Episode 71: Summary

HEARSAY The legal podcast

Episode name: Democratising... Ownership? Implementing Employee Share Option Plans
Guest(s): Craig West

What area(s) of law does this episode consider?	Employee incentives.
Why is this topic relevant?	Attracting and retaining talent is likely to be one of the main focuses for law firms in 2023. After all, the people that make up a business are its most valuable asset. Anything that gives a competitive edge is inherently valuable. One competitive edge, of course, comes from employee incentives. However, a gym membership doesn't solve the perennial problem facing business - lack of employee investment or engagement with the mission of the business. That lack of motivation can mean that owners and employees are pulling in separate directions. An employee share ownership plan - or ESOP - is designed to address this lack of engagement in the mission of the business by aligning employees with business owners.
What legislation is considered in this episode?	*Income Tax Assessment Act 1996* (Cth)
What are the main points?	● An ESOP is a framework that allows employees to acquire shares, governed by rules to ensure the business, owners, and employees are protected. Most importantly, employees acquire equity and this encourages them to think like owners. ● There are tax concessions available depending on the structure of the business and structure of the plan. ● Most ESOPs do not allow employees to keep their shares if they leave. This can turn into a great way to retain employees as they can lose potential income by leaving a business. ● ESOPs are valuable for more than just tax concessions and encouraging an ownership mindset, they also can be contingent on certain targets being met by the employees. ● This can help to improve specific areas that the company has identified are lacking and to improve overall performance. An ESOP also allows employers to lay out specific goals and make the desired results more tangible for employees. ● To be eligible for the startup tax concession, the company has to be turning over less than $50 million a year, have been in business for less than 10 years, not be listed and reside in Australia.

What are the practical takeaways?

- There are standard form ESOPs, but the reality is they are best designed for the specific situations they will be used in.

Show notes

Australian Federal Government, *Budget 2021-22: Budget Measures*, 2022

Australian Taxation Office, Employee Share Schemes reporting requirements

Australian Taxation Office, Employee Share Schemes standard documents

BDO Australia, *BDO Growth Index: An analysis of mid-sized businesses in Australia*, 2021

BDO Australia, *Uncovering Australia's Middle Market*, 2018

Darren Dahl, *Consumers Are Willing To Pay More For Products Made By Employee-Owners*, Summary of Thomas Dudley's PhD paper, 2017

Succession Plus' website

Thomson Reuters, *Tech & the Law 2022*, 2022