranteed To Increase Employee Take-Up**; **Selling Your Company To An EOT - How It Differs From An MBO**; **Institutional Investors' Views On The Use Of Share Plans**; **Esop Sofa – Hot Topics**; **Employment-Related Securities: The Complexity Unravelling Into Practical Application**; **Employee Ownership & The Future Of Capitalism**; **Could Equity Be Used To Replace A Portion Of An Employee's Salary?**; **The Case For Employee Share Ownership: The Heart Of The Matter Revealed**; **Esop Sofa Lockdown Stories**; **Share Valuation: The Wisdom On Price-Setting For Your Employee Share Schemes**; **Tools Of Engagement: The Power Of All-Employee Plans**; **Awarding Shares To Employees In A Covid-19 World**; **The Employee Share Trust: Establishing A Dynamic Market For Your Employee Share Schemes**; **How To Ensure All-Employee Share Plans Remain Relevant**; **Esop Sofa - What Are Today's Big Employee Share Ownership Questions?**; **Enterprise Management Incentives (EMIs) – Powerful Lessons From Five Practical Case Studies**; **Enterprise Management Incentives (EMIs) – Igniting Your Business By Sharing Success**; **Esop's Tales: The Foundation Of The Esop Centre.**

Broadening horizons, Z/Yen Group Limited is hosting a range of webinars over the coming weeks. For a full listing of Z/Yen, Long Finance, FS Club, and Esop Centre webinars look here - <https://fsclub.zyen.com/events/webinars/> - or sign up for mailings - <https://fsclub.zyen.com/#Subscribe>

CENTRE & MEMBERS' NEWS

Join the conversation in San Diego or from home

This year's **NCEO Fall Esop Forum** will be a hybrid event running from September 22 to 24. The NCEO will be hosting guests onsite, at the Omni Hotel San Diego, to experience the energy, vitality, and connections that have been missed these past 17 months; simultaneously, bringing the forum online, allowing delegates and speakers to join in on the conversation from wherever they are most comfortable. **Register by August 11** to secure a \$100 early-bird discount on ticket prices.

Australia: change to deferred income tax point for employee share schemes

Key points from Deloitte's Global reward update:

- ◆ The Australian Government announced its intention to remove cessation of employment with the group company as an early income tax point for employee share schemes (ESS), bringing the tax rules more in line with its major trading partners.
- ◆ This means the deferred income tax point will extend beyond cessation of employment, to the earliest of, broadly:
 - ⇒ For restricted shares – when the shares are no longer subject to a real risk of forfeiture and / or genuine disposal restriction;
 - ⇒ For conditional shares (which includes RSUs / options / other rights to shares) – when the conditional share awards, and the shares delivered via exercise or automatic exercise, are no longer subject to a real risk of forfeiture and / or genuine disposal restriction;
 - ⇒ For ESS interests acquired after July 1 2009 and before July 1 2015, seven years from the date the restricted share or conditional share was acquired / granted; or
 - ⇒ For ESS interests acquired after July 1 2015, 15 years from the date the restricted share or conditional share was acquired / granted.

- ◆ The change will apply to ESS interests acquired from the first Australian tax year (July 1 to June 30) following the tax year in which the amending legislation receives Royal Assent. The amending legislation has not been introduced yet.

Background: Currently, under a deferred ESS an early tax point arises when an employee leaves employment with the group company and keeps their untaxed ESS interests. This is problematic because the employee is required to pay tax on an ESS interest that may still be subject to conditions or restrictions rendering it incapable of sale to help the employee fund the income tax due. Even if a sale were possible, it may not be commercially desirable at that time.

Australia is a global outlier in this respect. The cessation of employment tax trigger does not align with the operation of ESS around the world, meaning companies are unable to design and implement consistent ESS across their workforces.

The proposed removal of cessation of employment as a deferred income tax point will address this long-standing issue.

Deloitte's view: The income tax event at the date the individual ceases employment has often left participants in employee share plans with a “dry” tax charge, because they are unable to sell shares to cover taxes.

Australia has long been an outlier globally in this regard. We believe the removal of the early tax point on cessation of employment for future awards better aligns the tax event with the timing of the economic benefit and removes the punitive impact of the previous rule.

Pete Stavros: giving stock to hourly workers at its portfolio companies has increased retention and productivity

Business Insider reports that KKR's co-head of Americas private equity, Pete Stavros, is familiar with the challenges low-income hourly workers face. Now, he thinks he's found an **effective solution by granting these workers shares** in the companies that employ them. Since 2011, KKR has implemented its “employee engagement model” in all its Americas industrials portfolio companies, a

division Stavros led at KKR from 2005 to 2019, when he was promoted to co-head Americas private equity. The model grants hourly wage workers shares of ownership in their employer. Stavros said the model, which also features employee training programmes, has significantly improved employee productivity and retention, the latter of which is especially important as manufacturing companies across the US struggle to hire enough workers.

More changes to Capital Gains Tax to come?

MM&K commented that the report of the Office of Tax Simplification in November 2020 caused headlines with its recommendations around increasing the rate of Capital Gains Tax.

In contrast, the **publication of its report into CGT** has seemed almost to have slipped under the radar – which is a shame as the recommendations proposed have the potential to be really beneficial – with one even changing the basis of how future M&A transactions are undertaken.

In terms of UK businesses, two particular recommendations stand out.

First, the Office of Tax Simplification has recommended a change in the way that “deferred consideration” on the sale of businesses is treated.

The second significant recommendation is to simplify the administration of the Enterprise Incentive Scheme, which would encourage investment in early stage businesses.

Acas publishes report on 'fire-and-rehire' practices

'Fire-and-rehire', the practice by which employers can dismiss employees and engage them on new/different terms (usually where consent is not obtained) has recently been in the spotlight, following reports suggesting that its use has increased during the pandemic. In October 2020, the Department for Business, Energy and Industrial Strategy (BEIS) commissioned Acas to carry out an independent and impartial fact-finding exercise to inform its strategy. Acas has now published its report for BEIS.

Writing for *Lexology*, **Baker McKenzie**

underlined that Acas was not asked to present recommendations to government, and on June 8 2021, Paul Scully MP, parliamentary under-secretary of state for BEIS, confirmed that the government is not proposing to devise "heavy-handed legislation" to ban fire-and-rehire at this stage. However, he confirmed that BEIS has asked Acas to prepare clearer guidance on when fire-and-rehire should be used and develop good practice for employers. He also warned that fire-and-rehire should not be used as a negotiation tactic and warned that "nothing was off the table".

Employers contemplating "fire and rehire" will need to be aware of the increased public and employee relations risks, and watch out for developments.

Travers Smith advises Dreams and ATG during acquisitions

In June, Incentives & Remuneration senior counsel (and Centre symposium speaker) Elissavet Grout was part of the Travers Smith teams that advised management of **Dreams on its c.£340 million acquisition by Tempur Sealy International Inc** from Sun Capital Partners Inc, and advised **Auction Technology Group plc (ATG) on a £244 million cashbox placing**, new debt financing and the proposed \$525 million acquisition of LiveAuctioneers, a leading curated online North American Arts & Antiques Marketplace, from US Private Equity fund Cove Hill Partners.

Global PE posts record buyout value in Q2

White & Case reports that Global **PE activity has gone from strength to strength in 2021**, with total value in Q2 overtaking the previous record high achieved in the first quarter of 2021.

The value of PE deals reached US\$578.6billion in Q2 2021—an 18 percent rise compared to the previous quarter and a new quarterly high for Mergermarket record (since 2006). The number of deals dropped by nine percent (to 1,765) compared to the prior quarter—but this still represents an 89 percent year-on-year increase compared to Q2 2020.

UK Market Abuse Regulations — change to notifications

On Tuesday June 29 2021 the **UK Market Abuse Regulations were updated** with changes to PDMR and PCA transaction notifications.

Previously issuers had to notify the FCA of any transactions within three business days of these taking place, leaving little time for companies to collect the information required before the submission deadline. While the change to UK MAR will reduce the notification window to two business days, the trigger for this will now be the date the issuer is notified of the transaction rather than the transaction date itself.

Cytec Solutions welcomed this update as it will allow companies a more reasonable timeframe in which to notify the FCA.

UK NEWS

Joseph Stolerman joins Index Ventures

Last month Joseph Stolerman joined Index Ventures' legal team as legal counsel. Prior to joining Index, Joe spent four years with **Bird & Bird** in London, working with businesses that are disrupting traditional sectors through innovative developments in technology. He has represented investors and founders, allowing him to build relationships on both sides of the table.

Joe commented “After four amazing years at Bird & Bird, I am looking forward to supporting the investment team here and working with some great founders.”

Joe began his legal career at HSF as a corporate associate, concentrating on M&A, private equity transactions and corporate reorganisations.

FRC's review of workforce engagement reporting and practices

The Financial Reporting Council (FRC) has published a study on the **reporting and practices of companies in connection with the workforce engagement requirements** of the UK Corporate Governance Code (the Code). The review is based on an analysis of annual reports, a survey of FTSE 350 firms and interviews with directors, executives and workforce representatives.

The key recommendations put forward in the review are:

- ◆ The breadth of coverage – Ensure the employee voice reflects the geography and demography of the workforce.
- ◆ The depth of coverage – integrate different engagement channels.
- ◆ Provide for regular and structured input from the workforce.
- ◆ Workforce representatives should be chosen with some input from the workforce.
- ◆ The focus should be on the substance of workforce engagement, not the process.
- ◆ Agenda setting for engagement is best when there is a balance between management interest topics and workforce interest topics.
- ◆ An effective feedback loop is required based on the informed employee voice.

ESG reporting: a hard nut to crack

Better information about **environmental, social and governance risks** leads to better decisions and better insight for stakeholders. However, compiling data and transforming it into usable external disclosure across a range of formats and against the backdrop of a fast-moving economic landscape is proving a hard nut to crack, the FRC has warned.

WORLD NEWS

USA: Small Business Administration's new chief plans to make the agency known

Isabella Guzman, the **new administrator of the Small Business Administration**, told The Guardian she has a long-term problem.

It is not about pandemic loans or the bottleneck in disbursing grants under other stimulus initiatives, nor about catching fraudsters or approving applications. She has these problems of course, but Guzman's long-term problem has to do with awareness. “The SBA has always been the best kept secret in government, and we don't want to be that,” she said. “We want to be known.”

“Our small business development centres in particular are training up on Esops (Employee

Stock Ownership Plans) and other types of alternatives for exit strategies,” Guzman says. “We know that it’s a big challenge to sell or hand down a business and we don’t want those businesses to disappear.”

Nonetheless the scope of SBA in the US is already much broader than that of the UK Small Business Bureau. Its new chief Liz Barclay is being encouraged to develop the mandate along US lines by Centre chairman Malcolm Hurlston who was already developing links between the SBA and her predecessor.

USA: How Joe Biden’s tax plan could spur a surge in employee-owned businesses

According to *Forbes*, the tax plan to fund President Joe Biden’s \$6 trillion proposed budget contains a number of new revenue-raising measures, most imposed on the highest-earning Americans and corporations. One of the tax hikes, a proposed 17 percent increase to the top capital gains tax rate, could have an unexpected side effect: A **major uptick in employee-owned businesses**.

Currently, over 10 million Americans work for employee-owned companies, which are any business where a significant portion of ownership is controlled by an employee stock ownership programme (Esop). Employees are typically awarded more shares the longer they work and are often entitled to profit-sharing. While most Esops are in relatively small privately-held companies, the model has also been adopted by large employers like Publix and the staffing firm Penmac.

Companies transition ownership to employees for a number of reasons, but it typically occurs when a private owner is looking to retire and sell off their stake. If the owner opts to cash out by selling their shares to another private buyer, they’re subject to paying a capital gains tax. But if they sell to an Esop that’s registered as a C-corporation, they aren’t liable for any capital gains taxes, provided that a couple of additional requirements are met (for example, at least 30 percent employee ownership). The capital gains tax hikes suggested by Biden would make that kind of sale all the more appealing.

USA: Pandemic proved value of ‘S-Esop’ employee ownership

Workers at employee-owned S corporations (corporations that elect to pass corporate income, losses, deductions, and credits through to their shareholders for federal tax purposes), who invest in and own their employers via ‘S employee stock ownership plans,’ report being on significantly more stable financial ground than other US workers. In a *Planadviser Magazine* **interview with Stephanie Silverman**, president and chief executive officer of Employee-Owned S Corporations of America (ESCA), Ms Silverman discusses the introduction of the Promotion and Expansion of Private Employee Ownership Act in the US House of Representatives, by representatives Ron Kind, D-Wisconsin, and Jason Smith, R-Missouri, as well as new research showing the way broad employee ownership of private companies benefits individuals and communities. Silverman says she is cautiously optimistic, thanks to the current economic and political environment, that business owners and lawmakers will come to see the significance of expanding employee stock ownership plans (Esops) in employee-owned S corporations, or S-Esops.

USA: 44-year employee stock ownership plan pays off for employees

SJE, a Detroit Lakes-based controls technology company composed of brands like, CSI Controls, PRIMEX, and SJE Rhombus, was acquired by Audax Private Equity for an undisclosed amount on June 17 2021. SJE adopted an Employee Stock Ownership Plan (Esop) in 1987, which, due to the sale to Audax, **secured retirements for many long-term employee shareholders**, according to a company official.

India: Paytm expands Esop pool and sees board reshuffle ahead of IPO

In its filings, IPO-bound Paytm has approved the placement of **544K fresh shares** under its employee stock ownership plan (Esop). In April, Paytm had issued almost 243K fresh stock options to its existing Esop pool, as it looked to provide employees a way to cash out during the IPO.

The company also made major changes to its board, bringing Douglas Lehman Feagin, senior vice president at Ant Group as an additional director, as per regulatory filings. The moves come ahead of the \$2.3Bn initial public offering (IPO), for which Paytm is yet to file its draft red herring prospectus. The IPO is expected to be launched in November, with the DRHP filing said to be coming later this month.

India: Whatfix unveils its first-ever Esop buyback scheme

Digital adoption solutions platform Whatfix, which raised \$100 million from investors led by SoftBank last month as part of its Series D round, has announced its **first ever employee stock ownership plan (Esop) buyback** scheme amounting to \$4.3 million, according to the *Economic Times*.

All current and former employees will have the option to liquidate up to 35 percent of their vested Esops under the buyback.

The per share price will be at the company's non-discounted valuation of around \$600 million at the time of its Series D, a senior company executive said.

India: HDFC bank allots 2.6 million shares under Esop scheme

Good Returns reports that HDFC Bank, India's largest private sector bank, has **distributed 2,651,520 equity shares to its workers** as a result of the execution of options under its Employees Stock Options Scheme (ESOS), according to a regulatory filing.

Shares of the HDFC Bank were seen trading at Rs 1,510, lower by 0.27 percent on NSE at 11.39 am IST June 28 2021. It touched an intraday low of Rs 1,505 during the trade.

Pakistan: raised eyebrows at company employee stock option scheme

Ghani Global Holdings Limited — a company listed in the “Glass and Ceramics” sector of the Pakistan Stock Exchange (PSX) informed investors in June that the apex regulator Securities and Exchange Commission of Pakistan (SECP) had **approved the Company's**

Employee Stock Option Scheme (ESOS). The company said it was allowed to issue shares of Rs10 each representing 15 percent of its outstanding share capital to its eligible employees under ESOS, 2020, by way of other than right offer.

It raised eyebrows since the concept had been avoided by the country's corporate sector. Discussions with senior officials at several entities revealed that many were not fully familiar with the concept and only a handful could tell the difference between ESOS and the Employees Share Ownership Plan (Esop).

The US Securities and Exchange Commission sifts the two in the following manner: “An employee stock ownership plan is a retirement plan in which an employer contributes its stock to the plan for the benefit of the company's employees. This type of plan should not be confused with employee stock option plans, which give employees the right to buy their company's stock at a set price after a certain period of time.”

Majyd Aziz, former president of Karachi Chamber of Commerce and Industry and the Employers' Federation of Pakistan, recalls that the most well-known Esop — not ESOS — in the country took place in 1991 when energy giant Exxon decided to part with its fertiliser business globally. The employees of Exxon Chemical Pakistan Ltd, in partnership with various financial institutions, bought out 75 percent shares of the company. That company then turned to Engro Chemical Pakistan Ltd. Many corporate stalwarts, however, prefer to term that transaction as an “employee buyout” and not Esop.

China's top electric appliances manufacturer Gree cancels employee stock ownership plan

The cancellation will **lead the firm's total equity to shrink** from 6.016 billion units to 5.914 billion units.

In the past six months, Gree has seen fluctuations in its stock price, peaking at 69.79 yuan in December last year. However, to date, its market value has shed more than 100 billion yuan. To moderate the impact of such a decline, Gree has launched three successive repurchase programmes.

The company bought back 108 million shares with six billion yuan on February 24, which was the first round of its repurchase programme. The second round of share buybacks was on May 18, wherein the company spent six billion yuan on its own shares. The third round of repurchase is currently underway, and is estimated to cost less than 15 billion yuan. Gree originally had planned to distribute these shares to its employees.

After several rounds of stock repurchase agreements, Gree announced its first employee stock ownership plan (draft) on June 20. The total capital involved will not exceed three billion yuan, and the number of employees participating in this plan will be fewer than 12,000.

Employees only have to pay a price of 27.68 yuan per share, which is half of the average share price Gree has spent during the repurchase period. Dong Mingzhu, chairman and president of Gree, will invest 830 million yuan to buy 30 million shares, taking up 27.68 percent of the total capital of the plan.

The plan has given rise to some controversy. Gree's share price in the secondary market has also fallen below 50 yuan per share, hitting a new low in recent trading.

China: Xiaomi Group granted 70.232 million shares to 3,904 employees

According to Xiaomi, the group's outstanding young engineers, fresh graduates and outstanding employees in the core positions of the team, and outstanding engineers of the annual technology award have all received corresponding equity incentives.

On July 2, the closing price of Xiaomi's stock was 26.2 Hong Kong dollars (\$3.37). Based on this calculation, Xiaomi has given a total of **1.84 billion Hong Kong dollars of stock rewards to employees**. That is approximately \$0.24 billion. This equates to an average of 470,000 Hong Kong dollars (approximately \$60,523) per capita.

Xiaomi specifically mentioned that among the above employees, about 700 outstanding

young engineers have been selected for Xiaomi's latest talent incentive programme: "Young Engineer Incentive Program." They will receive a total of 16.042 million shares. After a simple calculation, the value of the shares issued per capita of these 700 young engineers is 600,000 Hong Kong dollars (about \$77,263).

EMPLOYEE OWNERSHIP NEWS

EOT ROUND-UP



Catering disposables and equipment supplier **Alliance Disposables** becomes employee owned.



Peregrine Livefoods, Europe's largest specialist wholesaler of reptile products, has officially made the final payment towards becoming a fully independent employee-owned trust.



Market research agency **DJS Research** has become an employee-owned business.



Retiring md moves office cleaning services provider **Deeland Limited t/a ServiceMaster** to an EOT.

WINCH DESIGN

International design studio **Winch**, known for its high-end creations in the yachting, aviation and architecture industries, has announced that the company is now fully employee-owned.

salad

Creative agency **Salad Creative** to be owned by staff through employee ownership trust.



Trucking company **Axle Haulage** becomes employee owned.

How does employee ownership safeguard the future of the business – is it sustainable?

Wrigley's Solicitors' Malcolm Lynch and Mike Ford take a look at the key characteristics of a robust employee-owned business and how this should be **managed for a successful future**. Employee-owned businesses, when structured and managed appropriately, are able to channel the energy, commitment and abilities of the employees into an improved culture where everyone in the business shares the "all in this together" mission and has everyone working towards a common purpose. This mission allows employee-owned businesses to weather difficult times more readily than other corporates.

Anecdotal evidence from the crisis caused by the Covid-19 pandemic has shown that employee-owned businesses were able to handle the downturn and challenges raised better than others and are heading into the recovery in stronger positions as a result.

Fieldfisher assists in first Employee Ownership Trust (EOT) to be created by a business originating in Australia

Design company, Meld Studios Pty Ltd is the **first business originating in Australia to adopt an EOT**. Its EOT was created by Employee Ownership Australia (EO Australia) assisted by Fieldfisher.

Fieldfisher partner Graeme Nuttall OBE said "The main reason why so many new EOTs are created each month in the UK is the EOT's success as a succession solution for private company owners. Selling to the trustee of an EOT avoids sharing trade secrets with competitors and gives control over timing. It also secures legacy, independence and ethos at the same time as rewarding and incentivising those who make a company successful, its employees. These are values that apply internationally and I look forward to seeing the widespread adoption of the EOT business model in Australia."

RM2 blog: Top 50 employee owned companies in 2021

The **Top 50** list has six new entrants in 2021; Cleantec Services Ltd, Briggs & Forrester (UK) Ltd, Activate Solutions Group Ltd, William Gibbons Group Ltd and Oxford Policy Management Ltd.

Four of the six new entrants are Employee Ownership Trusts (EOTs), bringing the total number of EOTs on the list to 17. That number is expected to increase as EOTs continue to be a popular and flexible succession solution for owners of private companies. Data from the EOT Survey suggest that the number of Employee Ownership Trusts is increasing at a rate of 22 percent per annum. There were around 370 EOT-owned companies by the middle of May 2021.

ABOUT NEWSBRIEF

newsbrief is the Employee Share Ownership Centre's members-only mid-month publication.

To submit a story for the next issue of *newsbrief*, sponsor the publication, or to propose someone for a member profile, contact Juliet Wigzell:

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