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it's our business

newspad of the Employee Share Ownership Centre

Centre urges Treasury to boost Eso in private equity acquisitions

The UK private equity and venture capital industry has joined the Esop Centre in demanding legislative changes to widen and deepen employee share ownership in smaller companies. Like the Centre, the British Private Equity & Venture Capital Association is unhappy that current HMRC regulations force many private equity and venture capital organisations either to dismantle existing Eso plans in companies they acquire, or refuse to establish them.

Present rules state that the shares of a company involved in a tax-approved employee share plan must not be under the control of another company, unless the controlling company is itself listed. The problem is that more and more small and medium sized UK companies are being bought by private equity/venture capital combines, as opposed to the older-style takeover by a larger peer group listed company a decade ago. Inevitably, the rule about share control and approved Eso plan qualification is rearing its head more and more often.

Clifford Chance has helped the Centre lobby the Treasury in an attempt to get the law changed on this key issue. Treasury officials are studying a paper prepared by Clifford Chance, which called for a policy rethink. It outlined numerous barriers that currently exist for private equity investors looking to either continue operating or to initiate new Sharesave/SIP plans in a company they have invested in. The paper recommended: changes to the control test; adjusting the rules on share classes and restrictions for SIPs to align them with the corresponding and less restrictive rules for Sharesave; adjusting the rules on employee-control/open market shares for Sharesave to align them with the corresponding rules for EMI; allowing good-leaver/bad-leaver provisions for shares acquired by employees through Sharesave or SIP; amending Sharesave legislation to allow options to be exercised immediately prior to and conditional upon an "exit".

As 20 percent of staff in the private sector are employed in private-equity owned companies, these restrictions prevent a substantial portion of the UK workforce from participating in Eso schemes.

As General Election fever mounts, one of the political parties may be tempted to use Eso as a campaign marketing tool. It might play well in the marginal constituencies to promise new measures to liberalise Eso in order to encourage millions more employees to participate. Clifford Chance said: "Where private equity funds invest in a company, this usually results in more than 50 percent of the share capital being held by one or, more often, a series of limited partnerships. The LPs typically hold their shares through a corporate general partner, which may often be the same entity for the various LPs that invest in a particular company. It has been suggested that these companies cannot meet the requirements of paragraph 27 Schedule 2 ITEPA 2003 (SIP) or paragraph 19 Schedule 3 ITEPA 2003 (Sharesave). These paragraphs provide that the company whose shares are being used in the plan must not be under the control (as defined in section 840 ICTA 1988) of another company (unless that company is listed on a recognised stock exchange and is not a close company for UK tax purposes). There are technical arguments as to why this suggestion is not correct. However, the particular structure of a given fund should not dictate whether a company can have an approved plan.

"Moreover, it is difficult to see why this test should be applied at all in the context of an investment by one or more private equity partnerships.

"Such partnerships consist of unrelated investors who commit to a partnership to build a portfolio of unquoted investments. The corporate general partner is in effect simply a representative of the various separate investors in the company. Even more generally, it is difficult to see why the control test is needed at all. It is understood that

From the Chairman

Reward for failure seems like a popular idea, even in the Rugby World Cup. The incumbent countries who don't play as well as they are paid are still keen to hang on to their packages. The debate will transfer next year to the playing fields of Davos, when we shall enjoy the ABI's latest views, a controversial challenge from our international director and some smoothing words of expertise. It bids fair to be the best esop punch-up since Pett v Tweedie! By then of course we could have a new government to make the case but I shall speculate neither on that nor on the RWC.

Malcolm Hurlston

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the control test was originally introduced due to a concern that a company could artificially manipulate a subsidiary's value, thereby increasing the value of the tax relief available to employees in an approved plan. However due to subsequent tax changes that original purpose no longer seems relevant.”

In its pre-Budget submission, the BVCA told new Chancellor of the Exchequer, Alistair Darling, that it knew of at least one significant SAYE-Sharesave scheme that has had to be wound up recently for this very reason. Furthermore, problems with highly unionized workforces have arisen when other approved Eso schemes have had to be closed down after private equity/VC takeovers due to the “unfair” law on qualifying shares, said the BVCA.

In addition, complex rules governing the taxation of employees' shares, introduced in Finance Act 2003, make Eso too costly and time-consuming for many private equity/vc owners. These rules often threaten the Corporation Tax deduction, notes William Franklin of Pinsent Masons.

“It does seem surprising and iniquitous that employees are precluded from benefiting from approved schemes simply because a company has a different form of ownership,” the BVCA told the Chancellor.

“The benefits of approved share option plans should be available to all employees and not denied to large groups of employees based on the nature of the company’s shareholders. “These rules currently place a large sector of the UK economy at a competitive disadvantage and in our view there are substantial benefits for the modern competitive economy if all sectors are permitted access to the best incentive schemes. Broader share ownership is a key component. This is particularly important for the private equity sector. It also prevents substantial groups of employees in benefiting from the equity returns generated by a successful part of the UK economy. In other jurisdictions private equity backed companies do not face the same constraints and authorities take a more enlightened approach to broader share ownership.

“Employee share ownership is one of the keys to improving economic performance as it assists in aligning the interests of employees and shareholders. Such plans have been extensively used in the UK listed sector and are seen to be key to incentivising the wider workforce. The BVCA believes the current position to be unfair, and an inhibitor to productivity gains and enterprise,” the statement added. The BVCA is no mean player - worldwide equity investment by its members reached £22bn last year and 1300 UK companies received private equity/venture capital backing in the same year.

Lloyds TSB Registrars becomes Equiniti

The purchase of Lloyds TSB Registrars, the leading share registration and employee share plan provider, by Advent International was completed this week and the company has been renamed Equiniti Ltd. However, the future of the former staff Lloyds TSB Registrars employee share schemes is up in the air as its new owners are not a listed company (see front page story) Instead, Advent International has put together a co-investment plan for staff that uses ‘units,’ rather than shares, which are matched on a 1:1 basis up to a maximum of £5000. The units are capable of being ‘cashed in’ when Advent realise its investment either through a flotation or a trade sale with any increase in unit value calculated on the same basis as Advent on exit. The original personal investment made by staff is also underwritten by Advent. Phil Ainsley, senior manager - employee benefits, and the rest of the team are still very much in place. Employees voted for their preferred choice of name from a shortlist during a consultation period. More than 1,000 votes were cast and Equiniti won almost 60 percent of the votes. Equiniti will manage 24m shareholder and employee records, and act as registrar for more than 700 companies, including 55 percent of the FTSE 100. MD David Winton said: "As Equiniti, the company will build on its enviable heritage and offer clients the very best fully integrated service, including share registration, retail investor services and employee benefits.”

Eso to SIPP

Growing interest is reported among employers helping employees to transfer their Eso holdings into Self-Invested Personal Pensions (SIPPs). Nigel Manley Head of SIPPs at Premier Pension Services, a division of JLT Benefit Solutions Ltd said: “As head of our SIPP division I can confirm that we are seeing growing interest in using this product - particularly Group SIPPs set up by employers for receiving the maturing benefits of share option schemes. As a non-volume SIPP provider that specialises in these more creative uses for the product, we are working closely with a number of IFA firms and employers.”

Eso bonanza

Insurer **Admiral Group** announced that £3m worth of free shares will be shared amongst 2,000 staff based on the 2007 half-year result. The group announced a strong interim result with a profit before tax of £86.3m for the six months to 30 June 2007, an increase of 26 percent over the same period last year. Group turnover, comprising total premiums written, other gross income and investment income, rose 16 percent to £417.8m. Alastair Lyons, group chairman said: “We’re especially delighted that the group’s fine performance in the first half of 2007 will mean every member of staff who has been with us in the first six months of the year will get free shares in the Group.” Ceo Henry Engelhardt is a strong supporter of Eso.

New members

Famous architectural practice **Foster & Partners** has joined the Centre. Chairman Lord Foster, 71, seeks Centre advice over employee communications in relation to the installation and management of Eso plans. Earlier this year, some Foster & Partners employees complained to the Centre that the first they knew about the closure of an offshore employee benefit trust was when the trustee (Close Trustees Jersey Ltd) wrote to them offering varying financial amounts (based on seniority and service) to compensate for the closure of the EBT in preparation for the sale of a minority stake in Foster & Partners to 3i, the private equity investors. Future accounts published by Foster & Partners may explain the basis of the share-out.

Cheques worth up to ten percent of annual salary were paid out to employees.

Invista Real Estate Investment Management has joined the Centre. Invista Real Estate is the largest UK listed real estate fund management group. The Group manages both commercial and residential property across the UK and continental Europe, and has a total of £10.2bn assets under management as of end June 2007. Invista provides real estate fund management services to a range of clients including pension funds, life funds, investment trusts, unit trusts and other specialist investment vehicles and manages 19 funds. Typical responsibilities include: all aspects of fund management and fund administration; setting an appropriate investment strategy for the portfolio to include relevant targets for investment returns and acceptable risk levels; all aspects of property and asset management including preparation of individual asset business plans; establishing short and long term objectives for the property; where appropriate, identifying appropriate gearing strategies; suitable lenders and lending terms and managing securitisation programmes. Invista has offices in London, Guernsey and Paris and it plans to open further offices in Europe to support its European activities. Please call its marketing team on 0207 153 9300 for further information. Eso queries to Tamara Murray [tamara.murray@invistarealestate.com]

On the move

Keith Skinner from Oz informs us of a partnership change at leading lawyers **Freehills**. **Stephen Walmsley** has left the firm and accordingly, will no longer be representing Freehills at Centre functions. "It is a great pity as Stephen on his return from the Cannes conference this year advised of his decision to retire and establish a new firm," said Keith. In future our main contacts at Freehills will be Quentin Digby and Alex Moule (formerly Alex Rennie) both of whom have attended our international conferences who and are active in the Eso field. Keith is a consultant at Freehills.

Contact direct: 61 3 9288 1612 and 61 3 9288 1234 http:\\www.freehills.com

COMPANIES

AA and **Saga** staff will all be given shares in the parent company of the combined businesses following their merger. All 11,000 employees will be awarded equity in parent company **Acromas Holdings**, created from the merger of Saga, an insurance and holiday company for the over 50s, and motoring organisation the AA. Employees will own up to four percent of the group. A cash bonus of £1,000 will also be awarded to each full-time AA employee. A Saga spokesman said: "Giving staff an opportunity to own part of the company is a fantastic opportunity for them to be part of the future growth. We're conscious that all the staff at the AA and Saga have put an amazing amount of hard work into creating the brands and building the brands to what they are today." The merger of Saga, owned by buy-out firm Charterhouse, and the AA, which was jointly backed by private equity investors Permira and CVC, was completed recently. The three investment firms own the bulk of the shares, while the management own a significant amount with the rest of the equity owned by employees

Shares in oil explorer **Max Petroleum** were suspended after the firm asked its ceo, Steve Kappelle, and Ole Udsen, its chief operating officer, to step down. They were suspended pending a PricewaterhouseCoopers investigation into a possible breach of company rules regarding an "undisclosed receipt" of share options. Kappelle is listed in the firm's annual report as holding 10m share options at March 31, 2006. The company refused to say how many he had since exercised.

CONFERENCES

Speakers at the joint Society of Trusts & Estates Practitioners/Esop Centre share schemes for trustees conference to be held in Old Government House Hotel, St Peter Port, Guernsey, on **Friday November 9** are: Amanda Flint of Chiltern Reward, Catherine Gannon of Gannons (employment lawyers), STEP Guernsey chairman Alison MacKrill of Turcan Connell, Charles Cooper of BWCI Trust Co, William Franklin of Pinsent Masons, David Craddock of David Craddock Consulting and Clay Lambiotte of Lane, Clark and Peacock. The agenda includes trustee issues and presentations on internal share markets for SMEs, share trusts and deferred share schemes, the value of share schemes and how to set them up, employee share plan administration and accounting for Esos and EBTs. Admission prices are £295 for STEP/Centre members (discount for 2nd and subsequent delegates) and £425 for non-members.

Davos Jan 30–Feb 1, 2008: Confirmed speakers at the European Centre's ninth global employee equity forum in Davos include Karen Cooper of Osborne Clarke, Barbara Seta of UBS, Ed Buckland of Bedell Group, Alan Judes of Strategic Remuneration, Kevin Lim of RBC CEES, Jeff Mamorsky of Greenberg Traurig(USA), Peter Mossop of Capita Trustees, Michael Sterchi of KPMG; David Pett of Pinsent Masons, Paul Stoddart of HBOS Employee Equity Solutions, and Mahesh Varia of Travers Smith. This event takes place in the five-star Steigenberger Belvedere Hotel, from early evening Wednesday (Jan 30) until Friday noon (Feb 1). Speakers obtain a £200 attendance price discount. Please email Fred Hackworth at fhackworth@hurlstons.com if you and/or a colleague would like to speak at this event. Delegates' package deal bed nights in the Belvedere will be Jan 30 and Jan 31. Member practitioner delegates will pay £775 for the all-in (except travel) package deal, while non-member practitioners will each pay £995. Exceptionally, Centre member plan issuer delegates will pay only £275 for their accommodation + conference package deal. Return tickets from London to Zurich can be booked for less than £100, using member BA's website www.ba.com The discounted room rates are available to delegates who arrive earlier and/or depart later.

Register to attend these conferences on the Centre website at: www.hurlstons.com/esop and click on 'events.'

The joint Centre-Institute of Directors share schemes conference for SMEs at One Whitehall Place SW1 on **Tuesday October 9** is a sell-out. More than 100 people have registered to attend.

INTERNATIONAL

EDF said its recent board of directors meeting approved the implementation of a free share plan for staff in France and throughout the world, involving the allocation of up to 2.9m shares. In a statement of its first half results, the group said the final granting of the shares is subject to the achievement of a compound annual growth rate over 2006-2008 of EDF Group's EBITDA of more than three percent, in accordance with the financial guidance announced at the time of the IPO.

French finance minister Christine Lagarde said a employee share plan will allow core shareholders to control over 50 percent of Suez Environnement when it is spun off from Suez as part of the planned merger with Gaz de France. Lagarde's proposal means that employees would own at least three percent of **Suez Environnement**. As part of the revised merger deal, Suez is to spin off 65 percent of its environment business to its own shareholders, with the other 35 percent being retained by the merged GDF Suez group. But Suez said its main shareholders have agreed to form a pact to combine their 12 percent stake in Suez Environnement with GDF Suez's holding, representing a 47 percent bloc. Speaking on French radio, Suez chairman and CEO, Gerard Mestrallet, said there was 'no risk' of a takeover bid being launched for Suez Environnement, arguing the business would be protected by the core shareholders controlling almost half of the capital.

The French Parliament has adopted a significant new tax package where one of the new measures affects the taxation of stock compensation in **France**. The new provisions consider free transfers or gifting of shares upon exercised of qualified stock options after the four-year holding period has lapsed, as taxable dispositions of shares, thereby closing a widely-used loophole to exempt option exercise gains from income tax (by having share value included in gift/transfer taxes). For all French-qualified employee stock options granted as of June 20, 2007, gifting and other free transfers of shares constitute taxable events for the exercise gain at the time of transfer. Companies should revise employee communications to incorporate the new rules, said Bill Cohen of Deloitte.

Irish companies with high-yielding debt include Eircom, Smurfit Kappa, and Ardagh Glass have had little trouble securing new lines of credit in recent years - including a very expensive form of unsecured debt, called payment-in-kind (PIK) notes. Within months of Eircom being bought off the market last summer in a highly-leveraged deal, its new owners, Babcock & Brown and the telco's employee share ownership trust (Esot), added a further €425m to its €3.8 bn debt pile by issuing a PIK note.

Half the 20 highest-paid corporate executives in Europe last year were running French companies and despite headlines about fat cattery among British bosses, just two were from the UK. The EU's highest-paid ceo was Carlos Ghosn of French carmaker Renault, according to research by Board-Ex, published in the US magazine Fortune. He took home £22.2m last year, seven times more than in the previous year, most of it via share option exercise gains. In second spot was Jean-Paul Agon, ceo of L'Oreal, which snapped up Body Shop last year, who was paid £10m last year, while Alessandro Profumo, ceo of Italian bank UniCredit, was third with £9m.

BLACK EMPOWERMENT THROUGH ESO

Sasol Ltd. (SSL), the world's largest producer of fuels from coal, unveiled a deal to sell ten percent of its share capital to black investors in what promises to be the single largest move to address inequities created by South Africa's apartheid past. The transaction is valued at about R18bn ($2.5bn) and will be aimed a wide spectrum of investors, including employees. Ceo Pat Davies said the Joburg-based company deliberately elected to take a different approach to black economic empowerment. "We wanted this to be as broad-based a deal as possible. We're not selling off certain assets, we're transferring ten percent of Sasol to (new) shareholders," he said. Sasol said its transaction would be structured so that a three percent interest in the company would go to the wider black South African public. 27,000 staff, including black managers and non-executive directors and the company's mainly black employees are to collect a four percent stake in Sasol. Selected black economic empowerment groups will be entitled to a 1.5 percent interest, and Sasol will devote another 1.5 percent stake to a foundation, which Davies said will focus on communities around the company's main plants and which aims to promote skills training and development.

Chinatown: ***Global Shares*** opened its Shanghai representative office in China, which will be managed by Elsa Du. Having identified significant opportunities for its stock plan administration and related consulting services, Global Shares says it is the first stock plan administration company to complete the formal process of establishing an official representative office in mainland China. Ms Du worked in the Global Shares' headquarters and administration centre in West Cork, Ireland, before moving back to Shanghai to set up the China operation in December last year. She has a marketing degree from the University of Shanghai for Science and Technology and an MBS in Marketing from Dublin City University. Global Shares has won significant contracts to provide stock plan administration to Chinese companies. The Shanghai office will be supported from West Cork, to ensure that Chinese clients receive quality personal service. Global Shares' website has been translated into Mandarin. Maoiliosa O'Culachain, COO & co-founder of Global Shares said "China is a very exciting place to do business right now."

The Employee Share Ownership Centre Ltd is a members' organisation which lobbies, informs and researches on behalf of employee share ownership.