Feeling the chill

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Ideas don't have to be radical to be worthy or good. But it seems that radical ideas are the only things, in our perma-exhausted and over-alert, dopamine-reliant state, that grab people's attention.

The earliest forms of employee share ownership ('ESO') and profit sharing were, at their time, radical. Those of us who've read 'The Citizen's Share' by Joseph Blasi, Richard Freeman and Douglas Kruse will know about the Founding Fathers and the trawlermen of New England, USA, who blazed a trail for early profit-sharing. And if you know your English history, you'll be aware of the handful of mill owners who started sharing their profits with some members of their workforces during the first industrial revolution.

'Radicalism' for the many, not the few

With employee share ownership forming an established feature of most FTSE companies' pay practices, as well as being a valuable tool for SMEs in hiring and retaining the talent they need to thrive and grow, it's hard to believe that employee share ownership was once upon a time such a contentious concept. The idea of ESO was radical at the time of its inception because it broke down barriers between owners of capital and providers of labour. ESO laid the foundations for the democratisation of share ownership and with it, the sharing of wealth and capital growth with those whose labour helped to create it.

Standing on the shoulders of giants

Lucky us, we modern share plans practitioners get to stand on the shoulders of these giants and continue this great work. Still it seems even today, some politicians are stuck in the past, playing the same old tune of division, of us and them, workers and owners as discrete groups (and never the twain shall meet). Employee share ownership shows us that it doesn't have to be this way. Division has been a central theme of the Brexit debate and it is getting us all absolutely nowhere - except ever closer to a cliff-edge 'hard' Brexit. Amongst many things, it is also putting at risk Britain's much-admired tradition of employee share ownership.

So it's high time we poured some cold water on the fevered brow of the current Brexit debate, and took an objective and clear-eyed look at what Brexit may mean for the 2.5 million people currently participating in an all-employee share plan of one type or another, and for their employers.

Let's take this plan by plan.

Save As You Earn

Save As You Earn or 'SAYE' has since 1980 helped millions of employees to save and invest in their companies' shares. SAYE operates with tax advantages in the UK and in the Republic of Ireland, and globally without tax benefits. In the UK, the biggest threat to SAYE may materialise in the form of share price volatility around the 'Brexit date' of 29 March 2019 when the Article 50 period comes to its scheduled end. SAYE schemes with maturity dates on 1 April look particularly vulnerable as maturity dates cannot be unilaterally altered by plan issuer companies.

Time is short for canny employees to decide to miss one or two monthly contributions in order to defer their option maturity dates away from the Brexit date. In any case, were companies to advise them to do so, they would fall foul of legal restrictions on giving financial advice without the necessary authorisation. Not all participating employees may be able to miss contributions if they have already missed the maximum number permitted (with effect on all outstanding options as at 1 September 2018 and those granted after that date, SAYE participants are able to miss up to 12 months' contributions in the life of a single SAYE option, without their option lapsing). The one potentially saving grace is that despite their fixed maturity dates, SAYE optionholders do at least have six months from maturity in which to exercise their options.

Irish SAYE schemes face challenges of an altogether more existential kind. There currently exist just three financial institutions who are authorised and licensed to hold Irish SAYE scheme savings on behalf of around 10,000 current participants: Ulster Bank, Barclays, and Yorkshire Building Society.

Without the current system of 'passporting', or regulatory equivalence agreements on financial services in place from 29 March 2019, the number of Irish SAYE savings carriers will be reduced from three to just one – Ulster Bank. Barclays and YBS both being UK-headquartered institutions, they will no longer be able to hold savings on behalf of Irish SAYE participants. Given the numbers of Irish SAYE participants and the relative cumulative size of their savings, I am told it would be disproportionately expensive to acquire and maintain new Irish savings carrier licenses.

This means that the existing participating employees holding their Irish SAYE savings with Barclays and YBS will have to accept the return of their savings and, crucially, the lapse of their options. This would be regardless of whether these options are 'in the money' or not, and participants won't be permitted to exercise their options early as the plan rules and legislation don't provide for this under such hitherto unforeseen circumstances.

Current legislation doesn't provide for participants to transfer their savings from one savings carrier to another – Gill Brennan of IPSA (Irish ProShare Association), accompanied by UK domiciled savings providers, has met with the Irish Financial Services Minister Michael D'Arcy to discuss potential changes to legislation to allow savings carriers to transfer their book of Irish SAYE clients' savings to another licensed provider but as yet, we have no news on that. That could only be a 'stopgap' measure to prevent current optionholder employees from losing out on valuable options. (Longer term, the Irish SAYE savings carrier market requires more savings carriers if it is to remain viable and competitive in any way.)

The impact of this Irish SAYE issue will be felt in the UK, as well as in the Irish Republic. Several UK listed firms, including Halfords, B&Q, Next, Sage and Kingfisher have written to the Irish Govt, along with their Irish Savings carrier YBS, to emphasise the impact of Brexit upon their Irish employees' SAYE schemes. See press coverage here: https://fora.ie/share-schemes-brexit-4423476-Jan2019/?utm_source=twitter

Share Incentive Plan

Again, share price volatility is the main concern here, though as an evergreen plan SIP participants are under no compulsion to exit and/or sell their shares on a fixed date unless they are leaving the company. Those leaving employment due to resignation or dismissal will have to sell a number of shares in order to cover income tax and NIC liabilities on exiting the plan. The timing of crystallisation (and calculation) of the tax charges and the actual sale of shares will need to be managed carefully by plan administrators.

Enterprise Management Incentives

EMI's current EU State Aid approval will come to an end on 29 March 2019, expiring with the Article 50 notice period. It is currently very unclear what relevance (if any) EU State Aid will have to EMI in the post-Brexit era, as much depends on the nature of the relationship between the UK and the 27 remaining EU states and whatever is ratified for the transitional arrangements. We estimate that the current degree of uncertainty is having a chilling effect on the number of companies making new EMI grants, though without sight of any official HMRC figures this view is based on anecdotal evidence from industry sources.

It's an understatement, to say the least, that much is at stake with Brexit, much more than our industry alone. But we as share plans practitioners deserve to be heard, because we speak not just for our interests as an industry and as employers, global corporates and growing start-ups alike, but for the 2.5 million people who participate in SAYE and SIP and EMI right now. We speak for their millions of colleagues who haven't yet joined a share plan. We speak for those who are currently denied the opportunity to be employee shareholders by arcane, outdated and unfair legislation.

We also speak for those whose financial security and wellbeing may be disrupted, or even demolished, by a 'hard' or worse, 'no deal', Brexit. Many letters have been written, emails sent, and conversations and private entreaties made to date but we still lack clarity on the precise impact of Brexit and of what to expect (and what to plan for) in the transitional period. To be sixty-something days away from the expiry of the Article 50 period, without clear answers, is unconscionable.

ProShare will continue to press for clarity on employee share ownership-related concerns. We remain committed to keeping our members and contacts as well-informed as possible.

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