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it's our business

newspad of the Employee Share Ownership Centre

Educate public about share schemes, says HMRC study

Many employers and employees are unaware of the differences between the four tax advantaged UK share schemes, revealed an in-depth study commissioned by HMRC. In a series of 83 interviews with employers, employees and share scheme advisers, , the Social Research Institute at IPSOS/MORI (SRI) explored the motivations for and barriers to, uptake of Tax Advantaged Employee Share Schemes (TASS).

At the same time the researchers looked, on behalf of HMRC, at the growing number of arrangements which companies were using outside TASS, for their simplicity and lower cost.

The study report's conclusions and recommendations, published after many months of delay, will be mulled over by the Esop and share scheme sector. Were even half the policy suggestions enacted by the government, employee share schemes would be transformed. The summary said:

*Employers and employees believe that increasing awareness and understanding of TASS is essential to boost the relevancy of the schemes.

*Interviewees suggest that information about the TASS schemes could be given to young people while still at school, or in further education.

*HMRC itself needs to educate employers on the benefits of TASS, so that the latter would be less reliant on advisers for information and education.

*Employers and intermediaries said that changing structural aspects of share schemes could help to increase their appeal and relevance to businesses. Proposed changes include relaxing eligibility criteria and scheme features, e.g. the limits on the number of employees and qualifying business activities for the Enterprise Management Incentive (EMI) and reconsidering the length of the holding periods for both the Share Incentive Plan (SIP) and SAYE.

*SMEs could be incentivised by tax advantages to establish share schemes in their workplaces, in order to improve the take-up, suggested SRI, based on employers' comments.

*Increasing employers' ability to be more flexible with the rules and features of SAYE/SIP schemes could help increase uptake too among a wider range of company sizes and sectors.

*Recommended changes to SAYE include the ability to increase the upper monthly contribution limit; offering a reduction on the three-year holding period and increasing interest and bonus rates to be more competitive with ISAs. In addition, to encourage lower paid employees to consider SAYE, the government and employers should jointly consider offering them financial incentives to do so.

*In the SIP, the ability for SMEs to receive an additional tax incentive when providing free shares

From the chairman

I never thought the day would come when TASS meant anything other than the Soviet news agency so it was some surprise this month when the acronym was seized, by HMRC of all non-revolutionary people, to denote Tax Advantaged Employee Share Schemes! Within the new document, prepared for HMRC by the Social Research Institute at IPSOS/MORI, there was a further, larger surprise: contemplation of new plans beyond the scope of the existing schemes. The complexity of the presentation betokens no certainty, but Jack is certainly out of the box and not before time. So read the document: it repays study. It makes the point too that employees need advice from government as well as employers and administrators. Up till now HMRC has been unable to nudge. These are changing times and let us hope the bold ideas take hold in short order and bring the broad principles of all-employee participation and reward to far more people in a changed universe.

Pleasing too is the news that international adviser Tapestry has become employee-owned using the EOT mechanism. It enables the principles of the founders, Janet Cooper OBE and Bob Grayson to live on within a durable wrapper.

Malcolm Hurlston CBE

to employees could benefit employers and employees. Offering employers the ability to increase partnership share limits could allow a greater number of staff to invest in their companies and maximise their investment.

This TASS research report, ***signed off in January***, was published finally by HMRC on September 1 with a very short 'explanatory' press notice, which did not even mention the main findings.

The press notice is worth repeating: "*Employee share schemes allow employees to own a stake in the company they work for by offering them the opportunity to buy shares or securities. The government has* ***historically*** *encouraged the use of TASS to increase employee share ownership and employee engagement. HMRC commissioned the Social Research Institute at Ipsos MORI, an independent research organisation, to undertake qualitative research into TASS. The purpose of this research was to understand the motivations for, and barriers to, employers and employees participating in TASS, while also exploring customer awareness and knowledge of the employee share schemes* ***currently*** *on offer"* it said.

September 1 was the date parliament resumed and so both the survey report and the press notice were buried in a pile of other HMRC announcements on the same day.

The notice did **not** mention that the survey report had been commissioned by the chancellor's predecessor – employee share ownership fan Sajid Javid - who was bundled out of the Treasury on February 13 this year, after BoJo and Dominic Cummings demanded the removal of most of Sajid's top advisers.

One sentence in the SRI report confirms that the research was carried out while Sajid was still in post: "*IPSOS MORI's Social Research Institute carried out the research, using qualitative telephone interviews with employers, employees and intermediaries, with one interview carried out face-to-face*. *Fieldwork took place between August and October 2019.*"

Such reports do not come cheap and it is reasonable to assume that Mr Javid ordered the survey because he wanted to know in advance what the reactions would be to a *planned major shake-up of UK employee share schemes.*

Sajid has form on employee share schemes. He raised hackles in the upper reaches of Whitehall in 2015, when he was business secretary, by awarding an additional one percent of the equity *–worth £50m* -in the privatised Royal Mail to postal employees - in the form of free shares to add to their SIP. Martin Donnelly, permanent secretary at the business (BEIS) department, had told Sajid that this award would "*not provide a tangible return to the taxpayer*" and so was not value for money as defined in legislation, but Sajid over-ruled Donnelly's official protest and the *posties* received their extra free shares anyway.

To be fair to Mr Sunak, he announced in his Budget on March 11 that the Treasury was launching a review of EMI, to ensure that those companies can "recruit and retain the best talent" and to "examine whether more companies should be able to access the scheme." However, the Centre had asked him, in its pre-Budget appeal, for a major shake-up in the operating rules of *all* the UK's four tax advantaged employee share schemes. The Centre's EMI reform proposals were: **Double the existing value limits on non-vested EMI share options to £500,000 per individual over three years and £6m overall maximum value of issued options outstanding in a company at any one time. *Abolish or increase the current £30m Gross Assets Test for participating companies with a view to allowing EMI to supplement the CSOP (Company Share Option Plan) in larger quoted companies as well as continuing to operate in SME quoted and private sectors. *Remove the existing requirement for the employee to make a working time declaration, as it is unnecessary and a trap for the unwary*. The Centre told the chancellor that all the TASS schemes were in need of rewiring.

Returning to the SRI report's findings: Overall, although employers and employees were positive about TASS and the schemes were perceived to have continued relevance in the current business environment, there was generally low awareness of the specifics. "*Therefore, increasing awareness of the schemes was perceived as key to boosting their appeal and relevancy. Although information about schemes was provided by employers, a common criticism concerned the depth of information (*subtext: superficial*) and ease of understanding among employees* (low)," its report said.

The results will form part of an on-going HMRC assessment as to whether TASS are currently fit for purpose and relevant to both employers and employees.

Some employers and employees want to relax some eligibility criteria and scheme features to increase uptake. The cost of introducing a TASS acted as a barrier among small and micro companies, especially when compared with other types of employee benefits which were less expensive to introduce, the study reported.

Employers reported that three of the four TASS schemes – the SIP, the Company Share Option Plan (CSOP) and EMI had had a positive effect on employee engagement, although SAYE-Sharesave did not stand out in this respect.

Employers said that the TASS schemes were important tools for recruiting and retaining key staff and helped their companies remain competitive.

Employees who participated in TASS schemes often admitted to feeling more involved in the success of their employer and therefore more motivated in their work and some felt more secure in their jobs.

However, the report exposed an age chasm in levels of commitment to TASS participation: - basically, older more senior employees felt more comfortable about participating in share schemes because they had greater financial confidence and better understanding of the tax advantages. By contrast, younger employees and those in more junior roles lacked understanding of shares and tax efficiencies and were more risk averse, the research showed. Those in less secure jobs were worried about their futures and thus less likely to show allegiance to one company by participating in TASS.

SAYE-Sharesave appealed to employers because it was easy to operate, but some employees found the minimum three-year holding period a disincentive and the reduction of the bonus and interest to zero rates eroded the scheme's value, though the monthly savings mechanism was more popular among younger employers in lower-paid roles, said the report. Employers who offer the SIP tend to operate it as an alternative form of remuneration for skilled and more senior employees, as this led to a greater investment in the firm's performance, the researched revealed. However, some employees said that the different types of share structures in the SIP were difficult to understand.

The report added: "*Across all these schemes, both employees and employers had difficulties about understanding scheme rules*." With EMI, this related to understanding CGT liabilities and some participants wanted to amend the length of the holding period to allow EMI to become part of their retirement plan, or to reduce the barrier for younger employees who might perceive ten years to be too long a period to stay with one company. The importance of saving money was recognised by all TASS participants. However, instant access to their money was important to them for funding a variety of often unexpected needs. Consequently, employees were more inclined to use instant access accounts or ISAs as their primary savings vehicle. Investments, such as shares, were seen as a riskier option because the financial reward can be dependent upon a variety of factors and not always guaranteed. This view was shared by most employers, regardless of whether they ran share schemes or not. Employees saw company share ownership as increasingly important in an uncertain climate and as something that should be actively promoted, particularly among younger audiences. Interviewees felt that share ownership could help build employees' investment portfolio and financial confidence and could potentially help to fund a variety of life events as well as offering tax advantages.

However, SRI highlighted concerns about the future of the schemes. The discretionary aspects of CSOP and EMI were raised as having a potentially negative impact on equality and transparency in the workplace, due to the perceived secrecy and selectivity around who was invited to participate. Others questioned what effects leaving the EU might have on employee share schemes and thought that this area might need to be reviewed in the near future.

Employee-owned companies near 500 milestone

The number of UK SMEs owned by their employees is close to the 500 milestone, just six years after the **Employee Ownership Trust (EOT)** was launched by the then Coalition government. The UK employee ownership sector grew by an impressive 28 percent last year, as more privately-held companies and professional partnerships reorganise themselves into employee-owned organisations. Family-owned businesses seeking an exit are now aware of the tax advantages of selling all or part of their companies to their employees and so are turning to EOTs in substantial numbers.

"The latest evidence suggests that the sector is represented by c.470 businesses," said lawyers *Birketts* in an article published by *Lexology*. "*This growth has been attributed, in part, to the increasing realisation by family owned businesses that employee ownership offers an ideal solution to the issue of succession. By acknowledging the role employees play in establishing the success of the business, owners can ensure their legacy is protected by the very people who helped to build it."*

The sale of more than 50 percent of the owners' shares to an EOT is exempt from CGT, so the exiting shareholder(s) can bank the full amount received. Any payments from the company to the trust to fund the sale can be made on a tax free basis. Employees too can benefit not only from part ownership via an EOT but, in addition, can receive annual bonuses of up to £3,600 per tax year, free of Income Tax (although not of NICs). The biggest advantage of EOTs for employees is that they can buy control over their company without using their own private savings. Instead, banks and/or the exiting shareholders can stump up the cash to fund the shares transfer.

Although there are other forms of employee ownership, such as workers co-operatives, it is the EOT which is dominating this fast-growing sector in the UK economy. The best-known UK employee-owned companies include: Aardman Animations (*Wallace & Gromit*), Aber Instruments, Arup *(design & engineering*), City Health Care Partnership CIC (*Hull, East Riding & Merseyside*), Mott MacDonald (*engineering consultancy),* Richer Sounds and Unipart Group.

The EOT model is in many ways a special type of employee benefit trust (EBT). Employees become owners (or beneficiaries) via a controlling interest held by the trust. Employees can come and go without the need for ownership to change hands, although staff turnover tends to be much lower in employee owned businesses. To be an EOT, the structure must: *hold more than 50 percent of the ords and voting rights of the company and be entitled to more than 50 percent of profits distributed and assets on a winding up; and *generally benefit all eligible employees of a company or group on the same terms.

In recent years, European employee ownership law firm *Fieldfisher,* American banker and author Garry Karch, employee ownership advisor *Rm2 Partnership* and accountants *BDO* have helped many companies, as well as professional partnerships and groups, to establish employee ownership structures via EOTs. These range from companies with only 20 employees to more than 1,800, with values from £1m to more than £80m from all sectors (including construction, architecture, recruitment, media, technology, marketing, professional services, corporate finance and manufacturing).

However, EOTs, with their John Lewis heritage and inspiration, are not true exemplars for employee *share* ownership because the ownership of the company is exercised *indirectly* via the trust. Sometimes, EOT companies cannot easily find the cash to buy back departing employees' shares. In addition, employees tend to think personal share ownership is the real deal rather than trust ownership and the tax breaks they get for participating in share schemes can appeal more than the capital growth achieved by EOT companies. This is why some Centre members, like *Pett Franklin* advise clients that EOT companies *may* qualify to operate tax-advantaged EMI and SIPs, within the shared ownership structure. To do so, a small portion of the overall equity involved in an EOT can be set aside to facilitate an Eso scheme. Whereas, in 100 percent EOT companies, performance based rewards are cash, rather than share based.

Those who set up EOTs hope for: greater employee engagement and commitment, reduced absenteeism and improved business performance. The employee ownership sector has grown by ten percent a year since EOTs were established by *the Coalition government in 2014.*

Research shows that the EOT appeals to the values of a millennial workforce and that employee owned businesses are deemed to be more trustworthy. The benefits to employees are mostly found in the altered culture of an employee owned business where longer term thinking, transparency and collaborative behaviours tend to result in result in higher levels of innovation, employee wellbeing and greater job satisfaction; all important following the pandemic. It is important to remember that the EOT acts as a shareholder and not as a substitute for the company board.

EVENTS

Centre webclave report

The Centre hosted its first inter-active on-line members' networking event after being forced to postpone its annual **Jersey** share schemes for trustees conference, due to Covid inspired travel restrictions between the UK and the Channel Islands. Instead, the 70-minute *webclave,* chaired by Professor Michael Mainelli, executive chairman of the Z/Yen Group, which operates the Esop Centre, proved to be an ideal platform for lively debates on key employee share scheme issues, with trustees in mind.

The keynote address was given by guest of honour the Rt. Hon. Mark Field, who was a strong supporter of the Crown Dependencies when a Minister of State at the FCO. Delegates broke out into discussion groups and questioned the participating experts.

There were discussions on: The response of employee share schemes to Covid-19; Recent cases in Esop Law and problems with EOTs; How were we going to pay for the pandemic? - and trust issues during the pandemic.

During the trusts session, delegates were told by discussion leader Katherine Neal of Ogier about how lock-down restrictions engendered by the pandemic had caused problems over having the right people at hand to sign or witness legal documents. The electronic communications law had established that electronic (dry) signatures were accepted, but what about witnesses? Tongue in cheek, one participant mentioned a recent article in a pensions legal bulletin questioning whether, in extremis, a trusted pet dog could fill in as a witness to the signature of a legal document as, apparently, there was nothing explicit in law which said that the witness had to be human!…The debates were led by David Craddock of his eponymous consultancy firm; David Pett of Temple Tax Chambers; tax adviser Paul Malin and Katherine Neal of Ogier. Nimble-footed Juliet Wigzell played a major role at Centre HQ in ensuring that the spirit of our share schemes annual seminars in both Guernsey and Jersey lived on in the webclave. (The Jersey event will be re-scheduled for late spring 2021).

British Isles share plan symposium – March 24

The Centre's fourth annual share plans symposium and *newspad* awards presentation is scheduled to take place on the revised date of **Wednesday, March 24 2021** at a Central London location, Covid restrictions allowing.

Delegates from share plan *issuer* companies, large or small, are welcome to attend **free of charge**, though you must register your planned attendance in advance.

The revised programme and speaker list is posted on the Centre website www.esopcentre.com. Members who have confirmed speakers at this event include: **Bird & Bird, Computershare, David Craddock Consultancy Service, Deloitte, Equiniti, Doyle Clayton, Linklaters, Pett Franklin, Rm2 Partnership, Travers Smith** and **Willis Towers Watson.** This event will be chaired by Centre chairman **Malcolm Hurlston CBE.**

The original event, was postponed last March owing to Covid, so topic slots are being updated to reflect the new reality. A key programme segment covers executive remuneration, post pandemic. The presentations will be delivered by leading practitioners in their respective fields of expertise.

Our thanks to **Ocorian,** the independent Channel Islands based provider of corporate and fiduciary services, for co-sponsoring the symposium, which offers attendees latest guidance on installing and operating employee equity schemes for companies of all sizes.

Speakers wishing to update their presentations should inform Fred Hackworth at: fred_hackworth@zyen.com. For all other enquiries about this event, including seat reservations, please contact Juliet at juliet_wigzell@zyen.com or call +44 (0)20 7562 0586. Admission prices will remain as advertised – **£395** + VAT for delegates from member practitioners and **£595** for non member practitioner delegates.

WEBINARS

Coming up

*Institutional investors' views on the use of share plans: focusing on the use of share plans during the continuing pandemic***,** October 6 11:00am.

Share plan and employee incentives specialists Fleur Benns and Lynette Jacobs of international law firm **Pinsent Masons,** will discuss the use of employee share plans amid the economic fall out of the continuing pandemic. Their talk will give an insight into institutional investors' thoughts on share plans and how the views of institutional investors impact on their operation.

*Selling your company to an EOT - how it differs from an MBO***,** October 15 11:00am.

Employee Ownership Trusts (EOTs) provide an attractive new exit route for retiring entrepreneurs. William Franklin of the share scheme specialists **Pett Franklin** explains how they actually work and how they differ from MBOs.

*Employee share schemes: innovative communication strategies guaranteed to increase employee take-up***,** October 21 12:00 noon

Employee share schemes expert **David Craddock** will present strategies and techniques that have proved by experience to increase employee take-up, thereby securing involvement in the employee share scheme for employee motivation purposes with the consequential impact on company productivity. When all the legal work has been completed the success or failure of the employee share scheme launch will depend upon the quality and the sensitivity of the employee communication process. In this webinar David will explain advanced employee communication strategies based on cultural indices that provide an understanding of national cultures and enable bespoke solutions to issues that need to be addressed when formulating the employee communications.

Webinar reports

Could equity be used to replace a portion of an employee's salary?* **- Given the uncertain economic outlook due to the Covid pandemic, companies were concerned with maintaining cash flow and cutting costs wherever possible so, worldwide, jobs were on the line, said **Nicholas Greenacre,** EMEA head of employment, compensation & benefits and partner at global law firm **White & Case**. At an Esop Centre webinar, Nicholas led a panel of White & Case experts from France, Germany, the UK and the US who discussed whether it would be possible and advisable to replace part of an employee's salary with equity grants and the related employment, securities and tax law issues if doing so.

While in the US, most of the government pandemic financial support was directed at helping former employees not in work, in the UK most pandemic financial support was aimed at keeping employees on the payroll by subsidising their jobs. However, as the furlough scheme was due to end shortly, companies were looking at other ways of saving employment costs, including trying to get agreements with employees to sacrifice part of their salaries in return for shares in their employer company said Nicholas. A key issue concerned consent because many employees faced with a salary sacrifice proposal would fear losing their jobs if they refused, he said.

Both **Alexandre Jaurett** and **Frank-Karl Heuchemer,** who head the employment, compensation & benefits teams at the Paris and

Frankfurt offices respectively, said that in their countries part salary swaps for shares would only be possible via collective agreements between the social partners, including unions and other staff organisations and the employers. **Victoria Rosamond,** a partner in White & Case's New York employment, compensation & benefits group, said that it was much more straightforward to get salary sacrifice arrangements in place for rank and file US employees, though it was more difficult when dealing with management who tended to have more complex employment contracts. However, the general guideline was that lowered pay could not be taken below minimum wage levels.

Nicholas said that in the UK, salary sacrifice was a viable proposition, not only in exchange for shares in the company, but if the employer promised other benefits, such as better pension arrangements. Regarding the millions of UK employees furloughed by their employers, as an alternative to redundancy, much depended upon the way in which the furlough had been implemented, as to whether a salary sacrifice scheme could be installed.

Victoria said that salary reduction was not welcome news and probably the morale of the workforce would be adversely affected. So the quality and transparency of the management's communication with the workforce was crucial – e.g. stating its strategy of minimising lay-offs; who exactly would salary sacrifice apply to – could management tell employees with a straight face that they were *all in this together* – and how valuable were the proposed replacement equity awards? "*Does the plan reveal large pay cuts for those in management? – Show rank and file employees that salary sacrifice will be implemented top down*."

Section 409A of the US tax code – covering deferred compensation to employees who have paid taxes in the US – needed looking at carefully, said Victoria. In order to safely promise to repay sacrificed salary (cash or stock) companies with some employees in this category – eg UK based subsidiaries of US companies – had to be extremely careful not to fall foul of the strict rules, as the tax penalties, including accelerated income tax, were severe, she added.

At the beginning and at the end of the webinar, chair **Ian Harris**, md of **Z/Yen Group Limited**, conducted a *vox pop* among the virtual audience of share scheme and remuneration specialists which showed that only seven percent were gung-ho for salary sacrifice, but 72 percent supported the concept up to a point, while 14 percent were unsure and seven percent were dead against it. Comparing the before and after poll results, the White & Case team had succeeded in convincing more of their audience of the merits of salary sacrifice, as opposed to redundancies.

Employee ownership and the future of capitalism* **- Employee ownership works, substantial evidence over many years from the US has proved, speaker **Corey Rosen**, co-founder of the California based **National Center for Employee Ownership*, told a webinar, hosted by the Esop Centre and FS Club. Companies perform better if they practise shared ownership and employees usually end up with substantially more wealth but, regrettably, employee ownership was still the exception, Corey told his virtual audience. He recited some *shock & awe* statistics: more than 20 percent of Americans owned no wealth at all; only half the working age population had any retirement savings and 40 percent of adult Americans told pollsters that they could not cover any unforeseen emergencies with the limited cash they had available. The ownership of stock (equity) by white families was eight times greater than among black families. How could we address these issues? – Well, the concept of all-employee share (stock) ownership enjoyed cross-party support in both the US and the UK, as the lack of *access* to wealth was economically, socially and psychologically devastating, said Mr Rosen, who worked five years as a professional staff member in the US Senate, where he helped draft legislation on employee ownership plans. Wealth meant options in life and security.

In the US, the most common example of shared ownership at work was the employee stock option plan, which almost always featured as add-ons to company retirement plans. On average, Esop participation in a retirement plan accumulated 2.2 times more assets than in non Esop retirement funds, he said. Research proved that US companies with Esops grew 2.5 percent faster per annum than companies which did not operate Esops and enjoyed productivity rises 20-33 percent superior to those in comparable companies which did not share ownership widely.

There were 7,000 US Esop companies in existence this year, with 14m employee participant holdings collectively worth $1.4 trillion, said Corey. The owners of privately held US companies found it tax effective to use Esops in order to provide ownership transition to their employees.

He said that some UK share plans aimed to replicate US employee stock ownership plans but, unlike the USA model, Employee Ownership Trusts (EOTs) in the UK were not being set up in order that employees typically could benefit from the growth in share value in their accounts over time: "*In the EOT, employees are owners in a nominal sense, but they don't receive the increase in the value of their equity in the same way as in the US,*" said Corey. Thus, in general, the US model focused on long-term growth; while the UK model focused on short-term dividend payouts, he claimed. When US employees left their Esop using companies, they cashed out and it was not unusual for such an employee with 20 years service in a shared ownership company to have built up a fund worth between $100,000 to $500,000, he said.

The US Esop experience had shown that the most effective companies shared information with their employees at both company and team levels, because employees knew what the problems were, said Corey. Some companies were going beyond this by involving their employees in strategic planning. Working teams were called 'huddles' who met weekly to identify problems and track solutions put in place. *NCEO is a private, non-profit membership, information, and research organisation, widely considered to be *the* authoritative source on broad-based employee ownership plans in the US. This webinar was chaired by **Professor Michael Mainelli,** executive chairman, of the Z/Yen Group. He is a qualified accountant, securities professional, computer specialist and management consultant, educated at Harvard and Trinity College Dublin

Employment-Related Securities (ERS)* **- Centre member **David Craddock**, employee share scheme consultant and author of *Tolley's Guide to Employee Share Schemes*, used this webinar tutorial to strip away the complexities surrounding ERS, drawing upon his 35 years experience in employee share schemes. The virtual session was chaired by Ian Harris, md of the Z/Yen Group. David said that ERS legislation, which traced back to the Income Taxes (Earnings and Pensions) Act (ITEPA) 2003, contained key tools for employee share scheme development and implementation. Far from limiting employee share scheme activity, a proper understanding of the employment-related securities law opened up tax planning opportunities for practical application. ERS was wide in its scope because it concerned shares acquired by present, former and future employees, including directors, but there was a question mark over whether founders' shares came within ERS or not, he said.

Examining the concept of *employment-related securities,* David explained how to identify restricted securities and when to make Section 425 and Section 431 tax elections, as well as how to identify convertible securities with an explanation of their tax treatment. In ERS arrangements, it had to be clearly understood what was capital and what was income, because a levy of Income Tax was more punitive. Likewise, if companies and their advisers were going to label things as *restricted securities,* they had better be sure not only that the restrictions (e.g. voting or pre-emption rights) were real, but that those restrictions were in already place at the time when the securities were purchased, said David.

He discussed making a tax election, which had to be made by the employer and the employee jointly not more than 14 days from the date of the acquisition - or the chargeable event - and in a form approved by HMRC.

Tax planning opportunities were available too through notional loan arrangements in accordance with Chapter 3C while a clear understanding of Chapter 3D charges was required to avoid tax traps and pitfalls on the sale of employee shares. The use of alphabet shares to differentiate reward was dealt with by the ERS legislation. Often overlooked was the use of ERS legislation to enable a commercially effective and tax-efficient earn-out arrangement (*similar to an unapproved share option scheme*) on a change of control.

For space reasons, we are holding over our report on the recent Esop Sofa webinar, *Employee Share Ownership Hot Topics,* led by Darren Smith of YBS Share Plans, until the November issue of *newspad*.

MOVERS AND SHAKERS

On the move

*Centre member **Cytec Solutions** celebrates its 20th anniversary this year — marking two decades of developing intuitive, inventive, well-adopted technologies such as *Insidertrack* and *Sharetrack*. It will soon launch its **#Insidertrack** App — the first *Insider List* management App in the UK providing users with many flexible features.

***Georgia Dawson** became the first woman to lead one of the 'magic circle' law firms after she was elected as senior partner of *Freshfields Bruckhaus Deringer*.

***John Daughtrey** is md of **Linnear cosec**, a company secretarial business comprising a team of qualified professionals who currently look after 600+ companies, ensuring they remain compliant and that they can focus on running their respective businesses.

*Centre trustee member **Ocorian** has acquired Newgate Compliance, a London-based compliance consultancy and hosted regulatory solutions provider for funds clients, including both established and first-time managers, announced Ocorian Group ceo **Farah Ballands**. The deal is subject to regulatory approval. Newgate Compliance was founded in 2014 and provides compliance consulting services, leveraging GATEway, a proprietary software solution that enables clients to track and meet their FCA regulatory obligations efficiently, as well as to comply with the spirit, principles and culture of the UK regulatory regime. Farah added: "*This acquisition strengthens our service offering to fund managers who operate and who are regulated in the UK. Following the acquisition, we will provide end-to-end administration services and a suite of compliance and regulatory services. It will be business as usual for Newgate's employees and clients. We look forward to working with the* *founders, Martin Herriot and Aron Brown, as well as the whole team at Newgate to expand our funds offering in the UK.”*

UK CORNER

Roadchef: widow urges tax-free compensation

A widow is urging the government to allow victims of the Roadchef Esop share scandal to receive tax-free compensation as a reward for their six-and-a-half year wait *(so far*) for payment. Employees at Roadchef motorway services won a High Court battle in 2014 after losing millions (*collectively*) when their shares were transferred from one EBT to another, without their prior knowledge, by the then md and chairman, Tim Ingram Hill.

"*There's a lot of people who've died and haven't had the money*," said Eleanor Nicholls, from Llanelli. Her husband, Michael, was one of the employees who should have benefited. He worked for 18 years at the Pont Abraham Roadchef services, where the M4 ends at junction 49, but he died in February 2010 from lung cancer and a brain tumour, aged 68. Eleanor is still waiting for the compensation which was due to her late husband. "We both worked tirelessly to put money aside for our children's future," said Eleanor, now 74. "*I worked in a care home and he did the night shift at Roadchef so there was always someone in the house to look after my elderly mother, who was starting to get dementia.”*

It is believed that the compensation pot, hammered out in an out-of-court deal, is being held in an escrow account while the Roadchef Esop trustee continues to oppose HMRC’s insistence that the beneficiaries, like Mrs Nicholls, should pay tax on their individual payments. Some of the beneficiaries have told *newspad* that they want the compensation to be paid now, despite the tax threat. They point out that a number of former Roadchef employee beneficiaries have died already without receiving their compensation.

The Esop participants allege that £56m due to them after the £139m sale of Roadchef to Nikko in 1988 was transferred from their Esop into a separate performance shares trust for senior staff. This second trust was controlled by Mr Ingram Hill. The former Esop employees were expecting five figure payments to reflect the true value of their shares - *their union claimed that it was up to £90,000 gross each* - but some received as little as £2,300. Even the larger pay-outs were in the low thousands.

In 1986, Patrick Gee, md of the motorway service chain, wanted to see employees benefit from shared ownership and started to set up what would have been one of the UK's first Esops, but he died unexpectedly at the age of just 43. His successor was Roadchef executive Timothy Ingram Hill, who later took control of the employees' shares, making him an estimated £27m when he sold the company to Japanese investors in 1998.

Although a High Court judge ruled that Mr Ingram Hill had breached his fiduciary duty to the Esop participants in Roadchef EBTL1, he had not committed any criminal offence, she said. Mrs Justice Proudman however did void the transfer of the Esop shares into the performance shares trust.

The company secretary at the time, Tim Warwick, turned whistleblower on the Esop shares transfer before being edged out of Roadchef. He spent 25 years helping former Esop employee participants from his home in the Vale of Glamorgan. Sadly he died suddenly in August in hospital, without seeing the dispute fully resolved.

In 2018, the Roadchef EBTL trustee won a significant battle when c £8m in so-called net ‘tax’ was surrendered by HMRC to the ex-employees’ compensation pot. HMRC said it was working to bring the case to a conclusion.

**Newspad* editor Fred Hackworth was interviewed by BBC Radio Somerset about the Roadchef compensation scandal. He said that the Roadchef EBT1 trustee and HMRC had to reach a compromise deal soon to allow the compensation, finally, to be paid to the beneficiaries. He told listeners that both employees and employers had a great deal to gain long-term by adopting all-employee share ownership.

Float to create 200 millionaire staff shareholders?

Shares in **The Hut Group (THG**) rose in value by a third on their first day of trading on the LSE stock market, as investors initially piled into the IPO of the British e-commerce company, which operates 100 international websites. The Manchester-based shopping business floated its shares at 500p each and they soon changed hands for up to 658p, taking its value as high as £5.9bn, before falling back to around 575p days later.

More than 500 THG employees (one in 14), from the warehouse to the boardroom, were given equity in the business, with c.200 participating in the scheme that could vest in two years' time. By floating, the company is creating more millionaires than any other in UK corporate history, a company source claimed. These employees are in line to receive - collectively- several hundred million pounds in shares, but the incentive stock will lapse if the market valuation threshold is not met. Its share scheme was put in place three years ago to compensate Mr Moulding and other employees for the dilution of their stakes when early investors including Balderton Capital injected money into the company in 2010. Its employee share scheme dwarfs that of *Boohoo*, the online fashion retailer, which in June unveiled plans to award top managers shares worth £150m if its shares rose by two-thirds over a three-year period.

The float netted the company £920m, while shareholders led by the group's founder, Matthew Moulding, and a group of retail veterans, shared gross proceeds of £961m. Former **Tesco** boss Terry Leahy cashed in £17m of shares, the former **Matalan** and **Asda** boss Angus Monro £4.6m and the former **Debenhams** boss Terry Green £6.2m, with all three retaining multimillion-pound stakes. The Scottish retail entrepreneur Tom Hunter, a former **House of Fraser** investor who made millions from selling the Sports Division chain to the rival **JJB Sports** in the 1990s, was the biggest beneficiary among THG's retail veteran backers, selling £52.5m of shares and retaining a stake worth more than £95m. He said most of the proceeds from his shares sold would go to the Hunter Foundation, which backs charitable efforts including supporting, entrepreneurship, children and disadvantaged young people. Moulding said the timing of the float was prompted by private equity backers wanting to sell their investments. The private equity firm **KKR** sold all its shares, worth almost £450m. A fund linked to the Beano owner, **DC Thomson**, sold £1.5m of shares and retains a near £5m stake. Other investors included BlackRock, Merian Global Investors and Balderton Capital, which has invested in *Wonga* and *Betfair* too.

The valuation did not push THG into the FTSE 100 index because of its unusual governance structure: Moulding is joint chairman and ceo and will retain a "*founder's share*," allowing him to retain control for three years. Moulding defended the arrangement, which is more common in the US than in the UK, saying he wanted to protect against a hostile takeover. He is in line for large bonus payouts of up to £700m if THG's market value rises to £7.25bn within three years. Moulding sold part of his shareholding in the flotation via a Guernsey-based investment vehicle to fund the acquisition of property from the group. He will charge the group £19m in rent per year. However, Mr Moulding's associates pointed to the thousands of jobs created and millions of pounds in taxes paid, by THG since it was set up. Moulding, 48, owns 20 percent of the business which is best known for its *MyProtein* brand of fitness supplements. He grew up in Colne, near Burnley; his father a road worker laying tarmac and later studied industrial economics at Nottingham University. Now, his family has a fortune of £600m, with the tycoon controlling his vast empire through his iPhone. The company expanded rapidly as shoppers increasingly turn online for health and lifestyle brands. THG owns cosmetic brands - many of which it has acquired in recent years - but sells third-party brands too through e-commerce sites it operates, such as *Glossybox*.

Free share awards value employees

Over the last year, **EQ** (*Equiniti*) has supported 17 companies implementing a free share award, issuing over 100 million shares to employees valued at just under £126m. With the current economic environment looking uncertain, and with share prices at a low, this could provide an excellent opportunity for employees to make substantial gains as markets recover. A free share award is the gift of shares to employees by a listed company to recognise their contributions towards the company's performance. Free shares are offered as either a one-off award to employees or on a more regular basis, usually subject to good company performance.

Normally an employer will offer free shares either via an already established Share Incentive Plan (SIP) or via a Conditional Share Award (CSA). Free shares via a SIP are capped to a max £3,600 in any tax year and subject to a minimum holding period of three years (maximum of five years). In contrast, CSAs are more flexible using an existing set of plan rules without caps or pre-determined vesting periods.

For the free share award to be a success, companies must understand their employee base including geographical locations, and generational and demographic diversity. This will support the structure of the award and how it is communicated to the workforce, ensuring all employees are aware of - and understand the benefits of - share ownership. Employees should be kept informed throughout the holding/vesting period and know their choices when shares are released to them.

Case Study: BT's objective is to put the customer at the heart of all it does and to become a national champion. By offering shares in BT to all its employees, in every country, the entire workforce was encouraged to feel they had a stake in the future success of the company. Everyone should feel aligned and have an interest in BT's share price and the future of the business. In May last year, BT announced its new share plan, *yourshare*, offering more than 100,000 employees £500 worth of shares, followed by an annual award dependent on company performance. As BT has more than 20,000 international employees and 53 jurisdictions, it and partner EQ had to deliver a real global plan, navigating complex local tax rules, to support the revitalisation of the telecoms group. For those in *Open-reach*, whilst the award is delivered in BT shares, BT agreed with Ofcom the value would be based on Open-reach performance. Colleagues needed to be employed on December 31 in the year before the date of grant and employed on the date of grant (the date the shares are awarded) and would need to hold the shares for three years before selling them, ensuring engagement throughout. The information needed to be accessible for international employees, ensuring communications were clear, concise, engaging and digital wherever possible. To ensure all overseas employees were looked after, BT used a mixture of cash, phantoms and conditional share awards for non-UK colleagues, to comply with local tax laws. The share plans portal and all relevant documents used by BT colleagues to accept their award were translated into multiple languages, with more than 20 percent accepting their awards during the first two days. Since the award last June, 11,190 BT employees internationally (55 percent), have accepted. Using the award acceptance meant that Mifid data could be collected online to make the handling of early leavers simpler. At vesting, colleagues will be given the option to retain their shares, where permitted in the global nominee, to simplify the shareholding of international colleagues through a fully online solution.

Loan Charge dubbed 'one of the worst laws ever'

Tax barrister **David Pett**, doyen of the UK all-employee share ownership movement, exposes in his new book –'*Disguised remuneration and the loan charge*' - *the taxation of income paid through a third party* - how tax legislation dealing with what is now called 'The Loan Charge' has become so complex that it is beyond the ken of most mortals, including business experts. The legislation, first enacted in 2011, but amended many times since then, has had a devastating impact on many of 50,000+ participators in the schemes. They have ended up much worse off than if they had never entered into the scheme in the first place, said David, a leading light at the Esop Centre for many years. After taking legal advice suggesting that the third party structures were legal, advisers often had little choice but to facilitate such schemes if they wanted to accept the remunerative work on offer. Bravely, in his book, David delivers implied criticism of certain QCs whose opinions underpinned the loan charge debacle. The Centre is interested in this issue because DG schemes usually involved setting up one or even two employee benefit trusts (EBTs) to dish out the employee 'loans'. Subsequently, HMRC neatly skewered those advisers who argued that no back tax or penalty fines were due because the schemes were closed, by pointing out that as hardly any of the loans had been repaid to the trust, the loan structures were still very much open.

The wide scope of the Loan Charge can give rise to charges to tax and NIC even if no employment income is received by the employee and it extends to close company directors and even to self-employed contractors. His book examines the background to, scope of, and application of *disguised remuneration* rules, calculation of charges on employees and traders; exclusions from those charges; avoiding the traps; background to, and application of, the 2019 loan charge; knock-on effect of that levy. The House of Lords described the legislation as "*extremely complex and beyond the scope of most business people to decide whether or not it applies to them*". This work is aimed at professional advisers and aims to bring clarity to what Keith Gordon describes in the foreword as a clear contender for the worst legislation ever enacted. Available from www.claritaxbooks.com Price £85.

*The 50th update of "*Employee Share Schemes*" (the two-volume loose-leaf 'bible' on the topic) was published in July by **Thomson Reuters**.

Chancellor seeks to reduce job cuts

As chancellor Rishi Sunak announced his **Job Support Scheme (JSS**) to replace his earlier **Coronavirus Job Retention Scheme (CJRS),** which expires at the end of this month, questions were being asked about how many jobs the new scheme would save.

For the UK already faced 450,000 job losses in the coming months, according to a study the Institute for Employment Studies.

JSS, which runs for six months, starting November 1, will apply to all SME employees who are working at least one third of their normal hours and who are being paid for that in the usual way. After that first third, the government and employers will jointly increase such employees' wages to cover two thirds of their lost pay. This means that employees working 33 percent of their normal hours will receive at least 77 percent of their full pay, said a Treasury note. The taxpayers' grant under JSS will capped at ***£697.92*** per individual, per month. So for someone on £2,000 a month, working half their normal hours, they would get £1,000, plus £333 extra from the employer, matched by the government. However, under these rules, it would be cheaper for a company to lay off two employees and keep one on full-time, rather than to keep on all three and pay two employees' wages for one person's worth of work, claimed the Resolution Foundation. JSS could apply too to larger companies, but they must first prove that their turnover has fallen during the pandemic. Furthermore, quoted companies using the JSS scheme would have restrictions imposed on their dividend policies, said Mr Sunak. In all cases, companies using JSS could not issue redundancy notices to those employees covered by the scheme.

The £1,000 bonus per head being offered by the chancellor to employers who keep on furloughed staff from November 1 until at least January was criticised as being an inadequate incentive.

He announced that the existing scheme for the self-employed would be extended on similar terms to the JSS. The grant will cover only those eligible for the Self-Employment Income Support Scheme grant and will cover 20 percent of average monthly profits from November to end January, up to a maximum £1,875. A further grant may be made available to the self-employed to cover February 2021 until April 2021, depending upon the individual's circumstances.

Under the chancellor's *Pay as You Grow* scheme, the state-guaranteed *Bounce Back* loans taken out by businesses would allow their repayment terms to be extended from six to ten years, almost halving their monthly repayments, he told MPs. However, there were allegations that this scheme was vulnerable to fraudulent applications.

***CJRS scheme winding down:** From **October 1,** the taxpayer's contribution to furloughed jobs was reduced to **60** percent of pre-pandemic wages, up to a cap of £1,875 for the month of October for the hours the employee does not work. Employers who keep employees on their payrolls must make up the difference of *20 percent* to bring furlough payments to 80 percent of wages (up to a cap of £2,500) for un-worked hours, while continuing to meet NIC and pension contributions for furloughed wages.

Three million employees were still being covered by the furlough scheme in early September. More than 70 percent of employers who signed up to furlough payments have been making up the 20 percent difference between the 80 percent furlough pay and normal wages out of their own pockets. During September, the taxpayer's contribution via the CJRS was reduced to 70 percent of normal wages, up to a cap of £2,187.50 per month for the hours the employee did not work. Employers had to make up the difference to bring furlough payments to 80 percent of wages (up to the £2,500 cap) for un-worked hours, while continuing to meet NIC and pension contributions on furloughed wages. HMRC confirmed that payments of the CJRS to employees furloughed during the pandemic can constitute a salary, allowing SAYE and SIP contributions to continue to be deducted from these payments.

Employers had already planned more than 300,000 redundancies in June and July, as the pandemic took its toll on the workplace. 1,784 firms made plans to cut nearly 150,000 jobs in *July,* almost a sevenfold increase compared to the same month a year ago. These figures were obtained by a *BBC Freedom of Information* request. In June, 1,888 employers filed plans for 156,000 job cuts, a six-fold increase on the previous year. Almost 700,000 UK employees disappeared from company payrolls between March and July, as companies prepared for the winding down of the government's furlough scheme, said the ONS, but this was partially balanced by many ex-freelancers with no income having migrated to employee status. A big majority of those who had come off the furlough list had returned to work. A government spokesman stressed that, at the peak, it had protected 9.6m jobs through the CJRS furlough scheme, as well as paying out billions in survival loans and grants to thousands of businesses.

*Retail group **Arcadia** was forced to start paying 300 head office staff their full redundancy entitlements after the trade union Unite threatened legal action against the group owned by Sir Philip Green. *The Times* reported that Arcadia, whose outlets include *Top Shop* and *Dorothy Perkins*, had found a loophole in the government's furlough rules which enabled it to claim millions in state hand-outs while paying staff at reduced rates during their redundancy notice. Arcadia backtracked after adverse publicity, admitting that it had got the decision "*wrong*" and that all affected employees would receive their full notice pay immediately.

***Pret A Manger** is to cut 2,900 jobs, or more than a third of its workforce, as part of a plan to save the business. The jobs will mainly go at its sandwich shops, but 90 roles will be lost at its support centre. It said two months ago that it would permanently close 30 of its shops. Hard on its heels, Chinese owned **Pizza Express** confirmed that it would close 73 restaurants, putting 1,100 jobs at risk, after creditors approved a rescue restructure. The casual dining chain has 355 Pizza Express restaurants in the UK and 30 plus other restaurants and music venues are scheduled to re-open in the coming weeks. It operates 150 outlets internationally too. The closures include its original site in Soho and other outlets in London, Birmingham and Bristol. Pizza Express said approval of its company voluntary arrangement (CVA) deal, a form of insolvency, would help secure 9,000 jobs in the UK. It paves the way for a financial restructure to cut the group's debt burden and potentially hand control to its bondholders in a debt-for-equity swap. Hony Capital bought Pizza Express in 2014 in a £900m deal with hopes of expanding the chain in China. Then US owned **Pizza Hut,** which has a UK franchisee, announced the probable closure of 29 branches with the loss of up to 450 jobs too. **Costa Coffee** announced up to 1,650 redundancies after becoming the latest high street business to be hit by the absence of city centre shoppers. The UK's biggest coffee shop operator, which is owned by Coca-Cola, said that the continuing impact of the pandemic had forced it to make "difficult decisions to ensure that as many jobs as possible were protected long-term." Running against the tide, **Domino's Pizza** announced that it would *create* 5,000 new UK jobs, including chefs and delivery drivers, despite the pandemic. The new roles come on top of the 6,000 jobs DP has created already since the start of the pandemic.

BP is planning to quit its historic international headquarters in central London as the energy giant cuts 10,000 jobs and scales back its office space. The FTSE 100 group, which employs 6,500 UK office staff, plans to rent back the building from the new owner for up to two years before leaving for good.

Heathrow reached outline agreement with its unions that 4,700 frontline staff must take pay cuts of between 15-20 percent to save their jobs, with the aviation sector's hopes of a quick summer recovery from the pandemic dashed. The airport company issued Section 188 notices, allowing it to potentially fire and rehire employees. Up to 25,000 other jobs throughout the airport's many clients, including those employed by other companies – not least BA – remain under threat. Heathrow has already laid off one in three managers and imposed 20 percent pay cuts on office staff. The section 188 notices allow Heathrow to bypass negotiations after a 45-day period has elapsed and then offer employees new contracts. Heathrow said its offer enhanced voluntary redundancy to those who preferred to leave. A Heathrow spokeswoman said: "*Covid-19 has decimated the aviation industry, which has led to an unprecedented drop in passenger numbers at Heathrow, costing the airport over £1bn since the start of March. Provisional traffic figures for August show passenger numbers remain 82 percent down on last year and we must urgently adapt to this new reality.*" She said the offer still guaranteed a job at the airport for anyone who wished to stay.

Lloyds Banking Group announced 865 UK job cuts and the creation of 226 new job roles as a result of the pandemic. Online retail giant **Amazon** has said it would create a further 7,000 UK jobs this year to meet growing demand. Amazon said it had already added 3,000 roles so far in 2020, and so by the end of the year it will have created a total of 10,000 new jobs. This will take its total permanent UK workforce to more than 40,000. Amazon said that the jobs would be permanent and pay a minimum of £9.50 an hour. It is recruiting 20,000 seasonal UK posts for the festive period too.

Reference salary: Under the CJRS, an individual's reference salary for determining the amount that can be recovered is their post-salary sacrifice salary, where they participate in one or more salary sacrifice schemes. Where an individual pays pension contributions via a salary sacrifice scheme the employer would only be able to claim back a maximum of 80 percent of their *post* sacrifice salary (up to a cap of £2,500).

Pension contributions: HMRC confirmed that where there is a salary sacrifice scheme, the full grant (based on the post-sacrifice salary) must be paid to the employee in money and cannot be used to pay for any benefits provided through salary sacrifice schemes (including pension contributions).

*****Back to the Office*** **campaign scrapped: JPMorgan** had doubled the number of investment bankers who could use its Canary Wharf offices each day before the government suddenly reversed its efforts to get financial services staff back working in their offices. After BoJo's Commons announcement of the *second wave* of the pandemic, the message changed overnight to '*Work From Home If You Can.'* **Barclays** was not the only banking group to then ask its troops ***not*** to come into the office any more, until further notice. **Goldman Sachs** planned to bring more staff back to their offices part-time worldwide on rota systems, but then changed tack for its City office somewhat, as did **PwC**. Insurance market employees at **Lloyd's** were told they could work at home unless they did not want to. Elsewhere in the city, white-collar staff, worried about the risks of cramped rush-hour trains, were tending to arrive to work later than in pre-pandemic days and to stay in eating lunch, rather than venturing out, said software platform *Metrikus*, which collates office building entry sensor results. Some City financial services firms, like Natwest and Standard Life Aberdeen had already told employees to work from home until next year.

Companies pensions lifeboat scheme at risk

A former minister warned that the government's *lifeboat* scheme for company pensions is at risk from a huge wave of corporate defaults which in extreme circumstances could result in a ten percent cut to pensioner incomes, reported *The Guardian.* The Pension Protection Fund (PPF) is an insurance policy for millions of people in final salary-style company pension schemes, promising to pay out if the employer becomes insolvent. It is funded by employers, who pay an annual levy, which means the scheme is currently around £6bn in surplus. About 230,000 people rely on the PPF for pension payments, including 11,500 ex-Kodak employees, which had a £1.5bn shortfall in its pension fund when it fell into the PPF in 2019. The Fund looks after 27,000 members of the *Carillion* pension scheme too, which had a £800m deficit when it collapsed. Steve Webb, who was pensions minister in the Con-Lib Dem coalition government and who oversaw the PPF, said that a fresh Covid-driven spate of company collapses could result in the scheme using up its surplus and resorting to "extreme measures". If many more large schemes have to be rescued by the PPF, it will result in a potentially sharp increase in levies on existing employers, some of whom are already struggling. Webb, now a consultant for actuaries LCP, added: "If several larger employers were all to face insolvency in the coming years, even the more serious £20bn hit could prove to be an under-estimate."

Post Brexit relations with the EU

*Many UK firms which do not have an EU-based location may become GDPR non-compliant when the Brexit transition period ends on December 31. This is because many SMEs are unaware of the data storage and/or transmission requirements stipulated in Article 27 of the GDPR, warned Flor McCarthy of **Article 27 Representatives Ltd**. For GDPR Article 27 concerns "*representatives of controllers or processors* ***not*** *established in the EU"* and sets out obligations that such organisations have regarding data on EU subjects. In short, if firms use data on clients, customers, or prospects in the EU but don't have a presence in the EU, Article 27 requires them to appoint an EU-based representative. Until the Brexit transition period ends, UK businesses are not in breach of the legislation but after December 31 it is likely that many businesses will unwittingly become non-GDPR compliant. Failure to take steps to address non-compliance could potentially lead to substantial fines or class-action type lawsuits from data subjects in the EU. The Information Commissioner's Office (ICO) will continue to enforce GDPR after Brexit and failure to comply with the regulations could expose businesses to substantial fines of up to ***€10M*** or two percent of global revenues. Companies are referred to the ICO's Brexit FAQs PDF, a useful reference point.

***Barclays** and **Lloyds** wrote to thousands of UK customers now living in the EU, informing them that, due to the cross-borders bureaucratic problems facing the banks from next January, post the transition phase, they were closing down their UK bank accounts and credit card facilities.

*The European Commission (EC) proposed changes to the *Prospectus Regulation* as part of its Capital Market Recovery programme to help companies with capital raising during the Covid crisis. Companies listed for at least 18 months on regulated or SME markets, could opt to use an *EU Recovery Prospectus* to issue shares. This single 30 page document focuses on essential information that investors need in order to make investment decisions. The proposal will now go to the European Parliament and Council of the EU for consideration, reported **EQ** bulletin.

*Brussels warned that the EU must become less dependent upon the City of London for access to capital markets and that it should toughen up its financial regulation from January next year. Commission executive vice-president Valdis Dombrovskis said that the EU is working on 'on-shoring' capital markets and establishing new ones on the Continent. From the New Year, UK financial services' access to the EU will be governed by the concept of *equivalence*- regulatory recognition which could be withdrawn by Brussels at the drop of a hat.

***Withdrawal Agreement breach: PM** Boris Johnson acceded to demands from Tory rebel MPs that parliament be given the right to decide beforehand whether the circumstances justified the UK breaking the terms of the Withdrawal Agreement. Former Tory PM Theresa May warned in the Commons that the government was still about to break international law, despite the concession to the Tory rebels. However, BoJo's government continued to push through the Commons committee stage the amended *Internal Markets Bill* (*IMB*), which would over-ride the Brexit withdrawal agreement on Northern Ireland by giving ministers unilateral legal powers to oversee elements of the Northern Ireland protocol, threatening the collapse of post transition talks. Word leaked out in *The Telegraph* that ministers intended to delay sending the Bill back to the Lords for final checking *until after the scheduled EU Council of Ministers summit on October 15-16,* when BoJo hopes to sign off a bare bones post transition phase trade deal with the EU. Northern Ireland Secretary, Brandon Lewis admitted, when challenged by Mrs May, that new Bill to amend the Withdrawal Agreement with the EU would indeed "*break international law".* She warned the change could damage "trust" in the UK over future trade deals with other states and Mr Lewis conceded it would go against the treaty in a "*specific and limited way*". The advocate general for Scotland, Lord Keen, resigned in protest as justice minister and top law officer. The head of the UK government's legal department, Sir Jonathan Jones, quit too over the same issue, as did human rights lawyer Amal Clooney, who resigned as the UK's special envoy on media freedom.

The European Commission gave the UK government until the end of September to withdraw the controversial sections of the Bill, but senior Cabinet minister Michael Gove said there was no chance of parts of the Bill being withdrawn. Labour said the PM was "threatening to renege on the UK's legal obligations" and called it "an act of immense bad faith: one that would be viewed dimly by future trading partners and allies around the world". The news was condemned by Ireland's foreign affairs minister, Simon Coveney, who helped broker the original Withdrawal Agreement. He said any change would be "very unwise". The move would row back parts of the UK's agreement with the EU on state aid and customs arrangements for Northern Ireland. Apparently, the UK government believes the original protocol is drafted ambiguously enough to allow for a change of interpretation – a view fiercely contested by Brussels.

COMPANIES

*The ceo of Cardiff based **Admiral** Insurance, a true believer in employee share ownership, is giving staff a collective £10m leaving present after stepping down. David Stevens, 58, will hand over £1,000 each to all full time staff while part time employees will pocket £500 as a thank you for their hard work. More than 10,000 staff including 3,000 overseas employees are set to receive the bonus. Milena Mondini de Focatilis will replace him as ceo.

*Willie Walsh stepped down from the top job at **British Airways**' owner **IAG** amid investor protests over executive reward - as almost one in three shareholders failed to back his remuneration deal. The International Airlines Group (IAG) revealed at its annual agm in Madrid that only 71.6 percent of investors had approved executive pay awards, with about 20 percent of votes cast against. Mr Walsh's payout took the former pilot's earnings for 2019 to £3.2m, including a £833,000 annual bonus. His pay was approved *before* the pandemic sent IAG's airlines into crisis in March, but it now looks more controversial, as thousands of jobs are being axed. In addition, *Walsh stands to bag up to 1.1m shares worth £5.2m under previously awarded long-term bonus schemes over the next four years, if performance targets are met.* A further 258,910 deferred shares worth around £1.1m are due in annual payouts between March this year and March 2022. IAG's annual report showed Mr Walsh enjoyed a 5.5 percent pay rise in 2019, up from £3m in 2018, as he was awarded an £883,000 annual bonus and £1.2m in shares under a long-term incentive scheme (LTIP). IAG said it was 'disappointed' at the remuneration report vote, adding: *'The board will continue to engage with shareholders to fully understand their concerns (as part of wider engagement in relation to the renewal of our directors' remuneration policy in 2021) and will publish, in accordance with the UK Corporate Governance Code, an update on this engagement within six months of the agm."* Meanwhile, those long-serving BA cabin crew who have not taken voluntary redundancy face a 15 percent reduction in their base pay and are battling to hang on to their allowances.

*The government's chief scientific adviser, **Sir Patrick Vallance,** who chairs the government's expert panel on vaccines, holds a deferred bonus of 43,111 shares in GlaxoSmith Kline (GSK) worth £600,000, where he was president from 2012-18. He has already cashed in £5m worth of shares and held 404,201 GSK shares, worth c.£6.1m at current prices, when he left to become the government's CMO, revealed *The Telegraph.* In July, GSK and French pharma giant Sanofi agreed to supply the UK government with 60m doses of anti Covid vaccine, subject to contract. A senior Tory MP and ex cabinet minister told the newspaper that a potential conflict of interest could arise and that Sir Patrick should now tell parliament about his holdings in GSK, or sell them.

*The chairman of Mike Ashley's retail empire **Frasers Group** broke trading rules by accidentally buying shares during the run-up to the publication of its financial results. Mike Ashley announced a new plan for workforce equity-related rewards.

David Daly bought 3,912 shares worth 11,000 days before the results and had to donate his profit (after selling them) to charity. Executives with direct managerial responsibilities are banned from trading shares in their own company for at least 30 days before the results are published – in order to prevent them from insider trading on the basis of knowing the preliminary, unfinalised, but unpublished, results.

*Solihull based **Gymshark**, which sells kit to body -builders, is now valued at $1.45bn after General Atlantic, the US growth equity fund, had purchased a 21 percent stake in the business. Gymshark has not yet offered equity to most of its 500 staff, although its 70 percent equity owner and founder Ben Francis says he is now considering how he might do so.

John Lewis Partnership** confirmed that staff would not receive a bonus for the first time in 67 years after it was hit by pandemic store closures. The retailer, which owns *Waitrose*, posted a £635m pre-tax loss for the six months to July 25, after higher costs offset a one percent rise in sales. Chairwoman Dame Sharon White, who formerly worked for Gordon Brown at the Treasury, told staff the announcement would come as a blow. During the good years, 2010-14 inclusive, JLP's annual staff profit-sharing bonus ranged between 14 and ***17 percent of salary. Even before Covid-19, the chain had warned that it might not pay the usual staff bonus as online competition ate into profits. The group's first-half loss was £635m once exceptional items were taken into account, including a £470m write-down in the value of its stores. Excluding those one-off costs, the group's loss in those six months stood at £55m. JLP, which launched what many believe to have been the UK's first EBT, is miscast in the media as a beacon for *'employee share ownership*,' although it is no such thing. All full-time staff have only a nominal share in the business, but bonuses are paid in cash and it runs no Eso schemes.

***Pearson**'s new ceo-to-be, Andy Bird, was dismayed after almost a third of shareholder votes opposed the $9.4m (£7.3m) pay deal he pre-agreed to run the company. At a specially convened shareholder meeting 32.8 percent of votes cast went against Bird's *co-investment* arrangement with the FTSE 100 company. An angry investor characterised the reward terms as a $9m *Golden Hello.* Bird has agreed to spend $3.75m on Pearson shares and in return the company awarded him 1.21m shares worth 7.5 times his $1.25m salary. Under the plan, which trumped the remuneration policy previously approved by shareholders, the shares will vest in three stages, depending upon how well the company performs. When announcing Bird's appointment, Pearson said *the pay deal was necessary to hire someone of his calibre*. The company said it consulted some leading shareholders in advance. Bird, a former Disney executive, will be eligible for a bonus worth up to $3.75m each year and Pearson is paying $20,000 a month towards his rent of a New York apartment for business purposes. Pearson said: "*Given the unusual nature of the co-investment plan in the UK market, the board very much appreciates the support for the resolution by the majority of shareholders, although it notes that a significant minority of shareholders voted against the proposal. The company engaged extensively with shareholders during this process, noting that the board had developed a highly competitive remuneration package in order to secure, in Andy, an outstanding candidate to lead Pearson in its next chapter.*" The education publisher had been looking for a new ceo since December when John Fallon announced his planned departure. Bird was already a Pearson non-executive director and was free to take the job after leaving Disney in 2019. He is due to take over on October 19.

*Departing **Rio Tinto** ceo Jean-Sebastien Jacques could receive more than ***£31m*** worth of shares, despite being forced to resign over the company's decision to blow up 46,000 year old sacred

Aboriginal Juukan Gorge caves in Australia in its hunt for iron ore. Although his bonus was cut by £1m and a further £1m worth of shares were confiscated from him, he still will be eligible for up to 654,000 Rio Tinto shares by the end of 2023 from various incentive plans, revealed the miner's annual report. In addition, Mr Jacques is entitled to receive 12 months worth of salary and pension contributions worth c £1.5m on his departure. A company spokesman said that the incentive bonuses were only payable subject to performance targets being met, *but he will not help achieve them as he will have left the company*. Two other RT executives will quit on December 31 as a result of the caves outrage.

*Speculation mounted that Esop poster child **Royal Mail (RM)** was under pressure to sell off, or float, its profitable overseas (mainly European) parcels delivery arm General Logistics Systems (**GLS**). Were it to do so, RM would be left with its heavily loss-making letter delivery business, operated under Public Service Obligation terms, which would make it a takeover target long term. Amsterdam based GLS, which employs 17,000, has a fleet of 28,000 vehicles, servicing more than 70 distribution centres. About ***11.5 percent*** of RM's equity is held by postal employees, mostly in its Share Incentive Plan (SIP), and the rest in its EBT. Czech billionaire Daniel Kretinsky was sitting on paper profits of almost £100m in mid September having bought RM shares at their lowest price at the height of the pandemic. From an early April nadir of 124p, RM's share price has surged ahead by almost 100percent, standing at 237p on September 29. Mr Kretinsky has spent about £250m buying Royal Mail stock through his investment vehicle *Vesa Equity* and is now the largest single shareholder, holding 13 percent of the equity.

*More than one third of investor votes cast at **Ryanair**'s agm were against its remuneration report, notably the £418,200 bonus awarded to its ceo, Michael O'Leary, who received £3,82m in total reward, including £2.27m in share based payments, with his base pay cut to just £454,000, due to the impact of the pandemic.

Shareholder advisory group ISS said that it was difficult to justify O'Leary's executive bonus, which paid out at 92 percent, considering the crisis in the aviation industry. Many large listed UK companies had either deferred or cancelled altogether executive bonus payments in the current climate, added ISS. Ryanair has taken £600m so far from the UK government to keep it flying and has furloughed thousands of employees, with plans to make many more redundant.

*Senior executives at the City watchdog the **Financial Conduct Authority (FCA**) have been told not to expect payment of any annual bonuses until they complete their investigation into the collapsed savings company London Capital and Finance, which went under last year leaving 11,600 investors at risk of losing £237m. The Treasury ordered the probe into why nothing was done to protect the investors. The FCA said its remuneration committee had delayed paying the expected bonuses of up to £45,000 per head and might not pay them at all.

*Ministers came under pressure from UK banks to allow them to resume paying dividends, following the example of the European Central Bank, which said that it may let some banks resume dividend payments in December. Employee shareholders in the high street banks are missing their regular dividend payments, which were suspended earlier this year due to the Covid pandemic. NatWest chairman Sir Howard Davies said that restrictions on dividends should be removed so that banks can attract more investment.

Investment stewardship

The world's largest asset manager, **BlackRock**, disclosed that in the past year it voted 55 times against directors at 49 companies for failing to make progress on tackling the climate crisis. The firm had warned in January that it would be getting tough on companies that did not meet its expectations on dealing with climate risk, and would vote against them at agms. It announced in its annual investment stewardship report that it cast more than 5,100 votes against company directors in the past 12 months to hold management to account for failing to make headway on a range of issues, from environmental goals and corporate strategy to board diversity. This was 300 more than in the previous year. BlackRock, which manages *£5.5tn* worth of assets, said in July it had identified 244 companies who were not making progress on the climate emergency and voted against 53 of them. Those it voted against included the oil companies ExxonMobil and Chevron, the vehicle manufacturers Volvo and Daimler and Lufthansa. The asset manager put the remaining 191 companies *on watch*, thereby warning them they risked having votes cast against them at 2021 shareholder meetings unless they made significant progress in the interim period.

PRIVATE EQUITY & VC CORNER

Employee cash-outs

Start-ups are taking longer than ever to exit. The average time taken to reach a merger, acquisition or an IPO for venture capital-backed technology companies had risen from 7.5 years in 2006 to almost 11 years in 2018. That means that founders and employees may have to wait more than a decade for access to liquidity. Add Covid-19 into the mix and that wait is going to get longer. Should businesses expect employees to wait that long when their companies perform well, asked Olav Ostin, md of venture capital firm **TempoCap**? Staff could be cash-poor, but millionaires on paper. Major life events and changing priorities mean that people may well want to access liquidity ahead of the business schedule, but how? The answer is - through secondary share selling — finding a buyer for employee shares in the company. However, it's a process that's not often very clear, partly due to a lack of awareness of the options available to businesses and individuals, said Mr Ostin, writing in the FT supported online start-up bulletin *Sifted*. Despite this, it does happen — New York-based video advertising platform **Teads** underwent two secondary share sales in late 2016, ahead of its acquisition in early 2017. More recently, through secondary transactions, TempoCap invested in **Depop**, the London-based fashion marketplace app, and in **AirHelp**, a US-based air passenger compensation company. Purchasing secondaries from these exceptionally successful companies directly benefited employees as it enabled them to access liquidity.

Start-ups (and investors) have been wary of letting employees (and founders) cash out. Some suggest that retaining equity is a demonstration of loyalty — but on the flip side, preventing people from selling shares could impact morale and speed up departures. Employees could well have little or no intention of leaving, simply wanting to have cash for a personal matter (such as buying a house, getting married, or starting a family). Some companies are pro-actively looking for solutions for their employees. Several companies across Europe are reviewing the opportunity to engage in secondary transactions; **TransferWise** publicly discussed its secondary investment recently, for example (*see September newspad for more detail)*. Generally, however, these are the exceptions for companies not yet at the unicorn stage. To reject the possibility of a secondary share sale outright would be short-sighted, said Mr Ostin. As well as boosting employee morale, there's the opportunity to bring in new cash and experience (*if a new party acquires the equity*) without the hurdles of more traditional fundraising. When an investor acquires shares from employees, it helps address the liquidity needs of the seller, while providing continued access to growth capital and introductions to a broader network. This in turn helps accelerate the business. However, a secondary sale isn't easy. Assuming the cash and the will are in place, the deal can go ahead. To ensure success, several points need to be addressed: share valuation, accounting issues, tax implications both for employees and business, regulatory and legal requirements and finally, potential HR challenges (*for instance, needing to maintain equality amongst colleagues with similar equity holdings*).

WORLD NEWSPAD

***China**: Billionaire **Jack Ma**'s mobile payments firm has announced plans to float on the Hong Kong and Shanghai stock exchanges in a move that could value the company at $225bn (£169bn). Ant Group could raise as much as $30bn in the flotation, which would make it the world's largest initial public offering, overtaking the $25.6bn raised in the Saudi Aramco IPO in December 2019. In its stock market filing, Ant Group said it would use the funds raised to "further pursue [its] vision to digitalise the service industry." It did not disclose either the timetable or size of the IPO in its filing, although it has been suggested that the flotation could be in October.

Ant Group is 33 percent owned by the e-commerce business Alibaba and controlled by the latter's founder, Ma, who started Alibaba in a one-bedroom flat in China 21 years ago. The 55-year-old is the 21st-richest person in the world, with an estimated $53.5bn fortune, according to the Bloomberg billionaires' index. The Ant Group's stock market filing revealed the firm collected $10.5bn in revenue in the first half of the year, up almost 40 percent on the same period in 2019. Profits were nearly 12 times greater than in the same period last year

***France:** Bertrand Camus, ceo of **Suez,** called a takeover bid by **Veolia**, the water and waste management group's French rival, "particularly hostile". He responded after Antoine Frérot, his counterpart at Veolia, said that he wanted to buy Suez to create what he claimed would be a "world super champion" in the water and waste markets. Mr Frérot, 62, invited Mr Camus for talks about a two-stage plan that initially would involve paying €2.9 bn to buy a 29.9 percent stake in Suez from Engie, the energy group. The second phase, in a year or two, would involve Veolia acquiring the rest of Suez's capital. Veolia says the tie-up would produce €500m in synergies.

***Germany: Monedo**, once the largest German start -up in the fintech industry, filed for bankruptcy after the impact of the pandemic destroyed its business. Founded in 2012, Monedo had specialised in micro-credit loans but had struggled and changed strategy earlier this year to focus on using algorithms to grant loans. The company changed its name from *Kreditech,* but despite winning plaudits in the financial press for the new strategy, the pivot didn't work, coming as it did in the middle of the pandemic. *The company's fate could signal trouble* *for the wider industry, and in particular other digital credit providers who may be particularly vulnerable.* Pandemic debt relief laws were what, according to German media *Finance Forward*, caused trouble for Monedo. Spain and Poland, two of the company’s largest customer bases, both passed laws that allowed borrowers to postpone the repayment of debts, meaning no income for Monedo.

***Netherlands:** Technology companies in **Amsterdam** are now worth a combined €73bn, a seven-fold increase on five years ago, in a sign of how the city’s tech ecosystem has taken off in recent years, said *Sifted* website. This figure is largely down to two companies — *Adyen*, the e-commerce site, and *Takeaway.com* — both of which are amongst the top five most valuable tech companies in Europe. According to a report from *Dealroom*, the city has more start-ups per person than any other place in Europe. There are more than 2,700 start-ups in Amsterdam, which is 1.1 per 1,000 inhabitants. Tom Peeters, ceo of *Crisp*, an Amsterdam based app that connects customers with local farmers, said the city’s success is partially down to its infrastructure. “It’s located centrally in Europe, everybody speaks English, there’s high internet penetration, flexible office space and a housing market that is becoming hot, but less difficult compared London or Paris,” Peeters said. The city’s success is shown in recent funding deals. One of the city’s biggest start-ups, *Mollie*, an online payment service, just received €90m in funding and is now worth over €1bn in total, making it the city’s latest unicorn. It is not all rosy for the city though. According to Dealroom, the city has strong support from local investors, but struggles to attract international funding on the same level as other tech hubs like London, Tel Aviv and Stockholm.

US: Ingersoll Rand, (formerly Gardner Denver), a global provider of industrial equipment, technologies and related parts, celebrated its $150m equity grant to16,000 employees worldwide with a virtual ringing of the opening bell® at the New York Stock Exchange. “*This is a $150m investment in our employees*,” said ceo Vicente Reynal “*We are not aware of any other industrial company our size having done something like this; it’s a meaningful way to build an ownership culture where all employees can benefit from creating value as they all contribute to our success. Our employees have carried us through the beginning of a successful integration between Gardner Denver and the Ingersoll Rand industrial segment, built a solid foundation and now position us to pivot to growth and achieve great things in the future.*” From an hourly paid assembly employee on the production line in Quincy, Illinois to a sales representative based in Shanghai, China, all eligible employees received a grant equal in value on the grant date to 20 percent of that employee’s annual base cash compensation. The grant follows a similar approach Gardner Denver (GD) took a few years ago when it gave employees ‘skin in the game’ in the company through an equity grant. When GD returned to the public markets in May 2017, Mr Reynal, together with chairman ***Pete Stavros***, KKR’s co-head of Americas Private Equity and current Ingersoll Rand Board chairman, announced a grant of more than $100m in deferred stock units to all GD employees worldwide. Employees who held on to that equity grant have witnessed an 80 percent rise in its value. Pete outlined this outstanding employee share ownership success story at a Centre conference. Over the last decade, Centre member Stavros and his team at KKR have pioneered this model of employee ownership in manufacturing companies by granting equity to all eligible employees in the industrial companies KKR acquires in the Americas, including Gardner Denver. “*Across our investments in the industrials sector, we have seen first-hand the positive results that occur when you make everyone an owner and afford them the opportunity to participate in the value they help to create*,” said Stavros. “*It’s an obvious but often overlooked point: employees are the single most important driver in building stronger companies. Today, we are thrilled to continue to invest in Ingersoll Rand’s future by investing in and empowering its employees.*”

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