

NEWSBRIEF

Conferences and events

ESOP Awards dinner set to sell out.
Sponsorship opportunities available

There are a handful of seats remaining for the Centre's fourteenth annual employee share ownership [awards dinner](#) to be held at the [Reform Club](#), Pall Mall, on Wednesday October 28.

Main and supporting sponsorship opportunities are available, please contact Jacob Boulton for information: jboulton@esopcentre.com; 020 7239 4971.

The evening will begin with a sparkling reception, followed by four course dinner. The award presentations will conclude by 10:00pm to ensure that guests with travel or family commitments are able to leave in time.

Ticket prices
Members £185, Non members £260

To enquire about remaining places, please contact the Centre by emailing esop@esopcentre.com or calling 0207 239 4971

A list of accepted nominations is available on the [Awards 2015](#) web page.

Davos on the road in London and New York

The Centre's annual international event is moving to London in 2016 and New York in 2017. As one member commented: Switzerland has priced itself out of the market. Planned Davos speakers will transfer and international director Fred Hackworth will release further details shortly.

Vienna to host Centre annual conference June 2 & 3 2016

The elegant five star Steigenberger Herrenhof Hotel, in central Vienna, will host the Centre's 28th annual international share schemes conference on Thursday / Friday June 2 & 3 next year.

The 100 year old Herrenhof Hotel is situated in Herrengasse, near the Kohlmarkt and Golden Quarter in the old city centre, is classified by UNESCO as a World Cultural Heritage site and is minutes walk away from major historic landmarks, such as the Hofburg Palace, Café Central, the Spanish Riding School, Sisi Museum, the state opera house, Burgtheater (the Imperial Court Theatre) and gothic St. Stephen's Cathedral.

If you wish to speak in Vienna (Austrian and East European interest is expected), or attend as a delegate, please inform us by e-mail to: fhackworth@esopcentre.com with copy to esop@esopcentre.com.

Announcement

Join the team

The Centre is recruiting, looking for young Oxbridge/ Russell Group graduates with a good degree and an interest in economics, politics and the media. If you know anybody who would relish the challenge contact jwigzell@hurlstons.com.

Conference report

Centre / STEP Guernsey 2015

Centre chairman Malcolm Hurlston CBE told an audience of trustee delegates in Guernsey that more must be done to capitalise on "the new reality" in Guernsey and Jersey, the regulated jurisdictions of the near-offshore. "FATCA led to an intergovernmental agreement signed between Guernsey and the United States and the brouhaha around disguised remuneration created a new clarity about the purpose of employee benefit trusts," he said. The Centre is taking soundings for a Channel Island event in London to "celebrate the near-offshore in our industry". Mr Hurlston explained at the conference: "the Centre might help trustees set out their stall in London and gain recognition for their achievements with FATCA and Disguised Remuneration. Perhaps a seminar followed by dinner to which Channel Island trustees could invite guests." The Centre welcomes trustee's views on such an event, please contact Jacob Boulton: esop@esopcentre.com; 0207 239 4971.

The conference was chaired by David Pett, of Pett Franklin, as arranged when the Centre chairman might have been delayed by severe flooding, which claimed 20 lives, in the south of France.

Gavin St Pier, States of Guernsey minister for treasury and resources and former member of the Centre steering committee asked delegates at the annual Centre / STEP Guernsey share schemes for trustees seminar whether Guernsey needed a UK style tax-advantaged employee share scheme. Could an SAYE type arrangement promote broad-based employee share ownership on the Island, and in so doing support secondary pension provision? he asked. He recognised that more needed to be done, since only 40 percent of the Guernsey population had sufficient pension provision.

More than 20 delegates, representing ten different companies, attended the conference to learn from six Centre practitioner members, who provided their expertise on employee share ownership. Half of the firms present were represented by two or more delegates.

David Craddock, of David Craddock Consultancy Services, presented evidence that employee share ownership boosts economic growth, which proved useful in general discussion with clients. He emphasised the conclusions of three US studies that showed employee share ownership works best, in terms of productivity, when combined with employee involvement in decision making. David described the 2001 Shared modes of compensation and firm performance study by Richard Freeman and Martin Conyon as “the foremost UK study of the last 25 years”, which showed a 17 per cent average increase in ‘added value’ in 300 UK companies following the introduction of a free shares or profit sharing arrangement. Amongst the findings of other studies were that there is at least a correlation between the presence of employee share schemes and higher levels of employee retention, greater employee affinity with the business, greater resilience during recessions and lower levels of absenteeism. David Pett added that the Esop Index, promoted by the Centre and maintained by Capital Strategies, is a piece of live evidence showing that firms with all-employee share ownership outperform those without. Given this, might we focus on the moral case for sharing with employees the growth in value to which they contribute? asked Mr Pett.

Mahesh Varia, of Travers Smith, addressed the disguised remuneration rules, introduced to tackle the use of family benefit trusts to avoid or defer tax on employment related income. As the legislation is complex and best approached methodically, Mahesh broke it down into the five piece disguised remuneration puzzle: Is there an arrangement for reward, recognition or loan?; Is there a relevant step?; ...By a relevant third person?; Does an exclusion apply?; Can the charge be reduced? The first three establish whether a case is in the rules, the second if an exclusion applies. Mahesh advised that the best approach is to avoid coming under the rules at all – by ensuring that payments into trusts in shares or cash are not earmarked for any particular employee – rather than relying on the exemptions in the disguised remuneration rules. Particular care must be taken to avoid earmarking as it does not need to be formal,

although its scope is limited in that it must be a preparatory step for a later 'relevant step'; usually the transfer of money or an asset. While it is companies, rather than trusts, whose actions will leave them liable to a disguised remuneration charge, trustees should be vigilant and alert their clients if they are likely to incur a charge, Mahesh concluded.

Stephen Woodhouse, of Pett Franklin presented on the alternatives to options for rewarding growth. Not all companies qualify for tax-advantaged option schemes, and there are limitations on the amounts that can be awarded. With non-tax-advantaged options there can be a dry tax charge if there's no immediate ability to sell shares. Through growth shares and JSOPs firms can reward employees when the business grows. Growth shares are most often used in private companies where owners can usually pass the necessary special resolutions to change company articles of association as required. JSOPs are favoured by listed companies as no changes to the articles are required. HMRC's recent survey report was broadly supportive of growth interests, including JSOPs and growth shares, recognising their importance in aligning interests and rewarding employees for growing company value. HMRC's approach to valuation, however, is developing and now looks towards the 'expected value' of a growth interest rather than taking the value to be marginally above nominal value.

Jeremy Mindell of Primondell delivered a UK tax update. He summarised Chancellor George Osborne's approach as seeking to raise more tax without raising the rate of tax by tackling evasion and avoidance. Looking in detail at the changes to dividend taxation Jeremy highlighted the amount of dividend income on which each type of taxpayer will now pay more tax under the changes: £5,000, £21,666 and £25,265 for basic rate, higher rate and additional rate taxpayers respectively. Looking forward Jeremy identified the new criminal sanctions for offshore tax evasion and the growing number of international agreements to automatically share information on taxpayers, quoting financial secretary to the Treasury David Gauke "Time's up for people who don't pay their fair share of tax by hiding their money offshore." Trustees should be aware of the effects of this emerging picture on their clients, Jeremy added

Alison MacKrill of Carey Olsen, and immediate past chairman of STEP Guernsey, provided a legal update, looking at recent Channel Island cases relevant to the administration of EBTs and ESOPs. Alison highlighted five trust cases from 2015 which saw issues arising including gross negligence, wilful misconduct, and restitution on the making of a mistake. The final case she described as a "momentous decision" in Guernsey. A trustee was put in a situation where a choice would benefit one group of beneficiaries over another, such that it couldn't fulfil its fiduciary duty to all beneficiaries. The trustee surrendered its discretion to decide to the court, which made the decision on the trustee's behalf, still bound by the terms of the trust. This lays the ground for a remedy available to trustees when they've a conflict of interests leaving them unable to fulfil their fiduciary duty. Chair David Pett commented how this decision in particular demonstrates that English and Guernsey law, and the decisions of their courts, can be quite different.

Members', national and international news

Centre profile: Colin Kendon

Colin Kendon is head of employee incentives and benefits at Bird & Bird.

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

At its most effective employee share ownership gives employees an interest in the financial performance of their employer, it makes them think like owners and it improves productivity.

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

By introducing all-employee plans that do not require low-paid employees to fork out cash until they are in a position to fund it through share sales. For example: CSOPs operated on an all-employee basis.

What is the greatest obstacle to wider and deeper employee share ownership?

Cash flow. The two so called "all-employee" share plans are not in practice taken-up by all employees – only those that can afford to save. We don't require executives to fork out cash to access equity so why require it of employees who can't afford it?

You spoke at the recent Centre / IoD conference on shares for rights, do you think it's made a positive contribution to employee share ownership?

Shares for rights has made a huge contribution and will continue to do so for years to come. It allows unlisted companies to attract talent from safer jobs by offering attractive equity incentives and that has to be good for productivity. Wouldn't it be great to have a study into the productivity gains for a change instead of having to listen to complaints about the (probably lower) tax costs?

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

What is now Part 7 ITEPA 2003 – it changed most of the landscape almost overnight.

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

Ability for companies to buy-back their own shares pursuant to employee share plans without distribution treatment applying.

Is there a particular employee share plan you have been glad to work on? If so, why?

Playfish Limited - EMI plan. Option gains were \$100 million, the tax savings represented around 25% of the cost of EMI plans to the Exchequer for the year they exited. The team took a big risk, paid themselves low salaries for 2.5 years and it paid off.

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

The main parties accept it is better for employees to have a stake in the companies they work for. I hope they also continue to accept it is better to encourage people to take a risk by becoming entrepreneurs' and choosing to locate in the UK.

Which aspect of the ESOP Centre do you value most?

"On the Move" section of Newspad – read it first every time.

Which living person would you most like to meet?

David Cameron.

Which book has most changed your life?

Growing Vegetables (Royal Horticultural Society's Encyclopaedia of Practical Gardening) by Tony Biggs. Fantastic read – I won't spoil it by giving away the plot.

What do you consider your greatest achievement?

Becoming a partner at Bird & Bird – had to build up the practice following the 2008 crash to get there.

What would you have done if you hadn't become a lawyer?

I suppose I would have run the family farm.

How do you relax?

When not acting as a chauffeur for my kids and / or watching them play sport - looking after my allotment.

If you would like to suggest a profile for newsbrief please contact Jacob Boulton: jboulton@esopcentre.com; 020 7239 4971.

Centre's response to HMRC statistics

Based on HMRC's latest employee share scheme statistics, updated on September 30 2015, the ESOP Centre estimates that over 10,000 SMEs now use Enterprise Management Incentives (EMI). The Centre's [response](#) was based on an analysis of the statistics by Fred Hackworth, the editor of the Centre's monthly [newspad](#).

Hodge launches APPG on responsible tax

Former chair of the Public Accounts Committee and Centre high table guest of honour, Dame Margaret Hodge MP, has launched a new All-Party Parliamentary Group (APPG) on responsible tax. "We want parliament to continue to play a key role in building and maintaining the fair, sustainable and transparent tax system that is needed to create growth and prosperity both in the UK and internationally," said Hodge. The new APPG was founded following its recommendation in a [report](#) by think-tank CoVi.

SMEs struggle to comply with new HMRC requirements

In its autumn 2015 [bulletin](#), Pett Franklin raised the issues that resulted from the "technical glitches" and online confusion when the HMRC server went down on July 5; resulting in a change of deadline for filing returns. Although the companies that submitted their returns before July 5 were merely asked to re-submit their returns, Pett Franklin found that: "Many companies are understood to have failed to have complied and will have incurred a minimum fixed £100 penalty."

Pett Franklin announces upcoming webinar

Pett Franklin will be holding a webinar on Thursday October 29 to discuss the subject of investment trusts and the impact on the design of share scheme incentives. For further information and to register interest for the event please visit the Pett Franklin [website](#).

Equiniti research found share schemes promote loyalty

The latest [research](#) from Equiniti demonstrates that introducing share schemes in a company increases the chance of employee productivity and loyalty. Phil Ainsley of Equiniti Employee Services commented: "Share schemes are currently underutilised across all industry sectors, but they can have a hugely positive effect on the way employees view their employers and how involved they are with the company and its future. This can only be good for corporate growth and individuals alike."

Newly appointed Global Practice Head of Linklaters' Technology

In Members' news, Richard Cumbley, a partner at Linklaters since 2007, succeeds John Crozier as Global Head of TMT and IP, serving a four year term. The full announcement can be found [here](#).

Towers Watson provides overview of ISS 2016 Policy Survey Results

The Institutional Shareholder Services (ISS) released its 2016 annual policy survey, covering potential changes to its proxy voting policy guidelines. Towers Watson provided an overview on three executive compensation issues that arose from the global survey. More information on the proposed policies can be found on the Towers Watson [website](#); final updates of the proxy voting policies are expected to be released in November 2015.

The taxation of RSUs

In the September edition of its employment-related securities [bulletin](#) HMRC sets out its reasoning for considering a further amendment to the rules relating to the taxation of Restricted Stock Units (RSUs) and other securities options.

HMRC hosted a meeting to discuss the proposals on October 9, unfortunately it will not be publishing minutes arising from the meeting.

OECD presents plan to tackle BEPS

The OECD has presented its [final package](#) of measures to tackle base erosion and profit shifting, which it states provide "governments with solutions for closing the gaps in existing international rules that allow corporate profits to disappear or be artificially shifted to low/no tax environments, where little or no economic activity takes place."

"Base erosion and profit shifting affects all countries, not only economically, but also as a matter of trust," said OECD secretary-general Angel Gurría. "BEPS is depriving countries of precious resources to jump-start growth, tackle the effects of the global economic crisis and create more and better opportunities for all. But beyond this, BEPS has been also eroding the trust of citizens in the fairness of tax systems worldwide. The measures we are presenting today represent the most fundamental changes to international tax rules in almost a century: they will put an end to double non-taxation, facilitate a better alignment of taxation with economic activity and value creation, and when fully implemented, these measures will render BEPS-inspired tax planning structures ineffective," Mr Gurría said.

America's Employee Ownership Month

A leading voice in America for employee ownership, The ESOP Association, kicked off its annual Employee Ownership Month [campaign](#) on October 1. The celebration provides an opportunity for companies employed in share plans to "educate employee owners, the public, and government officials about the undeniable benefits of employee ownership for employees, their companies, the communities they are a part of, and the nation."

S ESOPs helping Americans save for retirement
The Employee-Owned S Corporations of America (ESCA), an organisation that speaks exclusively for employee-owned S corporations in the United States, released an online [blog](#) detailing how ESOPs provide Americans with a financially secure retirement fund. ESCA summarises: “there are 470,000 employee-owners of S ESOP companies across America who are closer to securing their retirements due to the S ESOP business model.”

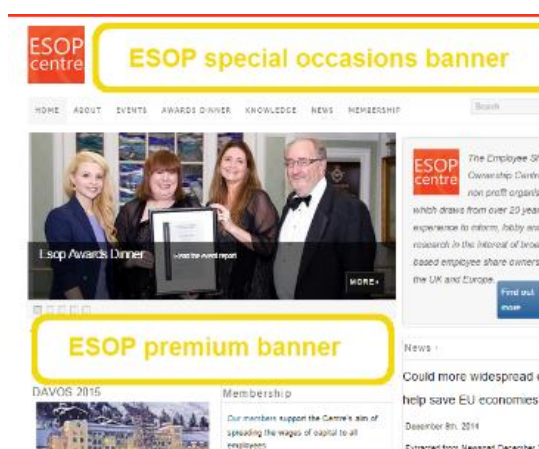
NCEO: the economic power of employee ownership
According to an [infographic](#) posted by the National Centre for Employee Ownership (NCEO), companies employed in share schemes were 25 percent more likely to stay in business and an immediate improvement in productivity could be seen in the first year an ESOP was adopted.

Sponsor the Centre's website

The Centre is offering three website sponsorship packages of various prominence, duration and price.

A sample of the positioning of your logo with each package is displayed below

Please contact Jacob Boulton to register your interest or to request more information, by emailing esop@esopcentre.com or by calling on 020 7239 4971.



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