

it's our business

newspad of the Employee Share Ownership Centre

Law firm employees to become shareholders

City law firm **Mishcon de Reya** is to give all its employees shares in the business when it floats on the LSE, probably later this year, in a move which would value the business at up to £750m. Mishcon said it intends to float around 28 percent of its equity, leaving the majority of its shares in the hands of partners and other employees.

Executive chairman Kevin Gold said: *"I am proud that my partners have decided to award shares to all staff. It means every single one of our people will have a meaningful stake in our business. A public listing will enable us to invest in talent, our core areas, our allied services, as well as technology and Asia."*

Mishcon de Reya, hired by Diana to represent her during her divorce from Prince Charles, will be guided by JP Morgan in the launching of an IPO, probably this autumn, if market conditions permit. If so, it would become the seventh law firm to list in the UK since ownership rules were changed almost a decade ago, according to *The Telegraph*.

Sheffield-based **Irwin Mitchell (IM)** is another big UK law firm exploring a potential £500m flotation. Irwin Mitchell, which worked on high-profile personal injury cases including the Lockerbie Pan Am flight bombing, the Marchioness riverboat disaster and the pandemic-related deaths of NHS workers, is examining strategic finance options with the investment bank Rothschild, reported *Sky News*. A listing for the firm, which is legal sponsor of England Rugby, could result in a windfall for its 214 partners, who would become paper millionaires by converting their interests into shareholdings. A city source said: *"On paper, the law firm's partners would own a percentage of a publicly listed entity, as they are the effective shareholders of the group. Their partner interests could become shares. But there would be lock-in clauses – it all depends on what's in the prospectus."* In its annual report for the year ended April 2020, IM said it employed 1,684 fee earners and 979 administration staff, and spent £110m on wages, salaries and pension payments. Ceo Andrew Tucker was paid £661,000. In its report, IM said that one of its aims was to seek takeover

From the chairman

The government has disposed of its holdings in Northern Rock for a total of £7.8bn, it was revealed last week by international banking expert, Bill Brown. The total was reached by adding the £2.69bn interim dividend paid to the government in 2018 to the £5.129bn balance shown in the UKAR 2020 accounts.

Former Northern Rock chairman Viscount Ridley has asked the Treasury to consider a payment from the massive windfall to employee shareholders.

In his reply, the economic secretary to the Treasury John Glen said no to shareholders in general, but left the door open for employee shareholders who were not separately mentioned in the letter.

It is now clear that it would be very much in the government's interest to show compassion towards former employee shareholders of Northern Rock, most of whom live in the Northeast within the Northern Powerhouse region - the bailiwick of Transport minister Grant Shapps.

The situation is radically different from the Roadchef case, on which the Centre has been campaigning even longer. With Roadchef, the government is holding back from making a payment to former employees for fear of creating a precedent. By contrast, a payment for Northern Rock former employees would be ex gratia and, as we now learn from Bill Brown, a miniscule part of a massive gain.

Malcolm Hurlston CBE

targets to expand the business: *"The board intends to grow the key areas of the business through continued investment in the Irwin Mitchell brand, organic growth, in new talent and further merger and acquisition activity, if opportunities allow."*

Employee share schemes to end at Asda

Up to 25,000 employee participants in supermarket group **Asda's (Walmart)** SAYE-Sharesave schemes were saddened when the three-year tax-advantaged share scheme came to an end recently, without any replacement scheme in sight. Its Sharesave participants received a 61 percent return on their investment in the scheme, as US parent company Walmart's share price advanced from \$86 at the launch in mid April 2018 to \$140 when it vested.

For a £6.8bn takeover spells the end of employee share ownership at Asda, at least for the time being. It is re-structuring its staff *cash* bonus scheme to offset the now seemingly certain loss of its popular share scheme when the UK operation is formally taken over, probably in a few weeks time. Under new ownership, Asda staff could receive between 100 and 200 percent of their salaries in cash bonuses, depending on their seniority.

Asda, hitherto owned by US store giant Walmart, has been sold to two billionaire brothers from Blackburn. A consortium of Zuber and Mohsin Issa's petrol station **EG Group** and private equity firm **TDR Capital** has taken a majority stake in Asda. They won the takeover battle, but the regulator, the Competition & Markets Authority (CMA) found "local competition concerns" over fuel prices in UK 37 areas and insisted on further discussions before giving the deal the green light. The Issa brothers, who own 395 UK petrol stations, while Asda owns 323, said they would work with the CMA to find a solution and there was speculation that they would agree to sell some of the petrol stations in those areas.

Once regulatory approval is granted, the acquirers are expected to take Asda private and de-list its shares from the stock market. With the notable exception of the private equity wing of US investment giant **KKR**, most private equity firms are not interested in all-employee share schemes, which they regard as dilutive of their control.

The same TDR Capital recently joined forces with Florida based I Squared Capital to acquire Glasgow based diesel and gas generator supplier **Aggreko** and take it private too. The recommended offer document said: "*The acquirer will make or procure a one-off cash compensation payment to those participants in the UK SAYE, International SAYE and US Stock Purchase Plan who exercise their options conditional on the effective (takeover) date and who remain Aggreko employees on such date.*" This means that the group-wide SAYE-Sharesave scheme will be terminated, with seemingly nothing to replace it.

The value of UK companies taken private by private equity acquirers rose from £2.3bn to £21bn in the 12 months to September 30 last year, according to BDO research. How many of these companies will ever come back to the market and,

if so, will the new owners offer any new employee share schemes? - is the question being asked in several quarters of the share scheme world.

Last November, *newspad* first broke the story of how the threatened takeover of Asda was a potential death sentence for its SAYE share schemes, but no-one would discuss that on the record with us at that time.

Previously, Asda employee shareholders doubled their investment in Walmart's three-year 2017 SAYE-Sharesave at vesting. Participating employees saved to accumulate share options in Walmart, with the standard 20 percent discount, gaining the option to buy and then sell them for a return three years on.

Many Asda senior managers hold Walmart restricted stock units (RSUs), which they were awarded as a retention tool. RSUs normally cannot be sold until they mature every three years. Walmart, which will retain a minority stake in Asda after the sale goes through, will allow early maturity of these stock units once Asda changes ownership. TDR Capital's view of the share schemes is not known.

The cfo of Asda left company amid speculation that several senior staff were gearing up to go after its sale. The supermarket chain confirmed that Rob McWilliam would be leaving- only weeks after ceo Roger Burnley announced his resignation. *The Times* reported that senior staff had been contacting head-hunters after receiving their final Sharesave Eso scheme payouts from Walmart, the giant US retail group, which owned Asda for more than two decades.

EVENTS

Building back better with your employees through shared ownership

May 27 2021 18:00 (BST)

Esop Centre joint web event with City of London Institute of Directors. Aimed at SMEs, this on-line panel discussion aims to explain why Employee Share Ownership is a "good thing" and why it is good for business; How it can be used to build better relationships with employees – how employee share plans can play a key part in rising to challenges, such as those caused by the pandemic, by contributing to employees' savings, morale and engagement. The session will look at the pros and cons of Employee Share Ownership, how it works and what the options are.

Webinar:

EOTs - the credible alternative to succession

May 27 2021 15:00 (BST)

The use of Employee Ownership Trusts (EOTs) by private companies has seen a considerable rise in 2020 and is expected to continue in 2021. A well-

run employee-owned company could benefit from a longer term business strategy and not have to consider the conventional exit routes, with the EOT giving an alternative succession route. In turn, a more engaged and happier work force could lead to higher profits.

The business ethos that lies at the heart of the EOT is that it is set up to hold shares on behalf of all the employees of the company.

As a business succession tool, supporting the sale to an EOT that, as a transaction, is free of Capital Gains Tax then facilitating Income Tax-free bonuses to employees, the EOT structure offers itself as a formidable element within a management buyout. However, the most tax-efficient and motivation-maximising management buyout will require a structure more akin to a hybrid model of employee ownership with linkage to meaningful and measurable performance conditions.

In this talk, employee share schemes expert, David Craddock, will demonstrate how the EOT has become the credible alternative to succession.

Report: Esop sofa—newspad review

The latest *newspad* review webinar featured **YBS Share Plans'** Darren Smith and guest panellists: Jonathan Sturman, governance manager – public service pensions & share schemes at **Kier Group**; Jennifer Rudman, industry director (employee share plans) at **EQ**; and Matthew Hunter, managing associate at **Tapestry Compliance**, who discussed in depth articles featured in recent issues of the Centre's monthly publication. Darren and his sofa guests complimented the Centre on the success, to date, of its campaign to convince the chancellor that a proposal to reduce substantially the annual £12,300 Capital Gains Tax exemption allowance would seriously damage all-employee share ownership, especially SAYE-Sharesave. The Centre opposes raising CGT charge rates too because other share schemes, such as EMI and Growth Shares would be adversely affected too. Jonathan said that 3,000 Kier Group employees were participants in its SAYE scheme, saving an average of £90 per month and for many, this was the only form of savings that they had.

Matthew said that Tapestry had a few clients who were worried, pre-Budget, about what looked like a threat to SAYE in the recent Office of Tax Simplification report, but a message had come back that the Treasury was not trying to scrap SAYE-Sharesave, though he said the outlook for growth share plans was "less positive," because the OTS thought they should be taxed at rates closer to Income Tax.

During the pandemic lockdown, the Kier Group had furloughed a lot of its staff and had applied pay reductions, some quite hefty, for three months on senior managers and executives, said Mr Sturman:

"We made sure that every participant in our SAYE scheme was aware of what we were doing, but there was no spike in contract cancellations by employees."

Mr Hunter said that there was a definite trend among senior management in quoted companies to link pay outcomes with environmental, social and governance (ESG) factors. Looking at FTSE100 companies, there were 42 which now had a specific ESG weighting element in their executive remuneration criteria and 35 which made a general reference to ESG factors in their remuneration guidance. There was a lot more board focus too on gender diversity. On executive reward plans, he said that investors did not want to see targets in any incentive schemes adjusted due to the effects of the pandemic on company performance. Nor did they expect company executives to be allowed to *catch up* via this year's rewards for lost opportunities in 2020. What investors wanted was for boards to ensure that executive reward packages were aligned with any percentage increases in company's pay bill as a whole. As the Investment Association had said, even if companies had spare cash, they were not expected to hand out executive bonuses this year. Investors wanted to see more *granular* transparency over what companies were up to on the reward front, he added.

Jennifer said that there had been an increase in the number of companies offering free shares to their employees, notably EQ client BT, which had been highly commended in the *newspad* Best International Share Plans 2020 Award category for offering free shares to nigh on 106,000 employees worldwide in its *Your Share* plan. BT had won the *newspad* award for the Best Use of Technology for the same plan too. This reinforced her experience, shared by Darren, of UK companies seeming to focus more nowadays on their global employee share plans than on those at home.

MOVERS AND SHAKERS

Linklaters appointed **Alex Beidas** as global head of employment & incentives. She succeeds Nicola Rabson, who returns to her role as partner, leading the London employment practice. Alex advises a wide range of leading corporations and financial institutions, including their boards, on major corporate transactions, crisis management and regulatory investigations. Her client experience spans more than one third of the FTSE30; more than two-thirds of the top 20 global banks and more than half the top 20 global asset managers. Her work includes advising on corporate governance, senior recruitment and terminations, workforce engagement, accountability, executive pay, management incentives, ESG, global remuneration regulation and risk. In addition, Alex works closely

with boards, lawmakers, regulators and industry bodies on the development of new legislation and regulation. Alex is heavily involved in the firm's social impact work, chairing the London Social Impact Committee as well as being on the London Leadership Board of Business in the Community and chair of the people & governance committee of St Mungo's, the homelessness charity.

UK CORNER

Betting group launches global Sharesave

Sports betting and entertainment group, **Entain**, which owns the UK Ladbrokes and Coral bookmaker chains, plus bwin, PartyPoker and Sportingbet, launched a group-wide three-year SAYE-Sharesave plan which offers its 22,500 employees globally a potential share in its future success. Of these, almost 14,000 work in UK Coral and Ladbroke shops. Under the terms of this SAYE plan, staff can save up to the imposed cap of £100 per month (*the maximum monthly savings limit is £500, but companies can choose their own limits*) towards buying shares in the organisation and they can start by making contributions of just £5 per month. Participants putting aside £50 monthly would save £1,800 over the period, compared to £3,600 for a £100 a month contribution.

The new SAYE-Sharesave plan subsumes a patchwork of smaller Eso plans within different parts of the Entain gambling empire. Ceo Jette Nygaard-Andersen, said: "*Entain has been one of the highest performing [organisations] in the FTSE-100, which is the result of hard work from teams across our business. Building a strong customer-centric culture where everyone contributes and shares in our continuing success is really important, so this plan is designed to be attractive and accessible to all.*" Entain's share price has risen consistently in the last three years, from 687p in 2019 to 1130p at New Year's Eve and up again to 1,718p recently – a rise of 52 percent in under four months.

Mass shareholder revolts over top pay

A new *shareholder spring* was well under way when this issue of *newspad* went to press, as shareholders revolted right, left and centre over executive pay awards at a time of Covid. More than a third of voting shareholders at the agms of **British American Tobacco (BAT)**, pizza chain **Domino's**, estate agency group **Foxtons** and educational publisher **Pearson** gave the thumbs down to their boards' remuneration reports over the thorny issue of executive reward during the pandemic.

Almost 40 percent of the votes at Foxtons expressed anger at the payment of bonuses to executives, despite the firm having taken furlough support and

business rates relief from taxpayers, via the government.

About 37 percent of Pearson's agm shareholders voted against the company's remuneration report to register their displeasure, for the second time round, over a £7.2m *golden hello* handed over to new ceo Andy Bird. It was an even bigger shareholder revolt than at the egm last September, when 33 percent voted against the reward deal. Mr Bird is to get almost \$10m (£7.24m) in share awards on top of an annual salary worth \$1.25m. Pearson said later that it always knew that an exceptional reward package had to be offered to secure the services of Mr Bird, a former Disney executive. Most shareholders had realised this and were happy with the arrangement, it added.

Same again at BAT, where more than 38 percent of voting shareholders opposed the directors' remuneration report. Shareholder advisory group ISS had recommended that BAT's shareholders oppose the pay report after ceo Jack Bowles received a three percent increase in his salary to £1.3m, following a 9.5 percent rise the year before. The aggregate value of [his] non-cash benefits at £592,000, including £155,000 for security improvements to his home and car allowance plus driver, health insurance and tax advice, stood out as unusually high, ISS said.

Foxtons awarded a near-£1m bonus to its ceo Nicholas Budden, who received an annual bonus payment of £389,300 last year to reward "hard work" in a year in which the business had done "*well in very tough circumstances*". In addition, Budden was given shares worth £569,000 under an LTIP (long-term incentive plan), which will vest in five years' time. Yet Foxtons refused to pay back millions of pounds in taxpayer-funded government support to help weather the pandemic. The estate agency chain received almost £7m in government furlough money for staff and business rates relief. Almost one third of the votes were cast against the re-election of Foxtons' remuneration committee chair, Alan Giles. Investor advisors Glass Lewis and ISS, criticised Budden's reward in a year that witnessed Foxtons' share price fall by about a third. "*Some investors may question the appropriateness of awarding bonus payments to the executive directors before paying back the government support received,*" ISS said in a note to investors. "*There is a material disconnect between bonus outcomes and company performance.*" Glass Lewis said it was "concerned" about any payouts under annual bonus schemes "given the shareholder and wider workforce experience" last year. "*In our view, there is no reason as to why the company could not reduce the bonus to nil, a common practice amongst the company's FTSE-listed peers.*"

At Domino's, 35 percent of the agm votes went against the new ceo Dominic Paul's reward

package, which was 41 percent higher than his predecessor's. Its remuneration committee said later that it would continue to engage with shareholders in order to better understand their views.

SSP suffered a mini investor revolt over a pandemic-inspired shift of its executive reward incentive base towards restricted share units, which usually involves ditching performance hurdles. That resolution was opposed by 10.25 percent of voting shareholders. However, almost 22 percent of its shareholders then gave the thumbs down to another resolution which allows directors to allot shares to chosen individuals under Section 551 of the 2006 Companies Act. Under the new reward plan, ceo Simon Smith is entitled to a restricted share award of up to 100 percent of his salary, with his cfo eligible for shares worth 75 percent of salary. Both missed out on bonuses last year and suffered substantial pay cuts as sales at its station and airport food outlets declined sharply.

In addition, more than 20 percent of investors at the agm of **Upper Crust** owner **SSP** voted against a board inspired executive share allotment plan which they thought was too generous.

A shareholder rebellion for an entirely different reason faced **Indivior**, the opioid addiction treatment company. Investors were angry over the board's decision to classify its jailed former ceo Shaun Thaxter as a *good leaver*, thus entitling him to receive up to 1.7m shares over the next three years, worth £2.3m at market price. Shareholder proxy advisor Glass Lewis advised clients to vote against Indivior's remuneration report at the May agm. Thaxter was jailed in the US for six months and fined \$600,000 after pleading guilty to a charge relating to the marketing of film drug Suboxone.

Investor institutions warned that they expected executive pay restraint at a time when chancellor Rishi Sunak had run up a £300bn+ pandemic repair bill in defending companies against possible failure or event bankruptcy. The Investment Association (IA), a City group of 250 fund managers, said it was on the alert. However, City commentators wondered out loud whether the IA's *Sin Bin* - the naming and shaming of companies at whose agms

more than 20 percent of voting shareholders had voted against key resolutions – had outlived its usefulness....

Ceo pay ratio fuelling reward race

Former business secretary Sir Vince Cable said government policies aimed at tackling the vast pay gap between ceos and their staff did not address the root cause of the issue and in some cases may have made the problem worse. The former LibDem leader said measures to increase the transparency of executive pay had backfired by sparking one-upmanship between large corporations eager to offer the most lucrative pay. Sir Vince added that recent measures that forced the disclosure of pay ratios may fail to expose the true nature of a company's remuneration culture depending on the industry. The Tory-LibDem coalition government, of which he was a member, was criticised for failing to introduce *mandatory* disclosure of the ratio between the pay of a ceo and that of a median employee in a company. Sir Vince said he regretted failing to pursue this measure while in office because it appeared to show a greater divergence in companies such as retailers, which have a large workforce, than in financial services firms, where even junior employees are paid a reasonable salary. He said the Covid crisis had renewed focus on executive pay because of mounting concerns about economic fall-out from the pandemic and the national debate over fairness and equality. Deborah Hargreaves, director of the High Pay Centre, said the UK should "not waste this crisis" when "major reforms to the economic system" were needed. "*We have to start talking about bolder measures. What's wrong with a maximum wage? What's wrong with a maximum pay ratio?*"

Think tank calls for share ownership commission

Low-income employees who own shares in the companies they work for are typically £10,000 better off than non-participating employees on a similar salary, said a report by the **Social Market Foundation**. The *wealth premium* for those in share ownership schemes - less than five percent of all employees - was particularly stark among younger employees.

The SMF cross-party think-tank urged the government to launch a new employee ownership commission to promote share plans, which could include new rules requiring companies to publish more information about their employee share plan use.

The Centre too is campaigning for a major overhaul of employee share plans, especially their tax-advantaged benefits and rules, which have not been changed significantly for 20 years.

The SMF said its findings underlined why ministers should do more to encourage companies to offer share ownership schemes, which could be "an



important tool for bolstering the financial resilience of UK households and giving employees a stake in the economy after the pandemic.” Such schemes often boost company productivity too.

Its report study found that among the UK’s worst-paid employees – those in the bottom 25 percent – those included in their employer’s Eso scheme were on average £10,900 wealthier than those without access to these schemes. Among the poorest half, aged between 25 and 34, those who were employee shareholders typically had a net wealth of £750 on average while those who were not had an estimated wealth of just £77. For those in this group aged between 35 and 44, the think-tank calculated an average net wealth of £450 for every employee not included in a share ownership scheme, while for those who do own shares in their employer their net wealth climbed to £8,835.

The Centre recently told chancellor Rishi Sunak that in many lower paid employee households the tin box on the mantelpiece represented their only means of saving anything at all.

SMF research director Scott Corfe said “*too many people on low incomes struggle to build up savings*” to survive tough times, but share ownership schemes give employees “*an opportunity to build up their wealth and financial resilience. That should be encouraged. Politicians who want a fairer, more resilient economy after the pandemic should lead a new drive to expand employee share ownership and give more people a stake,*” he said.

Although more than 14,000 UK companies offer employee ownership plan under the tax advantaged rules, the SMF warned that barriers may be limiting their uptake. For some companies the cost of administering the plans and complex accounting rules for their use, can be a deterrent. For employees there was still a lack of awareness of the benefits of ownership, and the requirement, in the Share Incentive Plan, to stay with the same employer for a minimum of five years to reap the full benefits, it added.

EMI Call for evidence

The Centre will send the chancellor comprehensive and ground-breaking proposals to expand the availability of the popular share options based Enterprise Management Incentive (EMI) tax-advantaged incentive scheme to many thousands more growing UK smaller businesses.

To that end, the Centre established an ad hoc committee tasked with submitting evidence on EMI reform to the chancellor before the May 26 deadline. It comprises four leading member advisers: Damian Carnell, director of Corporate Growth Ltd; David Craddock, founder & director of David Craddock Consultancy Services; Colin

Kendon, shares schemes partner at Bird & Bird and tax barrister and employee share scheme doyen, David Pett of Temple Tax Chambers.

The committee is hard at work on the EMI project and a framework for major change in the way the scheme operates is being developed.

The chancellor called for evidence on whether and how more UK companies should be able to access EMI to help them recruit and retain the talent they need to scale up. Agnes Chauvet, a senior policy adviser at HMRC and Alexandra Craig, Head of Enterprise Investment at HM Treasury, contacted the Centre directly, asking us to urge our members to help shape the future expansion of EMI. These senior officials told the Esop Centre: “*We are particularly interested in **quantitative evidence** to support the need for further intervention. We would like to encourage you and the businesses you represent to respond to the consultation:*

[https://www.gov.uk/government/publications/enterprise-management-incentives-call-for-evidence.](https://www.gov.uk/government/publications/enterprise-management-incentives-call-for-evidence)”

Advisers who are sending their views on EMI direct to the chancellor are asked to send a copy of their evidence to the Centre too. Please send your thoughts on how EMI might be changed for the better (not more than three pages) with supporting evidence to Juliet_Wigzell@zyen.com at Centre HQ.

The chancellor seeks evidence-backed views on:

*Whether the current scheme is fulfilling its policy objectives of helping SMEs recruit and retain employees

*Whether companies which are ineligible for the EMI scheme because they have grown beyond the current qualification limits are experiencing structural difficulties when recruiting and retaining employees

*Whether the government should expand the EMI scheme to support high growth companies and how best to do this.

*Whether other forms of remuneration could provide similar benefits for retention and recruitment as EMI for high-growth companies.

Examples of occupational sectors which do not qualify for the award of EMI options include: leasing, farming, financial activities and property development, but leasing should not be an EMI barred occupation, Colin Kendon told the Centre’s *British Isles share plans symposium*.

Centre member **Travers Smith** said that the chancellor could consider extending the EMI regime not just to larger companies, but to companies with a controlling corporate shareholder (*thereby making it more readily available to companies with private equity or venture capital sponsorship*) or to companies that carry out some of the currently prohibited trading activities (e.g. financial services

activities such as banking or insurance). As the EMI options regime was no longer subject to EU state aid rules, the government may find that it had more flexibility. HMRC confirmed that EMI schemes would continue to be available under UK law.

Some companies find themselves prevented from using the scheme, even though on the face of it they look like ideal candidates, revealed an **RM2** survey. Companies with external investors will sometimes be disqualified from the scheme because of complex control rules set out in the tax legislation, while those entering into joint venture arrangements can similarly find themselves inadvertently non-qualifying for EMI. Fast-growing companies, particularly those making acquisitions, can move from qualifying to non-qualifying status almost overnight by exceeding the *current 249 full time employee limit* – a cliff edge leaving them with a real challenge to provide truly motivational and impactful equity incentive programmes.

“We are encouraged by the chancellor’s announcement that as part of his commitment to making ‘the UK the best place in the world for high growth, innovative companies’ he’s launching a consultation to make sure the EMI plan is internationally competitive. We look forward to engaging with sector stakeholders in response,” said YBS Share Plans.

Roadchef

Former **Roadchef** Esop scheme participants are hoping to enlist the help of High Court Enforcement Officers in order to secure their court ordered compensation pay-out, which already has been delayed for more than *seven* years.

A writ of control can be issued after the court’s judgment or order is made for recovery of money and/or costs by the successful party. Sometimes, the court’s permission to issue such a writ is not needed, but the January 2014 High Court ruling by Mrs Justice Proudman in favour of the beneficiaries was complex and a hearing would be necessary.

The compensation order arose because the Judge ruled that former chairman and ceo of motorway services chain Roadchef, Tim Ingram-Hill, had breached his fiduciary duty when he transferred the share scheme participants’ shares into a separate performance shares trust, which he controlled. He later made a £28m+ profit when he sold Roadchef to Japanese investors, though he owned some of the shares in his own right.

An unknown sum was paid by Ingram-Hill in compensation, as an agreed settlement of the case. It is believed that this sum still sits in an escrow bank account, but no details of this have been released by the trustee.

The former Roadchef Esop participants are exasperated because English trust law, in certain

circumstances, allows trustees to decide what course of action is in the best interests of the beneficiaries, which is exactly what Roadchef EBTL trustee, Christopher Winston Smith, is doing. Indeed, he told one beneficiary last year: “*The issues you have raised illustrate the practical difficulty of trying to share the detail and nuances of this case with you. The law recognises this by giving trustees powers to administer Trusts and pursue a certain course of action with legal advice and/or directions from the court, where appropriate. We have done both and will continue to do so.*”

So far this year, he has not updated the beneficiaries on when the compensation finally will be paid. Mr Winston Smith told the beneficiaries late last year that HMRC was still insisting on taxing the compensation pots – an action which, he claimed, would almost wipe out their payments. He said he was still seeking an amendment to existing tax legislation and if that didn’t work, he would *get a tribunal to resolve the tax position.*

The problem about that is that the Roadchef employee share scheme (*one of the first in the UK*) was set up *before* the main share scheme tax reliefs were established in law. Shares were allocated to employees partly on the basis of their Roadchef service records and so were **not** made available to all full-time employees on equal terms, as is the requirement in tax-advantaged schemes nowadays.

HMRC was forced to surrender to the trustee millions of pounds of ‘tax’ paid by Mr Ingram-Hill on his profit from the sale of Roadchef, but it had no choice after the judge had ruled that the Esop shares transfer to the second trust was “*voided,*” so the ‘tax’ payment was unjustified in law. HMRC then told the trustee that in return for pocketing Mr Ingram-Hill’s ‘tax’ payment, the trustee should accept that tax would be due on the compensation payments. However, the trustee has refused to compromise.

The vast majority of beneficiaries who have contacted *newspad* in recent years want their compensation paid out now, regardless of whether it is taxed or not.

Old age, sickness and the pandemic have thinned out their ranks and some fear that they will not be paid their compensation before they die.

Airdrie & Shotts MP **Neil Gray**, who helped organise parliamentary petitions about the plight of ex Roadchef Esop participants, is quitting his Westminster seat and standing instead for the equivalent Holyrood seat.

Mystery persists over Royal Mail ownership

Details of the latest shareholder register at **Royal Mail (RM)** reinforce low key speculation about whether its future ownership could come into question. Czech billionaire investor Daniel Kretinsky still holds 15 percent of RM’s equity

through his Vesa investment vehicle, though his long-term intentions remain unclear.

Although UK media attention is focused on him and his Vesa fund, City analysts usually fail to mention the additional 10.7 percent stake held in Royal Mail by Prague based CSOB, an asset management business.

This was thrown into sharp relief when it was revealed that Mr Kretinsky had acquired a near ten percent stake in high street grocery chain **Sainsbury's** from Qatar's sovereign wealth fund. The Qataris still hold 15 percent of Sainsbury's shares.

Meanwhile, the share price of the FTSE 250 listed RM soared from 137p in April last year, to 500p+, largely due to the phenomenal success of its international parcels business, GLS.

The postal service employees, who collectively hold a total 10.60 percent, mainly through its huge Share Incentive Plan (SIP) and the rest via its EBT, *could yet play a major role in helping to decide RM's future.* Qualifying postal employees were all awarded free shares by the coalition government when it privatised RM in 2013 and a majority have since kept faith with employee share ownership, many thousands even subscribing to RM's SAYE schemes. After the employees, Schroder Investment Management is the next largest shareholder, with a nine percent holding.

Royal Mail is to make a one-off dividend payment to shareholders, including employee shareholders, after the online shopping boom during the Covid-19 pandemic boosted its parcel delivery business, in a dramatic turnaround of the company's fortunes. RM expects to make an adjusted operating profit of £700m for the year to the end of March, more than double last year's £325m. This has given it the confidence to pay a final dividend of 10p a share on September 6, the first payout to shareholders since January 2020. Since floating on the stock exchange in October 2013, RM has been struggling with its declining letters business. Attempts to restructure the company led to prolonged battles with unions. As well as investing in its UK Parcelforce division, RM sees growth opportunities abroad. Its GLS international parcels arm is expected to make an operating profit of €390m (£350m) for the past year and it is forecast to rise to €500m by 2025.

Pay flotation fees in shares call

One of Britain's biggest institutional investors is calling for investment bankers who float companies' shares to receive some of their fees in those shares as part of the overhaul of the listing rules. **Legal & General** wants anyone chairing a business being listed to be in place at least six months beforehand. The proposals were first reported by *Sky News*. The ideas were fed into a consultation being run by the Financial Conduct Authority over reforms to the

listing regime. It comes after a report by Lord Hill of Oareford called for rules to be made more flexible to entice entrepreneurs and the leaders of fast-growing businesses to list in London.

ESG corner

The debate on the future of agms has been ongoing following the difficulties encountered last year in holding shareholder meetings due to the pandemic, said an EQ Bulletin: Two recent contributors to the debate have been the GC100 and ShareAction with differing views on how agms should be held. The GC100 issued a discussion paper, "*Shareholder Meetings – Time for Change?*" which considers the future format of agms. The suggestions and recommendations in the report include: *Allowing companies the flexibility to choose the meeting format that best serves their shareholder base *Ensuring there is clarity in the Companies Act 2006 regarding the legality of virtual agms *Encouraging separate virtual shareholder engagement events in addition to the agm *Working with government, investor bodies and the Financial Reporting Council on a code of best practice for virtual meetings which addresses areas of shareholder concern The GC100's discussion paper includes a draft Code of Best Practice for electronic participation at hybrid and virtual meetings.

ShareAction wrote to the chairs of FTSE 350 companies asking them to put in place best-practice measures for 2021 agms, particularly during the ongoing crisis. These include: *Live, interactive question and answer sessions with the board *Video conferencing *Voting that takes place after the discursive portion of the agm.

Share Action published a report "*Fit for purpose? The future of the AGM*" setting out its visions for the purpose of the agm. It sees the agm as a forum for stakeholders, companies and shareholders to engage in communication and assess how the Board is meeting its Section 172 requirements. It is suggested that the agm cycle is split into: *Engagement with registered stakeholder groups throughout the year *Pre-agm questions and answers *The agm annual shareholder vote. The report sets out a series of recommendations for investors, regulators and companies.

COMPANIES

*Anti-Covid jabs producer **AstraZeneca** faced a potential backlash over its executive pay following opposition from City shareholder advisory group. Glass Lewis recommended that investors vote against the Anglo-Swedish pharmaceuticals group's remuneration policy at its agm on May 11. Glass Lewis took issue with the proposed increase of ceo Pascal Soriot's maximum long-term performance share award from 550 percent to 650 percent of his £1.3m base salary. The advisory group noted it was

the second consecutive annual increase, following a pay review. The company has faced several pay revolts over the years, despite the successful turnaround of the company under Mr Soriot, ceo since 2012.

***Centrica** ceo Chris O'Shea took a voluntary £100,000 pay cut and gave up his bonus to earn total reward of just £765,000 for his first 12 months in office. The FTSE250 company admitted a difficult year for customers and shareholders as the pandemic took hold. Centrica halved the number of its executive directors, saving £7m as a result and furloughed 6,000 staff between March and October last year.

*Ethical trading **Co-operative Group** came in for sharp criticism after it decided to retain £66m in business rates relief, despite posting a five-fold increase in pre-tax profits from £24m to £127m and pledging to pay bonuses to senior managers. The Co-op said it would repay £15.5m taxpayers' furlough support obtained via the Coronavirus Job Retention Scheme, but that it had been forced to shell out £84m on other pandemic measures, such as staff PPE. Ceo Steve Murrells said that executives would receive bonuses after store staff had received pandemic bonuses of £25m. He netted £2.2m in total reward last year, including a bonus of more than £1.35m. Apart from food, the co-op has funeral, legal services and pharmacy divisions.

***Credit Suisse** sacked two top executives as it faced a £3.4bn loss from stricken Archegos Capital Management, which had relied on collapsed lender Greensill Capital. The troubled banking giant, which admitted that clients were vulnerable to huge losses from frozen funds associated with Greensill, cancelled directors' bonuses and cut its dividend.

***Deliveroo** shares dived in value on its stock market debut after some UK investors expressed concerns about its gig economy worker model. Shares in the food delivery business had been offered to investors at 390p each, but collapsed in early London dealing to 275p, before later recovering slightly. However, in subsequent trading weeks, they fell sharply again to c 237p (*40 percent below the float price*), as disillusioned customer share-buyers scrambled for the exit. Sentiment was further soured in France, where thousands of registered Deliveroo customers were sent phoney bills, as an April Fool's (*Poisson d'avril*) joke, which fell as flat as a pizza. One customer was hospitalised after collapsing when she received one of the fake invoices. Later, it emerged, via a US financial disclosure, that investment manager T Rowe Price had acquired a seven percent stake in Deliveroo. Initially, investors were put off by factors including the working conditions of its riders and a lack of investor power over the direction of the company. Deliveroo was reportedly lobbying for a change in the law, to allow it to offer pension contributions and paid holidays to

Join the Esop Centre

The Centre offers many benefits to members, whose support and professional activities are essential to the development of broad-based employee share ownership plans. Members include listed and private companies, as well professional experts providing share plan services covering accountancy, administration, design, finance, law and trusteeship.

Membership benefits in full:

- ⇒ Attend our conferences, half-day training seminars, breakfast roundtable discussions and high table dinners. Members receive heavily discounted entry to all paid events and preferential access to free events.
- ⇒ Access an online directory of Esop administrators; consultants; lawyers; registrars; remuneration advisers; companies and trustees.
- ⇒ Interact with Esop practitioner experts and company share plan managers
- ⇒ Publicise your achievements to more than 1,000 readers of the Centre's monthly news publications.
- ⇒ Instant access to two monthly publications with exclusive news, insights, regulatory briefs and global Esop updates.
- ⇒ Hear the latest legal updates, regulatory briefs and market trends from expert speakers at Esop Centre events, at a discounted member rate.
- ⇒ Work with the Esop Centre on working groups, joint research or outreach projects
- ⇒ Access organisational and event sponsorship opportunities.
- ⇒ Participate in *newspad's* annual employee share ownership awards.
- ⇒ Discounted access to further training from the Esop Institute.
- ⇒ Add your voice to an organisation encouraging greater uptake of employee ownership within businesses; receive support when seeking legal/policy clarifications from government and meet representatives from think tanks, media, government, industry bodies and non-profits by attending Centre events.

How to join: contact the Centre at esop@esopcentre.com or call the team on +44 (0)20 7562 0586.

freelance drivers, without having to sign them up as employees.

*Collapsed regional airline **Flybe** was stripped of its operating licence, leaving more than a 1,000 of its occupational pensioners facing major reductions in their pensions, as its retirement fund was not protected by the state-backed Pensioners' Protection Fund. Flybe had held around a dozen pairs of take-off and landing slots at Heathrow, but these were revoked by the Civil Aviation Authority.

*Sheffield-based **Gripple**, manufacturer of wire joiners and suspension systems, with 700 staff, has been employee owned since 2011, although employees were first allowed to buy shares in the business back in 1994. The company uses a direct ownership, rather than a trust, model, with governance, management and oversight managed through a stand-alone EO company called *Glide*. Chairman Michael Hodgson explained that employees agree to buy a minimum £1,000 worth of shares, once they have been employed for a year. Through an agreement with a local credit union, this investment can be paid for at a rate of only £25 a month. As the scheme is well established, making the 'business case' is mostly about making sure there is clear, ongoing education and communication about how it all works, he emphasised. *"We have a full induction for employees and part of that is a session on Glide. We give people a lot of information when it comes up to their anniversary to buy shares. Technically, after two years, [they] can cash shares in, although [they] have to retain a minimum £1,000 stake. We have a share transfer committee and can facilitate the buying and selling of shares; we have four windows in the year when people can buy shares. Employees receive a dividend payout each quarter based on the profitability of the business,"* Hodgson added. *"We do encourage people to see this as a long-term investment and incentive and not as an opportunity to make a quick buck."* Employee ownership has had a positive impact on retention, performance and productivity, said Katrina Ritchie, Gripple's people and culture director. This, in turn, has allowed Gripple to offer a wide range of other benefits, such as a 15 percent non-contributory pension, private healthcare, and financial rewards for 100 percent attendance. *"As owners in the business, employees are engaged and have a sense of shared responsibility. If we employ people who share our values and who therefore really engage with and buy into our culture, who are able to live and breathe what we call the 'Gripple spirit', they tend to stay,"* she said.

*Security firm **G4S** was expected to de-list from the LSE this month after the £3.8bn takeover bid by new owners **Allied Universal** won approval from the regulators.

*The last family member of the **John Lewis Partnership (JLP)** was being given a £1.5m pay

WHITE & CASE

off after 26 years' service at the group, latterly as fd until last December. Its annual report revealed that Patrick Lewis, great-grandson of the JLP founder, who leaves in June, is getting a payment for loss of office, a contribution to legal fees and cash in lieu of salary, car, pension and other benefits to cover the rest of his employment contract. JLP's 80,000 staff, known as 'partners' have not received any profit-related bonus for the first time in 65 years, reported *The Guardian*.

*England's largest chain of independent photographic stores is to move to employee ownership after 65 years as a family business. The transfer of **London Camera Exchange** to its 140-strong workforce was to have taken place in March last year but was delayed until recently by the pandemic. The switch was via an employee ownership trust, set up with trustees who work for the business and who will represent the wider workforce. Steve Hall, 71, the outgoing owner, said: *"While the business is breaking direct links with the family of its founders, we are essentially moving to the ownership of the broader London Camera Exchange family."*

*Lord Simon Wolfson, ceo of the **Next** fashion and homeware chain, netted a 28 percent increase in his overall £3.4m reward last year, despite forgoing his annual bonus and taking a cut in basic salary. Next said it did not think that paying him an annual cash bonus, which had amounted to £350,000 the year before, was appropriate given that the company had not paid dividends to shareholders. Lord Wolfson and other directors and top managers in the business took a 20 percent cut in their basic pay between April and June when many employees were on furlough. However, its non-executive directors confirmed his award of £2.4m from a maturing LTIP, covering the last three years. That came despite the company claiming £120m in a business rates holiday and millions more in furlough payments for thousands of staff from the government while shops were closed. Next opted not to pay back any of this support, unlike some rivals including Primark. The board said it would make the full vested long-term bonus payments as financial data showed Next was performing well in very challenging circumstances. Directors claimed the performance targets behind the bonus were *more demanding than market norms*, while actions taken by the team meant Next was well placed to take

advantage of the opportunities of the structural shift in spending from retail stores to online, as well as investment and acquisition opportunities arising from the pandemic. Under the terms of the payment, Lord Wolfson must hold on to those bonus shares for two years. The company increased his future maximum long-term future bonus to up to 225 percent of base salary, up from 100 percent in the past under a scheme approved last year. That increase, as well as a 0.6 percent rise in basic salary to £805,000, means that he could earn up to £5m this year, although only a fifth of that is fixed pay.

***Pearson** chairman Sidney Taurel plans to stand down after coming under heavy investor pressure over a £7.2m *golden hello* he authorised for new ceo Andy Bird, reported *The Telegraph*. The educational publisher was looking for a new chairman as Mr Bird received his huge share awards after joining Pearson from Disney.

***Rubicon People Partnership** became employee owned after transferring 100 percent of the business to an employee ownership trust model. The Dorset-based business is now entirely owned by its 30 staff. Lloyd Banks, founder of Rubicon, said that the move was a natural progression for the company and solved a looming problem of succession planning. He said: *“Our business has always prioritised being positive, doing the right thing, integrity, fairness and openness. Although I don’t expect to retire for at least five years, if I’d sold the business in the traditional way, there would undoubtedly have been job losses, and we would have put at risk the incredible culture that we’d built up.”* Banks added: *“Employee ownership protects jobs, retains our culture, provides clients with even more confidence in service delivery commitments and I believe will be a catalyst for growth. It gives us additional resilience to face the challenges and opportunities ahead.”* Every employee now has an equal voice at the firm’s quarterly meetings. The EOT will have a representative who sits on the board. Additionally, employees will be called ‘partners’ and will enjoy an equal share of the business’s profits.

*A strong recovery in the share price of **Rolls-Royce** could land a fortune for the jet engine manufacturer’s ceo. **Warren East** can take 30 percent of his annual salary of £943,000 in *shares*. Rolls’ shares stand at c 105p after an abysmal year of pandemic travel restrictions. The company tore up its traditional equity based bonus schemes,

fearing they could deliver lottery scale winnings and consequent media criticism within the next two-three years, assuming its share price recovers. Much of Rolls Royce’s aerospace business disappeared as airline customers were not paying for engine service contracts with fleets grounded and Airbus and Boeing, the aircraft manufacturers, slashing production rates. Mr East received only £1.1m in pay, benefits and pension contributions last year, well down from the £2.5m he received in 2019, of which £1.3m was bonus and incentive payments. No bonuses were paid to Rolls Royce executives last year. The situation forced Rolls into an emergency £5bn recapitalisation last autumn, with the need to raise a further £2bn in disposals.

*The ceo of a private hospital company was awarded an annual bonus worth more than £300,000 after the business he leads benefited from an NHS contract worth £360m during the pandemic. **Spire Healthcare Group’s** ceo, Justin Ash, received a £1.2m pay package in 2020, up from £1m in 2019, and share options which have already soared in value, according to the company’s annual report. The package included a base salary of £618,000 plus bonuses and other benefits worth almost £600,000. Mr Ash has donated at least half of his base salary to charity over the last three years and took a temporary pay cut worth £30,000 during the first wave of the pandemic. He was awarded the proposed £322,000 annual bonus after Spire changed its bonus pool for 2020 with targets including *“Playing as full a role as possible in assisting the NHS”* and hitting *“key liquidity priorities.”* Bonuses were spread more widely across the company, with £7.3m shared by 13,500 frontline staff in the form of £500 *thank you* payments. Ash’s pay rise came in a year when Spire and other private hospital providers agreed a deal for the NHS to take over their clinics at cost and without charging for executives’ time. The partnership helped to ease pressures on the NHS during the worst of the pandemic. However, it acted as a *de facto* bailout for the private hospitals, according to one expert, because it allowed them to cover rent and wage costs at a time when they were unable to offer elective procedures, or to provide lucrative treatments to foreign customers. Spire, which runs 39 hospitals, agreed that NHS deal had helped sustain its business. Net revenues from Spire Covid-19 contracts in GB totalled £363m during the year. Spire’s group revenue fell by £61m to £920m, with adjusted operating profits dropping from £98m to £67m. Many ceos of companies which relied on government support during the pandemic gave up bonus payments during 2020, sparking a debate as to whether executives should be eligible for bonus payouts. Mr Ash, who benefited from a previous LTIP, was awarded new options in April last year, near the bottom of the market crash. Amid a strong recovery across global stock markets, he has a paper



profit of almost £900,000, with those options now worth £1.8m. A spokesperson for Spire said that the majority of its 2020 income came from private patients. She said: *“Spire provided vital treatment to more than 250,000 NHS patients in 2020 charged at cost, not for profit, and did not charge the NHS for the overwhelming majority of board costs including executive salaries. Mr Ash took a cut to his basic salary during the year and successfully led the company, and sector, in the urgent response to Covid-19 deploying equipment and expertise built up over years of investment by shareholders.”*

The Hut Group ceo Matt Moulding, is donating a £100m equity stake in his company to a new charitable foundation in a move that he hopes will soothe lingering corporate governance criticisms. There were concerns in the City when it emerged that Mr Moulding would collect £19.4m a year in rent from transferring the company’s properties into his private ownership before its bumper stock market listing. His position as landlord rankled with corporate governance advisers, who highlighted Moulding’s already unusual position as executive chairman, ceo and owner of a golden share. However, the company confirmed that Moulding would donate £100m of his ordinary listed shares into a charitable foundation.

EQUITY REWARD AND TAX

Odey partners must pay Income Tax

Hedge fund firm **Odey Asset Management (OAM)** lost its legal battle with HMRC, in which it argued that executives who were part of a partnership pay plan between 2011-12 and 2015-16 did not need to pay tax on their share options. The plan put 17 executives into a special purpose vehicle called *Partners Special Capital Ltd*. The scheme deferred any executive profit pay-outs for up to three years until certain targets were met. HMRC reportedly questioned the plan and said it was owed Income Tax. The **tax tribunal** ruling, in HMRC’s favour, found that all of the managers owed income tax on the shares awarded to them. OAM had argued that the award plan was set up in the wake of the 2008-9 financial crisis, when regulators sought to rein in upfront bonuses deemed to reward excessive risk-taking in the industry. Founder Crispin Odey told the court that any tax reductions were “incidental,” but, Judge Harriet Morgan said: *“To say the tax saving was not a main objective of the plan but merely a consequence, or that the tax saving is incidental only, is unrealistic.”* Mr Odey told the court the plan was focused on retaining staff. He said: “The problem was that we were going from a place where basically we paid out bonuses to one where we



were deferring bonuses.” However, HMRC said the plan came at the time when the government had introduced a top tax rate for the country’s highest earners. In a statement, it said it welcomed the fact the tax tribunal had deemed that *“these arrangements do not work”*. The ruling means current and former executives of the hedge fund could face large tax bills. It is believed other hedge funds who created similar incentive arrangements could face scrutiny too. Odey Asset Management said it would appeal against the finding and would not make any further comment.

PENSIONS

*Pension trustees for two FTSE100 companies and a US multinational launched a legal challenge to the **Treasury’s** move to recalculate retail prices. Lawyers for trustees of schemes at **BT, Ford and Marks & Spencer** issued proceedings as they claimed the measure would lead to millions of final salary pensioners receiving lower payouts than they had anticipated. The action claimed female workers would be worse affected by the move than their male counterparts. Last November the Treasury and the government’s statistics authority announced the replacement of the retail price index (RPI) with the consumer prices index, including housing costs (CPIH). The shift was due to take effect from 2025, but the chancellor, Rishi Sunak, agreed to extend implementation by five years.

*The founder of an online pensions company could be worth up to £140m on paper after the company announced it would list on the LSE with a value of up to £384m.

Romi Savova, ceo of **PensionBee**, set up the consolidation business in 2014 after having problems transferring her old workplace pension to a new provider. The company, which helps people track down their old plans and consolidate them, has more than 81,000 customers who have moved pension assets to, or paid into, one of its investment plans. PensionBee said that so far more than 12,000 customers had signed up to buy its shares as part of the flotation. Savova said an IPO had always been “part of PensionBee’s corporate trajectory”. She added: *“We’re delighted that so many of our customers wish to join us as shareholders and look forward to welcoming all our new investors as important stakeholders in our business.”* Customers

who use PensionBee can sign up and do transactions online, and check their balance on an app, but the company has customer account managers who can help with any questions. In the year to the end of March, the value of assets it administered grew by 123 percent to £1.65bn and it said the flotation would allow it to grow its business further. Ms Savova holds 80m shares. Her stake in the business will fall from 44 to 36 percent at the time of the listing. The price range valued the company at between £346m and £384m and her stake at £124m to £140m. Savova and the other founders and executive directors agreed not to sell shares for two years after the initial IPO, while other senior management are locked in for 18 months.

***NMW rise boosts pensions enrolment**

Little noticed last month was the rise in both national minimum wage (NMW) and living wage levels, which brings more employees into automatic pension scheme enrolment. According to the government's own review of auto-enrolment, the impact of the freezing the £10,000 trigger point combined with an increase in the NMW will result in 8,000 new pension contributors. However, the rise in the national living wage (NLW) – from £8.72 to **£8.91 per hour** – will mean 'all' employees working more than 22 hours per week will meet the £10,000 minimum earnings threshold that qualifies them for a workplace pension. Added together, an estimated two million people will be earning more money, especially as eligibility for the NLW is now widened to include 23- and 24-year-olds, instead of just those aged 25 and over.

Paying for Covid

*The UK's **Corporation Tax (CT)** rate will rise from 19 percent to 25 percent in April, 2023, but this time the change in the headline rate is expected to be broadly mirrored by a corresponding increase in corporation tax receipts, said *Slaughter & May*. "We can see in this year's **Red Book** that the corporation tax take in 2022-23 is expected to be £48.8bn, broadly the same as 2019-20's £48.4bn. It then jumps to £71.3bn in 2023-24, £81.7bn in 2024-25 and £85.3bn in 2025-26. So, a *30 percent increase* in tax take due to the rate rise, which is about the same as the percentage increase in the headline rate ($6 \div 19 = 31.6$ percent), is a very big rise for CT payers indeed." The tax increase will raise £47.8bn by April 2026, the Treasury said, representing the single biggest tax rise in the budget. Businesses with profits of less than **£50,000** will continue to pay the CT rate of 19 percent, although the rate will be tapered up for businesses as they get closer to the £250,000 profit level. Only one in ten companies will pay the full new 25 percent CT rate from April 2023. Up to 1.4m SME

businesses will pay no increased CT rate at all if their net profits are less than £25,000 per year. Businesses with annual profits ranging between £50K and £250K will pay the full rate from April 2023 but will be able to claim some marginal tax relief, depending upon where their profits fall within these parameters.

*To encourage business investment, a new first-year capital allowance *super-deduction* of 130 percent will apply to expenditure on qualifying plant and machinery incurred from April 1 2021 up to and including March 31 2023, reported Centre member **White & Case**. This super-deduction applies to *new* main rate assets (*i.e. used or second hand plant and machinery will not be eligible*) and a 50 percent rate will apply to special rate assets. The chancellor confirmed the extension of the increased annual investment allowance of £1,000,000 for expenditure on qualifying plant and machinery until December 31 this year, so the government will effectively pay for companies to invest their capital. The deduction will be worth £25bn over two years to businesses. The investment subsidy could prove to be a boon to large companies like telecoms group BT which has a significant broadband investment programme, but critics said that the super-deduction scheme could be open to fraud.

The chancellor temporarily extended the ability to *carry back* losses from one year to three years. The rule change will mean that for the next two years companies who have swung to losses can gain refunds of up to £760,000 for tax payments made in the previous three years. The policy is expected to cost about £1bn over two years.

*UK businesses have taken out **£180bn** in government-backed loans since the start of the pandemic, official figures show. Treasury figures suggest that 1.6m businesses have drawn on support, which was designed to prevent large numbers of company failures during the lockdowns. As of March 21, they had borrowed £179.1 bn, up by £2.2 bn from the previous month. About a quarter of the nation's businesses have drawn on the support, which includes the *bounce back* loan scheme for small firms. Under the programme, businesses have been able to take out up to £50,000 in loans that are 100 per cent guaranteed by the state. The chancellor said: "I'm delighted that our bounce back loan scheme worked so effectively."

*As of mid-March, around 4.5m employees were still receiving taxpayer job support. The jobs retention scheme has cost the Treasury almost **£50bn** so far. Billions more has been spent subsidising lost income for self-employed people, but even so, millions of people have fallen through the cracks and have received no emergency Covid job support.

Make the rich pay, says IMF

Governments should consider raising taxes, temporarily, on the wealthy to help pay for the cost of Covid, said the *International Monetary Fund (IMF)*. It suggested a one-off or temporary increase in taxes on wealth or high incomes could help tackle inequalities that have widened due to the crisis. In its fiscal report, the IMF said the move would help the worst affected by the pandemic feel a sense of cohesion. However, it urged governments to “carefully assess trade-offs”. The IMF pointed to the reform of current policies on inheritance taxes or property, for example, before turning to wealth taxes. *“To help meet pandemic-related financing needs, policymakers could consider a temporary Covid-19 recovery contribution, levied on high incomes or wealth,”* the report said. *“To accumulate the resources needed to improve access to basic services, enhance safety nets, and reinvigorate efforts to achieve the sustainable development goals, domestic and international tax reforms are necessary, especially as the recovery gains momentum,”* it added. Wealth tax targets assets owned by taxpayers, such as property and/or investments, but its use has declined in recent decades. The UK Wealth Tax Commission last year found that a one-off wealth tax at a rate of five percent on £500,000 per wealthy individual would raise £260bn in the UK. It warned that an *annual* wealth tax would be harder to deliver as rich individuals would be likely to change their behaviour to avoid being squeezed. Vitor Gaspar, the director of the IMF’s fiscal affairs department, said: *“Pre-existing inequalities have amplified the adverse impact of the pandemic. In turn, Covid-19 has aggravated inequalities. A vicious cycle of inequality could morph into a social and political seismic crack.”*

Ministers urged to set out Eso stall

A spirited attempt by **Fieldfisher** partner Graeme Nuttall to get a pro all-employee share ownership clause incorporated into the **Financial Services Bill** in a House of Lords debate was beaten off – but only just.

Graeme drafted Amendment 122, which required the regulator to take into account the impact of employee share schemes. Tory peer Lord Hodgson took up the challenge, in an attempt to force the government to spell out in detail its policy towards employee share schemes. He told peers: *“Amendment 122 requires the regulator to take into account the impact of employee share schemes. This aspect is of a piece with the plan to foster good work generally. Indeed, the Financial Conduct Authority ceo has endorsed research which shows the link between share schemes and the fostering of a sense of ownership and involvement.”* He was backed by another Tory

peer, Lord Holmes, and by a raft of Lib-Dem peers and by Lord Tunnicliffe for Labour too.

However, Earl Howe, replying for the government, said that Amendment 122 would require the FCA to consider the impact of employee share schemes on sustainable economic growth. *“The government wants to support hard-working people to share in the success of the businesses for which they work. To encourage this, we offer several tax-advantaged employee share schemes. These provide a range of tax benefits to participating employees and businesses. We keep all employee share schemes under review, to ensure that they remain effective in these ways. Once again I do not believe that the UK’s financial services regulators are best placed to carry any changes forward.”* – in a word ‘No’.

A defiant Lord Hodgson told him: *“This issue is not going to go away. The weakness of our present regulatory system is that it merely catches and tries to prosecute the bad. In this part of the century, given all the challenges we face, the system should be doing more than that; it should be encouraging the good. This is an area where good could be encouraged, and that would have a huge trickle-down effect on our society as a whole.”*

Share plans post Brexit Transition

UK employee and executive share plan and remuneration schemes were subject to various EU laws and regulations, which ceased to apply on December 31 last. Areas of ongoing uncertainty and potential divergence remain, for example, data protection rules and the regulation of remuneration in the financial services (FS) sector. However, the UK’s replication under UK law of many of the relevant rules (e.g. the EU Prospectus Regulation and the EU Market Abuse Regulation) meant that administration of remuneration and incentive arrangements would continue largely unaffected, at least in the short to medium term, wrote Louise Batty of lawyers *Skadden Arps Slate Meagher & Flom*.

*Administration of remuneration and incentive arrangements will continue largely unaffected for now.

*Companies which operate their share plans internationally can rely on the same substantive exemptions under the EU and UK’s Prospectus Regulation regimes from the requirement to publish a prospectus.

*The UK Market Abuse Regulation (MAR) replicates the EU regime, including the notification and disclosure requirements of certain transactions.

*Regulation of FS sector remuneration will play into the wider debate as to potential benefits of equivalence against independent regulation and divergence from EU rules.

In the securities laws context, companies which operate their share plans in EU jurisdictions

typically rely on either: (1) the fact that the offer of non-transferable or free share awards is outside the scope of the EU Prospectus Regulation, or (2) an exemption under the regulation from the requirement to publish a prospectus (usually the *employee share schemes* exemption concerning the number of participants, or the exemption covering the value of the offer). *That regime and the relevant exemptions have been replicated under UK law and will therefore remain available to companies operating their plans in the UK or the EU. Regarding non-transferable or free share awards, the Financial Conduct Authority (FCA) is likely to maintain the view that these types of awards are, as they were under EU regime, outside the scope of the UK regime.* Since the need for a prospectus for the grant or award of shares under a share plan is usually avoided, the absence of any agreement between the UK and the EU on *financial passporting* does not present an immediate issue, she added.

Participation by directors and senior managers of listed companies (PDMRs) in share incentive arrangements involves dealing and disclosure rules previously governed by the EU MAR. The UK MAR replicates the EU regime, including the requirements for notification to the regulator and disclosure to the market of transactions by PDMRs and closely associated people. The content and format of the notifications and disclosures remain the same. On reporting requirements, listed company remuneration reporting rules are largely derived from UK law under the UK Companies Act. The EU Shareholder Rights Directive II, implemented in the UK in 2019, made only minimal changes to the existing regime. Reporting and disclosure requirements relating to remuneration and executive pay will continue unchanged.

Data protection rules, including the use of employee data to administer participation in share plans, had been a concern, given uncertainty over the UK's position as a third country following December 31 last. The Trade and Cooperation Agreement (TCA) and the temporary *bridge* period meant that data sharing between the EEA and the UK could continue on the current basis for *up to six months*, during which time it was hoped that the EC's draft decision on the UK's adequacy would be adopted, thereby allowing data transfers between the EEA and the UK to take place unrestricted.

UK regulation of the quantum and structure of remuneration in this sector, to address excessive risk-taking, predated the EU rules. In implementing regulations under the relevant EU directives, UK regulators had in some cases *gold-plated* the EU requirements, which suggested there may not be particular pressure for change. However, there were certain EU remuneration rules which the UK had

challenged (e.g. the bonus cap) or on which it has taken a different approach (e.g. the use of proportionality in the application of the rules).

WORLD NEWSPAD

***Australia: Clough Limited v Commissioner of Taxation** Companies that are the targets of mergers and acquisitions activity often make payments to employees to cancel their entitlements under employee share and option schemes. The Federal Court recently ruled that these payments are not deductible to the payer. Buyers and targets alike may need to adopt other ways to deal with such employee entitlements, said Australian lawyers *Gilbert & Tobin*. The taxpayer (Clough) had implemented a share option plan in 2009 and an incentive plan involving performance rights in 2012. Clough's majority shareholder, Murray & Roberts, acquired all of Clough by way of a scheme of arrangement in 2013. The option plan and the incentive scheme broadly provided that, in the event of a change in control, the board had discretion to allow the options to vest immediately (in the case of the option plan) or participating employees were entitled to be issued with shares (or cash equivalent) (in the case of the incentive scheme). To facilitate the acquisition, Clough cancelled employees' entitlements under the option plan and incentive scheme and paid them cancellation amounts. Clough claimed that the amounts were deductible in full in the year ended 30 June 2014, when they were paid. The Commissioner, on the other hand, allowed the deductions over five years under section 40-880 of the *Income Tax Assessment Act 1997* (Cth) (the blackhole deduction). The dispute in the case was one as to timing. However, whether the Commissioner's approach was correct remains open as the Court did not have to decide this.

The Court held that the payments were neither:

◆ Incurred "in gaining or producing assessable income"; nor ◆ Necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income. The Court held that the amounts were paid to fulfil an obligation that arose upon the change of control in Clough. Relevant to the Court's decision were: ◆ *There was no evidence that the amounts were paid for past performance of employees. Instead, the payments were calculated on the basis of the value of the accrued rights taking into account the prevailing share price and without any assessment of the value of past performance.*

◆ The evidence indicated that it was considered there was an obligation to pay out the accrued entitlements of the employees even though neither the option plan nor the incentive scheme required options and performance rights to be paid out in full

it's our business

on a change of control. ♦ Clough intended to establish new incentive schemes for its employees following the change in control, supporting the conclusion that the payments were not made to retain or incentivise employees for the future. *It was difficult to see how the unconditional termination of the option plan and incentive scheme by making large cash payments to employees would incentivise them to remain in the employment of Clough. Instead, employees would be freed to decide as to whether or not to stay with Clough following the change in control. ♦ If the options and performance rights had been allowed to vest and shares issued to employees, with those shares then being acquired under the scheme by Murray & Roberts, the payments by Murray & Roberts would have been capital in nature and not deductible under section 40-880. Instead, they would have formed part of the cost base of Murray & Roberts' shares in Clough. ♦ If the options and performance rights had been allowed to lapse, employees may not have suffered any adverse tax consequences and no payments would have been made by either Clough or Murray & Roberts, with no tax implications for them. ♦ If the options and performance rights had been replaced by similar interests by Murray & Roberts (as seems to have been in contemplation), employees may not have had a taxing event and no payments would have been made by either Clough or Murray & Roberts, with no tax implications for them.

Key takeaways: Option cancellation payments are not the only way to deal with options and performance rights in a mergers and acquisitions transaction. Different commercial and tax outcomes arise for both payers and employees. Both targets and acquirers should determine what strategy is in their and their employees' best interests.

***Chinese** regulators imposed a fine of 18.2bn yuan (£2bn) on e-commerce giant **Alibaba** over practices deemed to be an abuse of its dominant market position, according to state-run media. The Xinhua news agency said the state administration for market regulation had set the fine after concluding an investigation into Alibaba which began last December. This centred on Alibaba's alleged practice of requiring its member merchants to sell exclusively on its platforms. The size of the penalty was determined after regulators decided to fine Alibaba at a level equivalent to *four percent* of its 2019 sales. Alibaba said it accepted the ruling and would ensure its compliance. Analysts said that the fine showed China intended to move against internet platforms that it thinks are too big. The company is China's *Amazon meets eBay*. Retail is

its main activity, but its work has spread to digital payments, credit and cloud computing. Alibaba has been under scrutiny since October last year. Its co-founder, **Jack Ma**, criticised Chinese regulators as being behind the times after they expressed concern over the push into loans, wealth management and insurance by Alibaba's financial arm, **Ant Group**, whose proposed £27bn flotation was cancelled by Chinese regulators at the last minute. Chinese authorities then forced a sweeping restructure on the Ant Group so that it acts more like a bank. The overhaul, directed by the People's Bank of China, subjects Ant to tougher regulatory oversight and minimum capital requirements. Ant Group is China's biggest payments provider, with more than 730m monthly users on its digital payments service **Alipay**. China's central bank said that under a "comprehensive and feasible restructuring plan," Ant would cut the "improper" linkage between Alipay, and its credit card and consumer loan services. Its trove of consumer data was widely seen as one of the company's key advantages over its competitors. Ant has agreed to set up a personal credit reporting company, which will strengthen the protection of personal information and effectively prevent the abuse of data. Alibaba and other leading Chinese tech companies have come under pressure amid concern about their influence on the lives of Chinese consumers. In March, 12 companies were fined over deals that violated anti-monopoly rules. They included another Chinese Eso fan, Pony Ma's **Tencent**, Baidu, Didi Chuxing, SoftBank and a ByteDance-backed firm.

***Japan:** **Sony** is set to pay its Japanese staff their largest bonuses for more than two decades, as it prepares to announce end-of-year record profits. The electronics and gaming company is set to post year-end profits of around £7.2bn, which have been significantly boosted by a surge in demand for home entertainment as people stayed at home due to the pandemic. As a result, the corporation is set to pay out the equivalent of seven months' salary to staff in the form of bonuses. Japanese employees are usually paid two bonuses per year, and their regularity means there are largely considered as part of their normal salary. This year's bonuses have swelled due to Sony's gaming business reportedly posting its best-ever year, thanks in part to shipping more than 4.5 million PS5 consoles since launching in February 2020 to the end of December 2020.

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