Employee shareholder

On 1 September 2013, a new concept of "employee shareholder" was created. The idea is to allow companies to create a flexible workforce by allowing employees to exchange their employment rights in return for shares in their employer.

Employees agreeing to accept the new status will give up their right to claim for unfair dismissal, statutory redundancy and the right to request flexible working or time off for study or training. In return they must be given shares worth at least £2,000 in their employer company (or its holding company).

The shares will benefit from favourable treatment. The first £2,000 of shares will be free of income tax and national insurance contributions. However shares received with a value in excess of £2,000 will be taxable. Shares valued at up to £50,000 (when received) will not be subject to capital gains tax when sold.

There are a number of limitations and practical difficulties with these new arrangements which are likely to result in take up being limited. In particular:

- Shareholder employees will retain the right to bring discrimination and "whistle blowing" claims (for which there is no minimum period of service required and no financial cap on claims).

- The new status cannot be imposed upon existing employees although it can be stipulated as a condition of new offers of employment. Employers may not therefore be able to achieve consistency across the workforce.

- The employee (or applicant) must take independent legal advice and the employer must pay the reasonable legal fees incurred (whether or not the role is ultimately accepted). The employee also has a 7 day cooling off period.

- The new regime may not be a viable option for start ups. Given the substantial discounts generally applied in valuing shares with restricted rights in private limited companies, shares worth the minimum of £2,000 could represent an unacceptably large stake in the business.

The new regime seems most likely to be used by large organisations which already have share schemes in place and are therefore better placed to deal with the additional administrative burdens. They may also be appealing to senior executives attracted by the CGT exemption and potentially less concerned with their employment rights.

All of which suggests that the legislation may have missed its target market and that SME's are likely to continue to favour EMI options and other tried and tested employee incentives for the foreseeable future.

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