Employment Ownership Trusts - EOT's

Overview

Our one stop shop service for the effective delivery of a capital gains tax FREE sale of your shares. At FDS we have teamed up with Paul Trudgill Senior partner at Keeble LLP and Russ Cahill partner at the Taxadvisory partnership.

This highly experienced team can provide:

- The robust valuation which will help with substantiating any HMRC queries.
- The legal structure including the establishment of the trust, shareholder agreements articles of association etc.
- The tax clearance procedure and recommendations on tax management issues.

At FDS we have first-hand experience of EOT's as we are one!
We have over the years done literally scores of valuations. We have our own insight department and will tailor the valuation for the needs of the vendor and as needed negotiate with the employees.

Employment Ownership Trust Outline

An employee-owned company is a limited company, which is run on a commercial basis. The key difference is that the majority of the shares are owned by a trust. This is for the long-term benefit of the employees as a whole. To differentiate this kind of trust from other forms of employee benefit trusts (EBTs), the trust is normally known as an employee ownership trust (EOT). Employee-owned companies have indirect employee share ownership through the EOT.

Under FA 2014 Sch 37 it is possible for the owners of a company to sell their shares tax-free to an EOT. The sale must be for the majority of the shares so that the company becomes owned and controlled by the EOT.
After the EOT has acquired the shares, it may not have any funds to pay the consideration, and so it is not unusual for all or most of the consideration to be left unpaid until the EOT has received sufficient funds from the company that the EOT has acquired. This might be in the form of a loan by the company.

However, loans could trigger tax liabilities under the loans to participators rules, so funding by gift is more favourable.

From an economic perspective, the purchase consideration is ultimately being funded from future earnings and this can make the arrangement attractive to an owner who may be considering retiring. Future earnings that otherwise might have been taxed as income can be released from the business without income tax or National Insurance. However, this benefit can be offset by the fact that gifts to fund the EOT do not qualify as deductions for corporation tax purposes, unlike employee remuneration which would be deductible.

Tax considerations should only be a relatively minor factor in a decision to become an employee-owned company. The owners need to have compelling reasons for making such a fundamental change in ownership structure because once a company has become majority-owned by an EOT it is not easy to reverse the structure, as the trustees of the EOT have to act in the long-term interest of employees as a whole.

It is important that the owners think through how the corporate governance of the business will function after the company has become owned by the EOT, and there are many non-tax issues that must be addressed. Considerations need to be made toward:

- Who should the trustees be and how should they be appointed? It is normal for there to be a corporate trustee and for the corporate trustee board to include employee and independent directors.
- How should employees influence decisions? An employee council is often created that may advise and appoint employee trustee directors, but is it the intention that key commercial decision be referred to employees? If someone later wants to buy the company, should the employees have a vote or even a veto?

EOT-owned structures can also have direct shareholdings and or options over shares, referred to as hybrid schemes.

Many companies may wish to obtain an advance clearance from HMRC. If the sale of the shares is intended to create a genuine employee-owned company and the transaction is carefully explained to HMRC, then it is unlikely that it will withhold a clearance.

Since the legislation was introduced growth in the number of companies has continued and is increasing. The model seems to appeal particularly to smaller professional service firms or other people businesses which need to retain good quality staff.

Jo Haigh CEO of FDS

Jo Haigh is the CEO and founder of fds, which has bases in London, Birmingham and Yorkshire.

An experienced dealmaker, Jo specialises in putting together the right deal at the right time and in the right format for growing businesses throughout the country.

Since 1989 she has bought and sold approximately 400 companies specialising in owner managed companies in addition to selling three of her own companies and undertaking two personal MBOs.

In the 90s Jo created a specialist director training division, which has been highly successful since inception. She is a regular presenter on corporate governance and mergers and acquisitions for prestigious organisations across the UK and Europe.

Jo is a regular presenter for the Institute of Directors and Vistage on corporate governance and mergers and acquisitions.

Over the years Jo has been awarded and acknowledged for her outstanding business achievements and contributions to the organisations she works with as demonstrated below*:*

- Winner of The Sunday Times NED of the Year award in association with Peel Hunt.
- Non-Executive Director and Chair for a number of prestigious companies.
- Winner of Acquisition International M&A Awards - Most Innovative UK Deal Negotiator 2016 and The AI One to Watch in Corporate Finance.
- Winner of Non-Exec Director of the Year IoD Yorkshire & North East Awards.
- Winner of the CBI First Women in Business Services Award
- Shortlisted for Inspiring Leader of the Year Forward Ladies and SME Business of the Year with Forward Ladies

Poonam Kaur BSc (Hons), FCCA, CERT IoD

Poonam Kaur, a qualified Accountant, is the Managing Director of fds Director Services, which has bases in London, Birmingham and Yorkshire. She is also the unique community designed to develop and hone the skills of exiting military officers to help them become world-class Non-Executive Directors.

Established in 1989, fds provides a range of services to established, growing and new businesses with valuable and trusted support plus guidance to help achieve their individual business goals.

Poonam manages all projects, transactions and operational issues on a day to day basis. Alongside Jo, Poonam heads the strategic plans and staff development for the company. Poonam is now the lead negotiator on transactions including fds's largest ever transaction of $72 million.

Within three years at fds Poonam was promoted from Senior Corporate Finance Executive to Managing Director in January 2015. Poonam's drive and passion to develop fds has resulted in identifying the need of expanding the team and recognising skill areas required to achieve the strategy of the company.

Poonam's commitment, dedication, hard work and ambitious attitude has deservingly been recognised in the business society. Poonam has been awarded the winner of the Forward Ladies Awards in 2019, along with been listed as a Finalist for the IOD Yorkshire and North East Awards 2019. She has also been listed as one of Insider's 42 under forty two amongst other achievements listed below. This is a great recognition of Poonam's contribution throughout her professional career.

Paul Trudgill Partner at Keebles LLP

Paul is partner at Keebles LLP and an award-winning corporate lawyer, has worked in corporate transactions for almost 20 years and during that time has been involved in many employee ownership structures including EOTs and ranging from businesses as diverse as those in the retail, manufacturing and professional services sectors.

Paul's involvement usually includes preparing the documents constituting the EOT itself (most commonly a trust company limited by guarantee and in respect of which the EOT trustees hold the position of directors), the documents to enable the Company to make contributions to the EOT for the purposes of the sale and the transaction documents themselves.

If the owners of the Company are to retain a shareholding in the Company going forwards then Paul will also advise on and prepare the documents reflecting the relationship between the EOT and the Sellers (always recognising the requirement for there to be an effective change of control to ensure that the appropriate structure is achieved).

Russ Cahill Founding partners of Tax Advisory Partnership

Russ is one of the founding partners of Tax Advisory Partnership, an independent firm which provides bespoke tax advice to individuals and companies. Russ has for the last 25 years specialised in advising companies and their shareholders on tax efficient structuring of value realisation transactions, such as MBOs, demergers and vendor-initiated structures. Similarly, Russ has been involved in many employee ownership structures, including EOTs, across all sectors.

Russ will advise on all tax aspects of the EOT arrangements, which require careful planning in order to access the tax advantages of the structure. His role will include advising the shareholders on how to secure the tax-free capital gain, maximising the availability of tax-free bonuses to employees and explaining the tax treatment of the arrangements for the company and the EOT. He will also prepare and submit all necessary tax clearances to HMRC and negotiate the arrangements with them as required. Russ will work closely with the lawyers and other advisers to ensure that the HMRC approved structure is implemented.