Comments on the Danish EOT Law:

"Hamlet" without the Prince of Denmark

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Introduction

The Danish EOT Law proposal (Bodskov 2025) was unanimously passed into law by the Danish Parliament (2025) on Dec. 19, 2025.

The key to the US ESOP and the UK EOT mechanism is the *obligation of the company* to make timely ESOP (or EOT) contributions to pay off the shares transferred to the ESOP (or EOT). These ESOP contributions are the "Prince of Denmark" that is missing from this version of Hamlet and that render the law unworkable. The law envisages the shares being paid for by (apparently discretionary on the part of the company) dividends on the shares in the EOT.

The inadequacy of dividends

In the Nobel-winning contributions to financial economics by Merton Miller and Franco Modigliani, the theoretical market valuation of corporate shares is the discounted present value of *all future dividends*.

> Properly formulated, the dividend approach defines the current worth of a share as the discounted value of the stream of dividends to be paid on the share in perpetuity. (Miller and Modigliani, 1961, 419)

Thus, in theory, the Danish EOT could not pay for the shares at market valuation out of any dividends over *a few years* (not to mention the additional capital gains tax payable by the EOT). In any case, why would anyone sell shares for a few years of dividends when they could just keep the shares and get essentially the same dividends (plus all the future dividends since they still have the shares)?

Moreover, dividends are an expensive way for the company to transfer money to the EOT to pay off the shares. In the ESOP mechanism, the ESOP contributions:

- are pre-corporate-tax,
- are paid only to the ESOP, and

- are obligatory according to the agreements with the seller (or with a financing agency in a leveraged transaction).

In contrast, the dividends envisaged for the Danish EOT law:

- are post-corporate-tax,
- have to be paid to all shareholders, and
- are discretionary on the part of the company.[1]

For example, there could be an ESOP contribution of 3,000 that would go from the company to the ESOP owning, say, 1/3rd of the company. But for Danish EOT with the minimum of 1/3rd ownership, corporate tax on the 3,000 of, say, 15% or 450 would first be paid and then the remaining 2,550 would be paid as dividends to all the shareholders so the EOT would receive 1/3 of 2550 or 850. There is no provision in the law to just pay dividends on the shares in the EOT.

- For total shares in an ESOP purchased for, say, 15,000, the ESOP mechanism would pay the shares off in 5 = 15000/3000 years at 3,000 a year (ignoring interest for simplicity).
- Assuming 2/3 of the 15000 or 10000 was capital gains, the Danish EOT would have to pay the 22% capital gains tax of 2200. The Danish EOT mechanism would take over 20 < (15000+2200)/850 = 20.2… years of the same 3,000 per year drain on the company's cashflow to pay off the same shares and the 22% capital gains tax transferred to the EOT.

Even though the seller avoids the capital gains tax, why would a shareholder sell shares with market value of 15,000 to a buyer who would have to get over 60,000 = 20 x 3,000 of company-endangering cash (on a discretionary basis) over two decades to receive their cash? And the market valuation of the whole company was assumed to be 3 x 15,000 = 45,000. Thus, the company with no legal obligation has to pay out over 133% of its total market value in cash for over 20 years (ignoring interest) in order for the coop to obtain the minimum 1/3rd of the shares. Why would any seller agree to such a deal or a bank finance such a deal? That is not even close to a viable scheme.

The only other source of funds for the EOT would be the "contributed capital" from workers who join the cooperative. But each member of the cooperative has only one vote and the shares of profits distributed between the members (profits apparently based on more dividends after the shares and taxes are paid off) are independent of the amount of contributed capital. The contributed capital seems to be treated essentially as an interest-bearing loan. Since employees in the underlying company who join without putting up any capital (beyond a typically nominal mandatory share) would get the same share of profits and same vote, it is not clear why anyone would make such a loan to the EOT particularly in the amounts that would affect the payoff period for the shares and taxes.

The formation of the Danish EOT

The tax authorities and the valuators lobby seem to have cooperated to ensure that the law would require a market valuation before the deal was proposed to the workers by the seller. The shares would need to be sold at least at market value, so the tax authorities were happy with the capital

[1] The law does not explicitly prescribe dividends as the funding mechanism, but it fails to provide any alternative obligatory or tax-efficient mechanism, leaving dividends as the only realistic source of funds from the company to the cooperative.

tax shifted to the EOT at market value. Thus, the capital gains tax is not reduced but only shifted from the seller most able to pay it to the EOT buyer least able to pay it. There seems to be no *overall* tax breaks in the Danish EOT, only a shifting of the capital gains tax to "the workers." And if the valuation was older than four weeks before the proposal was presented to the workers, then the valuators would have to be called in for a second helping.

The whole situation is wrongly modeled. In the ESOP (or UK EOT) mechanism, the arrangement *includes the company* partly or wholly owned by the seller(s). The *company has to agree* to make ESOP/EOT contributions in a timely manner so the funds are passed through the ESOP/EOT to pay for the shares (or to pay off the loan in a leveraged transaction).

The Danish EOT is wrongly modeled as a cooperatively managed "investment club" proposal to "the workers" in the underlying company who have no authority to oblige the company to make timely contributions in some efficient form (certainly not just post-tax dividends to all shareholders) to pay off the shares.

On the first cohort problem for EOTs

The overall Danish EOT model is unworkable, but it does involve some thought given to avoid sellouts. In the UK EOT and in the Canadian EOT when it is without Individual Capital Accounts (ICAs), there is the "first cohort problem." Whatever money goes to pay off the shares will not go into the pockets of the first cohort of members in the EOT as profit shares. Workers who later come to the EOT after the shares are paid off can enjoy the same bonuses as the first cohort unless there is some mechanism like the ICAs to record the foregone bonuses of the first cohort.

> A threat to the long term future of EOTs lies embedded in the way they are currently structured. In the current set up, employees have no right of access to the equity value locked up in the trust. So a successful EOT business could face pressure to accept a takeover offer so that all or some of the equity value trapped in the trust can be distributed to the employee beneficiaries. (Mason 2019, 12)

The Danish EOT law seems to recognize this problem by having some scheme that allows the members who didn't get cash profits (e.g., dividends) due to the need to pay for the shares would have priority on future cash profits until the situation was "equalized." This would require some rudimentary system of capital accounts to keep track of that information.

Individual capital accounts redux

Nigal Mason also reinvented that ICA wheel by recommending some scheme in EOTs "to allocate their shares to individual employees on an equitable basis" (Mason 2019, 12) which would be like the ICA system in the American ESOPs.

Even though the system of individual capital accounts has been:

- around 'forever' in the form of partnership capital accounts;[2]
- around since the mid-twentieth century in the Mondragon worker cooperatives;

[2] See any accounting text particularly ones with a chapter on partnership accounting such as Warren et al. 2007 or Wild and Shaw 2019 or just consult the internet, e.g., Achen Henderson CPAs 2023.

- around in the American Mondragon-type worker cooperatives (Ellerman and Pitegoff 1983; Feldman et al. 2025) since the late 1970s,
- around in the American ESOPs since the mid-1970s, and
- in Slovene Coop-ESOP (Ellerman et al. 2022) which has now been passed into law (October 2025),

an understanding and appreciation of the ICA system seems to remain as esoteric knowledge unavailable to people trying to design employee ownership schemes in the present day.

Conclusion

The main problem in the Danish law is, however, not the lack of an ICA system (i.e., it is an EOT, not an ESOP) but the lack of any company-obligation to make tax-benefited ESOP contributions or EOT bonuses to pay off the acquired shares. That is the "Prince of Denmark" missing from this version of "Hamlet."

One would search in vain throughout the entire modern literature on ESOPs and EOTs to try to find the idea that ESOP/EOT shares could be paid off with dividends (not to mention the transferred capital gains tax plus the discretionary nature of dividends)—so it is baffling to this observer how that idea ever got footing in the law proposal, not to mention the final law that was passed.

There is a tradition in Denmark where family shares are gifted to a foundation (e.g., Carlsberg or Novo Nordisk) where the employees are at least partially seen as beneficiaries or primary stakeholders. The Danish EOT law would allow the foundation owner to be replaced by a worker cooperative where all or almost all the shares were *gifted* to the cooperative. That possibility seems to be the actual outcome of the passage of the law.[3]

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[3] A *gift* transfer to an employee cooperative would seem to be possible under existing legislation even without the new law.

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