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it's our business

newspad of the Employee Share Ownership Centre

Share plans existence threatened by CGT rise plan

Fears that employee share scheme vesting gains will be much more heavily taxed in the near future were ignited by a Treasury commissioned review, which backed the imposition of higher Capital Gains Tax rates, in order to equalise them with Income Tax rates.

Substantial increases in annual CGT bills will be on the way for employee shareholders, if the government accepts the recommendations in the review published by the *Office of Tax Simplification* (OTS).

Were chancellor Rishi Sunak to give the green light to the proposed changes, CGT rates could soar from the current 20 percent on investments such as shares and investment funds to 40 percent for higher rate taxpayers and from ten percent to 20 percent for basic rate taxpayers.

For example, suppose employee participants make a £10,000 gain when their three-year SAYE scheme vests, after they buy and sell the shares. Under current CGT rules, neither basic rate nor higher rate taxpayer participants would pay any CGT *provided they didn't make gains elsewhere during the relevant tax year.* This is because both enjoy the £12,300 annual gains exemption allowance currently in force.

Suppose employee participants in a *five-year* SAYE scheme make a £20,000 gain when they sell the shares they have purchased from their vested options. Under current rules they would both have to pay CGT, but not very much, due to the annual exemption. The base rate taxpayer would pay currently only £770 in CGT on the gain whereas higher rate taxpayers would pay £1540 in CGT, if they made no capital gains elsewhere. However, under the OTS' proposed changes, the CGT bills in all cases suddenly would make grim reading, because the review delivered a double whammy *by proposing a major cut in the current CGT annual exemption allowance of £12,300 to between just £2,000 and £4000 maximum.*

The slashing of the CGT annual exemption to almost nothing which would do the real damage to all-employee share ownership schemes. On the £10K gain, *were the CGT exemption allowance reduced to just £2K*, the basic rate taxpayer Eso participant would face a CGT bill of £1600, *were the charge rate doubled to 20 percent*, as suggested by the OTS. Similarly, the high rate taxpayer would see his/her CGT soar from zero to **£3,200**.

On the £20K gain from a five year SAYE, assuming a doubling of the CGT tax rate *and* a reduction of the annual exemption to just £2K, the basic rate Esop participant would face a CGT tax bill of £3,600, whereas a higher rate taxpayer would face an astronomic CGT bill of **£7,200** (*on a new CGT rate of 40 percent).*

Thus, when put together, harmonised CGT/Income Tax rates, plus a substantially reduced annual CGT exemption – as proposed by the OTS would pose a major **threat to the future of tax advantaged share schemes in the UK.** Many employees would conclude that the game was no longer worth the candle, so that participation rates in share schemes would plunge.

From the chairman

Gradually more states on the European continent are taking steps to embrace share plans, with Germany in the lead. Through the activity of multinational companies they have always been more prevalent than was apparent but a welcome sea change is now taking place. With time it may make it more likely that foreign acquiring companies, other than the French and Americans, retain share schemes in UK companies.

For the moment Asda employees are hanging in the wind. It would be good to see the Department of Business take a principled position. After all former Asda leader and Tory MP, Archie Norman, has been the senior independent non-exec at BEIS. He has a track record in taking positive action.

Malcolm Hurlston CBE

The best hope for share schemes appeared to be that the PM would urge his chancellor not to raise CGT rates in the latter's March Budget, but instead leave that option open until the UK economy starts to recover. However, the political speculation was that the PM has vetoed either ending the triple lock on state pension rises or imposing higher rate VAT imposed on selected goods. If true, the only obvious targets for tax rises would be the abolition of higher rate tax relief on pension contributions, as well as rises in CGT and the removal or sharp reduction in available tax relief. However, the chancellor said nothing in his Spending Review statement to MPs about how all the extra spending would be paid for – specifically nothing on extra taxation.

Senior Centre members were not slow in condemning the review report:

"*Essentially, OTS tax director Bill Dodwell is proposing the abolition of the four government backed tax advantaged share schemes in the UK*," William Franklin, Partner at **Pett Franklin**, told *newspad. "The proposals in the OTS review on CGT are quite shocking and unexpected. What comes through seems to be some quite archaic personal views favouring the preservation of the division between and supremacy of capital over labour. If Dodwell gets his way, he will overturn a political consensus that has held for more than 40 years and has helped underpin the growth sectors of the UK economy on which so much of the future depends.*

"Another reason this report is shocking is that it was published only a couple of days after the closing date for submissions. Making submissions involves effort and time and one seriously has to wonder whether it's worth contributing to a consultative process when this sort of thing happens," added Mr Franklin.

In addition, the review proposes recasting, with stricter access conditions, Business Asset Disposal Relief (BADR), which targets owner managers who might, for example, consider selling their companies to their employees via an Employee Ownership Trust (EOT). It suggested that qualification for BADR should be tightened by: *increasing the minimum shareholding to 25 percent, so that the relief goes to owner-managers rather than more passive investors; increasing the holding period to ten years, to ensure the relief only goes to people who have built up their businesses over time and reintroducing an age limit, perhaps linked to the age limits (from 55 on) in pension freedoms, to reflect the intention that it should mainly benefit those who are retiring.*

Ominously, the CGT Review questioned the rationale of the four tax-advantaged Eso schemes, namely - SAYE-Sharesave, the Share Incentive Plan (SIP) and the two discretionary schemes - the Company Share Option Plan (CSOP) and the options-based Enterprise Management Incentive (EMI). The rushed review's key conclusions on the taxation of share scheme participants are summarised thus:

"*A separate case can be made for the all-employee schemes, as those who benefit from them include many individuals with relatively low incomes and the policy justification is as much social as economic. However, the OTS questions whether tax advantaged share schemes are the most cost effective approach to helping people save or encouraging long term share ownership, recognising that many millions of lower paid employees (including those in the public sector, or professional partnerships, or private equity backed companies) cannot have access to them.*

"While the policy rationale for SAYE arrangements is about promoting savings as well as encouraging share ownership, 38 percent of SAYE users sold some or all of their shares as soon as they were able to."

Practitioners' ire was aroused over Mr Dodwell's assertion that employees' views in a Loughborough University study had shown that the evidence about the benefits of employee share ownership was 'evenly balanced,' when it was not. The Loughborough sample size for its "*evidence*" about Eso was only 37 people, which is not statistically significant.

The long-awaited court-ordered pay-outs to former **Roadchef** motorway service station employees who participated in one of the UK's first Esops, are threatened by the proposed CGT tax hike bombshell, unless the compensation pots are disbursed within the next few months. For if their pay-outs were delayed beyond April 6 next year, they then could be subjected to massive CGT tax bills.

Centre chairman, Malcolm Hurlston CBE, said: "The Office of Tax Simplification typically steps back from the fray and makes suggestions for the medium term. In that context its report has much merit.

"Industry experts are concerned however that the current hard-pressed government might take inappropriate short term action. CGT rates are a likely target for revenue-raising, as alternatives, such as raising Income Tax and/or NICs rates, or even VAT, would be politically dangerous for a Tory government.

"So we must fight as hard as we can for a Carve Out for employee share schemes from any imminent CGT rate rises and the possible near elimination of the annual CGT exemption. At the same time we can encourage steps to take share schemes beyond the narrow definition of 'employees'".

The chancellor mulled over possible CGT tax rises after rapid anti-Covid government spending pushed the UK's national debt to more than £2tn, or more than 100 percent of GDP. Meanwhile, tax receipts have collapsed dramatically, so how to start filling the yawning chasm? The national deficit has ballooned to an estimated £400bn this year, but the Treasury could recoup £90bn of that over five years were CGT and Income Tax rates to be harmonised and much more were the annual CGT exemption to be slashed simultaneously, as proposed by the OTS review.

It said that the maximum CGT rate of 28 percent could be raised by the chancellor closer to IT rates, where the top rates are 40 percent and 45 percent in England and Wales. Currently there are four different rates of CGT.

Recommendation Four spelled out the threat: "*If the government considers addressing CGT and Income Tax boundary issues, it should: *consider whether employees and owner-managers' rewards from personal labour (as distinct from capital investment) are treated consistently and, in particular* ****consider taxing more of the share-based rewards arising from employment,*** *and of the accumulated retained earnings in smaller companies, at Income Tax rates.*"

The OTS said: "*If the government's policy is that the Annual Exempt Amount is intended mainly to operate as an administrative de minimis, it should consider* ***reducing its level to between £2,000 and £4,000***."

Hitherto, millions of Eso scheme participants have received their share sale gains entirely free of tax, because – if they are in tax-advantaged schemes – they pay no Income Tax or NICs on sale at maturity, though they are liable to CGT on gains. Financially savvy employees would rush to transfer their share plan gains into their ISAs and thus side-step CGT, were CGT rates to be raised shortly, but many other employees would be unaware of this possibility, or unable to make such transfers. They could, however, transfer their share scheme assets to their spouses or civil partners to reduce or eliminate their CGT liability, though they should seek specialist tax advice before doing so.

In lock-step, Treasury officials are working up plans to equalise CGT and Income Tax, an internal source revealed, according to *The Times.* The chief secretary to the Treasury, Steve Barclay, refused to rule out any tax rises and dodged the issue by suggesting ministers were focused on stimulating the economy.

Nigel Mason, corporate fd of Centre member, **RM2 Partnership,** pointed out that the CGT relief enjoyed by SME vendors had been an essential part of the government's policy to encourage employee ownership. Business owners currently face a 20 percent tax rate on a sale of their business, but enjoy 100 percent tax relief if they sell to an Employee Ownership Trust (EOT). The question now is whether that relief will be left alone, or reduced. Stockbroker FinnCap reported that owners and entrepreneurs were already racing to sell their businesses before any CGT hike comes into effect.

RM2 said: "*Our main concerns lie with the approach to tax advantaged schemes, including those aimed at all employees such as SAYE and SIP. These long-standing and well understood vehicles give all employees – not just higher earners - the opportunity to become shareholders and part-owners of their company in a way which would otherwise simply not exist.*

"In particular, we note that the report references the argument that share schemes provide "*a strong incentive to forgo salary in favour of other more lightly taxed forms of remuneration, for those with the financial flexibility to do so*". There are two points: *firstly, the all-employee share plans are not aimed at higher earners with financial flexibility; indeed the investment limits on those schemes are so low as to be almost irrelevant to anyone described as a higher earner* and secondly, in respect of EMI in particular, it is true that many cash-strapped SMEs will offer options to attract key hires, in return for a lower salary – which is the whole point of EMI! The option will deliver tax benefits only if there is a capital event and, if that happens, HMRC will have collected plenty of tax in the meantime from what has become a successful company. For a high earner this is very much not a "*more lightly taxed form of remuneration*" and there is a significant risk to the participant that the option will in fact never deliver the hoped-for capital outcome.

"In RM2's experience, the tax benefits of such tax-advantaged schemes are a motivator towards adopting a share scheme, but not a driver. Business owners wishing to implement a share plan invariably cite employee motivation, employee retention and the general concept of *making employees think like owners* as the reasoning behind share plan establishment. Cross-party support for these plans demonstrates the same intentions, underpinned by research, showing superior performance in companies with broad-based employee share plans.

"We recognise the importance of simplifying the tax system and are not averse to some closer alignment of CGT and income tax rates where there is clear evidence of significant tax avoidance and lack of commercial intent. Nonetheless, we very much hope that subsequent OTS reports will take a more holistic view of the benefits of employee share schemes, not least benefits to the Treasury which needs successful companies from which to collect taxes. *The current view seems very myopic and may result in the employee share schemes baby being thrown out with the tax avoidance bathwater.*" Mr Mason defended existing employee ownership CGT relief: *'If an increase in CGT rates does go ahead without any change to the EOT relief, the value of* *the EOT tax relief will be greater, and so there will be an even greater drive for business owners to sell to an EOT*," he said.

However, comments in the report show which way the wind is blowing: "*The OTS considers that Business Asset Disposal Relief is miss-targeted if its objective is to stimulate business investment and risk-taking. The government should, having regard to pensions policy more broadly, consider replacing Business Asset Disposal Relief with a relief more focused on retirement. The government should abolish Investors Relief.*" Business Asset Disposal Relief (BADR) is targeted at owner managers and certain employee shareholders while Investors' Relief, which OTS alleges is little used, is targeted at external investors. Both reliefs reduce the CGT payable on the disposal of qualifying business assets, by applying a special tax rate of ten percent.

The review said that BADR had once been regarded as a specific relief, applying when business owners retired. This recognised that an owner's business can be an alternative to a pension, representing years of constant re-investment. If this were the objective, the government could, alongside the wider objectives of the pension system, consider: *increasing the minimum shareholding to perhaps 25 percent, so that the relief goes to owner-managers rather than to a broader class of employees *increasing the holding period to perhaps ten years, to ensure the relief only goes to people who have built up their businesses over time *reintroducing an age limit, perhaps linked to the age limits in pension freedoms, to reflect the intention that it mainly benefit those who are retiring.

On the annual CGT exempt amount, Mr Dodwell added: "*Were the government to reduce the annual exempt amount, it should do so in conjunction with considering reforms to the current chattels exemption and improving the real time CG service, including linking these returns to the personal tax account. It should explore requiring investment managers and others to report CGT information to taxpayers and HMRC, to make tax compliance easier for individuals.*"

The OTS was asked by Mr Sunak in July to compare CGT with other taxes and make proposals in order to iron out distortions. The report said that the annual CGT exemption clearly distorted investment decisions. "*Around 50,000 people report gains annually close to the threshold and so 'use up' the annual exempt amount as if it were an allowance – which is particularly easy for holders of listed share portfolios*."

Three times as many people in the UK, including many employee shareholders, would end up by paying CGT, if the government adopted the harshest of the OTS recommendations. More than 275,000 people paid £9.5bn in CGT in 2018-19, it added. The review, to be followed by an OTS supplement on technical issues, is focused on individuals' liabilities and does not cover trusts or the attribution of offshore gains to UK residents.

EVENTS

Webinar: Looking ahead to 2021: moving beyond Brexit in financial services regulation

December 16 2020 12:00 noon GMT

In the Centre's next webinar Baker McKenzie's Jeremy Edwards and Mark Simpson will look at the evolution of the post-Brexit financial services regulatory landscape, with a key focus of what firms should expect in 2021 in terms of regulatory policy developments. They will also discuss issues relating to remuneration in the financial services sector. Jeremy Edwards, partner and head of the Employee Benefits Group at the firm, is an experienced share plan and corporate lawyer. Mark Simpson is a partner in the Financial Services & Regulatory Group at Baker McKenzie, where he practices in the areas of financial regulation, financial crime, and regulatory investigations. Registration is free at: Webinars - FSClub (zyen.com).

Share plans online symposium

The Centre's fourth British Isles share plans symposium will be held online over three days on **March 23, 24 & 25**, next year. This key event, scheduled to have been held in the London HQ of a senior Centre member firm, has been postponed twice, due to Covid restrictions, The online format will comprise three, hour-long, **live webclaves** with the speakers forming a panel discussing the topic of the day with delegates able to interact live. Supporting material for each webclave - the speakers' pre-recorded presentations - will be released the day before the relevant live panel session. The revised outline programme looks like this:

Day 1 - Webclave: All-employee share plans and share plan regulation. Speakers: Baker McKenzie, Pett Franklin, Travers Smith, Computershare & EQ

Day 2 - Webclave: Executive equity incentives. Speakers: Deloitte, Linklaters & Willis Towers Watson

Day 3 - Webclave: Eso opportunities for SME companies. Speakers; Bird & Bird, David Craddock, Doyle Clayton & Rm2 Partnership.

Programme segments will include the impact of the pandemic on employee share plans and on executive remuneration trends. *Further details to be announced*.

Willis Towers Watson director **Damian Carnell**, executive compensation expert and adviser to the **International Accounting Standards Board,** is among the all-star speaker line-up for Damian, who has 25 years' experience advising leading companies on all aspects of executive compensation and in particular performance pay will speak in the *Executive Reward* segment of the programme on: *Top pay, incentives and the pressing environmental, social and corporate governance (ESG) agenda.* A major employee share plan case study, promoted by Centre member plan administrator **Computershare** will be another highlight. This slot will be introduced by Centre conference speaker **Stuart Bailey. Travers Smith's** incentives & remuneration team will examine the question of: *which elements contribute most to effective global equity plans* and **Linklaters** will be represented by speaker **Harry Meek,** whose theme is: *The changing landscape of investor and corporate governance expectations* regarding executive equity reward. Harry will focus on three key issues: *Regulatory developments impacting remuneration in the FS sector - challenges to the way banks and FS firms have been operating their incentive arrangements *Listed company investors and corporate governance expectations are catching up, as concepts the FS sector has been dealing with come to the fore, such as: #Operating malus and claw-back in practice, #Use of discretion in determining vesting outcomes and #Measuring non-financial risk and culture as part of incentive plans *Finally, what listed companies can learn from the challenges and developments faced by the FS sector in share plan design and operation.

The event will be chaired and introduced by Centre founder and chairman **Malcolm Hurlston CBE**, who will ask delegates: *How could all-employee share plan schemes be re-set to make them more popular with companies and employees?* Other speakers at the symposium include: **Colin Kendon**, partner (employee incentives) at **Bird & Bird,** who will deliver a frank review of the popular *Executive Management Incentive (EMI)* share options based approved scheme, now being operated by more than 11,000 UK SMEs. During his tour of the 'ins and outs' of the HMRC tax-approved scheme, Colin will talk anecdotally about the use of 'Exit Only' EMIs. **David Craddock,** who heads his eponymously named worldwide share schemes consultancy, will explain how SME companies are valued, so that employee shares can be issued. David is technical secretary to the ground-breaking *Worked Examples Group* which the Centre administers. **Deloitte's Liz Pierson** will ask *whether recent changes in the UK corporate governance code go far enough on the executive reward front;* **Baker McKenzie's Jeremy Edwards** will examine the practicalities of *easing a cashflow crisis by paying employees in shares rather than cash*; **Jennifer Rudman** and **Graham Bull** of **EQ** will address a key question: *How do you ensure that all employee plans (Sharesave and SIP) continue to be relevant and provide benefits for today's workforce?* **Garry Karch**, of **Clayton Doyle,** a leading Esop banker in the UK, will explain *How Employee Ownership Trusts (EOTs) are structured and financed.* **Jane Jevon** of **Pett Franklin** takes the dust covers off the *Company Share Option Plan (CSOP), the forgotten share scheme; unlocking its potential and avoiding its hidden pitfalls.* **Robin Hartley,** a senior associate of **RM2,** will discuss how best to structure and install *growth shares* in companies.

The programme to date can be viewed on the event page at www.esopcentre.com.

Our thanks to **Ocorian**, the independent Channel Islands based provider of corporate and fiduciary services, for its patience in co-sponsoring the symposium, which offers participants latest guidance on installing and operating employee equity schemes for companies of all sizes. Delegates from share plan ***issuer*** companies, large or small, are welcome to attend free of charge, though each must register their planned attendance in advance with Juliet Wigzell. Prices for all other delegates have been altered to reflect the change in format: Practitioners: members £250, non-members £425. Trustees: members £225, non-members £395. An "early-bird*" rate is offered to delegates who have already booked or who book by December 31 2020: Practitioners: members £200*, non-members £350*. Trustees: members £175*, non-members £295*.

Speakers needing to update their presentations should inform **Fred Hackworth** at: fred_hackworth@zyen.com. For all other enquiries about this event, including attendance logistics and reservations, contact juliet_wigzell@zyen.com or call +44 (0)20 7562 0586.

2020 newspad Awards

Submissions are invited for the 2020 newspad all-employee share plan awards, which recognise the achievements of companies who offer employee share plans and hold up best practice models for other companies to follow. This year has been very challenging and the awards reflect this with a new category focussing on share plans and the Covid crisis. All-employee share plans can play a key part in rising to such challenges by contributing to employees' savings, morale and engagement. Google, Nokia, Telefónica, easyJet, Unilever, BP, BAE Systems, Reckitt Benckiser, Tesco, Marks & Spencer and Dixons Carphone are all recent award winners. You will be in distinguished company as an entrant. Companies can nominate themselves or advisers can make submissions on behalf of clients. Company share plans can be nominated for more than one category.

The **deadline** for all nominations is 17:00 on **Friday January 15 2021**. Results will be announced at the British Isles share plan symposium. The award categories are:

- Best international all-employee share plan (*more than 2,500 employees*)
- Best UK all-employee share plan (*fewer than 2,500 employees*)
- Best executive/managerial equity reward plan *(involving more than 100 employees)*
- Best start-up equity incentive plan
- Best share plan communications
- Best use of technology, AI or behavioural science in employee share plans
- Best share plan adaptation to the Covid crisis
- Best HR director/Head of Reward/Company Secretary/Share Plan Manager
- Outstanding company leader (*for chairman or ceo personally associated with company plans)*
- Company whose employee share ownership is most impactful on company success

Entry rules and submission forms are published on the **Centre's website www.esopcentre.com**

Centre Webinar reports:

Lessons from lockdown: re-assessing how you manage share plans in a digital way. Adva Lewitte, senior global business and client manager at **ShareForce** and guests Graeme Cook, head of comms at **Eximia**, a creative communications consultancy and Lynette Jacobs, partner in the employment & reward group at **Pinsent Masons,** explored how the latest specialised technologies gave businesses the flexibility they need to adapt in a thought-out and compliant manner. Adva kicked off by saying that Covid had shown that our collective dependency on technology was undeniable and it had forced the business world to empower employees to work from home. Technology had made it easier to avoid human error, to allow us to work across teams and different locations in an integrated manner to provide a safe space for data to be transferred, especially in a highly-regulated environment. A digital process manager would remove the reliance on key individual knowledge and the technology would allow for transparency and continuity in organisations. Not all technology was equal and specialist tasks require specialist technology. For example, when considering a technology system to manage your share based scheme, it's best to make sure it would allow for greater flexibility to optimise work flows and to incorporate a wide range of facilities, rather than catering on a particular solution. The technology would be expected to cope with settlement and performance details, vesting profiles, tax rules, individual limits and the processing of awards, said Adva. Technology should not provide a temporary short-term fix, but rather a flexible watertight solution robust enough to cater for a variety of work flow scenarios. Managing incentive schemes involves complex detailed processes, including the design and testing of new awards, the process of issuing new awards, managing the performance vesting conditions and making sure that the end to end settlement processes run smoothly without any delays or errors. Usually, input from internal and external experts was necessary, further emphasising the need for streamlined processes. Many stakeholders were involved, including management, remuneration, and rewards teams, finance, tax and legal.

The design of award schemes was crucial and factors to consider included remuneration and reward. You needed to test the impact on the company's financials over its life –the many conditions included the suitability of proposed awards, best practice, market practice, performance conditions, guidelines and full accounting analysis, such as budgeting and amortisation tables. Huge unreliable spreadsheets or out-sourced tasks added additional strains to tight timelines. You would not want to end up with an unsuitable award scheme due to unforeseen delays and challenges, which could lead to rash decision-making. The correct technology had to offer flexibility to design and test all award plans within regulatory limits and tax regimes, said Adva, whose Centre member company ShareForce is a digital share incentive management platform. She said she could not believe the number of big companies still following relatively manual processes for new awards, which required multiple checks and approvals, every email had to be checked individually and re-read in a process which was error prone. Yet the successful take-up of equity award schemes hinged on the process. Webinar chairman **Professor Michael Mainelli**, executive chairman of the **Z/Yen Group**, then conducted a poll of attendees which revealed that 71 percent represented companies with partly automated new equity award scheme processes, with the remaining 29 percent being fully automated. None relied exclusively on manual processes. Graeme Cook said that the results showed they still had a lot more to do!

Vesting performance, deferred profile and retention conditions were yet another complicated process which had to be dealt with – the complex calculations could not always be performed in-house, so resolving that could be an expensive option. There should be automated digital technology to allow instant access to key individuals needed to approve different tasks. Keeping employees engaged and fully informed was ultra important too, added Adva.

Graeme, former journalist turned PR man, who worked with major companies such as BT, DMGT, Heathrow and Microsoft, said that technology at work had changed massively during the past decade. Management had had to change too with the pandemic, in order to keep in contact with remote workers, some of whom did their communicating by means of a smart-phone, particularly front-line employees who might not have access to a computer. Previous employers, he knew, had experienced difficulties in adjusting to the new work reality. While some, like Vodafone and BT, were now using employee apps; others were using company emails, intranet and videos to communicate with their employees, who, outside of work, were used to using Facebook, Twitter and Instagram - communicating in a different way. We can see how far this type of technology has evolved if we look at just five years ago, how Skype, for example, had been very grainy and people didn't like using it, whereas now we are happy to meet via video conferencing, he added.

Lynette said that nowadays, in light of the pandemic, for contracts, people used either electronic or digital signatures, which were more advanced and secure. People could now 'sign' contracts by email, sending a signature by scanning it, or by clicking a button (*I accept*) too. Covid human presence problems associated with signing documents could be solved by having witnesses looking through windows or standing outside watching the signings from a social distance.

Graeme said that work-life balance had come to the fore since the pandemic started and people were asking whether 9-5 with commuting every day was a good way to work. Google had set up local work hubs for its employees. People wanted personalised communications with their employers. He had read that only one percent of IT spending goes towards improving digital engagement with front-line employees, which he said was madness "*because we should be spending a lot more money on engaging with employees.*" Giving front-line employees access to computer usage at work should be a key corporate objective, he added. The introduction of 5G would be crucial as it would unlock the potential for so much extra high tech that would help people communicate messages such share plans for example. Wearable technology, such as corporate smart watches, would create even more of a stir because employers could use them to find out what employees were actually doing at different times of the day.

Insights into share valuation for employee share schemes, revealed through dynamic case studies. Centre doyen **David Craddock**, technical secretary of the Share Valuation Worked Examples Group, guided his virtual audience through the tricky issue of share valuation for Esops, via a series of case studies. For most SMEs, it was necessary to construct a reliable value, as they weren't listed, and so in law there was the statutory open market value of the company, hedged about with restrictions or none, depending upon the actual situation and the Articles of Association. Typically, there was a need for a market in the shares to establish the capital gains and tax position. HMRC would ask "*Where is the market in these shares?*" The *Best Price* was what the buyer was prepared to pay, not what the seller necessarily wanted and the valuation was like a snapshot at a particular point in time.

Surrogate positions enabled the application of the statute; whichever basis – earnings, net assets, share trading or dividends - produced the highest value prevails: However, if an offer came in, that would trump all other bases, said David, who then explained valuation assessment criteria in various valuation case studies from his own consultancy records.

The equity value of a company focussed on its share value, while the enterprise value revealed its overall value as a business, helping investors to make their decisions, he said. The enterprise value revealed how the company was funded, partly through shares and partly through debt. Among his final tips were the disclosure that HMRC always gave emphasis to any share trading records; genuine offers trump all else; there is one only value for sellers and buyers; when setting value, always examine the restrictions; respect the Articles of Association; the influence of voting rights when dealing with different classes of shares; the treatment of excess cash (*is there adequate working capital*?) and internal share market activity.

Mr Craddock said that since HMRC had withdrawn its facility for Post-Transaction Valuation Checks and PAYE health checks for valuation, it was vital that young company valuations were rigorous to ensure that they were credible and capable of robust defence if challenged by HMRC. This webinar followed up his "*Wisdom Of Price Setting For Your Employee Share Schemes*" webinar last July. **Ian Harris**, md of Z/Yen Group, which operates the Esop Centre, chaired the latest webinar.

MOVERS & SHAKERS

*Centre friend and Eso fan **Marco Cilento,** from the huge Italian trade union CISL, was elected to the board of the European Movement International as representative of the European Trade Union Confederation, of which he is head of institutional policy.

***HMRC** has changed its e-addresses. From now on, they'll all end @hmrc.gov.uk. Any emails sent to its former email addresses will be re-directed. Any questions, or suggestions for future articles should be mailed to: Shareschemes@hmrc.gov.uk. Include the relevant share scheme reference number when contacting HMRC about share schemes.

UK CORNER

Executive bonus culture decried by ceo

***Crossrail** ceo Mark Wild called for an "*honest conversation*" about how not to incentivise senior executives for failure. Mr Wild said there was "something wrong" with the bonus culture of executives in charge of multi-billion pound engineering schemes. He admitted: "*Crossrail's lessons are pretty profound. Crossrail hasn't achieved its targets, has it? It has failed. Yet people were paid bonuses. There is something wrong*," reported *The Telegraph.* "*Crossrail has brought it into sharp relief. It is clearly one of the key lessons – how do you incentivise the executives when something hasn't gone right? We are billions of pounds over budget and we are years late. It can't be right that people were incentivised for that.*"

Crossrail, whose budget has soared from £15m to almost £20m, was supposed to open in December 2018, but is unlikely to do so until spring 2022. Mr Wild, former md of London Underground, who was appointed in November 2018, refused to accept any bonus for the second year running, but other Crossrail executives have shared a bonus pool of £6.5m during the past decade, sparking calls for their bonuses to be surrendered.

*News, magazines and books chain **WH Smith** cancelled a planned £*5m* shares bonus planned for new ceo Carl Cowling after an investor accused the company of being "tone deaf" to the hardening corporate governance atmosphere due to the pandemic. WH Smith had already received a rap on the knuckles in January from the Investment Association (IA), which said that cash contributions towards Mr Cowling's pension were too high when compared to those made in favour of the retailer's typical branch employees. Since April, Cowling has been forced to cut WH Smith's payroll by 1,500 jobs, despite receiving £6m a month in furlough aid from taxpayers. The IA warned quoted companies some months back that those who took the taxpayers' shilling via the furlough scheme, or who laid off substantial numbers of employees, should not award one-off bonuses to executives and should trim their *in flight* equity incentive scheme pay-outs, if possible. Mr Cowling had to raise £166m from shareholders in emergency cash to keep the business afloat too.

***Lloyds Banking Group** ceo Antonio Horta-Osorio is set to receive a 1.4m shares windfall, through a 'fixed share award' payment scheme, just before he leaves the lender next July. The shares were bought through the year at an average price of 29p for an outlay of more than £425,000. However, the scheme's terms mean Horta-Osorio could see a huge windfall gain *if* the share price rises over the next few years, when he can cash in the stock. Analysts said if the shares bounce back to 38p – the pre-lockdown level – the value of the award would jump above £548,500. If the shares returned to 64p – their price in January – his payment would soar to above *£900,000.* A banking source said Horta-Osorio had lost millions in value from his shareholding in the bank because of the plunging share price. Bank shares have been hard hit by the pandemic, partly because lenders had to set aside more than £20bn to cover customer debts that could turn sour. The Bank of England forced lenders to stop paying dividends in March to shore up capital reserves. Mark Brown, general secretary of the banking union BTU, said the payment would be made irrespective of performance, so Horta-Osorio could see a big gain *'for doing nothing'.*

*The ceo of Manchester-based **The** Hut Group **(THG)** is to receive one of the biggest payouts in UK corporate history after the online retailer's share price rose by more than a quarter, prompting calls for higher taxes on the super-rich. Matthew Moulding, who founded the company in 2004, will receive at least **£830m** in shares after its share price hit the targets set for THG's partial float in September. His total share awards could rise further if the company's market value reaches £7.25bn. Mr Moulding's position as THG's chairman and ceo and landlord upset corporate governance advisers. He started THG as selling CDs online and pivoted to running websites for other retailers, such as Asda, Tesco and WH Smith. The company is a technology provider helping companies such as Nestlé, Unilever and Danone, in addition to selling own brand cosmetics (Glossybox), direct to consumers. As well as the share awards, Moulding will receive a salary of £750,000 a year – a big increase from the £318,000 salary he received in 2019. In total last year, Moulding's company paid him £4.7m, mostly in share awards. The huge pay-out could dwarf the £323m that Denise Coates, the owner of the **Bet365** gambling website, was paid in 2018.

***Pfizer**'s ceo Albert Bourla made £4.2m from the sale of 130,000 Pfizer shares on the same day that the US pharma giant announced that its Covid-19 vaccine was more than 90 percent effective. Mr Bourla sold the shares as part of a scheduled plan, according to a Securities & Exchange Commission filing. Susan Susman, Pfizer's chief corporate officer, sold Pfizer shares worth £1.36m on the same day. Both sales were authorised months ago under a 10b5-1 trading plan, which permits stock to be sold on a pre-determined date or price, according to a report in *The Telegraph.*

***Whitehall** officials banked at least £42m in bonuses last year and the real figure is likely to be much higher, the *Daily Mail* revealed. Civil servants at the Ministry of Defence pocketed the lion's share of salary top-ups, with the department spending more than £12.2m on bonus packages. Bureaucrats on salaries of almost £200,000 were handed cheques for up to £20,000, while up to £25,000 was pocketed by a departmental head already earning more than £130,000. The £42.4m in bonus packages is thought to be only the tip of the iceberg, claimed the newspaper, because only a third of the government's 43 ministerial and non-ministerial departments provided bonus numbers under Freedom of Information requests. *The Mail*'s investigation showed that the Competition and Markets Authority paid coo Erik Wilson, who earns up to £135,000 a year, a bonus of up to £25,000. The watchdog's ceo, Andrea Coscelli, who earns between £190,000 and £195,000 – pocketed up to £20,000 extra in bonuses. John O'Connell, ceo of the *TaxPayers' Alliance*, criticised the lavish bonus payments and called for *'gold-plated bonuses'* to be cut.

*One fifth of UK employers imposed a pay freeze on their employees in the three months to October, four times the normal rate, said *XpertHR.* Average pay rises across the board were two percent, down from 2.5 percent in the two previous years.

Company pensions revolt looms

About a quarter of FTSE100 companies face shareholder anger at their agms next year over what the Investment Association judges as excessive pension cash contributions to senior executives, reported *The Telegraph*. The IA told companies including AstraZeneca, GlaxoSmithKline and Sainsbury's that they must reduce executive pension contributions to a maximum of ***15 percent*** of their annual salaries. This marked a tightening of the corporate governance corset by the IA, which hitherto had asked for such 'top hat' pension contributions to be reduced to a maximum 25 percent of executive salary levels. It has told FTSE350 companies too that they should adhere to the new maximum 15 percent pension contribution guidance too, or risk shareholder rebellions next year. The crackdown came after a report by actuaries Lane, Clarke & Peacock (LCP) stating that the median pension contribution to FTSE100 ceos was three times the salary percentage contribution received by factory and office employees. In view of the devastating economic effects of the pandemic, investors expected corporate boards to treat senior executives and average employees consistently when it came to compensation, added the IA's corporate governance director, Andrew Ninian.

Almost all the FTSE100 companies have aligned pension cash contributions for ***new*** directors with those of the workforce, *or have committed to doing so*, revealed the IA**.** However, only 14 FTSE 100 companies reduced pension contributions for existing directors, though 43 committed to reducing contributions in future years. Six companies were increasing workforce pension contributions to help alignment. The IA red-topped ten FTSE 100 companies for having at least one director receiving a pension contribution of 25 percent or more with no commitment to align this by 2022.

*Many rank-and-file employees have suspended their workplace pension contributions due to extra financial pressures arising from the pandemic, revealed a survey by Hargreaves Lansdown. One in four respondents said they had either reduced or suspended their pension savings, while a further eight percent said they planned to cut back their regular payments shortly.

*The Pension Protection Fund said that the collective deficit (the difference between what is owed to members and the value of fund assets) in the UK's 5,400 final salary pension schemes had widened to ***£168bn*** by the end of October, up from £35.4bn at the end of last year. It would widen further, almost certainly, if the Bank of England imposed negative interest rates. The pensions' regulator issued 1,026 unpaid contributions notices in Q3 this year, almost three times as many as in Q2.

Pandemic job cuts

The Office for Budget Responsibility (OBR) expects unemployment to rise to a peak of 7.5 percent - or **2.6m** people - in the second quarter of next year, the chancellor told MPs, during his ***Spending Review*** speech. The UK economy would contract by 11.3 percent this year, said Mr Sunak. The National Living Wage would be raised by 2.2 percent to £8.91 per hour next year and extended to those aged 23 and over, but public sector pay rises would be paused next year, with the exception of those earning less than £24,000 a year. Doctors and nurses and other NHS employees would get a pay rise next year, he said. A new UK Infrastructure Bank would be established in the north of England, to finance projects from next spring.

Redundancies rose to a record high of 314,000 in the third quarter, announced the Office for National Statistics (ONS). Firms made more employees redundant in anticipation of the end of the furlough scheme, which was supposed to finish at the end of October, but which has been extended until the end of March. *Analysts said the extension had come too late to save many jobs and further big rises in unemployment were likely in the coming months.* The ONS figures showed there was a big rise to 14.6 percent in the number of 16 to 24-year-olds out of work, far higher than the overall jobless rate. Employers declared redundancies at close to a record level in September, as 1,734 employers notified the authorities of plans to cut 20 or more posts, close to peak levels seen in June and July. The UK has lost two percent of its workforce in 12 months as almost *800,000* foreign-born employees left the UK due to the effects of the pandemic on their jobs. An estimated 2.6m people were still claiming Universal Credit in September, more than double the number of those who were claiming UC last March.

The extension of the Coronavirus Jobs Retention Scheme (CJRS) would protect the jobs of about 5.5m employees a month, predicted the Bank of England. As a result, the start of the Job Support Scheme (JSS**)** will be delayed until the expiry of the CJRS. The furlough extension is likely to cost taxpayers an extra £26bn by the end of March next year, but the Job Retention Bonus of £1,000 per head will no longer be paid from February, because its raison d'etre no longer applies. The Treasury announced that the extended furlough scheme will operate on the same terms as it did in August, said Centre member **Bird & Bird**: The government will pay 80 percent of furloughed employees' wages for un-worked hours, up to a cap of £2,500 per employee per month. Employers will pay NI and pension contributions, but only for the hours that the affected employees don't work; Flexible furloughing is allowed in addition to full-time furloughing, with the employer claiming the grant for hours not worked. *Employers must discuss the proposed arrangements with staff and make changes to their employment contracts by agreement. While the agreement must be confirmed in writing, the policy paper says that an "employee does not have to provide a written response".*

Employers can top up employees' wages (*by the missing 20 percent*) at their own expense, if they wish; All employers with a UK bank account and UK PAYE schemes can claim; Employees must have had an RTI submission made on their behalf by October 30 in order to be eligible for the scheme.

*Businesses forced to close in England due to the national lockdown measures will be eligible for grants (originally put in place to support businesses forced to close due to local 'tiered' lockdown restrictions). Such grants, intended to keep employees on the payroll, must be paid to furloughed employees in full.

*Grants for the self-employed and freelancers (*Self-Employment Income Support Scheme)* were topped up to cover 80 percent of average trading profits up to a maximum of *£7,500*, from November to January, from a previous level of 40 percent, to bring them more into line with what was being offered to company employees.

*The government extended the window for submitting applications for its three pandemic business interruption loan schemes and the Future Fund to January 31.

*Lenders are charging big arrangement fees and double-digit interest rates to give struggling firms bailout loans which are guaranteed by the Treasury, claimed a report in *The Times*. Specialist agencies are charging fees of up to *five percent* of the value of each loan, up to a maximum £5m per business and interest rates of up to *15 percent*, paid by taxpayers in the first year. Some are marketing the CBILS loans, which are supposed to help firms in distress, as ways to fund management buyouts or refinance debts. There have been 73,000 applications for CBILS loans to date.

SMEs who received a *Bounce Back* loan from non-bank lender *Tide* are struggling to secure further loans to cope with the second lockdown after the finance company ran out of funds. Unless Tide can secure fresh private investment or cheap funding for loans only available to licensed banks, it will remain closed to new business and the small firms affected would have to find alternative funding. The Treasury's Bounce Back loans scheme (BBLS), which has so far lent ***£40bn*** to 1.3m firms, was criticised by an all-party parliamentary group after it found that about 250,000 SMEs could have been locked out of the first scheme because they do not bank with any of the 28 accredited lenders. Business groups said they were concerned that if the number of lenders shrank, the number of businesses unable to access funds from the second round would be even higher. Under new rules, SMEs who have already received a loan, but failed to ask for the maximum £50,000 (*up to 25 percent of annual turnover*) first time round, can request a top-up in light of new lockdown measures.

*Administrators were called in at **Edinburgh Woollen Mills'** retailers and the Ponden Home chain after owner Philip Day failed to find buyers. As a result, 866 staff were made redundant, to add to the 56 store and concession closures, plus 600 redundancies already announced. A further 2,900 jobs in EWM were at risk. *Peacocks, Jaeger, Austin Reed* and *Jacques Vert* collapsed into administration too when the rescue deadline expired. FRP administrators said that they were in advanced discussions with several parties and were "working hard to secure a future" for the fashion retailers. There were no plans for immediate redundancies among the 4,700 staff. Peacocks has 4,369 employees in 423 stores while Jaeger, which was founded in 1884, has 76 outlets and employs 347 staff.

***John Lewis Partnership (JLP)** and **Lloyds Banking Group** announced plans to cut a total of 2,200 jobs. John Lewis, which runs Waitrose supermarkets, said it would axe up to 1,500 jobs at its head office to save another £50m as it looks to make £300m in annual savings by 2022. Meanwhile, Lloyds was cutting a further 730 jobs as part of a major restructuring programme. Only last September, Lloyds said it planned to cut 865 jobs, mainly in its insurance, wealth and retail teams, so the new job cuts on top of these came as a shock. The JLP job cuts will be made at the two head offices in London Victoria and Bracknell, where it employs 5,000 people. John Lewis, which does not operate employee share schemes, despite having one of the UK's earliest employee benefit trusts, said it would try to find new roles for staff, or would offer redundancy support and retraining funds for those it had to let go.

***Sainsbury's** announced *3,500* job cuts, mainly from the Argos chain it bought in 2016. The retailer said it planned to close about 420 standalone Argos stores by March 2024, although it would open 150 more outlets in Sainsbury's shops. Controversially, the retail group said it would pay out a £231m interim dividend and then a special dividend – in lieu of the one which was deferred last April due to the pandemic- *despite earlier having been given a £230m business rates holiday by taxpayers*, as part of a government push to keep retailers afloat, said *The Telegraph.* However, Sainsbury's claimed that it had had to shell out £209m keeping its supermarkets Covid-safe. Staff were awarded a ten percent loyalty bonus for staying at their posts during the pandemic.

***Pizza Express** was axing a further 1,300 jobs, which came on top of 1,100 job losses announced in August, when Pizza Express agreed a deal with landlords to close 73 of its restaurants, meaning about 2,400 employees – almost a quarter of its previously 10,000-strong workforce – has been made redundant since the start of August.

EMI continues post Brexit transition period

The EMI scheme will continue to be available following the end of the Transition Period (TP), confirmed HMRC. These schemes were approved by the Commission as required under State aid rules and will continue to be available under UK law, it said. In ERS Bulletin 36, HMRC reviewed EMI option holders who find they no longer met the working time commitments. The recent Finance Act modified current legislation to ensure EMI option-holders can retain the tax advantages and relief, as if they'd continued to work for their employer as per employment contract. HMRC ensured this protection until the EMI working time declaration clause receives Royal Assent next year. The modifications took effect from March 19 this year and are due to end in April 2021, but HM Treasury can extend the exception for a further 12 months if the pandemic has not ended by then. The examples in ERS Bulletin 36 are still relevant. *Last June, HMRC withdrew the old SAYE-Sharesave prospectus and issued a new one, to reflect the extended payment holiday were contributions are missed due to being furloughed or on unpaid leave during the pandemic. Details can be found in ERS Bulletins 35 & 36. HMRC confirmed that employees working less than their usual hours and who will be eligible for the scheme will be treated as being part furloughed for the purpose of SAYE. For now, the extended payment holiday will continue to apply to these participants who miss contributions whilst receiving payments under the Job Support Scheme. HMRC is reviewing the impact of Covid-19 across all tax- advantaged share schemes and will provide updates when necessary.

Dividend payouts fall, but worst is over

UK dividends fell more than 49 percent to just £18bn during the third quarter of this year, the lowest Q3 total in a decade, revealed the latest edition of **Link Group**'s *UK Dividend Monitor.* However, the worst was over as some companies were restarting payouts and there were fewer dividend cuts in the pipeline, it predicted. UK plc is set to yield 3.6 percent over the next twelve months on a best case basis or a yield of 3.3 percent on the

worst-case scenario. "*Compared to the long-run average this suggests UK shares are fairly valued at present*," said UK Dividend Monitor. "On a headline basis, which includes special dividends, the 2020 decline is set to be between 44.6 percent and 45.2 percent, finally totalling £61.2bn or £60.6bn respectively," it said. "*A fall of this magnitude is terrible for investors by any normal standards, but Q3 is significantly better than the 57.2 percent drop in the second quarter*," said **David Isaacs**, associate director, corporate markets, Link Group. "*This suggests positive signs could be emerging as some companies restart payouts*", he added. In Q2 of this year, UK dividends were slashed with 'unprecedented speed and ferocity'. If cuts were made to protect balance sheets, had it worked? Dividend cuts totalled £14.5bn in Q3, of which banks accounted for almost two fifths, oil companies another fifth, and mining one eighth. In percentage terms the sectors worst hit were airlines, travel and leisure, general retail, media, house-builders and discretionary consumer goods and services. Food retail and basic consumer goods increased payouts. Some companies began to catch up on missed payouts (eg *BAE*), others restarted (eg *Direct Line*) and others signalled dividend payment re-starts in Q4. One-off specials fell 90 percent to £299m. The report added: "*After Q1 2021, we will have passed the trough for the UK's Covid-19 dividends. We pencil in a best-case increase of 15 percent for 2021 to £69.6bn (excluding specials); our worst case delivers a six percent increase to a total of £63.5bn*."

Have GDPR rules been broken?

*Credit reference agency **Experian** has been sharing the personal information of millions of people without consent and must stop, the UK's information commissioner ruled. The firm sold on the data to businesses that used it to identify who could afford goods and services, as well as to political parties. The company must make *fundamental changes* as to how it handles data, or face a huge fine, the watchdog said.

Experian has said it will appeal. "*We believe the ICO [Information Commissioner's Office]'s view goes beyond the legal requirements*," said the Dublin-based firm: "*This interpretation risks damaging the services that help consumers, thousands of small business and charities,* *especially as they try to recover from the Covid-19 crisis*." While Experian had made efforts to improve its practices, the ICO said they did not go far enough. The company has eight months to satisfy the regulator or face fines of up to £20m, or four percent of its global turnover, whichever is higher. The two-year investigation was prompted by a complaint from the campaign group *Privacy International*. It found that **Experian** and two other credit reference agencies - **Equifax** and **TransUnion** - did a significant amount of "*invisible*" processing of data, meaning that people did not know it was happening. All firms provide a way for people to check their credit score for loans and credit cards, but the agencies are data brokers, collecting and selling on information gathered from a variety of sources.

The report found that the agencies had access to the data of almost every adult in the UK, which was then "*screened, traded, profiled, enriched, or enhanced to provide direct marketing services".* This processing resulted in "*products that were used by commercial organisations, political parties and charities to find new customers and build profiles about people*", the probe report stated. It was limited to offline data broking, so did not include data collected about online behaviour, which is being investigated by the ICO separately. Equifax and TransUnion will not face further action from the watchdog because both made changes, including withdrawing some products and services.

*A radical *Pro-tech* plan championed by Dominic Cummings to rewrite Britain's data protection laws was endangering future cooperation with the EU worth billions to the British economy, Brussels warned. The government's national data strategy, promising a transformation long sought by Boris Johnson's ex chief adviser and former *Vote Leave* director, sparked concern at a sensitive time with the continued flow of data between the UK and EU member states in question, said *The Guardian.*. The Commission is examining whether the UK's data laws will be in line with the EU's general data protection regulation (GDPR) and law enforcement directive after January 1, allowing the movement of data vital to the law enforcement agencies and the banking, health, entertainment, insurance and tech sectors too. Downing Street hoped that positive "***adequacy***" decisions would be made by Brussels before the end of the transition period.

The government estimates that EU exports to the UK of data-enabled services were worth ***£31bn*** in 2017 while UK exports of data-enabled services to the EU were worth around ***£80bn***. EU sources said the government's consultation paper, published on the same day as the controversial internal market Bill, had exacerbated concerns over the UK's approach at the end of the transition period. EU officials said the two key issues standing in the way of a positive decision were the use of data by the UK intelligence services and the potential onward data flow to countries such as the US. "*While the UK applies EU data protection rules during the transition period, certain aspects of its system may change in the future or be implemented in a manner that differs from the approach of the EU such as rules on international transfers,*" an EU official said. "*These aspects therefore raise questions that need to be addressed*." There was concern over the future rules "governing access to data by UK national security authorities" in light of a recent ruling by the European Court of Justice which made the transfer of personal data to the US from the EU almost legally impossible due to the intrusive nature of surveillance programmes undertaken by the US intelligence agencies and the lack of redress for EU citizens. Brussels sought assurances that the UK would recognise the implications of the ruling on its own treatment of European citizens' personal information.

Lawyers *Addleshaw Goddard* said the government was "walking a tightrope" by seeming to make a major move away from the EU's *gold standard* GDPR while seeking to show that it was in line with its regulatory intentions. The now defenestrated Cummings had described the GDPR as "horrific". Without a favourable GDPR adequacy decision, businesses will be forced to use individual agreements, known as standard contractual clauses. Industry insiders said the extra costs would be crippling for many SMEs.

*The UK government announced that it would grant *equivalence* status to EU-based financial services (FS) in order that they could keep trading in the UK after the transition period ends on December 31. However, as *newspad* went to Press, Brussels had not reciprocated chancellor Rishi Sunak's gesture, leaving uncertainty as to whether UK based FS companies could continue to operate on the continental mainland in 2021.

New IR35 rules: what to do

IR 35 The government's changes to the off-payroll working rules for the private sector will come into force finally next April, after being delayed by a year, due to the pandemic. The new deadline of April 6 2021 is now only four months away, so businesses need to ensure they are ready for the change, said Centre member **Bird & Bird.** This will involve checking the status of existing contractors, preparing to issue status determination statements to contractors who will continue to work after April 6 and putting in place new on-boarding processes for all contractors. IR35 is a tax law designed to tackle the problem of *disguised employment & remuneration,* where organisations engage off-payroll contractors on a self-employed basis through an intermediary (often, but not always, a personal services company (PSC)), rather than on an employment contract, so they become disguised employees. The Centre took an interest because some contractors set up employee benefit trusts (EBTs) in order to make '*loan payments'* through them to contracted individuals – to side-step Income Tax and NICs rules.

From April 1, private sector organisations will have a *statutory obligation* to assess the employment status of all contractors engaged through an intermediary (taking reasonable care in doing so) and, if the result of that assessment is that they are deemed employees, they will need to operate PAYE (income tax and NICs) on any remuneration payable to the contractor for its services. They will need to issue a status *determination* statement to the contractor setting out the conclusions of that assessment. For more complex arrangements involving a supply chain, each party in the supply chain will have an obligation to pass on the determination and other information to parties further down the chain. All such communications must take place at, or before, the time of the *first payment* under the contract after April 1. Public sector organisations have been required to make these assessments since April 2017, although there are some changes to the rules they have to comply with as well.

Exempt companies must satisfy two or more of these requirements: (a) annual turnover of not more than £10.2m; (b) balance sheet total of not more than £5.1m; and (c) not more than 50 employees. They will be deemed to be "*small*" and outside the scope. However, even SMEs may need to give warranties or other protections if they are providing staff to an affected business.

*The introduction of the *Loan Charge* should have signalled the end of HMRC's long battle with contractor loan schemes and the way they used employee benefit trusts, but it was not to be. *Stewarts*' tax director examined the issues in *The Yorkshire Post*. The Loan Charge had created a backlash, with accusations of retrospective legislation, HMRC failures and unfairness. It applies to any company that remunerated its employees via a loan from an EBT, thereby avoiding PAYE and NIC liability on behalf of the employee. If the loan still existed at April 5 2019 (*i.e. it had not been repaid*), it is treated as employee earnings. HMRC issued guidance to employers and employees in spring 2019. If the employing company is UK based, it should have calculated Income Tax and NIC due on the loans and paid it to HMRC by April 2019. Some companies did, many did not. The Morse review, commissioned by the PM, ensured that the total tax burden was eased for some, but many companies were left with significant tax liability and uncertainty. A lot of companies registered for the *HMRC Settlement Opportunity* with a cut-off date for settlement of September 30, this year. Companies who failed to register in time were sent to the back of the queue. Many did not pay the Income Tax and NIC liability back in April 2019 and wonder what to do. Similarly, employees are in a difficult position. Individuals with EBT loans outstanding at April 5 2019, were required to ensure the loans were declared on their 2018/19 Income Tax Returns – and these had to be submitted by September 30 2020. The problem is that *if the employing company failed to pay the Income Tax and NIC due in April 2019, or reach settlement with HMRC by September 30, the employees cannot claim a PAYE credit on his/her Income Tax Return, meaning that they risk a significant tax bill which is not really theirs.* HMRC is aware of this, but has been advising relevant employees to put the loans on their tax return. Anyone doing so and thus receiving a large tax bill should take advice. Companies that did not pay the Income Tax and NIC in April 2019, or settle with HMRC by September 30, have outstanding liability and should approach HMRC. Its Counter Avoidance Directorate is open to approaches to settle Employee Benefit Trust issues.

Disruption post Brexit transition?

*The governor of the Bank of England, Andrew Bailey, warned that the economic cost of a no-deal post Brexit would be bigger in the long term than the damage caused by Covid-19. Mr Bailey said failure to agree to a post transition deal would cause long-term damage to UK economy. The UK was likely to face "widespread disruption" as the result of its failure to prepare adequately for the new border controls that businesses will face next year, a report from the public spending watchdog warned. The National Audit Office assessment of UK border preparedness said there were insufficient customs brokers, unprepared border sites and not enough capacity in new customs software. From next year the UK will need to process ***270m*** customs declarations a year, compared to 60m at present, according to estimates by HMRC, with £1.4bn committed this year to funding new infrastructure. The report found that the new regulatory controls for goods crossing from GB to Northern Ireland would not be ready by January 1 and that the government was exploring contingency options. It added that the government's own border and protocol delivery group knew that there was a high risk that not all the infrastructure would be ready even by July 1 next year, when the UK expects to phase in full controls for goods coming from the EU.

*The Lord Mayor of London, former investment banker William Russell, criticised the government for allegedly not putting the future of the City's financial services at the heart of the post Brexit transition negotiations. He said that the City was a victim of its own success because key ministers seemed to think that it didn't need anyone to defend its interests in the fractious talks, but the reality was that even the City's FS sector needed TLC and it should have been better represented. Mr Russell backed proposals to make it easier for UK pension funds to invest in venture capital projects and to reduce the current 25 percent minimum founders' stake float rule, in order to attract more tech IPOs to London.

Assets worth **£1.2trillion** have been switched from London to continental Europe since the Brexit vote in June 2016, according to accountancy firm **EY**. Banks, insurance firms and fund managers have scrambled to protect their businesses before the transition period ends on December 31. From next year UK based financial firms will lose the *'passporting rights'* that have enabled them to freely sell funds, debt, advice and insurance to clients across the EU. City leaders had hoped that ministers would be able to thrash out a replacement deal with EU officials to enable them to trade on a similar basis after the transition period, Firms have hedged their bets by shifting assets from London to the continent and setting up subsidiaries in rival financial centres such as Frankfurt, Paris and Dublin. Wall Street giant JP Morgan has already switched £180bn – or seven percent of its global assets - to Frankfurt and now plans to shift £50bn more there. Barclays is now the biggest bank in Ireland after switching £150bn to Dublin. Others, including Bank of America, Goldman Sachs (£50bn to Frankfurt) *and* Morgan Stanley – have already prepared European hubs and shifted assets out of the UK to Ireland, Germany, and France. At least £150bn worth had already decamped from the City of London to France, claimed the Governor of the Bank of France, Francois Villeroy de Galhau. In the past few months, 21 investment firms, four credit institutions and seven third country branches had applied for authorisation to continue seamless trading and transactions, he told the *Europlace International Financial Forum*. In addition, 31 organisations, mostly investment firms, had applied in France for licences. M. de Galhau said: "*Even if there is a trade deal, which I still wish and hope for, UK based firms operating under the European financial services passport must quickly finalise their re-location to the EU if they want to operate within it from next January.*"

*The Financial Conduct Authority (FCA) said that UK investors could continue trading shares on European stock markets even if the government does not conclude a trade deal with the EU before the end of the transition period on December 31. The FCA threatened to abandon the EU's financial rulebook – Mifid – if Brussels did not allow UK firms to retain full access to its financial markets from January. *Brussels is permitting European investors to continue to trade in London listed shares, but only in limited circumstances*.

COMPANIES

*The **AA** has accepted a 35p per share £200m+ takeover offer from private equity firms TowerBrook Capital and Warburg Pincus. The listed breakdown service company floated six years at a price of 250p per share, but was loaded with £3bn corporate debt via previous owners Charterhouse, CVC and Permira.

***Amazon** ceo Jeff Bezos sold more than $3bn worth of his company stock recently, taking the total value of shares he has unloaded this year to $10bn. One million shares were sold by Mr Bezos, 56, under a pre-arranged trading plan, according to filings from the *US Securities and Exchange Commission.* Amazon's value has risen by 75 percent this year to more than $1.6 trillion as online shopping boomed. Its shares closed recently at $3,322 each. Mr Bezos is the world's richest man with a net worth of $191bn.

*UK electric vehicle company **Arrival** raised hackles by announcing that it would be listing in New York on Nasdaq, via injection into a special purpose acquisition company (SPAC), rather than in London, despite having its HQ in the UK capital. A SPAC is a company in which investors put up the capital and then look for a target to buy. Arrival is currently valued at £4.1bn. The number of companies listed on the London Stock Exchange shrank by 21 percent – from 1817 to 1439 - between 2010 and 2018, revealed a study by Oxera for the European Commission. The number of listed companies in Frankfurt fell by 34 percent to 469 over the same period. The Treasury plans an overhaul of the listing rules to encourage more high tech companies to list in London, rather than New York.

*The **Co-operative Bank** was in takeover talks with US private equity firm, Cerberus as speculation rose that the UK banking sector was heading for a wave of merger and takeover deals. The bank received an approach from a financial sponsor regarding the possible sale of the bank and/or the holding company. The lender declined to name the suitor, but it is believed that New York-based Cerberus Capital Management was behind the bid. The Co-operative Bank, which has 3.3m personal customers, 85,000 business clients and 50 branches across the UK, still classes itself as an ethical lender, although it was detached from the Co-operative Group in 2013.

*RSA, the 300-year old insurer which owns the *More Than* brand, agreed a £7.2bn cash break-up takeover from two overseas insurers - Canadian **Intact Financial Corporation** and the Nordic insurer **Tryg**. Under the terms of the deal, Tryg will pay £4.2bn and take over RSA's Swedish and Norwegian businesses, and Intact will pay £3bn to buy RSA's Canadian, UK and Ireland and other international operations. The two companies will co -own RSA's Danish business. RSA shareholders will receive a pre-announced interim dividend of eight pence per share, worth about £82m.

WORLD NEWSPAD

***Australian** mining company **South 32** faced a shareholder revolt over allegedly excessive bonuses after ceo Graham Kerr was paid two incentive awards worth £377,000 each. Shareholder advisory service **ISS** said that the awards were not aligned with the companies' declining financial results in the last two years.

*__China__: The planned stock market debut of Chinese tech giant **Ant Group** was postponed after its Shanghai listing was suspended without warning. Shanghai financial authorities said the group had reported *"changes in the financial technology regulatory environment,"* leading to the suspension. Ant, backed by **Jack Ma**, billionaire founder of e-commerce platform **Alibaba**, was set to sell shares worth about $34.4bn (£26.5bn). Ant runs Alipay, the main Chinese online payment system, where cash, cheques and credit cards have long been eclipsed by e-payment devices and apps. Alipay said the total volume of payments on its platforms in China for the year ending in June was $17.6tn. However, the Shanghai stock exchange said that "*major issues*", including Ant's report of changes to the regulatory environment, meant Ant no longer met *listing conditions or information disclosure requirements*. The Hong Kong exchange then reported that Ant had suspended its planned listing. The share price was set amid reports of strong demand from major investors. The pity was that Mr Ma had planned to use the partial IPO to offer many millions of extra shares in Ant to employees at a discounted price. Ant was due to sell about 11 percent of its shares and the pricing valued the whole business at about $313bn. Ant Financial had to repay **£128bn** to more than 1.5m investors – the biggest refund to would-be shareholders in history after Chinese regulators suddenly stopped the music. They told Ant that it must comply with increased capital requirements (*in case anything went wrong*) and that they were concerned about high-risk lending. Although he is a member of the Chinese Communist Party, Jack Ma has been critical of Chinese banking and technological regulations. Mr Ma aims to re-float Ant late next spring.

*China proposed new regulations aimed at curbing the power of its biggest internet companies like **Alibaba, Ant Group** and **Tencent**, as well as food delivery platform **Meituan**. The move came as the EU and the US were seeking to curb the power of internet giants too. Chinese tech shares were sharply lower with Alibaba, JD.com, Tencent, Xiaomi and Meituan shedding more than *$200bn* (£150bn) from their combined value. The 22-page draft by the ***State Administration for Market Regulation (SAMR)*** is the first attempt to define anti-competitive behaviour for the tech sector. Such rules will attempt to stop companies from sharing sensitive consumer data, teaming up to squeeze out smaller rivals and selling at a loss to eliminate competitors. They would clamp down on platforms forcing businesses into exclusive arrangements, something which Alibaba has been accused of by merchants and competitors. The regulations will take aim too at companies who treat customers differently, based on their data and spending habits. The SAMR sought reviews and feed-back from the public on the anti-trust guidelines until the end of last month. Alibaba and JD.com dominate the online retail market in China, together accounting for about three-quarters of Chinese ecommerce. As of September, Alibaba boasted 881m mobile monthly active users - more than half of China's population.

*The sacked ceo of **Arm**'s China division Allen Wu apparently demanded a $1bn buy-out of shares he manages as his price for leaving the premises. As Arm, which is owned by SoftBank, has refused to pay up, the dispute was holding up the planned $40bn takeover of Arm by US chip company Nvidia. Mr Wu owns shares in four companies that own shares worth up to 17 percent of the Arm China joint venture. Arm China claimed that it is a Chinese owned company and has asked Beijing for protection. Mr Wu was allegedly dismissed by the board of Arm China after setting up an investment fund without the board's knowledge. Cambridge based Arm, which designs semi-conductors, has devised technology used in millions of smart-phones.

***Canada:** In a recent decision, *Battiston v Microsoft Canada Inc*, the Ontario Superior Court refused to enforce termination provisions, similar to those often found in stock award agreements, *which stated that an employee lost his/her right to unvested awards upon termination of employment*. The court found that the termination provisions were unenforceable, despite being unambiguous, because they were "*harsh and oppressive*" and the employer ought to have brought them to the employee's attention, reported lawyers *McMillan.* The employee, Mr Battiston, had joined Microsoft Canada in December 1995 as a senior consultant. He was promoted several times over the years, but in 2018 was dismissed without cause. During his employment with Microsoft, Battiston's compensation included stock awards that were subject to Microsoft's rewards policy, which featured an online acceptance process that qualifying employees had to follow to confirm that they had read, understood and accepted the terms of the stock award agreement. The termination provisions of the stock award agreement stipulated that unvested stock awards would be forfeited *if the qualifying employee was terminated for any reason.* When made redundant, Mr Battiston had 1,057 unvested Microsoft stock awards. He claimed that he was entitled to them because: *the stock award agreement did not unambiguously terminate his right to vesting the stock during his notice period; *the termination provisions were onerous and unenforceable because Microsoft failed to bring them to his attention and *the stock awards constituted wages under the *Employment Standards Act, 2000* and, as a result, the termination provisions were void as they ended his right to unvested stock (wages) during his notice period.

The Court found that the termination provisions were "*harsh and oppressive*" as they ended Mr Battiston's right to vest stock awards if he was dismissed without cause. The Court further held that, due to the nature of the dismissal provisions, Microsoft *should have taken reasonable measures to ensure that these provisions were brought to Mr Battiston's attention*. As a result, the court held that the termination provisions were un-enforceable against Battiston and awarded damages for stock awards that would have vested during his notice period if his employment had not been ended. The court accepted Battiston's evidence that he was unaware of the termination provisions because Microsoft did not bring them to his attention. Importantly, the court found that ***Microsoft's online acceptance process for stock awards did not constitute a reasonable measure to ensure that the termination provisions were brought to his attention, even though the employee was expressly required to acknowledge that he had read the plan***. Microsoft filed an appeal notice. *Employers should be aware that even an unambiguous termination provision that limits an employee's entitlements to post-termination awards or pay may be deemed "harsh and oppressive."*

*__France:__ The global consulting, digital change, technology and engineering services business, **Capgemini**, launched a seventh Esop, offering it to 96 percent of its employees, as part of the group's policy to associate all employees with its development and performance. Total employee shareholding resulting from previous Esops already amounted to 5.1 percent of Capgemini's issued share capital. This Esop involves issuing a maximum 3,000,000 new shares (i.e. 1.77 percent of outstanding shares) reserved for the Capgemini employees, with settlement-delivery no later than December 17, this year. The directors of Capgemini authorised a share buyback envelope, as they did last year, to neutralise during the next 12 months all or part of the dilutive effect of this capital increase. Employees could subscribe to Capgemini shares within the framework of leveraged and guaranteed formulas, allowing employees - until the shares become available - to benefit from a guarantee on the amount invested in this plan. The voting rights will be exercised by the subscribers who, depending on the formula and the applicable country, will be either an FCPE, the employees, via direct shareholding and/or the financial institution structuring the offer. The implementation of the leveraged guaranteed offering implies hedging transactions by *Crédit Agricole Corporate and Investment Bank,* which structured the offer, through purchases and/or sales of shares, purchase of call options and/or other transactions, at any time until December 17 2025. Capgemini has 270,000 team members in almost 50 countries.

***L'Oréal** rolled out its second Esop in 57 countries, after its first worldwide Esop in 2018 allowed the cosmetics giant to open a new chapter in its social policy. Jean-Paul Agon**,** chairman and ceo, reaffirmed: *"This Esop is a new opportunity to allow those who wish to do so to support the development of the company and participate in its strategic project. This new plan reaffirms our ambition to unite our employees even more closely with L'Oréal's future."* The share purchase price, including a 20 percent discount, was fixed in mid September and the offer was limited to 500,000 shares, with settlement last month. Participants could purchase L'Oréal shares via a subscription formula, where the value of their investment varies with changes in L'Oréal's share price. They will benefit from an employer contribution, subject to terms and conditions as in the plan documentation. Shares purchased in registered form, as well as employee shareholding fund units, will be blocked for a five-year period, subject to early release exceptions defined by applicable regulations in France and the other countries in which the offer was available.

***Germany eases rules on share option awards:** European policymakers are installing new laws and initiatives to help the Continent rival Silicon Valley, to promote more investment in European tech start-ups and attract talent to the sector. German finance minister Olaf Scholz announced plans to make it easier for companies to award *employees stock options*, so that SMEs can hire the talent they need. "A flourishing start-up scene is important for our country, it strengthens the innovative capacity of the economy," he said, adding the law should be agreed next month. "That's why I am introducing new rules. Young companies should be able to really get started, even in difficult times." The news was flagged up at the ‘*Not Optional’* event, organised by VC firm *Index Ventures* and start-up conference *Slush*, with Jörg Kukies from the German finance ministry promising to help to “*incentivise start-up investment* in our country.” This came amid a sustained campaign by Index and other entrepreneurs to make it easier to give employees options, as a way of aligning incentives between employees and their employer. France changed its share options rules earlier this year.

*German corporate boards are being forced to appoint at least one female director as a board member in all listed companies. State-owned businesses will be forced to have a minimum of 30 percent women on their board of directors.

***India-stock options for salary**: Some of India’s leading consumer internet start-ups are offering additional stock options to employees in a bid to retain them, following broad pay cuts due to economic upheaval triggered by Coronavirus. Online food delivery major Zomato, hospitality chain Oyo Hotels & Homes, grocery delivery company Grofers and mobility venture Bounce, are among those bulking up employee stock option pools, after initiating salary reductions across the board, executives told *The Economic Times*. Zomato initiated a voluntary salary reduction programme, which offers affected employees additional stock in lieu of the cash cut from their pay cheques. About 2,700 employees took voluntary pay cuts and were then issued extra stock. The additional Esops are coming mainly from the founders’ stakes in their companies, said *The ET.* SoftBank-backed online grocery delivery company Grofers increased the size of its Esop pool by an additional $25m, as part of a new financing round. Companies were asking at what level to compensate at — *1:1, or should it be higher?* The grants may have better terms than their existing stock plans — lower priced and shorter vesting periods and because it’s set against liquid cash, there is an effort to make it as attractive as possible,” an executive told *ET*. While Bounce, which announced salary deductions ranging between 20 and 60 percent, said that while it is looking at paying due salary as soon as the macro-economic indicators return to normal, employees will get Esops in lieu of the interim salary cut.

***US:** Customer relationship management firm **Salesforce** announced it had granted equity awards under its 2014 Inducement Equity Incentive Plan to new employees who joined Salesforce after its acquisition of **Vlocity**. Via the plan, Vlocity employees received various equity awards. Under the Plan, Salesforce granted 363,731 restricted stock units (RSUs) and 88,463 stock options to 703 Vlocity employees. The RSUs vest over four years with 25 percent of the RSUs vesting on the first anniversary of the grant date and the balance vesting quarterly thereafter in 12 equal instalments, subject to continued service. The options vest over four years, subject to similar conditions. Founded in 1999, Salesforce enables companies of every size and industry to adopt powerful technologies—cloud, mobile, social, internet of things, artificial intelligence, voice and block-chain—to create a 360 -degree view of their customers.

*US financial regulators accused the former ceo of **Wells Fargo** bank and another former executive with misleading investors in the latest charges to arise from the bank’s fake accounts scandal. The Securities and Exchange Commission said the bank’s leaders endorsed and disclosed sales metrics they should have known were false. Ex-chief John Stumpf agreed to pay $2.5m (£1.9m) to settle the charges. He did not admit or deny the claims. In addition, Carrie Tolstedt, former head of Wells Fargo’s community banking operation, is fighting fraud claims in court. She is facing a $25m fine in a related case, which she is contesting. Wells Fargo has been under the scrutiny of regulators since 2016, when it was revealed the firm had glossed its ‘performance’ by opening millions of fake customer accounts. This year it paid $3bn to settle an investigation by the US Department of Justice and the SEC. It is subject to an order by the Federal Reserve that limits its growth. The scandal led to the departure of two Wells Fargo leaders, including Mr Stumpf, who stepped down in 2016. Earlier this year, he agreed to pay $17.5m to settle charges related to the scandal. The Office of the Comptroller of Currency, a US banking regulator, barred him for life from the banking industry.

Seasonal Greetings: All at the Centre – chairman Malcolm Hurlston CBE; Professor Michael Mainelli, executive chairman of the Z/Yen Group; Juliet Wigzell and *newspad editor* Fred Hackworth wish members and friends the best of health and happiness in 2021. We all have had to adapt swiftly to Covid-19 and many members have been ingenious and imaginative about activating and processing share scheme extensions and installations at the highest levels. This must have played a part in encouraging and persuading all-employee share plan sponsors to keep making their annual equity participation invitations. So with, apparently, an effective vaccine or two in sight, a very prosperous New Year to you all!

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