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it's our business

newspad of the Employee Share Ownership Centre

Share schemes spared Budget tax punishment

Employee share scheme sponsors and practitioners breathed a sigh of relief as chancellor Rishi Sunak announced nothing in his autumn Budget which would overtly damage the employee equity sector.

He ignored suggestions from the Office for Tax Simplification (OTS) both to hike Capital Gains Tax (CGT) rates up to a level much closer to the much higher Income Tax rates *and* to slash the annual CGT exemption allowance to a derisory amount.

The Centre warned the chancellor earlier this year that significant rises in the level of CGT charges and/or a severe reduction in the annual CGT exemption allowance would threaten the viability of SAYE-Sharesave schemes in particular, as CGT is chargeable unless the vested shares are quickly moved into an ISA. Another casualty would have been the hugely popular share-options based Enterprise Management Incentive (EMI) for SMEs, as gains from the tax-advantaged scheme are subject to CGT too, though *not* in the case of Share Incentive Plan (SIP) participants.

The chancellor failed to deliver any formal response to the OTS report which recommended a major upwards overhaul of CGT charge band rates generally.

EMI promoters are still waiting to hear from him whether their proposals for a much extended scheme, *for instance by doubling the £30m gross asset value entry limitation*, will be approved.

Nor did he respond to calls for carried interest gains made by private equity managers to be taxed as income, rather than as capital gains, which is the case at present.

CGT is paid by about 275,000 taxpayers and raises almost £10bn per annum. Although it escaped band rate rises, the annual exemption allowance of £12,300 has been *frozen* at its current level until 2025/26, as has the £2,000 annual dividend exemption allowance, which means that more employee shareholders will be dragged into the CGT net as the years go by. As CGT Business Asset Disposal Relief saw a cut in its lifetime limit last year, CGT receipts should increase without further intervention anyway.

Ditto the annual Income Tax exemption allowances – frozen from next April at just £12,570 for the tax years 2022/23 to 2025/26, so that employees will pay more tax each year, via *fiscal drag,* on their pay rises, which is how the chancellor intends paying for his large departmental spending increases. He decided that the already announced 1.25 percent increases in NICs rates and Income Tax rates on dividends, from next April, were quite enough for taxpayers to swallow. This means that basic rate dividend tax will increase to 8.75 percent, the higher rate dividend tax will increase to 33.75 percent and the additional rate tax will increase to 39.35 percent.

The new Health and Social Care Levy, together with the increased tax rates on dividends, is expected to

From the chairman

Particularly to be welcomed within the budget is the launch of a new numeracy skills programme, called Multiply. It will directly help up to 500,000 improve their maths and receive £560m in funding.

The money comes from the Shared Prosperity Fund, which was designed to replace EU structural funds after Brexit.

The push to level up workers' maths abilities comes as part of the government's broader efforts to boost skills and employment, in order to deliver what chancellor Sunak called a "high wage, high skill, high productivity economy of the future". Matt Whittaker of Probono Economics noted that maths skills in the UK were currently below the EU average.

Employee shareholders and Esop participants have a serious need for an understanding of maths and elementary bookkeeping skills. The Multiply programme should encourage them all to catch up and take better control of their financial lives.

Malcolm Hurlston CBE

raise more than £12bn per annum, starting next April.

Centre member **MM & K**, the remuneration consultancy, said that assuming existing relief applies as expected, it should become more cost-effective to acquire SIP partnership shares using *pre-tax, pre-NIC income* and to receive shares through both Sharesave and SIP free of income tax and NICs. Centre member **Deloitte** took a similar view: *"This should mean that tax advantaged awards, which are exempt from NICs, will be exempt from the levy. This may make the use of UK tax advantaged share schemes (e.g. CSOP) more attractive. Companies may want to consider using these plans as a cost-effective way to provide rewards to employees.*" Mobile employees, exempt from UK NICs under international agreements, should not have to pay the levy.

The cost to the company sponsor of using employee share plans is likely to rise slightly as a result of the levy.

*More than five million public sector employees will see their wages and salaries rise next year after the government confirmed that their pay freeze is to be lifted. Nurses, teachers and armed forces personnel are among those set to benefit. On public sector pay, Mr Sunak said those employees would "*see fair, and affordable*" pay rises during the next few years, but the amounts would be decided by independent pay review bodies.

*HMRC is being given extra powers to chase UK-based associate companies behind offshore structures used to promote *loan* schemes used by 50,000 freelancers and contractors to minimise their tax bills on pay. HMRC will be able to freeze the assets of such companies and shut them down. Many clients do not realise that these schemes are no longer legal, said the Treasury.

*He confirmed a new 50 percent business rates discount for the retail, hospitality, and leisure sectors, lasting one year. Pubs, music venues, cinemas, restaurants, hotels, theatres, gyms, any eligible business can claim the discount on their bills, up to a maximum of £110,000, reducing the burden of business rates by £7bn over the next five years. This is alongside a commitment to modernise the business rates system with more frequent revaluations, though full-scale reform first has to await a decision on whether to impose an online sales tax. To support investment in *England*, the government is freezing the business rates multiplier for a further year, a tax cut worth £4.6bn over five years. Alongside the Small Business Rates Relief, the chancellor claimed his measures meant that more than 90 percent of all retail, hospitality and leisure businesses would see a discount of at least 50 percent in their business rates payments.

*The banks' eight percent surcharge on their profits, on top of the current 19 percent Corporation Tax (CT), is being cut to three percent. With CT set to rise to 25 percent from April 2023, that would mean banks will be paying 28 percent tax on profits.

*Mr Sunak announced that the planned rise in fuel duty had been cancelled.

*The **National Living Wage** is set to rise by 6.6 percent, from £8.91 per hour to **£9.50** from next April, he confirmed. This increase in the minimum wage for all employees aged 23 and over is more than twice the current annual 3.1 percent rise in the RPI cost of living index. The rise means a full-time employee will get £1,074 extra a year *before tax*, from April, the Treasury claimed. However, Paul Johnson, director of the Institute for Fiscal Studies, said that in reality it was worth £700 after tax and NICs and "less than £300 to anyone on Universal Credit (UC)". The **National Minimum Wage** for young people aged 21-22 will rise from £8.36 to £9.18 an hour – a rise of almost *ten* percent - and the Apprentice Rate will increase from £4.30 to £4.81 an hour.

EOT promoted as tax-avoidance vehicle - claim

The chancellor should clamp down on '*abuse'* of Capital Gains Tax (CGT) relief designed to encourage employee ownership - when SME businesses are sold to employees without incurring any tax, said the Chartered Institute of Taxation.

Some financial advisers are recommending SME owners to sell their businesses to their employees via an Employee Ownership Trust (EOT) as a cynical tax-saving short term measure – with no commitment to employee ownership - before selling on, or floating the company, alleged the Institute.

EOTs were created in 2014 during the coalition government to encourage businesses to convert to employee ownership. Qualifying SME owners can sell between 51 and 100 percent of their business to their employees without having to pay any CGT. The trust, which is supposed to have at least one independent trustee, looks after the employee-owner shares, though it is not an Eso structure in the normal sense of the word, as the 'share' ownership is indirect.

Though the EOT concept took a while to take off, there are now up to a dozen new ones almost every month. They are popular among both small owner-founder manufacturers and professional consultancies and partnerships, such as architects, engineers, PR outfits and lawyers.

"*Taking into account the known unknowns, I think there are now at least **500 EOTs** in existence in the UK*" estimated the late Nigel Mason, then director of corporate finance at Centre member the **RM2**

Partnership last January. There were 104 new EOTs established last year, just one short of the 105 in 2019, which itself was a record year. This brought the total number of extant EOTs to 421 by January this year and a further 14 had been sold or dissolved over the years since being established. "*This is almost certainly an under-estimate of the total number of EOTs. Many companies choose not to publicise their transaction, and EOTs are not always discernible from public sources like Companies House,"* added Nigel, who died at home last September.

In its pre-Budget submission, the taxation institute (CIOT) urged the government to review the EOT tax regime in order to encourage more take-up and to discourage tax relief abuse. One policy option the chancellor should consider in this respect is to require all tax-advantaged EOTs to be resident in the UK, said the Institute. Another would be to require all EOTs to have a majority of independent trustees.

Pete Miller, chair of the CIOT's owner-managed business committee, said: "We are concerned that some advisers seem to be recommending EOTs as a tax planning measure without any real commitment to employee engagement. *"In particular, we have heard of advisers recommending EOTs simply as an interim tax-saving step where the intention is, in the relatively short term afterwards, to sell off or float the company. This suggests a lack of genuine commitment to employee engagement.*

"We think it is worth exploring ways to guard against this outcome –and the consequent loss of tax revenue. One option would be to require EOTs to be UK resident as a condition of accessing the favourable tax treatment. Fundamentally, promoting employee engagement is at the heart of the purpose of EOTs, achieved mainly through the trustees' and directors' abilities to influence the company's conduct. More could be done to enhance that engagement through options such as requiring a majority of trustees to be independent of the original owner. ***Overall, we think it is the right time for a review of these provisions***," he added.

The CIOT urged the government to consult on options for changes to the tax regime in order to:*eliminate unnecessary costs in transferring to employee ownership, *remove a potential exchequer risk where the tax breaks are used to save tax without real commitment to employee ownership and *to achieve the policy objectives of promoting employee engagement more effectively.

Mr Miller continued: "While there is clear support for the principle and the broad outline of the EOT tax regime to support this model, there are certain aspects that do not work as well as they could and should do. Removing unnecessary costs from the process of transferring a company into employee ownership should be a priority. When a business owner sells a company to an EOT, it is usually necessary to approach HMRC to obtain agreement for the way the trust obtains funds to pay the sale price to the seller out of the future profits of the company it now owns. Seeking and obtaining clearance involves unnecessary costs for taxpayers and for HMRC – costs that could be eliminated by confirming *in legislation* that the contributions paid by the target company to fund the acquisition do *not* suffer a tax charge. Putting that treatment on a firm statutory footing would provide certainty and save everyone time and expense.''

Research has been cited to show that employee-owned businesses are usually more profitable and have a happier, more engaged and more productive workforce, compared to privately-owned peers.

EVENTS

Hold the day - share plan symposium 2022

The Esop Centre is pleased to announce that senior member **Baker McKenzie** has offered to host the Centre's **Vth share plans symposium** which, subject to Covid, will take place at its London offices at New Bridge Street EC4 on **Wednesday March 30** next year. **Jeremy Edwards**, partner and head of Baker McKenzie's employee benefits group, will assist the Centre in the preparation of the programme. *More info in the next issue.*

2021 newspad awards

The 2021 *newspad* all-employee share plan awards are now open for entries. These annual awards recognise the achievements of companies which offer all- employee share plans and hold up best practice models for other companies to follow. Companies can nominate themselves or advisers can make submissions on behalf of clients. The deadline for all nominations is 5:00pm on **Friday January 14 2022.**

The award categories this year are:

1. Best international all-employee share plan (more than 2,500 employees)
2. Best UK all-employee share plan in a mid range company (500-2500 employees)
3. Best all-employee share plan in an SME (fewer than 500 employees)
4. Best executive/managerial equity reward plan (involving more than 100 employees)
5. Best share plan communications
6. Best use of technology, AI or behavioural science in share plans
7. Best HR director/ head of reward/company secretary/employee share plan manager
8. Outstanding company leader

Application process

To submit an application for the *newspad* all-employee share plan awards, complete both following stages:

1. Online application form - complete all sections of the online form, providing as much detail as possible. (*Alternatively, entries can be made by attaching one or two explanatory documents).*

2. Supporting documentation - where appropriate, please back up your application with supporting documentation. Either upload the files at the end of the form, or email them to esop@esopcentre.com.

The winners will be decided by impartial judges, experts in the use of employee equities, plus Malcolm Hurlston CBE, founder of the Esop Centre. The *finalists* will be announced in *newspad* and award certificates will be presented during the Centre's **British Isles share plans symposium** on March 30 2022.

Review the **entry rules** at www.esopcentre.com/about/awards. For other questions contact us at: esop@esopcentre.com Tel: +44 (0)20 7562 0586.

Eso schemes & trustees conference 2021

Join us for this year's Esop Centre employee share schemes and trustees conference, held in partnership with STEP Jersey, which will be hosted on-line on Wednesday December 1 2021 from 10:30 am.

The event comprises a 90 minute live virtual conference. Lisa Springate, head of legal & technical at Jersey Finance will set the scene with a keynote address. The experienced speaker panel will then discuss their presentation topics, with delegates encouraged to interact live, followed by breakout discussion groups for all participants. Most importantly, all paid participants will have access to supporting material. The speakers' pre-recorded presentations will be released a week before the live panel session.

With the international reach of trustees and the growth in the establishment of employee ownership trusts, it has never been more important for those interested in employee share schemes and trusteeship to stay informed with expert views and enjoy the continuing education which our conferences and seminars offer.

The programme is drafted to provide relevant technical information, which we trust will be acceptable as counting towards your Continuing Professional Development or Continuing Competence.

The programme will include talks on: Recent changes in UK tax laws: court and tribunal decisions and the Finance Bill 2022; The rise of Employee Ownership Trusts; The Common Reporting Standard – what happens to the data within HMRC?; Round-up of the most common new structures in Jersey; Hot topics in employee share ownership; and Powerful insights into share valuation for employee share schemes.

Share schemes experts will include: David Pett, Barrister, Temple Tax Chambers; Elaine Graham, Director, Zedra Guernsey; tax expert Paul Malin of PMC; Katherine Neal, Head of Employee Incentives at Ogier; share plan lawyer Graham Muir, Partner, CMS; and David Craddock, Founder and Director, David Craddock Consultancy Services.

Prices: Esop Centre/STEP members: £125 Non-members: £195. To reserve your place, email esop@esopcentre.com or call the team on +44 (0) 20 7562 0586.

Webinar: Esop sofa- newspad review IV

The next *newspad* review webinar will be at **11:00am on November 18**. A share schemes expert panel, including **Wincanton** company secretary **Lyn Colloff** will discuss in depth their pick of articles featured in recent editions of *newspad.* Global Shares' Darren Smith will chair. registration is open.

Separate employee shareholder votes urged

The Centre is to examine the proposal that all quoted companies should record separately employee votes in order to improve board understanding of their concerns. This was decided by member participants in a lively online members' webclave, hosted by the **Esop Centre**, to study a paper entitled *'Employee Voice*,' authored by Damian Carnell and Jane Allen of CORPGRO. The online poll during the webclave came down two-thirds in favour registering a distinct employee voice, although more than a quarter said they did not support it.

The discussions were led by Damian, founder/director of CORPGRO; Anna Watch, head of executive share plans and senior manager, corporate governance, at BT and Jennifer Rudman, industry director, employee share plans, EQ. Damian's paper proposed that companies should compare the separate vote results of employees and non-employees and analyse the rationale for any marked differences. Good practice would be to present the findings at board level and feed back the main conclusions to the employees with an addendum highlighting the implications of employee voting patterns for the company. Damian said: "*A forgotten benefit of Esops is the vote. The problem is that the Esop vote in the register is a very small percentage, so employee shareholders do not have much say. Could we not listen to the employee vote as a separate category and feed the outcome back to the board to compare with votes over time and with institutional investor votes?*

This could be a source of participation and information for the company. There is a proviso – share options do not have a vote; so we would need some sort of synthetic vote to allow all Esop participants to have their voice heard."

Participants, who split into working groups, analysed the complexities of organising separate employee shareholder votes, such as the eligibility of employee shares held in ISAs, shares held in nominee accounts, the fact that Esop shares held in trust generally did not vote; whether share options could qualify too and whether the concept should be enforced by regulation.

All agreed that the current level of *employee* shareholder participation in agm votes was far too low (*often below ten percent*) and had to be improved. Some companies even refused to allow their employees to vote their shares at agms, while some nominee account holders did not inform employee shareholders when agms were coming up and what the agenda resolutions were. Furthermore, those agm agendas which confined themselves to re-electing directors and approving the board's remuneration report and/or the remuneration policy report were unlikely, in themselves, to attract much employee shareholder enthusiasm or interest, according to one participant. However, *newspad* editor Fred Hackworth said that in the US, engaged employee shareholders at major companies such as Amazon and Alphabet (owner of Google) were tabling agm resolutions demanding that directors draw up detailed plans to counter climate change. Others, like Senator Bernie Sanders at Walmart, were pushing for the appointment of employee directors to the main board of directors. So, the question was whether separate votes for employee shareholders would encourage this US trend towards wider business-societal agm agendas to migrate to the UK?

If detailed monitoring of employee shareholder agm votes in smaller quoted companies were judged too expensive, an alternative might be to canvass employee views well before such meetings. In general, younger employees were often keen to vote, as they were more interested in what their employer was doing, particularly in the ESG field. The pandemic had made it easier for employees to 'attend' virtual agms and technological advances had cut the cost of crystallising who had voted for what.

Overall, the traditional view was that the ability to compete depended upon optimising shareholder return and that the employee voice had no valid role in governance, but the counter view was that competitiveness depended on the capacity of firms to mobilise employee skills as a key source of innovation and learning.

The webclave was chaired by **Prof Michael Mainelli**, chairman of the **Z/Yen Group,** which operates the Esop Centre.

Webinar report

There are tax-advantaged employee share schemes, which reference HRMC's view of a share scheme and whether or not it comes with tax statutory advantages as a result. Furthermore, some Eso plans, like the SME share option based Enterprise Management Incentive (EMI) contained operational tank traps which, if breached, could result in the loss of all tax advantages. However, outside the approved schemes, it was still possible to construct schemes that delivered significant tax efficiencies, which was just as well, as some company structures do not permit the introduction of such schemes. In this **Centre- FS Club** webinar**,** share schemes expert **David Craddock** explored innovative strategies based on tax-efficient solutions in employee share ownership programmes. David, author of *Tolley's Guide to Employee Share Schemes,* explained the tax efficient elements which could be brought into play in LTIPs, share purchase arrangements using various share classes, so-called *share loan* schemes, growth share models, JSOPs, tracker shares and subsidiary company schemes. The two legislative pillars which authorised such innovative tax techniques were – the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) and the Taxation of Chargeable Gains Act 1992 (TCGA 1992). The former includes the Section 431 Tax Election regime that, when properly implemented for shares to which restrictions are attached, can protect future gain from income tax, subject instead to the less punitive Capital Gains Tax regime. The latter includes Section 272 that, when harnessed to share valuation case law, enabled share values to be established that can be relied upon in Eso schemes, whether developed from bespoke employee share schemes legislation or the general legislation.

He showed how, using an *unapproved share option scheme*, where the options were granted at a substantial discount, it was possible to emerge at vesting with a higher net return than would have been the case using an option awarded from a tax-advantaged Company Share Option Plan (CSOP) which had had the same *underlying value* (using the unapproved scheme) at the outset.

David then presented the *employee share trust*, which hinged on company cash and share movements in and out of an offshore trust in a tax-efficient manner as follows: Corporation Tax relief for the company independent of the trust; CGT treatment for the existing shareholders; Income Tax relief for the employees independent of the trust and no CGT charge for the trust, given its offshore status.

He then presented successively tax-efficient approaches to: the share purchase scheme, the share loan scheme, a variant of the share growth scheme, the tracker shares concept and finally non tax-advantaged share schemes in subsidiary companies. This webinar was chaired by **Ian Harris**, md of the **Z/Yen Group**.

UK CORNER

Private equity kills off more UK share schemes

More than 20,000 employee shareholders at supermarket chain **Morrisons** witnessed a bitter-sweet outcome to the four-month takeover battle for their employer. On the one hand, they were mourning the death of their share schemes but, at the same time, many were ready to bank thousands of pounds in gains via their last Morrisons share scheme participation.

Former Tesco boss Sir Terry Leahy and his US private equity backers won control of Morrisons, which has 112,000 employees, after winning a £7bn auction, despite a mini-revolt against the deal by some private and employee shareholders.

Morrisons' popular SAYE-Sharesave scheme, administered by **EQ**, appeared doomed, because the company was being taken private – and its shares de-listed by the winner - US private equity house **Clayton Dubilier & Rice (CD&R).** Its bid trumped that of **Fortress,** a rival group of investment houses and billionaires by just *one penny* a share. Centre member **Clifford Chance** was CD&R's main legal adviser.

The winning bid was £2.87 per share – 61 percent above the group's share price before the first bid emerged - so employee share scheme participants could at least look forward to a bonanza pay-out from their schemes.

The CMA ordered an *initial* inquiry into whether the 339 Morrisons' petrol stations CD&R had acquired would unfairly distort the market, when added to the more than 900 the latter already had and could order CD&R to sell off some of its petrol stations, for it to get regulatory approval. However, Morrisons shares had been cancelled already by the new owners, so the employee share schemes disappeared.

CD&R's £7bn takeover auction victory, the cost of which rose to almost £10bn once Morrisons' debts were taken into account, was approved by the supermarket chain's board, paving the way for a shareholder vote. Although 75+ percent of shareholder voters had to approve the takeover, City institutions fell into line and so it passed.

Morrisons directors expect collective pay-outs totalling £40m as their reward for backing the deal.

However, CD&R, owner of the Motor Fuel Group, which has 900 petrol stations, warned that it could yet walk away if the Competition & Markets Authority decided to launch an in-depth investigation into the deal.

Some private equity firms have a poor reputation for using high levels of debt to buy companies and then chasing profits aggressively through asset sales and job cuts, but CD&R gave assurances, including keeping Morrisons' HQ in Bradford, though they were not legally binding. As two-thirds of the takeover cost was being financed by loans, Morrisons' debt pile will double and it will be weakened. Analysts expect asset sales of c.£2.5bn, including job losses, to achieve private-equity levels of return on the investment. The Morrison family was left with a residual five percent stake in the company.

Recent issues of *newspad* have explained how fatal most private equity acquisitions are for employee share schemes. This is partly because private equity (PE), with the exception of Centre member **KKR**, which is listed on the NY stock exchange, does not like share schemes as they dilute ownership of the company. Secondly, HMRC generally does not grant tax-advantaged status to any employee share schemes where the acquired company is no longer listed and/or where it cannot operate at arms length from its new private equity owner which, usually, is not listed either. So even if PE were interested in installing an Eso plan in newly acquired UK companies, the lack of any tax relief for employee participants might reduce the appeal of such schemes to the workforce.

Employees get attached to their employee share schemes, as **BA** found out in January 2011, when it merged with Spanish carrier Iberia in a then new holding company, **International Airlines Group (IAG)**, which is listed in London and Madrid. Although BA staff were offered shares in IAG, many did not want them and began demanding, through their trade unions, that BA restore their popular share plans. IAG refused to do so, but even if it had done so, any new BA share plans would have been unlikely to qualify for UK tax advantages because it was no longer an independent company. More recently, the BA pilots union tacked on requests for profit-sharing schemes to its pay rise demands.

On the same day as CD & R's takeover vote victory, **Vectura**'s London-listed shares were cancelled after its controversial acquisition by cigarette manufacturer **Philip Morris**, which at least has its own US based employee equity plans.

The collapse of the proposed buyout of **Entain**, the owner of the Coral and Ladbrokes betting brands, extended the life-span of its ShareSave plan, launched only last April and beamed at 22,000 employees worldwide; almost 14,000 of whom work in 2,885 Ladbrokes and Coral shops spread across the UK and Ireland. US outline bidder **DraftKings,** a fantasy sports and gambling company, had until November 16 in which to hammer out a £16.4bn takeover deal, but pulled out before the end of last month. By permitting monthly contributions as low as £5, Isle of Man based Entain hopes to put share ownership within reach of all staff, including overseas employees. The company said it had placed an initial £100 monthly cap on contributions to reflect the global nature of its business and currency differences among the workforce, with the aim of maximising its appeal to all colleagues. The new plan superseded previous employee share plans introduced in countries in which it operates and companies that had, by acquisition, become part of Entain in recent years. Under the terms of the plan, colleagues save a monthly sum over three years, after which they can buy shares in Entain for 20 percent less than their market value was at the start of the invitation period.

'*Uncle Sam's shopping trolley has been filled to over-flowing with UK based companies since the start of the pandemic*,'' wrote Jasper Jolly in *The Guardian.*

Josh Pack, md of *Soft Bank* backed **Fortress,** smarting from his defeat in the auction for Morrisons, warned that Fortress could soon be back in the market for a different slice of UK plc. Fortress has *£37bn* worth of assets under management.

There was speculation in the City as to which large UK listed company would be the next target for US private equity. Rival supermarket group **Sainbury's** seemed an obvious target, even if its share price had almost doubled already during the past year. Furthermore, the Czech 'sphinx' billionaire Daniel Kretinsky had built up a ten percent stake in Sainsbury's so far this year, via his Vesa Equity Investments fund, while the Qatari state sovereign wealth fund owns a further 15 percent. If a takeover bid were tabled, these two would play a pivotal role in the outcome.

Many of Sainsbury's estimated 31,000 employee shareholders fear for the future of their employee share schemes, even though they would stand to gain in the short term from being forced to sell their shares in the event of a successful takeover. Employee participants in Sainsbury's 2021 SAYE-Sharesave scheme were awarded options fixed at 161p, after applying the 20 percent discount, but in recent weeks, the share price hovered at just under 300p, almost *twice* as much as the option price. As any takeover bid would be pitched at a premium of at least 20 percent to the market price, Sainsbury's employee shareholders would more than double their savings investment via a final pay-out, which would follow a takeover. Then the PE acquirer almost certainly would de-list Sainsbury's, thus terminating its employee share schemes.

Even the UK's largest supermarket chain, **Tesco**, might not be immune to US based PE acquirers. One adviser told The Telegraph: '*Tesco is not so big that I can't bid for it. The reason is that, due to quantitative easing and low interest rates, there are major buckets of capital swishing around, not just PE, but family offices, sovereign wealth funds and high net worth individuals."* A banker said that the Tesco price tag of c.£32bn could be met because two PE houses could team up and fund a takeover with £8bn in equity, with the rest coming from debt.

***Asda** ditched its **Walmart** (former owner) based share schemes, including its popular SAYE-Sharesave scheme, which regularly attracted up to 25,000 employee participants, after it was taken over by the Blackburn based **Issa** brothers, Zuber and Mohsin, backed by the private equity house **TDR.** The new Asda will be loaded with an extra £500m of debt after a deal to sell its petrol stations fell through, said *The Telegraph.*

*Meanwhile, hundreds of UK employee shareholders at Coventry-based defence and aerospace technology firm **Meggitt** were on the verge of losing both their SAYE-Sharesave and SIP schemes, as the takeover battle was won by US aerospace company, **Parker-Hannifin (PH),** which gained almost 100 percent of votes cast at a shareholder agm. Meggitt employs 2,300 in the UK, 1,000 in the rest of Europe and almost 5,000 in the US. Belatedly, business secretary Kwasi Kwarteng called in the CMA to probe the deal on grounds of national security.

*About a tenth of the workforce at Warrington-based **Blue Prism** could be made redundant after a £1.1bn takeover offer by US buyout group **Vista Equity Partners** was accepted by the Blue Prism board. Texas-based Vista had tabled a £11.25-a-share offer for the Aim-listed developer of automation software, with the aim of merging Blue Prism with **Tibco**, a California database analytics group that it acquired seven years ago. The Blue Prism Group operates employee and non-employee share plans alongside a Share Incentive Plan (SIP), plus an employee stock purchase plan, launched in 2017. At least 75 percent of shareholders had to agree the £11.25 per share offer before it could go forward. If it does, Blue Prism employee shareholders will lose their UK based share schemes. Hopes that UK staff could participate in Tibco's employee equity arrangements in this scenario were deflated when Vista admitted that it would look to sell all or part of the enlarged company, potentially within the next year.

*Employee shareholders at Bournemouth based **Ultra Electronics** had to exercise their Sharesave options on completion, before October 22, to avoid them lapsing, after it was taken over by aerospace rival **Cobham,** owned by the US private equity house **Advent**. Ultra's board agreed the £2.5bn takeover, so Ultra and its subsidiaries will become wholly owned subsidiaries of Cobham, which is loaded up with more than 2bn of debt by Advent. Substantial chunks of Cobham's assets have been sold on, despite pre-takeover promises to keep the group largely intact. Ultra Electronics employs 4,500 worldwide and operates several popular Eso schemes, including both SAYE-Sharesave and the SIP. In its SIP, employee share dividends are automatically reinvested into the purchase of more SIP UE shares, which are held in trust for a minimum three years. It looked very unlikely that Ultra's new owners would revive these all-employee share schemes.

*This year is on course to be the strongest for M & A in the UK since 2015, with more than **£169bn** worth of deals completed so far, said *Bloomberg Data.*

£1.4m free shares award at Lords Group

Building materials distributor **Lords Group** announced that it would award 2,105 free shares to each of its 485 employees following its AIM listing earlier this year. The specialist building, plumbing, heating and DIY goods distributing group, which listed at 95p per share (*and now trading at above 130p*), after being valued at £150m and which raised £52m at its IPO, will offer shares to all staff who were employed at the business six months before the float. The 1m shares on offer will be placed in an EBT on behalf of the employees, who are required to stay in their roles and hold the shares for at least three years. The group applied for the shares to be admitted to trading on AIM, their value having risen by more than 30 percent since July. Lords ceo Shanker Patel explained that the share incentive plan (SIP) was announced in recognition of employee efforts and the importance of ensuring that all employees are "*well motivated and identify closely"* with the success of the group. "*We are a people business and the future success of the group relies on their continued hard work and commitment*," he said. The company announced it had recorded a pre-tax profit of £4.5m in the first half of its current financial year, while revenue increased from £124m to £179m. Patel and his team plan see its turnover almost double to £500m by 2024, as well as increasing net return on sales, edging up towards the higher six to seven percent margin achieved by larger building suppliers, such as Travis Perkins.

Ashley sidelines independent shareholders

A £100m bonus plan for Mike Ashley's prospective son-in-law was approved by Frasers Group shareholders, but only because Mr Ashley owns 64 percent of the shares himself. More than **55 percent** of independent shareholders voted against the group's future remuneration *policy*, showing strong dislike of the £100m bonus scheme, while 50 percent voted against the remuneration *report*, indicating disapproval of last year's £100,000 cash bonus and pay rise for fd Chris Wootton. Furthermore, 26.5 percent of independent investors failed to back his reappointment in one of the votes, amid concerns over corporate governance at Frasers, which owns *House of Fraser, Sports Direct* and *Evans Cycles*. Advisory proxy groups Pirc and Glass Lewis said that shareholders should vote down the bonus plan, which they characterised as being vulnerable to "*excessive payouts*." It will hand incoming ceo *(and future son-in-law*) Michael Murray a bonus of up to £100m if the Group's share price reaches £15 – about double the present value - and maintains that level for at least 30 days at any time during the next four years. The retailer received almost £100m in rates relief during the pandemic and a further £80m in furlough payments, but has announced no plans to return any taxpayer support. Mr Wootton told the agm that Frasers had done well to keep open more than 40 of the 59 House of Fraser stores it bought out of administration in 2018 "given how bust that business [was] when we took it over." He added: "The government support really supported us holding on to that many stores."

Reasons to hope for share plans revival

Although the pandemic torpedoed many all-employee share scheme launches last year, there are good reasons for hoping that the fortunes of both Sharesave and the Share Incentive Plan (SIP) can be revived, said Centre member **MM & K**. A survey revealed that only 17 new Sharesave schemes were launched in the UK last year (*the lowest since 2013 and way below the record high of 92 in 2015*) and the number of invitations or new grants was the lowest, at 279, for many years. In addition, the number of new companies offering SIP for the first time fell to just seven in 2020, with the average employee contribution (to acquire

Partnership Shares) falling to £72.38. MM & K, the leading independent remuneration strategies adviser, said that the reasons for the decline included: *the removal of interest bonus on amounts saved under Sharesave *reduced levels of net disposable income as the pace of wage rises slowed *lacklustre performance of the FTSE 100 over the past five years (although the FTSE 250 has fared better over the same period) *the greater complexity of SIP over Sharesave, which may not have been adequately balanced by communicating the benefits of being able to acquire Partnership Shares using pre-tax, pre-NIC income, or the Matching and Free Share elements, via which participants acquire more shares at no additional cost and *size constraints on companies able to use the tax-advantaged Enterprise Management Incentive (EMI) and the £30K limit on outstanding individual option awards in Company Share Ownership Plans (CSOP). Nevertheless, there were reasons, said MM & K, why all-employee share schemes might, nonetheless, be due for a revival, namely:

*The post pandemic Treasury forecasts for UK economic recovery were good: GDP could grow by well over six percent this year and by 5.6 percent next year; public sector borrowing was expected to peak at £172.3bn this year but to fall thereafter. Retail price inflation was forecast to reach 4.5 percent, reducing thereafter; the rate of unemployment was forecast to fall to about four percent in the medium-term.

*Secondly, the NICs changes should encourage more companies and their employees to invest in share schemes (*see Budget story*).

*Thirdly, said MM & K, the need for and benefits of an engaged workforce had become more apparent during the pandemic. All-employee share schemes provided employers with an opportunity to engage with the whole workforce, thus creating a common sense of ownership and purpose. Through the free share element of SIP, employers can enable employees to acquire shares at no cost. The discounted acquisition cost available through Sharesave and the ability to acquire SIP Partnership Shares using pre-tax, pre-NIC income both provide an element of stop-loss protection.

*Although UK share schemes are popular among employee participants, companies should intensify employees' *financial education* and raise awareness about equity ownership benefits to boost take-up rates and promote engagement, urged **EQ**'s new *Shareholder Voice* research. Satisfaction among share owners reflects a generational shift in attitudes toward employment. According to EQ's survey, 85 percent of employee shareholders were positive about the experience and 75 percent said they would buy shares in other companies. These figures were significantly higher among baby boomers (57-75 age group) than among Gen Z (18-24) employee shareholders in the UK and the US.

In 2020, there were more than 15,000 tax advantaged UK employee share schemes—six percent more than in 2019, largely due to the popularity of EMI, the stock options based incentive for key employees, now used by more than 12,000 SMEs. This partially hid the struggles of the three other tax-advantaged employee plans to do more than tread water. Furthermore, the recent study by the Social Market Foundation, revealed that almost four in every ten employees declined to join their company share schemes because they couldn't afford to do so. EQ's research showed, for employees working in quoted companies, 65 percent chose to buy shares to boost their wealth and 38 percent because they thought the share price would rise in the next 12 months; 83 percent of participants check the share price at least once a month; and 50 percent feel the employer has a high responsibility to communicate the company's financial performance with them. A further 22 percent opted into their employer's scheme because they believe in the company's goals, and nine percent feel they have influence over their company's performance.

Recent changes in employee-employer relationships cried out for a different approach to help schemes stay relevant, said David Ellis, consultant at David Ellis Associates. Millennials and Gen Z were now the dominant generations in the workforce, but they tended to stay with the same employers for a shorter period compared to baby boomers. Hence, in EQ's wish list of desired UK share scheme structural changes, there is one stating that: *Employees should be able to share in the company's success through the equity they receive, but not be penalised with loss of that equity if they leave, because schemes which offer the option to buy shares after five years of employment have become less effective in light of higher personnel turnover.

By contrast, many US plans are starting to offer share ownership earlier in an employee's tenure with the company, so UK employers too will have to offer shares soon after hiring and allow employees to buy them frequently to help reduce the risk of stock market volatility. "Explaining and communicating clearly how these factors work is critical to maximising take-up," said Mr Ellis "The most sophisticated schemes will use slick digital systems to ease the experience and explain how they fit into the employee's long-term financial plan." The tax advantages of share schemes are substantial and make the plans much more attractive, but those advantages may be lost on employees if companies fail to provide education and guidance on share ownership.

*Another trend schemes needed to keep up with was the rise in gig workers, zero hours contracts, and other employees in a less formal relationship with the company, said Liz Pierson, a partner at **Deloitte.** *"In the UK, current laws make it difficult to invite them into your schemes, but they are a valuable part of the workforce, so companies might want to include them*," she said. "*This area has been getting some attention and, although it will be complex, the authorities might consider changing the definition of who can join."*

*Companies wishing to attract their employees to share plans can choose various strategies. "*A good way to kick start ownership is with a free shares award, then use partnership and matching plans to build on that,"* said Jennifer Rudman, industry director, employee share plans, at EQ. "This helps attract new joiners as well as boost [employee] retention." Another path could be introducing auto-enrolment in stock purchases in the same way the UK has for pensions — because "*once placed in the plans, people tend to stick with their shares,"* said Graham Bull, EQ's head of all- employee share plans. Employees can always opt out if they don't want to join for any reason. Jim Wulforst, head of equity compensation at EQ, said one reason take-up in US stock purchase plans varied significantly between companies was the differing quality of their communications. "*We see 70 percent participation in some companies and 20 percent in others,"* he said. "*Some companies have staff and resources dedicated to promoting share ownership plans but many don't. Generally, companies need to do more on promotion and communication of the plan and education about it, especially in sectors where the employees may not be tech savvy, such as manufacturing*." Digital communication played a key role in boosting participation, as technology tools allow employees easy access to information about their shares, as well as details about the company's performance, Mr Wulforst added. "This can work particularly well with IPOs, where communication can start at least a year ahead of the float. *Employees can learn that, if they are still working for a company when it lists, they will get a number of shares*." Employees feel existing communication tools are effective in keeping them informed about share ownership, but they consider their employers responsible for providing education about their investments, according to the EQ survey. Most participants track their company share price at least once a month, which suggests share plans are effective at increasing overall employee engagement with the company, added Ms Rudman.

Ian Cox, md of share plan services at EQ, said companies could offer more options on plan maturity such as individual savings accounts (ISAs), and combine that with advice about financial wellbeing. This way, the scheme would become a stepping stone to wider share ownership, helping employees build cash resilience, reduce debt and diversify savings. This echoed research by the SMF, suggesting employee share ownership could bolster the financial resilience of employees. He said: "*If you give them opportunities to learn, grow and earn through a share plan, you're more likely to keep them, but you need to get the message right*."

Ms Pierson said: "Over recent years, we have seen much better communication about share plans, which *reflects a shift in the way these schemes are used. They are less about another reward, more about engagement and getting employees involved in company strategy. With a global or diverse workforce, it's a way to make you feel part of one organisation."*

*Confidence in the value of SAYE plans, at least among employee participants, has never been higher, according to a *ProShare* report, with the average monthly savings for new grants rising from £138.51 in 2019 to £146.06 in 2020, the highest amount recorded. Last year saw a significant rise in the employee take-up of company SIP schemes too – up to ***41 percent***, up from 33 percent the previous year - which had been driven by the relatively low price of shares in the first year of the pandemic. It found that, as share prices declined, the number of employees making a withdrawal from their SIP funds fell in the period with 43 percent fewer participants opting to cash in part or all of their plan holdings. The research showed that low earners in the bottom income quartile of share plans were on average £10,900 better off than people who are not employee shareholders.

COMPANIES

***Burberry** appointed Jonathan Akeroyd as its next ceo in a deal including a £6m *"golden hello*" to cover the loss of bonus and share awards for leaving his position as ceo of rival Versace, after overseeing the sale of the business to Michael Kors three years ago. Burberry's outgoing ceo, Marco Gobbetti, is due to leave the UK's biggest high fashion brand to take the helm at luxury Italian group Salvatore Ferragamo at the end of the year. Akeroyd will join Burberry on April 1 next year. He previously held senior fashion roles at Alexander McQueen and department store Harrods. Burberry agreed to give Akeroyd cash and share awards worth £6m over the next four years to cover the loss of equity and cash incentives at Versace that he will have to forfeit for leaving. "*These buyout awards are in line with peer awards and deferral schedule of the awards being forfeited by Jonathan*," the company said. He will be paid a base salary of £1.1m, with a maximum annual bonus worth up to 200 percent of his base and a share plan worth up to a maximum 162.5 percent of annual salary.

***DXW**, an agency which designs, builds and runs digital public services, became employee owned after an employee ownership trust (EOT) acquired a majority of its shares on behalf of 80 staff in London and Leeds. The key decision was taken by founder Harry Metcalfe and his directors so they could protect the agency's values and culture, and continue to grow. Mr Metcalfe chairs a board of trustees which leads the EOT, comprising two external trustees with outside expertise and two employee trustees representing staff views. The trust will hold the organisation accountable to its mission and values and will work in the interests of its service users. The leadership team will remain intact and form the new board, with directors working alongside the EOT to guide strategy and growth. Through the trustee board, employees will be more involved in shaping the agency's future direction.

*Petrol stations **EG Group**, owned by the Issa brothers who recently bought **Asda**, gave its 10,500 UK employees a five percent pay rise, which took effect on October 1. The increased rates of pay apply across all of EG's petrol filling stations and food service brands throughout the UK, with each member of staff aged 18 and above now being paid a minimum of £9.50 per hour. More experienced employees, such as team leaders and supervisors, will receive a minimum of £10 per hour, representing an average hourly wage increase of more than five percent. The Blackburn-based business said the pay rise has been awarded in recognition of employees' "hard work and commitment" throughout the pandemic.

*Lord Rothermere secured a deadline extension in which to make an £810m bid to take the parent of the *Daily Mail* private, as pension trustees negotiate the scale of future funding payments into the company's schemes. The Rothermere family, which has a 30 percent stake in Daily Mail & General Trust (DMGT)**,** had to make a *"put up or shut up*" offer for the business. The Takeover Panel had granted a second extension to make an offer, as negotiations continued to secure the backing of DMGT's pension trustees, the last of three preconditions that had to be met to take the business private. DMGT pays £16m a year into its three main pension schemes. The company has a significant pension deficit, although the scale is not known. Trustees were hoping to secure the future funding of the scheme, which could include asking for an increase in payments, or seeking an asset-backed security solution, such as against DMGT-owned property. If DMGT is taken private, it will leave *Reach* – the parent company of the *Mirror, Express* and *Star* national titles and regional publications such as the *Manchester Evening News* – as the only major UK newspaper group that remains a publicly listed company.

*Outdoor adventure company **Go Ape** transferred the majority of shares in the business to an EOT, allowing its workforce to have a stake in the company's success. Ninety percent of Go Ape shares were handed over to staff, with the remaining ten percent retained by founders Rebecca and Tristram Mayhew. The forest activity business employs around 1,000 UK employees in 35 locations. It operates in 16 US states too. Rebecca Mayhew said: "*Go Ape has always felt like part of our family. We knew deep down we would never be comfortable selling the business to investors."* Go Ape said its employees were passionate about the company and its values and "best positioned to achieve success necessary to promote [its] values." Consultancy network **The HR Dept** announced it too would transfer to employee ownership from November 1, while employer marketing agency **Blackbridge Communications** last year transferred 65 percent of its shares to a trust managed on behalf of employees. The Employee Ownership Association (EOA) claimed that there are 730 employee-owned businesses in the UK, though far from all are EOTs. A survey of employee-owned businesses by the EOA found 70 percent saw employee ownership as socially responsible, with 77 percent stating that "*making a positive contribution to society and environment*" was part of their purpose.

*Welwyn Garden City, based groundwork and concrete business **Ground Construction Group** established an EOT for its 100+ members of staff.

ZEDRA

Group founder Trevor Diviney transferred *all* his shares at market value to the EOT, making the transaction exempt from CGT. He stays on as executive chairman, while his younger brother John becomes md, Michael Greene is deputy md and Stephen Bell is fd. The EOT will be represented by a corporate trustee led by an independent chairman and the trustee board of four will include one employee director. Trevor Diviney said that during the past 24 years, the group had achieved controlled growth, continued advancement and reinvestment. "*The EOT route will enable us to transition the ownership structure without the potential disruption a sale to new owners might involve, thereby maintaining continuity of culture. It is an opportunity for us to recognise and reward the contribution our staff make to the continued success of the group*," he added. Ceo Simon Morrish said: *One thing that is essential when operating a business is to align people's incentives with the interests of the business. It is something I drive in every company I am involved in. You have to ensure that people are incentivised to think not only in the short term, but also in the long-term interests of the entire business. That's the way to achieve sustainable performance and success.* ***At Ground Control, every member of staff is a shareholder in the company.*** *They receive bonuses every six months, based on their performance, of which a significant part is their contribution to our culture and living our values. The more senior they are, the more their remuneration derives from their employee shareholding.*''

*Billionaires George Roberts and Henry Kravis are stepping back from the front line after almost 50 years at the helm of Centre member **KKR**, which is listed on the NY stock exchange, but they remain as leading shareholders and co-executive chairmen. KKR, founded in 1976, doesn't just buy and sell companies – it trades in shares and other securities and provides debt and investment banking services too. The other 'K' - Jerry Kohlberg - left the company in 1987 after a policy disagreement. KKR, which has around 2,000 staff, manages $430bn in assets.

*Eight litigation partners are to leave **Mishcon de Reya** only a month after partners at the law firm backed a flotation on the London Stock Exchange.

The departures will dent the firm's promotion to future investors and suggests that while the September vote to approve a public listing achieved the minimum backing of 75 percent of the partners, a significant minority were uncomfortable with the move. These eight departures bring the total number of partners to ten who have left since the vote to approve the float.

*Leicester-based design business **STB Graphic Designers** became employee owned after setting up an EOT in October. The organisation, which was named Stocks Taylor Benson after being launched by Glenn Taylor, Dean Stocks and John Benson in 1988, has worked with Avon, Aldi, Next, Black & Decker, Virgin Trains and Morrisons. Mr Taylor, who had been the sole owner of the business up until the ownership transfer, gave 90 percent of it to his 29 employees. He will continue as ceo and will be supported by the existing executive management team.

*Almost one third of **Tesla** shareholders opposed the re-election of James Murdoch to the board at its agm. Proxy advisor ISS had advised shareholders to vote against Mr Murdoch's re-appointment, alleging that he had sat on audit and governance committees which had signed off huge reward packages for Tesla's directors. Mr Murdoch holds Tesla share options worth $300m at current prices after four years service on the board. Tesla shares have risen by more than 800 percent since January last year, making Elon Musk the world's richest person with net worth standing at $227bn. Directors waived their right to receive more options this year in view of the outstanding share performance.

*The share price of Manchester based e-commerce beauty products firm **The Hut Group (THG)** collapsed after a product sustainability presentation failed to convince City investors. Its shares, which were floated at 500p in September a year ago collapsed in value within hours from 437p to 289p – a fall of almost 35 percent - which was bad news for its heavily equity incentivised workforce. E-commerce specialist, THG, owns online beauty and nutrition brands including *Lookfantastic* and *Myprotein*, which it plans to spin off and to expand its role as a technology provider, helping consumer giants, such as Unilever and Danone, to sell directly to consumers. Founder, executive chairman and ceo (*all rolled into one)* Matthew Moulding was forced to surrender his *golden share,* which would have repelled hostile takeover bids for the next three years - in an effort to stem the rout, which it did. Although the share price rallied briefly, it then fell sharply again, to a new level of c. 240p - less than half the flotation price. He and his wife Jodie then pledged to stop using 182m THG shares as security against a £100m personal loan from Barclays Bank. Mr Moulding promised major corporate governance structural reform, to be implemented early next year. Recent major tech listings *Wise* and *Deliveroo* were defined by their founders insisting on the so-called *dual class* structure as a condition for choosing the UK market. Moulding undermined those who support such a structure, which includes most tech founders. It was a central recommendation of Lord Hill's review of the London market. THG is one of several companies whose shares are in the red after recent IPOs.

Pandemic caused big fall in ceo pay last year

The median reward for a UK ceo last year was £2.69m, a 17 percent fall from 2019 when median pay was £3.25m and the lowest level since 2009, the left-leaning High Pay Centre and the Chartered Institute of Personnel and Development (CIPD) reported in their annual review of FTSE 100 ceo pay. Only 64 percent of companies paid an annual bonus to the ceo, down from 89 percent in the previous year and the amount of their annual bonuses fell from £1.1m (2019) to £825,000 (2020). About 77 percent of companies paid out on long term incentive plans (LTIPs) based on the previous three to five years compared to 82 percent who received LTIP pay-outs in 2019. Again average LTIP payments fell from £2.4m to £1.38m due to the pandemic. Nevertheless, typical ceo total reward was 86 times median earnings for UK employees, revealed the latest EQ bulletin.

*However, City investment bankers will be in line early next year to receive their biggest bonuses since the financial crisis of 2008-9. Commentators said that in the City, bonuses will increase by between 20 and 50 percent, as a reward for the banks' £4bn plus income (*so far this year*) from global M & A transactions, especially flotations, capital raising and private equity acquisitions.

*The standard salary for a first year analyst in an investment bank in London is now £60k, which is far below the $100k starting point in the US. After three years, London salaries rise to £90k at banks like Morgan Stanley and Goldman Sachs, which offer accelerated promotion to associates.

What to do about leavers' employee shares

*Employee ownership offers many benefits for businesses and employees, including helping to attract the best talent, improving employee engagement and boosting staff retention. However, it was inevitable that some employees would leave at some point, whether to move on with their career, retirement or illness, or even dismissal, said the **RM2 Partnership** *Blog.* If employees held shares in the company – or if they had been granted share options – they should always consider what happened to their shares or options when they left the business. The issues to consider included: could there be reasons for an exiting employee to keep their shares or options; how shares might be sold, to whom, and at what price; and whether there were any tax issues? If an employee was an actual shareholder, arrangements might need to be made for the employee's shares to be transferred. This might involve the company buying the shares back and cancelling them, or another shareholder buying them. If the company had set up an EBT, the trustees might be able to buy back the leaver's shares to "recycle" for future employee awards.

The treatment of a leaver's shares was typically set out in the company's Articles of Association or, sometimes, in a shareholders' agreement. This usually covered the price to be paid for the shares. It was common for a *bad leaver* simply to receive what he/she had paid for his shares in the first place; while a *good leaver* might receive market value for the shares, which often was the price agreed between buyer and seller, or whatever price the company's advisers confirmed was an appropriate value. If an employee was an option holder, the treatment leavers received should be set out in the rules of the relevant share plan. Options commonly lapsed on, or shortly after, the termination date. In that case, there was no need to deal with buying back shares – the options were simply cancelled.

Most privately held companies wanted to keep ownership concentrated in the hands of individuals directly involved in the business, whether by family connection or by employment. It followed that, if an employee ceased employment, then the default position was that their shares should be bought back, or their options lapsed. However, in some circumstances, the company wanted to be more generous and include *good leaver* provisions to allow employees to keep their options and shares, even after they'd stopped working for the company. These might cover situations where an employee had left due to retirement, illness or death.

Some tax advantaged employee share schemes (such as SIP and CSOP) had *good leaver* definitions set out in the rules, so it was obligatory to treat such leavers more generously – and this would typically feed through to the tax treatment of leavers' shares or options. For example, a SIP participant will not pay income tax or NICs when they took their shares out of the plan if they were a good leaver. EMI legislation didn't differentiate between good and bad leavers. However, if an employee leaves, this is treated as a disqualifying event for EMI, and usually the option has to be exercised within 90 days of the date of employment termination in order for the tax benefits to be retained.

UK companies consider pay cuts

CIPHR, a specialist, UK-based provider of HR, payroll, recruitment and learning software, said that 68 percent of organisations it polled are considering pay cuts for staff who choose to work from home full time. This is despite more than half the firms surveyed saying they have saved money thanks to remote working. The study followed comments by a minister that civil servants should have their pay reduced if they continue to work from home and news of a pay calculator produced by Google in the US which shows employees the effects of working from home or moving offices on their wages, reported Centre member **Bird & Bird.** The software firm *Factorial HR* noted that many point to savings on commuting costs as justification for pay cuts, but found that train tickets had increased by 44 percent since 2010 while weekly wages had only increased by 18 percent over the same period. If the average UK salary had increased by the same percentage as rail fares. it would be more than £6,000 higher than the current average salary of £30,472. Factorial argued this highlighted the "disparity between the cost of commuting and the average wage", making the suggested pay cuts illogical.

Taxpayers hold shares in 158 companies

UK taxpayers have equity stakes in 158 companies ranging from a crypto-currency broker to a consumer-owned wind farm, after the government named recipients of backing from its ***Future Fund*** scheme. The state-owned British Business Bank published a list of 158 companies in which the taxpayer holds shares, though this represented only about *one in eight* of the businesses that received funding via the emergency programme. Companies in which the Future Fund (FF) is a shareholder include Vaccitech, a co-inventor of the AstraZeneca Covid-19 vaccine, Monese, a current account provider caught up in complaints about account closures and Kano, a computing kit maker. The Future Fund closed to new applications at the end of January. Taxpayers have lost £4.5m so far, invested in bankrupt musical instrument company, Roli, which made high tech keyboards for rock stars, via the Future Fund. About half is owed to the latter and the rest to HMRC. The government's £1.1bn rescue fund allowed loans of up to £5m to be converted to equity at a 20 percent discount when the company next raised investment. The Treasury revealed that the Fund had already accepted shares in 158 companies, from the 1,100+ who had taken loans.

ESG corner

*The UK's financial regulator, the **Financial Conduct Authority (FCA),** accused of failing from "*top to bottom*" after a string of scandals, has paid out bonuses of more than ***£125m*** to its staff since 2016, the *Observer* revealed. Campaigners said the payouts were an "absolute insult" to savers who had lost their life savings because of the regulator's systemic failings. FCA ceo Nikhil Rathi is proposing to scrap the bonuses after two independent reviews found the regulator had acted too slowly to protect consumers. He said the payouts had "*not been effective at driving individual or collective performance.*" Bonus payouts totalling £125,530,000 - including bonuses worth up to £45,000 each for executive directors - have been paid at the watchdog since 2016. In the year to March 31 this year, almost £20m in bonuses was paid out, with average payouts of about £5,300 for those receiving awards. These were among the biggest bonus pots ever awarded in a government department or quango. The FCA, which employs about 4,200 staff, is funded by the financial firms it regulates and was headed by Andrew Bailey, now Governor of the Bank of England, from July 2016 until March last year.

The National Audit Office (NAO) recently announced an investigation into the FCA's role in the British Steel Pension Scheme disaster, when almost 8,000 ex steelworkers were persuaded into surrendering their generous final salary pensions in return for less favourable new pension pots and high transfer fees. The NAO probe will examine the steps taken by the FCA to regulate the advice given to the steel pensioners and whether its plans to redress wrong advice are adequate.

Gina Miller, the business activist and co-founder of the *True and Fair Campaign*, which called for a package of financial reforms to benefit consumers, said: "*These payouts are an absolute insult to people who have lost their life savings or have had their lives destroyed because we have a regulator which isn't fit for purpose. We have seen over the last five years some of the biggest financial scandals due to a lack of enforcement and regulatory rigour. It's unbelievable against that backdrop to award these bonuses. This is an organisation which has failed from top to bottom.*"

The watchdog was criticised in a damning report by former Court of Appeal judge Dame Elizabeth Gloster last December over its failure to supervise and regulate the mini-bond issuer London Capital & Finance (LCF). About 11,600 investors lost savings of up to £237m when LCF went into administration in 2019.

The FCA was panned in another independent review published last December for ineffective regulation over the collapse of the Connaught Income Fund. The FCA said at the time it was "*profoundly sorry*" for the mistakes that had been made. The watchdog faced criticism too for failing to intervene before the collapse of Neil Woodford's £3.1bn Woodford Equity Income Fund. That was shut down in October 2019 with heavy losses for tens of thousands of investors.

In an FCA consultation circulated to staff, Mr Rathi said it was *"increasingly difficult*" to justify the bonus payouts after the LCF and Connaught fund reviews found the regulator had acted too slowly to protect consumers. He wrote: "***This is particularly so when bonuses are paid to the vast majority of staff and not just those who have performed exceptionally.***"

*The FCA warned banks and investment firms it could swoop on staff who work from home to check they were not harming customers or markets. It said firms that want to introduce 'hybrid' - a mix of home and office - working on a permanent basis, must have their plans vetted by regulators first. Many financial staff worked from home after the UK locked down the economy in March last year to fight the pandemic, but since then employees have begun returning part or full time to the office. Some firms have told staff that hybrid working is here to stay, but the FCA said this could only be the case if they could show it wouldn't harm customers, damage the market, increase the risk of financial crime, or cut competition. There was a need to demonstrate that rules on recording calls, record keeping and maintaining protection from cyber attacks could be met from home.

*The EQ *Shareholder Voice* survey found that 82 percent of shareholders in the US and UK think companies are responsible for communicating about ESG, but 43 percent felt they were not doing enough of it. A further 34 percent of investors reported intense frustration when a company behaves unethically. With regulators in both countries calling for more accountability on ESG practices, many companies are strengthening their sustainability reporting. Still, many others were doing the bare minimum to comply. Failing to address shareholders' concerns on ESG was a reputational risk, as investors could easily amplify their frustrations on social media. Some had even campaigned successfully to oust board members based on their perceived ESG failings or lack of commitment. By contrast, recent studies from research firm Morningstar and index provider MSCI showed that companies with sound ESG practices were reaping the benefits in financial performance, sustainable value and share price premium by market information or other means.

*Research by *Cranfield School of Management* found the proportion of women on FTSE 100 boards was at an all-time high, but concluded there still were not enough female chairs, ceos and cfos. Only eight of the ceos in the top 100 UK companies were women in July this year. Nevertheless, this was the highest number for the female FTSE board report since it was first published in 1999, said *The Guardian*. The report, sponsored by EY and covering the 12 months up to 20 July, found the wider group of FTSE 350 companies had exceeded the voluntary target of 33 percent women on all boards, set by the *Hampton-Alexander* review. For the UK's biggest 100 companies on the FTSE 100 the figure was 38 percent, while for the medium-sized firms on the FTSE250 next-biggest companies, it was 35 percent. Among the FTSE 100, the drinks group *Diageo* was leading, with women occupying 60 percent of board positions. The online grocer *Ocado* was lagging the most, with only 17 percent women on its board. Just over a fifth (21 percent) of FTSE 100 boards and 32 percent of FTSE 250 boards had yet to reach the Hampton-Alexander target. "This highlights the drawback to voluntary targets and prompts whether it is time to make these targets mandatory," the report said. Alison Kay, EY's managing partner for client service in the UK & Ireland, said the report raised the valid question – "*the progress in executive roles is actually far more of an important metric than the number of women on boards as a whole*". The report recommended more companies prioritised succession planning and talent management on their board agenda to improve the appointment of women into executive roles. The percentage of female non-executive directors on FTSE 100 boards was at an all-time high at 44 percent, with 14 percent women chairs, 25 percent women senior independent directors and 35 percent women chairing board committees. However, the proportion of female *executive* directors had flat-lined for a second year at almost 14 percent for the FTSE 100, and 11.3 percent for the FTSE 250. Among the UK's top 100 listed companies, 31 women held executive roles in 27 companies. Eight were ceos, and 15 cfos or fds. The ceos were Alison Rose at *NatWest Group*; Emma Walmsley at pharma giant *GSK;* Carolyn McCall at the broadcaster *ITV;* Alison Brittain at Premier Inn owner *Whitbread;* Jette Nygaard-Andersen at sports betting firm *Entain*; Amanda Blanc at insurer *Aviva;* the winner of the *newspad all-employee share plan award for outstanding company leader 2020* **Liv Garfield** at the water company *Severn Trent;* and Mondini de Focatis at employee share ownership friendly insurer *Admiral* – the last two companies have female chairs too.

*Last year, the average reward for *female* ceos was £2.76m compared to an average of £3.44m for male ceos and of the 98 companies surveyed, only seven had a female ceo, reported the left-leaning High Pay Centre. There was a substantial fall in ceo pay and a narrowing of the pay gap last year, but was this was sufficient given the level of hardship experienced by many, as a result of the pandemic and whether there was a real need for ceo pay to go back up to pre-pandemic levels following economic recovery? The full report is available from *CEO pay report 2021* (highpaycentre.org).

*More than one third (34 percent) of start-up boards still include no women, revealed a report by recruitment consultancy *Erevena.* However, this was an improvement compared to the results of the same survey two years ago when almost half (47 percent) of start-ups had no female board representatives. Two-thirds (67 percent) of female board members are not offered any equity in the start-ups they work with, compared to only 31 percent of male board members, added the report. The numbers for ethnic diversity on start-up boards were even lower: only nine percent of start-up board members are from ethnic minority backgrounds.

*Companies, such as steel, chemical and ceramics manufacturers, who are struggling to pay sky-high gas prices could be rejected for government bailouts unless they stop any planned share buy-backs, curb dividends to shareholders and stop paying bonuses to directors, **Steven Barclay**, Cabinet Office minister, suggested. These restrictions would mirror those imposed on large companies seeking Treasury taxpayer loans during the pandemic lockdown. Mr Barclay told *Times Radio* that the Treasury would need to examine the *value for money* of handing taxpayer cash to firms and that any scheme would need to be "proportionate." The PM backed the multimillion-pound bailout, siding with business secretary Kwasi Kwarteng, rather than with chancellor Rishi Sunak, who was said to be lukewarm over the subsidy plan.

*Pubs group **JD Wetherspoon** planned to hit back at the negative impact of corporate governance rules by promoting employee directors to its board. It said that by forcing frequent changes of directors, the regulations "often diluted or even destroyed" the culture of a company that had been developed over years and so directors with long experience of working for the group would counter that. Tim Martin, the chain's founder and chairman, said: "*The pattern of a low level of executive representation and non-executives who stay, on average, for short tenures is bound to have a deleterious effect on the DNA*." He said that if the nine-year maximum tenure rule were to be strictly applied at Wetherspoon, he and two of the four non -executives would have to resign.

*An employment tribunal ruled that Morrisons' shop floor workers' roles can be compared to those working in distribution centres in terms of equal pay. The 2,300 claimants now needed to identify male employees at the supermarket chain who are in positions of similar value. In her judgment, Employment Judge Davies said that it was not necessary for the employees at this stage to specify a regional distribution centre (RDC) to be compared with each supermarket store. "*They rely on comparators working at all the RDCs and the question at this stage is therefore whether a worker from any of the RDCs who moved to a depot at any of the stores would be engaged on broadly similar terms. For the reasons outlined, I find that they would*," the judge said. In June, thousands of Tesco shop floor staff won a legal argument, as the European Court of Justice ruled that an employee can compare their role with someone working in a different establishment if a single source can correct the pay difference.

WORLD NEWSPAD

OECD wins multinationals global tax deal

Almost 140 countries signed a global deal on the taxation of multinationals, with agreement on a minimum 15 percent rate of Corporation Tax (CT) announced as part of a landmark statement at the OECD in Paris. It said the deal could bring in an extra $150bn (£108bn) of tax a year, bolstering economies as they recover from Covid. The countries fixed a global minimum rate and other measures designed to stop multinationals shifting profits into tax havens. The new minimum rate will apply from 2023, but financial services and extractive industries are excluded from the agreement. Ireland, one of nine countries that declined to sign the OECD headline agreement in July, signed the landmark deal. The new 15 percent CT rate will apply only to companies which have an annual turnover exceeding E750m, while the rest will continue to pay 12.5 percent, said Irish finance minister Paschal Donohoe. Ireland's 12.5 percent CT rate has been the cornerstone of its foreign inward investment policy for decades and helped lure multinationals in the tech and pharma sectors to establish their European and Middle Eastern HQs in the country. Most companies in the social media sector have their European headquarters in Dublin, including Facebook, Google, Yahoo, LinkedIn and TikTok, along with other big names in tech and pharmaceuticals such as Apple, Intel and Pfizer. They employ 200,000 people directly and almost the same again indirectly. Between them they paid net corporation tax of €5.98bn in 2020, with the ten largest companies paying just over half of Ireland's total corporate tax receipts.

Experts pointed out that the more controversial aspect of Irish tax policy was the tax avoidance scheme, dubbed the "*double Irish*", which was outlawed in 2015. Pressure mounted on governments worldwide to take tougher action on tax, following revelations in the Pandora Papers exposing vast amounts of hidden offshore wealth.

Tax experts said the statement from the OECD would commit signatories to implementing the two-pillar global tax reforms by 2023 and would include details for a new multilateral tax. The twin-pronged reforms would create a new taxing right, enabling nations to levy a slice of the profits generated by some of the world's biggest companies, based on the sales they make within each country's borders. The second pillar would set a global minimum tax rate of 15 percent on large companies.

Critics are concerned the deal would benefit the US most because it has the largest number of multinationals on its shores on which to levy a global minimum tax, while the second pillar allowing governments to raise money from large firms operating within their borders was thought to be too limited in scope. Amazon could end up paying less tax in the UK under the reforms, which are expected to target as few as 100 major global firms.

***France**: The subscription price of employee shares in the **Orange** *Together 2021* plan, beamed at the telecoms group's *140,000* employees worldwide, was to be announced within days. The plan aims to increase equity held by employees by around one percent. As of end June, 80 percent of group employees - and 88 percent of Orange employees in France- were company shareholders. Employees or former employees held 6.50 percent of its capital and around ten percent of voting rights.

This 12th employee shareholding scheme, offering a 30 percent discount from the share's market price, reflected efforts by Orange to make employees part of the group's long-term development and to ensure the success of the *Engage 2025* strategic plan, whilst reinforcing this element of stability in company governance. Through these schemes, employee shareholders can actively and independently play a role in company governance, either directly or via the supervisory boards of employee shareholding funds, said Orange. Its chairman and ceo Stéphane Richard declared: "*Together 2021 is a new step to achieve our goal of **ten percent** employee share ownership over time, and to allow employees to play an even bigger role in the group's development and prospects*." *Together 2021* was offered to 140,000 eligible employees at the group's French and international entities who are members of the group savings plans, as well as 45,000 retirees with credit in the domestic plan. There was a maximum subscription limit worth ***€260m*** (indicated as the price of shares *before* the 30 percent discount), operating via the repurchase of existing shares, as carried out by Orange in the context of its share buyback programme. Annual payments made by beneficiaries to the French or international plan cannot exceed 25 percent of gross annual salary. The shares will be acquired through employee investment funds (FCPE) or registered within existing Orange plans and locked -in for almost five years, unless early release conditions apply. Employees will receive an employer contribution of up to €2,580 according to the amount invested, including a unilateral employer contribution of €400. Internationally, as part of the plan, employees will receive an employer contribution of €2,600. The Orange shares will be delivered on December 1.

*__Ireland's__ Data Protection Commission decided that *Facebook* does not obtain consent from its users, which could have implications for EU contract law and companies' handling of data processing agreements. Basically, in terms of GDPR compliance, does your business have consent or a contract?

***Italy**: Drinks company **Campari** will offer employees the option of receiving a portion of their salaries in the group's shares starting from next year, the huge *CISL* trade union said after giving its approval to the drinks group's project. The initiative will target the group's 4,000 employees and will give them the chance of getting bonus shares if they buy and hold shares for a certain period. The union said it would allow staff to share in the group's financial results and encourage them to be more informed and take decisions on Campari's future by attending shareholders' meetings. "*We hope other groups will take similar initiatives*," CISL said in a statement.

***Zero tax for PE in Hong Kong**: The financial services and the treasury bureau of the Hong Kong government proposed amending the Inland Revenue Ordinance to provide tax concessions for carried interest distributed by eligible private equity (PE) funds *operating in Hong Kong*, reported lawyers *Hauzen*. The IR Amendment -Tax Concessions for Carried Interest-ordinance came into operation on May 7. The regime operates to provide tax concessions at both the salaries tax and profits tax levels. Eligible carried interest will be taxed at zero percent profits tax rate and it will be excluded from computation in the calculation of salaries taxes, too (!!).

***US:** Ownership America, a new non-profit organisation founded to turn Americans into owners, released its inaugural publication *Turning Employees into Owners: Rebuilding the American Dream.* Its report examines federal policy opportunities to significantly expand the number of Americans with an ownership stake in the company they work for, via an Esop. It reviews the extensive track record of employee-owned businesses in creating high-quality jobs that build substantial retirement wealth for employees while reducing layoffs and outperforming both domestic and global competitors. "*Employee ownership may be the most unsung economic policy success story in America*," said Jack Moriarty, Ownership America founder and executive director. "*These proposals are intended to insert employee ownership squarely into the dialogue on how to generate equitable growth and shared prosperity. Employee ownership is a bipartisan idea that creates wealth for US workers and anchors high-quality jobs in communities—all while producing higher-performing businesses.*"

Board president Michael Quarrey has seen how employee ownership has made his company *Web Industries*, a 100 percent Esop manufacturer, and his employees more successful. Quarrey said, "*When employees own their company, they care about customers, they share their ideas, and they benefit directly from improved profitability. This is good for business, for families, for communities, and for the US.*" Corey Rosen, founder of the California-based ***National Center for Employee Ownership (NCEO)*** is a board member too. Ownership America is reinforced by an advisory board comprising thought leaders and practitioners who bring diverse perspectives to the work of broadening asset ownership. Proposals include an Employee Equity Investment Act - a federal loan guarantee programme designed to mobilise private investment to grow employee ownership in the US mid-market. Other policies include tax incentives to promote employee ownership conversions in the context of private equity transactions and corporate divestitures as well as reforms to Opportunity Zones to clarify Esop eligibility. The report focuses on the Esop model, but touches on other forms of EO, including worker cooperatives, employee ownership trusts, employee stock purchase plans, and broad-based equity sharing. Ownership America coordinates thought leadership and grassroots advocacy. Its website is at www.ownershipamerica.org General inquiries to info@ownershipamerica.org.

The Employee Share Ownership Centre is a membership organisation which lobbies, informs and researches on behalf of employee share ownership.