

November 2017

## CONFERENCES & EVENTS

### British Isles symposium

White and Case hosted the Centre's British Isles symposium this week. Highlights included a panel discussion led by Fred Hackworth on the Roadchef scandal and a challenging debate on whether *executives really should be paid so much*.

A full report will appear in the next *newspad*.

In a hard-hitting opening address, Malcolm Hurlston CBE, proposed that employee share schemes should only qualify for tax breaks if they contained a substantial all employee element.

Calling for a reset of share plans, and a departure from schemes concentrating on executive pay, Mr Hurlston said:

"In just over 30 years since I founded the Esop Centre we now have the vast share scheme industry you see today. Firms have grown large on it and executives have extracted untold riches with very little trickling down to the employees, who were first in our minds when we established the idea back in the eighties.

"Now is a time for a reset. We burrow away in a functional and efficient way but where is the vision? Where is the leadership in the UK? It is our duty to ensure that employee share plans

are used to put a dint in inequality."

Mr Hurlston commended Pony Ma of world-leading Tencent and Pete Stavros of KKR for being international role models in using share plans to address inequality.

The Centre thanks White and Case for hosting the symposium.



## CENTRE & MEMBER NEWS

### Expert Employee Shares Worked Examples Group formed

The Centre, with three other leading UK share plan bodies: the Employee Ownership Association; ProShare and the Share Plan Lawyers Group, has formed the expert Employee Shares Worked Examples Group (WEG). The group will work closely with

---

HMRC and publish examples of share plan valuations over a wide range of employee share ownership and employee ownership arrangements.

The aim of the joint initiative is to create better understanding and reduce uncertainty for practitioners following the withdrawal of the HMRC post valuation transaction check procedure. Share plan practitioners are invited to submit worked examples for assessment, agreement with HMRC and online publication to [weg@esopcentre.com](mailto:weg@esopcentre.com).

The formation of the group was announced October 31 by Tony Spindler, HMRC Shares and Assets Valuations, who stated:

“HMRC welcomes this share scheme industry initiative and the opportunity it provides for constructive dialogue. The WEG will provide a framework that assists compliant customers to get things right, allowing HMRC to concentrate on the minority that seek to test the boundaries.”

[For more information please click here.](#)

### **Aon Hewitt double acquisition**

Aon has announced it is to acquire [UK based Henderson Insurance Broking Group](#) to expand its UK retail business in the mid-market and specialist sectors. The purchase of the Dutch [Unirobe Meeùs Group](#) has also been completed, reinforcing Aon’s position as a leading global professional services firm advising on risk, retirement and health.

### **Global Shares success at FinTech awards**

Global Shares won the [2017 FinTech award](#) at

*the 18<sup>th</sup> Deloitte Technology Fast 50 Awards. The awards rank Ireland’s fastest growing technology companies.*

### **London Charity Swim raises £144,000**

Intertrust-sponsored [London City Swim](#) has raised £144,000 to combat motor neurone disease.

### **Solium Analytics launches**

Solium has announced the launch of [Solium Analytics](#), which will provide 409A, ASC 820 and ASC 718 valuation tools and further Solium’s aim of providing private companies the best equity management and valuation solutions.

### **Travers Smith partner makes outstanding LGBT list**

Travers Smith partner and Head of Pensions Daniel Gerring was ranked 13<sup>th</sup> out of 100 in the Financial Times OUTstanding LGBT+ Executives List, which highlights high performing LGBT individuals who have made an exceptional contribution to promoting LGBT+ inclusion in the workplace and society.

[Read more.](#)

### **Zedra buys Luxembourg based service provider**

Zedra has received final regulatory approval to buy [Luxembourg International Consulting](#).

### **Illogical income tax rates and bonuses**

Writing in [Tax Adviser](#), William Franklin and Alan Garrod highlight how illogical income tax

---

rates mean that bonuses paid in a single year for performance over a number of years can suffer unfairly high marginal rates of tax. This consequently seriously detracting from their effectiveness as incentives.

### **RM2 webinars: November 22 & December 5**

Robin Hartley of RM2 will be leading the webinar: *Plans for companies that don't qualify for HMRC recognised plans*, at 11:00-11:30 on November 22. Topics to be addressed include: free (restricted shares), growth shares, joint share ownership plans and unapproved options.

Join Nigel Mason as he shares the results of the 2017 Employee Ownership Trust Survey, which was administered by RM2 in partnership with the Employee Ownership Association and the John Lewis Partnership. The announcement will be made 11:00-11:45 December 5.

To register for either event [click here](#).

the *remoaning*. Esops do their bit: Centre member David Craddock has introduced and endorsed *Invest in yourself with exercise* by Dr Susan Smith Jones, while the chairman commends *New day, new way: 28 days to a healthier happier you* by Dr Heidi Tempest, who was at his own happy college. Reviews to come in *newspad*.

### **HMRC updates UK tax dispute strategy**

HMRC has released **updated guidance** of its litigation and settlement strategy. In the new guidance HMRC has confirmed it may not always pursue earlier periods where taxpayers have since changed their behaviour. In exceptional circumstances where an individual has assisted HMRC in understanding facts and circumstances, and, where the chance of any risk re-occurring is eradicated, HMRC may decide that the taxpayer has no liability for earlier periods.

## **UK & GLOBAL NEWS**

### **US Tax Bill**

People with hard to sell employee shares are now likely to get better tax treatment. They will have five years delay before facing a tax bill. In an echo of the Centre's call to favour all employees, the executive suite and owners of more than one percent of the company will not qualify.

### **UK happiness**

The latest government survey (originally commissioned by David Cameron) shows an increase in year on year happiness, despite all

### **Changes to French share plan taxation**

The 2017 Finance Bill, currently being debated in the French Parliament, will have implications for the taxation of individuals, including the treatment of free-share plans ('Macron' awards). Currently, individuals are taxed on a progressive scale and entitled to a 50 percent or 65 percent rebate, depending on how long they have held their shares. Under the new rules the acquisition gain under a qualifying free share plan (up to EUR300,000 per annum), will benefit from a 50 percent deduction irrespective of how long the person has held the shares.

---

The Bill proposes to introduce a flat 30 percent tax (EPU) for all investment income, under which there will no longer be a tax reduction for social security. Tax rebates for holding periods will no longer apply.

### **HMRC disguised remuneration schemes guidance**

Guidance has been provided on **disguised remuneration schemes**, summarising the key settlement terms that HMRC is willing to make available for contractors; employees and employers. Schemes involving a loan must settle by April 5 2019, or new loan charges, announced at Budget 2016, will apply. Taxpayers must register their interest by May 31 2018 and provide HMRC with any required information by September 30 2018 to be eligible for the new settlement procedure.

Commenting on the guidance, Paul Malin, partner at Haines Watts stated:

“Whilst the devil is always in the detail (and the worked examples to follow), for employers there is no particular saving being offered other than to put behind them the trials and tribulations of APNs, Follower Notices etc.

“For any employees of companies that have since ceased to trade but wish to settle there is good news in that NIC is effectively being waived giving a potential saving of between 13% and 25% (depending on their income) together with a saving of interest that would have been applicable on the NIC element. However, if the employee waits for the loan charge to bite in April 2019 then any Settlement will include a NIC element.

“For contractors, any Settlement will now be based on the amounts received by the contractor, typically after the deduction of the scheme fees of the provider, not the gross amount paid by the client.”

## **MEMBER PROFILE**



**John D. Menke** is President of **Menke & Associates**

### ***In what ways does employee share ownership serve a useful purpose?***

Employee share ownership serves many useful purposes. For employees, it provides financial security, a sense of personal worth, and an additional form of retirement savings. For owners, it provides a way to retire and sell their businesses without having to sell them to larger companies who may downsize them or move them elsewhere or even abroad. For the

---

economy, it helps to perpetuate locally-owned business and increase employee productivity and company profitability. From a political standpoint, employee share ownership helps to reduce income and wealth inequality, thereby helping to restore the middle class and political democracy.

***How can we widen and deepen the adoption and use of employee share ownership?***

In the U.S., we now have about 12 million employee owners, which is almost twice as many employees as the number of employees who are union members in the private sector. Yet, only about 10% of the U.S workforce is covered by an ESOP. Naturally, people are always asking, “If ESOPs are so great, why aren’t there more of them”? The answer is simply that most ESOPs are installed by privately-held companies, and the success of these companies is seldom reported on by most business publications, who mainly report about well-known public companies. A second reason is that most companies are bought and sold by business brokers who earn commissions from selling businesses to other companies. These business brokers have typically not had the knowhow to help a business owner sell his business to an ESOP, and most of them have assumed that they would not earn a commission from selling a business to an ESOP.

But these factors have started in change in the last five years. There are now several ESOP associations, such as the ESOP Association of America, the National Center for Employee Ownership, two dozen so state chapters of the ESOP Association, and five or six State Centers for Employee Ownership that publish news

stories and press releases regarding ESOP companies and ESOP success stories. And more recently, business brokerage firms and investment banking firms have discovered that they can, in fact, earn the same kind of commission from selling a business to an ESOP as they would earn from selling a business to an outside buyer.

But to widen and deepen the adoption of ESOPs, we still need more public awareness of ESOPs, how they operate, and how they benefit the owners, the employees and the economy. To some extent, this can be accomplished by private associations, such as the ones mentioned above. But, it would also be helpful if federal and state governments established Offices of Employee Ownership that disseminated information and advice about the benefits of employee ownership.

***What would you tell someone on the fence about introducing employee share ownership to their company?***

I would tell them to talk to other owners who have sold part or all of their companies to ESOPs. According to a survey taken in 2014 in the U.S., 93% of business owners who adopted an ESOP for their company were very pleased with the results and would recommend an ESOP to other owners.

***What do you think will change about employee share ownership over the next five years?***

I do think that employee ownership will become more prevalent over the next five years, and especially over the next 30 years. Millennials are very attuned to the idea of working in a

---

team environment. Increasingly, they will want to work for firms that are employee owned or that have substantial employee ownership. Also, the concept of employee ownership is spreading around the world, including both Western and Eastern Europe, Japan, China, India, Canada and Australia. In the U.S., the Democracy Collaborative has recently announced their Fifty-by-Fifty initiative in which they have set a goal of increasing the number of employee-owners in the U.S. from 12 million today to 50 million by the year 2050.

***What has been the most important development in employee share ownership during your career?***

The first most important development was the codification of ESOP provisions in the Employee Retirement Income Security Act of 1974. Prior to that, the Kelso law firm, which is the firm that first developed the concept of the leveraged ESOP as a buyout tool, had done 50 or so leveraged ESOP transactions, but the entire authorization for these transactions rested on one Revenue Ruling, which could have been revoked by the Internal Revenue Service at any time.

The next most important development was the adoption of the “tax-free rollover” provisions of Sec. 1042 of the Internal Revenue Code in 1984, which provides for the deferral of capital gain taxation for owners of C corporations who sell their stock to an ESOP, provided that the ESOP acquires 30% or more ownership, and provided that the owner purchases “qualified replacement property” within 12 months of the sale. Several years after this provision was adopted in the U.S., after speaking at meeting of the Wider Share Ownership Council in London, I

had a brief meeting with the Chancellor of the Exchequer and recommended that a similar provision be adopted in England. The Chancellor agreed, and it is my understanding that this provision still exists in England to this day.

The third most important development was the amendment to the U.S. Internal Revenue Code in 1996 to authorize the adoption of ESOPs by S corporations, which are pass-through entities that do not have more than 100 individual shareholders. Today, over 60% of all privately-held corporations operate as S corporations. Had the 1996 amendment not been adopted, none of these companies would be able to adopt an ESOP.

***Which change to employee share plans legislation, in the UK or elsewhere, would you most like to see?***

There are currently four bills pending in the U.S. Senate (and four companion bills in the U.S. House) that would help to promote greater employee share ownership. S. 1589 would extend the Sec. 1042 tax-deferral incentive that is currently available only to owners of C corporations to owners of S corporations. It would also establish an S Corporation Ownership Assistance Office within the Department of the Treasury, and it would amend the Small Business Act to allow minority-owned firms, women-owned firms and veteran-owned firms to adopt ESOPs without losing their existing preference in bidding for government contracts. S. 1081 would provide \$45 million to establish and support state employee ownership centers. S.1082 would provide a U.S. ownership bank that would have a revolving fund of \$500 million for ESOP buyouts. S. 1788 would provide a revolving loan fund within the

---

Department of Treasury to provide low-interest loans to employees seeking buy a business. It would also exclude from taxation 50% of the interest earned by a financial institution from making an ESOP loan, and it would close the CEO-pay loophole for public companies that are not at least 5% employee owned.

These provisions would help to further promote the prevalence of employee stock ownership, and I would like to see all of them passed. I would also recommend that similar provisions be passed in England.

***Why do you think employee share ownership has enjoyed cross-party support in the UK?***

I think that employee share ownership has enjoyed cross-party support the UK for the same reasons that employee share ownership has enjoyed cross-party support in the U.S. For conservatives, employee share ownership is a way of extending capitalism to the middle-class, blue-collar and low-income workers. It provides a tool whereby such workers can become more secure and self-sufficient without depending on government “redistribution” programs. Conservatives also assume that employees who acquire stock ownership will tend to become more conservative in their political viewpoints once they become capital owners. For liberals, employee share ownership is a tool for alleviating economic inequality and for providing a way out of poverty. For liberals, it is a way to create economic opportunity for low-income workers, minorities, and other disadvantaged classes that would not otherwise be able to acquire a significant amount of capital ownership.

***What is your idea of perfect happiness?***

One’s idea of perfect happiness is, of course, highly subjective. In my view, happiness comes from having a reasonably balanced lifestyle that balances work, family, friends and personal achievement. Most of us will never be able to achieve a “perfect” balance of these goals, but most of us do know that balancing these factors will bring more happiness than can be gained from achieving financial success, professional acclaim or celebrity status.

***What is your most marked characteristic?***

My most marked characteristic is my ability to work on ESOP tax and financial issues for hours at a time without getting bored or tired. I have been working almost exclusively on ESOP transactions since graduating from law school 50 years ago, and I have yet to get bored or tired of dealing with the infinite variety of issues that arise from these transactions.

***What do you consider your greatest achievement?***

My greatest achievement was helping my boss and mentor, Louis Kelso, get the ESOP concept codified into law when ERISA was being drafted by the U.S. Congress in 1974. I was the one who drafted the legal arguments (and the proposed statutory language) making the case for why ESOPs should be authorized by ERISA, and Mr. Kelso was the one who convinced Senator Russell Long to champion the cause in the U.S. Senate. Over the years since then, the ESOP concept has developed into an entire new body of law, and has spread to many countries around the world.

---

My second greatest achievement was to create a consulting firm, Menke & Associates, Inc. which over the past 50 years has consistently been the most active firm in the country in installing and administering ESOPs for U.S. companies. Over the past 50 years, our firm has installed ESOPs for over 3,500 U.S. companies.

***What historical figure do you most identify with?***

Probably President Abraham Lincoln. He came from very humble beginnings and presided over a country that was hopelessly divided over the issue of slavery. On May 20, 1862, he signed into law the Homestead Act of 1862, which allowed Americans, including freed slaves, to claim 160 free acres of land. Subsequently 270 million acres of land were homesteaded by 1.6 million homesteaders. I grew up on one these homesteads in Texas. The ESOP laws in the U.S. have had a similar objective of providing ownership (in this case, stock ownership) in exchange for sweat equity, and the ESOP provisions of ERISA are sometimes referred to the “Industrial Homestead Act”.

***Which living person do you most admire?***

The one living person that I admire the most is Ms. Patricia Kelso, who is now 90 years of age and is still working every day on behalf of the Kelso Institute to promote and support the ESOP concept, both in the U.S. and abroad. Ms. Kelso is the co-author of two of Mr. Kelso’s four books on employee ownership, and over the years has written or co-authored numerous articles on the economic importance of employee ownership. Three of these books and

most of these articles can be downloaded for free from the Kelso website at [www.kelsoinstitute.org](http://www.kelsoinstitute.org).

Ms. Kelso is probably the most widely-read person I have ever known, including any of the liberal arts professors I studied under as an undergraduate and any of the law professors I studied under at Yale Law School. She was the intellectual soul mate of her husband, Louis Kelso, and the success of the ESOP movement in this country and abroad would not have happened but for the collaboration of these two great intellects. In addition, Ms. Kelso’s skills as an experienced journalist were instrumental in helping Mr. Kelso get the PR for the ESOP concept that was necessary for it to achieve national recognition and acceptance. Following Mr. Kelso’s death in 1991, Ms. Kelso has continued to promote the ESOP concept abroad, having co-sponsored more than half a dozen employee ownership symposiums with the European Commission, together with several symposiums in Russia and in China. In addition, the Kelso institute has also endowed the Kelso Professorship of Comparative Law, East European Business law and European Legal Policy at the University of Viadrina at Frankfort (Oder), Germany.

---

**ABOUT NEWSBRIEF**

newsbrief is the Employee Share Ownership Centre’s members only mid-month publication edited by Robert Jarvis.

If you would like to sponsor an edition of newsbrief and place an extended announcement contact Laurence Cubbon: [lcubbon@esopcentre.com](mailto:lcubbon@esopcentre.com)

To submit a story for the next issue of newsbrief or to propose someone for a member profile, contact the editor:

T: +44 (0)20 7239 4971

E: [rjarvis@esopcentre.com](mailto:rjarvis@esopcentre.com)

---

**EMPLOYEE SHARE OWNERSHIP CENTRE**

Esop Centre Ltd, 65 King’s Cross Road, London WC1X 9LW

+44 (0)20 7239 4971 | [esop@esopcentre.com](mailto:esop@esopcentre.com) | [www.esopcentre.com](http://www.esopcentre.com)