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it's our business

newspad of the Employee Share Ownership Centre

Share schemes stagnate, but EMI powers ahead

The use of tax-advantaged employee share schemes largely stagnated last year, though the discretionary SME Enterprise Management Incentive (EMI) stock option based scheme was the shooting star exception.

The total number UK companies who had tax-advantaged schemes during the tax year 2020-1 rose by 990 to 16,330, but that was almost entirely due to the continuing success of EMI, revealed the latest annual share scheme statistics published by HMRC and the Office for National Statistics.

For no fewer than 14,310 of these companies incentivised their key employees by using EMI – 930 more, equivalent to a seven percent increase – during the year ended April 6 2021.

Once again, the three other tax-advantaged schemes struggled against the background of the then continuing pandemic. The number of companies having one or other, or both, the all-employee schemes – SAYE-Sharesave and the Share Incentive Plan (SIP) hardly increased during the year; SAYE attracted 480 companies, compared to 470 in the previous year, while SIP advanced by the same tiny number, from 810 to 820 companies. Meanwhile, the number of companies having the other discretionary tax-advantaged plan, the Company Share Option Plan (CSOP) rose by just 20 to 1,170 during the 20-21 tax year, according to HMRC.

However, even these relatively static numbers flatter to deceive, because the number of companies who actually grant options or who approve SIP share purchases and awards *during the tax year* is much smaller – for example only 260 companies issued SAYE options during 2020-1, only 290 granted CSOP options and 480 companies appropriated SIP plan shares for use. Why such a discrepancy between the number of companies who have the various share schemes on their books and those who actually used them during that year? - Answer - because in each case

From the chairman

There is a gaping hole in national statistics – let us call it the Prosper Paradox – which explains the generally high level of well-being in these currently troubled times. National statistics, Gross National Product, were created by the late Belarusian/ American Nobel prize winner Simon Kuznets but his caveats about their incompleteness have been largely forgotten.

The fifteenth anniversary of the launch of the iPhone casts a light on the transformation that has taken place. A simple phone for the elite few has, as one of many modern smart phones, morphed into a sophisticated mini computer in the hands of many. The value of its properties amounts to a sum beyond estimation at the time of that first launch. Where four gigabytes was on offer now there is up to one terabyte.

The power of the new handheld computer age has revolutionised communications, access to information, online and stored, and brought additional pleasure with entertainment and sophisticated cameras. We have access to libraries, films and tv online and interaction round the world with families, friends and strangers, all adding to the power of our new small computer age. For most people throughout society things are not nearly as bad as the current inaccurate stats from the state would have you believe.

There are lessons here for employers as well as governments – and a need to learn how to build from the hidden acquis. I look forward to seeing estimates of the size and potential of taking the Prosper Paradox into account. Not least it should make it easier to bring more help to a small minority who don't have access to the same acquis and whose needs require special intervention.

I look forward to further contributions in the pages of newspad to the value of the Prosper Paradox and its significance to all our lives and work.

Malcolm Hurlston CBE

Z/Yen Group Limited t/a The ESOP Centre
1 King William Street, London EC4N 7AF
tel: 020 7562 0586 e-mail: esop@esopcentre.com www.esopcentre.com

the share options have to be retained for at least three years in order to qualify for tax relief. So Eso companies had large numbers of participating employees who were simply holding onto their share options without being issued with new ones during that tax year.

This is especially so in EMI companies where last year 4,550 of them (*only about one third of the total number of companies who use it*) actually granted key employees new EMI options, compared to 4,330 the year before and 3820 in 2018-9. Many of these EMIs are *Exit Only,* which means that senior employees can be left holding their EMI options for years, unless there is an exit – usually a takeover or an IPO. The number of those key employees who were granted EMI options last year rose significantly – from 39,000 to 44,000, which is more than twice as many who received EMI options a decade ago. This statistic suggests that, slowly but surely, employers are allowing a wider range of employees to benefit from being awarded EMI options. About 10,000 of them exercised their EMI options in the tax year 20-21 for a collective gain of £830m.

No surprise then that EMI cost HMRC £400m in lost Income Tax and NICs relief last year, more than half the total £760m loss from all the tax-advantaged share schemes. Interestingly though, this total tax loss was more than 14 percent *lower* than in the previous year, almost certainly due to the malign impact of the pandemic on the UK economy.

CSOP was costing just £40m in lost tax relief revenue; SAYE £100m while SIP was costing taxpayers £210m, though that number was well down on the previous tax year's £280m.

For those who enjoy statistics, HMRC estimates that at the *end* of the 20-21 tax year, the number of *live* (as opposed to *dormant*) tax advantaged share schemes in the UK was EMI 14,950; CSOP 1,280; SIP 840 and SAYE 550. Only EMI schemes had advanced during the year, while all the others were static.

There are multiple traps for the unwary when examining the crude numbers: although 3,430,000 employees apparently were awarded partnership shares in the SIP last year, this ignores the fact that employees often buy their shares once a month, or once every quarter, so the number of shares bought does not equate to the number of employees (*risk of double counting)*. However, as 330,000 employees received free shares under their SIPs and 243,000 received matching shares, it is possible that the true number of employees who purchased SIP shares, or who were awarded free shares, was in the region of one million.

Perhaps the total 330,000 employees who received SIP free shares was the most interesting statistic of all – as compared to only 100,000 in the previous year – because that shows how nimble many companies were in awarding their employees morale-boosting free shares in the midst of the pandemic.

Larger slice of bonuses in shares?

*Ministers are said to be pressing for a higher proportion of executive bonuses to be paid in shares in future, rather than in cash. This rumoured policy change was reported by the *Financial Times*, which said that PM Boris Johnson and Chancellor Rishi Sunak were asked – at a recent meeting of finance leaders – to raise the EU-imposed bonus limit, currently 200 percent of fixed pay, provided shareholders agree. However, the government insisted it was *not* planning to change bonus rules. The Department for Business, Energy and Industrial Strategy (BEIS) said that the focus was instead on possibly changing the form in which bonuses were paid out - *with potentially more of the awards coming in company shares rather than cash.* This means recipients would be more "*fully invested in the success of the companies they run",* it added.

Shares rather than cash would seem psychologically more appetising in the UK, where FTSE100 share prices are not far behind the level they were at last January, whereas Wall Street was down 19 percent at the end of June, as compared to January's level. Both the NASDAQ (tech stocks) and the FTSE250 indices were well down too. As a result, share options in dozens of high tech US companies were underwater as vesting approached. However, the prospects of a major *bounce back* in US stock prices increase the likelihood over there of many attractive new stock option package issues in the autumn.

The EU-wide cap on bankers' bonuses, which still applies in the UK, is normally set at 100 percent of salary but it can be extended to as much as 200 percent of fixed pay if there is *explicit* shareholder permission, for example by agm or egm vote. It was brought in after the 2008 financial crisis. Supporters say it ensures fairness, but opponents argue that removing it for UK-based bankers, following Brexit, would give the City of London a competitive advantage over its rivals.

The FT reported that, at a virtual meeting

comprising Mr Johnson, Mr Sunak, Bank of England governor Andrew Bailey and international bankers, the prospect of the post-Brexit UK lifting of "unnecessary" restrictions on bonuses was discussed. It was reported that Cabinet Office minister Steve Barclay, the PM's chief-of-staff, had written to the Chancellor calling for "*deregulatory measures*" to help businesses, including cutting restrictions on director and non-executive director remuneration. When the PM attended theCommonwealth summit in Rwanda, he faced questions over whether he would use his Brexit freedoms to allow bigger bonuses for bankers. "*We're not doing that. We have no plans for the measures you describe*," he told journalists.

Meanwhile, bonuses paid to the UK's bankers, insurance brokers and other financial sector workers hit a record high and were rising more than six times faster than average wages in the UK, claimed the TUC. Its analysis suggested that the City's bumper executive bonuses of the pre-financial crash era were back, even as the UK struggled with the soaring cost of living, which is outstripping pay rises, reported *The Guardian.* The analysis showed that bonuses in the financial and insurance sector grew by almost 28 percent over the last year, while average wages in the same period grew by just 4.2 percent. Almost £6bn was paid out in City bonuses in March alone. OutgoingTUC general secretary Frances O'Grady said: "*Working people are at breaking point, having been left badly exposed to soaring bills after a decade of standstill wages and universal credit cuts. Ministers have no hesitation in calling for public sector pay restraint, but turn a blind eye to shocking City excess. It's time to hold down bonuses at the top – not wages for everyone else.*" She called for new measures to rein in City bonuses and push up wages across the economy. They include: •introducing maximum pay ratios, so that bonuses are no more than ten percent of total pay; •ensuring that bonus schemes are open to all staff on the same terms; and •ensuring employees are included on company pay committees. The average bonus awarded in the finance and insurance sector rose to £4,021 in the first three months of this year, up from £3,146 in the same period last year, TUC analysis showed. By contrast, average monthly pay in the UK rose to £2,413, up from £2,315. These figures put City bonuses at the highest since records began, dwarfing the average pay in almost all sectors. In March, finance and insurance bonuses were 2.4 times larger than the average worker's basic monthly pay.

*Real basic pay in the UK is falling at its fastest rate in over two decades, as wages fall further behind rising prices. In April alone, regular pay packets (excluding bonuses) shrank by 3.4 percent, once adjusted for inflation. That was the biggest monthly fall, year-on-year, in at least 20 years, data from the Office for National Statistics (ONS) showed. A two-tier Britain for employees is emerging, whereby those receiving annual bonuses are being shielded from the worst ravages of price inflation, whereas those who don't get bonuses are not, the ONS data revealed.

Total pay *including bonuses* outpaced price rises, rising by 0.4 percent when taking inflation into account, the ONS added. Sam Beckett, head of economic statistics, said a "*high level of bonuses*" was continuing to "cushion the effects of rising prices on total earnings for some employees, but if bonuses were excluded, pay in real terms was falling at its fastest rate in over a decade," she added. About 11,000 staff at audit giant **PwC** received pay rises of at least nine percent, as pressure rose on major employers to combat the cost of living crisis and retain employees in the highly competitive jobs market. Roughly half PwC's staff received the inflation-matching nine percent rise in what was its biggest pay award for a decade. This year's pay round is costing the company £120m, while the bonus pool rose by £10m to £138m. Yet millions of UK employees do not have access to bonus payments. British households are spending less on food as rising prices force them to cut back on their weekly supermarket shop. There was a 0.5 percent drop in retail sales in May, said the ONS. Smaller grocery bills were the main factor behind the fall but department stores and household goods outlets reported consumer reluctance to spend as a result of a higher cost of living

*Retail prices however were continuing to rise at their fastest rate for 40 years as food, energy and fuel costs climbed. UK Consumer Price Index (CPI) inflation, the rate at which prices rise, edged up to 9.1 percent in the 12 months to May, from nine percent in April, said the ONS. However, the older Retail Prices Index (RPI) was a staggering ***11.7 percent*** higher in May than it was a year ago. Inflation was being fuelled by food and non-alcoholic drink prices, which were rising at the fastest annual rate since 2009, the ONS said, with the most dramatic increases seen in the cost of bread, cereals and meat. In addition, soaring prices for petrol and diesel drove up

inflation in May, adding to the pressure on motorists and business costs with a near 33 percent jump in motor fuels over the past year – the biggest annual increase on records dating back to 1989.

EVENTS

Members' Webclave: Tuesday July 12 2022

Are all-employee share plans still fit for purpose?

The Centre's next webclave (private, invitation-only on-line event for Centre members on topics of common interest) will widen the discussion which stemmed from **Jennifer Rudman**'s draft paper "*SAYE look-back – option price reset proposal*". The idea is to revitalise SAYE share plans, providing a boost to take-up and the number of companies offering them, by implementing a change to one of the key features – the way that the option price is set. Owing to their low-risk nature, SAYE plans have undoubtedly benefited both employees and employers considerably over the years of their operation and their success has contributed significantly to employee financial well-being as well as employee share ownership in the UK. However, the challenge for SAYE is that the economics have changed which puts a question mark over the number of providers still prepared to offer it – particularly in the wake of YBS' withdrawal from share plans. SAYE has been impacted by many years of low interest rates (its original main attraction was that you get your money back plus some interest), how savings are held and plan administration. The *Option price look-back* is part of the Centre's campaign to make employee share ownership more popular. As the Centre's prime goal is to foster all-employee share ownership, this is a timely cue to look at the shape of all broad-based plans currently in use and ask whether they are fulfilling the needs of today's workforce. After a brief introduction, speakers Jennifer Rudman, industry director at Equiniti and Stuart Bailey, associate director at Computershare, will set out the issue, then participants will break into two groups for detailed discussions, which will form the basis of a report to follow.

Webinar – 11:00am July 28 2022

Esop sofa – newspad review. In our next newspad review webinar, Global Shares' Darren Smith will chair a panel of share schemes experts for in depth discussion of their pick of articles featured in recent editions of "It's Our Business", newspad of the Esop Centre. Guest panellists to be announced. Registration is open.

Share schemes and the impact of inflation

Share schemes expert David Craddock told his Esop Centre/FS Club webinar audience not to panic over falling share prices on Wall Street and elsewhere and to hang on to their equity investments – including employee share participation. He castigated those market commentators who are advising clients to build up cash reserves as a hedge against share price falls. "*This is total nonsense*," said David. "*The best form of hedge against temporary share price falls is a carefully chosen portfolio of shares/stock. People should hang in there because in the longer term, the ship will come loaded with goodies, such as capital gains, dividends and an eventual rise in share values.*"

High inflation is equivalent to a regressive tax, because it affects poorer people far more than it does the better off, he said. Current higher price inflation is a symptom of a deeper malaise – deficiencies in productivity and supply. Lower taxes could release growth as a credible means of recovery, but any increases in wages have to be in line with productivity improvements, he warned. In that context, employee share ownership has a unique contribution to make because pay rises should only be paid *after* productivity increases have been achieved, he added. Louis Kelso, the American father of the Esop, had talked about the *wages of capital* (profits, dividends etc) some of which would be due to employees in addition to their hourly pay). Employee share ownership is a "wonderful" construct because it provides individuals with rewards for group performance. The late Professor Martin Weitzman in his book *The Share Economy* pointed out how useful as a management tool was the notion of *variable pay* – profit sharing, dividends and capital gain for employees on top of their normal core pay – "because when times get tough and companies need to reduce costs, variable pay could take the hit without forcing mass redundancies among the workforce, nor needing heavy monetary stimulus in the economy either," he said.

For employees participating in discretionary employee equity schemes, David's message was to *sit tight* and not to panic. Similarly, those in SAYE-Sharesave schemes should keep going, if possible, and not stop contributing. In both cases, management should keep their employee

communications strong – to manage share price expectations and to spread confidence among the workforce.

Free shares for employees is a great resource for companies to use in present circumstances – in return for better performance and productivity - thus preserving profit margins, free shares could be issued widely to employees. There is no impact on the company's cash reserves in doing so, though existing shareholders would be diluted. If the employees have confidence in the company's future, they would accept the free shares, in a difficult economic situation, as an alternative to conventional bonuses or pay rises, he opined.

David, director & founder of **David Craddock Consultancy Services,** is an independent consultant specialising in employee share ownership and reward management. A recognised authority on the subject, he is the author of *The Tolley's Guide to Employee Share Schemes* and many other essential books and courses.

MOVERS & SHAKERS

*Centre member **Linklaters'** updated cross-border guide for company directors aims to inform and help individual directors and international businesses in 25 jurisdictions. With contributions from lawyers across the legal group's global network, this version now covers Saudi Arabia. *"Businesses worldwide are increasingly exposed to regulatory action, public criticism and litigation. Current challenges include evaluating and tackling climate change risks, the war in Ukraine, and the continuing effects of the Covid pandemic,"* said Linklaters.

***Paul Matthews**, ceo of **EQ Boardroom (Equiniti),** and executive director retired after 43 years of full time work. Before he joined Equiniti more than a decade ago, Paul was md at JPMorgan Cazenove. Paul worked with leading businesses to deliver transactions, including IPOs and other corporate actions covering 50 percent of the FTSE100 companies. He said: *"I have worked with fantastic people, many of whom were brilliant at their job, these are friendships and memories I will always remember fondly. As my new journey starts I will look for some NED opportunities, and will continue in this role with Emperor, the brilliant creative consultancy specialising in corporate reporting, digital, engagement, sustainability and brand communications."*

Thera Prins is EQ's new director of UK Shareholder Services. She said: "*Under our new ownership, we have recently updated our vision: 'To create a leading global share registrar/ transfer agent, which offers complementary services to our clients'. A key outcome of this is that we are streamlining our services, focusing our investment on our core market and establishing a strong and relevant brand."* This follows the announcement last December that *Equiniti* and American Stock Transfer & Trust Co (AST) had combined under new ownership under private equity Siris Capital Group after Equiniti shareholders had accepted the £673m takeover offer, which was approved later by the Financial Conduct Authority.

*Centre member **Pinsent Masons** was short-listed for the Best HR or Benefits Team of the Year award by *Employee Benefits.*

UK CORNER

Bigger equity awards to beat tax trap?

Almost one million more working Britons are likely to fall into the 60 percent Income Tax trap within a few years owing to fast-growing earnings, *Money Telegraph* reported. Higher rate taxpayers who earn between £100K and £125K per year lose their £12,750 personal allowance on a sliding scale until, at £125K it disappears altogether. For every £1 they earn between the two amounts, 50p in personal allowance is lost, producing an effective 60 percent income tax rate. Soaring price inflation means that more and more of this middle-to-high income band will fall into the 60 percent tax trap within the next three to four years, because their salaries have to rise faster – *annual earnings growth is around seven percent* - to keep up with prices. The Chancellor announced a five year freeze on all personal tax band allowances last year, which makes the problem even worse.

In the higher income levels, one way round is for companies to pay more employee salary directly into pension schemes, thus reducing NICs and obtaining income tax relief at 40 percent. An alternative is to convince senior employees to accept higher long-term equity awards by way of *salary sacrifice*. The emotional appeal of being considered a co-owner in the business is real, even if the shareholding is modest. Making employees shareholders in the business may seem like a bigger leap of faith than granting options. An option delays the acquisition of the shares

until a future point in time. If exercise of the option is structured deliberately to coincide with an exit of the business, the employee is only a shareholder for a sliver of time. Another reason is that being a shareholder in the business has greater impact than effectively being a deferred shareholder.

Growth Shares now come into their own. They have no right to receive any fraction of the current equity value of the company and only have an interest in its future growth. Unlike becoming a 'normal' shareholder, a growth shareholder can still be required to 'earn' equity by creating added value. Using the Share Incentive Plan (SIP) is another possibility because not only can employees within a SIP receive £3,600 each year in bonus payments without being taxed, but if employees' SIP partnership shares, which they have to purchase, are kept in the plan for the full five years, they do not pay income tax, NICs, nor CGT on the sale value.

End nears for Meggitt share schemes

The UK government hinted that, finally, it was likely to accept the £6.3bn takeover of the British defence manufacturer **Meggitt,** the second recent deal by a US buyer to receive the green light. The US industrial conglomerate **Parker Hannifin** said that it expected to complete the takeover within the next two months after receiving assent from the UK business secretary, Kwasi Kwarteng, reported *The Guardian*. Meggitt, based near Coventry, makes wheels, materials and electronics for the F-35 fighter jet and the A400M transporter, both used by the UK military, as well as civilian aircraft made by Airbus and Boeing. Meggitt employs about 2,300 in the UK and 9,000 globally.

Last September, the hundreds of Meggitt employees who were participants in its ***Share Incentive Plan (SIP)*** were told by the directors that they should instruct their SIP trustee to vote their shares before the subsequent agm. "*If the acquisition proceeds, all SIP Shares held in the SIP Trust at scheme record time will be acquired by Parker for 800p in cash for each Meggitt share, subject to the terms of the acquisition*," employee shareholders were told. On the other hand, if the deal fell through, their SIP Shares would continue to be held on their behalf in the SIP Trust. Meggitt's board said (almost one year ago) that the deal was "*currently expected to take effect in the third quarter of 2022, subject to Meggitt Shareholder approval and receipt of the relevant competition clearances, regulatory approvals and national security and foreign investment clearances.*" Meanwhile, their SIP would continue as normal until the deal completion, meaning that they could continue to acquire Partnership Shares in the normal way. The Meggitt SIP is administered by Centre member **Computershare.** Employee shareholders were told too that they should not have to pay any Income Tax, NICs or CGT when they sold their SIP Shares to Parker under the deal (assuming that their SIP Shares were sold directly out of the SIP Trust to Parker).

Similarly, Meggitt's ***SAYE-Sharesave*** employee participants were told that they could continue to save in the normal way and apply to exercise their discounted options on completion of the deal. They would receive a one-off cash compensation payment, *equal to the profit they would have made had they continued to save*, for any unvested Sharesave options at completion date. However, there was a tax sting in the tail for Meggitt's Sharesave participants in that the frozen CGT allowance limit of £12,300 meant that more of them, may have to pay CGT due to *fiscal drag*. By contrast, SIP participants are not liable to CGT when they cash out their holdings. Helpfully, Meggitt's directors reminded their Sharesave participants that by transferring the shares they eventually receive to their spouses/civil partners, they could eliminate or reduce CGT liability. The Meggitt Sharesave was administered by YBS, which has left the share schemes market. A year ago, the Meggitt Employees' Share Ownership Plan Trust held company shares worth £14.26m. To sugar the bitter pill for Meggitt employee shareholders, who will soon see their UK share schemes disappear, they were promised the right to participate in the Parker Global Employee Stock Purchase Plan in those countries where that plan is operated.

The Meggitt takeover was among several approaches by US investors for mid-sized British companies amid concerns they were undervalued by stock markets after the pandemic lockdowns. A US private equity firm's £2.6bn takeover of **Ultra Electronics**, another mid-sized target and a maker of electronics for nuclear submarines, received preliminary assent from Kwarteng (*see report later in this issue*), while the government was still looking at a £5.4bn deal for the satellite company **Inmarsat** by its US rival **Viasat**.

Spending squeeze

The government borrowed another £14bn in May despite the rising tax burden, as inflation sent interest payments soaring. The costs of servicing the near 4tn debt mountain surged to £7.6bn, a record for the month. It was the third-highest May borrowing since monthly records began and £8.5bn more than in May 2019, before the pandemic struck. The data revealed that surging levels of inflation sent interest payments on government debt to a record-breaking £7.6bn – £3.1bn higher than a year earlier. The ONS said the jump in UK debt interest payments was due to the recent spurt in the RPI measure of inflation, which determines pay-outs on index-linked gilts. Capital Economics said that debt interest repayments were likely to reach £100bn next year, of which about 60 percent will be returned, either as dividend on pensions or direct to the Bank of England.

*Regulator Ofgem announced that the energy price cap is to rise by more than £800 in the autumn. This follows a 54 percent increase in April and will take the average annual household energy bill to £2,800. Real wages across the economy, adjusted for inflation, are down by £68 a month compared with a year ago. The situation is even worse for public sector workers, whose monthly real wages are on average £131 lower. Beyond finance and insurance, other industries are turning to one-off payments to recruit more people amid labour shortages, potentially hampering more sustained rises in pay, according to the TUC. Its analysis showed record bonus payments in a number of sectors, including professional, scientific and technical services, real estate, arts and entertainment, administrative and support services, construction, wholesale trade, and accommodation and food. The TUC urged the government to tackle the crisis by introducing fair pay agreements across industrial sectors. It wants to see the minimum wage lifted immediately to at least £10 an hour for all employees, irrespective of age, and called for "decent pay rises" for all public service workers.

*The number of UK employees on payrolls continued to grow in May 2022 and is now 627,000 above the pre-pandemic level. Economic inactivity fell slightly, but the number of people in the UK who are not in work and not looking for a job is some 450,000 higher than pre-Covid. This 'colossal' change is not often talked about, said Joel Hills, business and economics editor, ITV News. More demand in the system + fewer people in work = more wage pressure, he added.

*The **Bank of England** raised UK interest rates to 1.25 percent, from one percent, in order to fight inflation. The Bank's monetary policy committee voted to raise rates to a fresh 13-year high, the *fifth* consecutive rate rise, despite concerns that the economy was weakening. In a split decision, three members of the nine-strong MPC pushed for a larger, 0.5-point rise, amid unease over persistently high inflation as central banks worldwide launched aggressive rate hikes to combat the rising cost of living. Another hike in UK bank base rates this month looks likely. Mortgage rates are rising fast. The US Federal Reserve was not so reserved – it announced a 0.75 -point rate rise – the largest single rise since 1994.

*Millions of retired public servants are to get an average £2,000 more in their pensions, half via their occupational pensions and the rest in the expected £1,000 rise in state pensions next April. This follows confirmation from ministers that the so-called *triple lock* which governs state pension rises will re-apply in the next financial year, based on September's annual price inflation figure, likely to be around ten percent.

IPOs pulled in the City

Financial technology companies are putting IPO plans on hold and cutting expenses as fears of an impending recession generated a shift in how investors view the market, said the Canadian *CNBC.* At the *Money 20/20* conference in Amsterdam, ceos of major fintech players sounded the alarm about the impact of a deteriorating macro-economic climate on fundraising and valuations. John Collison, co-founder and president of **Stripe**, said he was unsure if the company could justify its $95bn valuation given the current economic environment. "*The honest answer is, I don't know,*" Collison said on stage. Stripe raised venture capital funding last year and was not currently looking to raise again, he added. *Buy now, Pay later* firm **Klarna** was reportedly seeking to raise fresh funds at a 30 percent discount to its $46bn valuation, while rival group *Affirm* has lost roughly two thirds of its stock

market value since the start of 2022. *Zopa*, a digital bank based in Britain, had hoped to go public by the end of 2022. Now it looks less likely as inflation shocks, exacerbated by the war in Ukraine, led to a slump in both public and private markets.

The international money-transfer service *Zepz*, formerly *WorldRemit***,** became the latest fintech unicorn to take an axe to its workforce, as tumbling valuations forced founders onto a survival footing. *Sky News* said that Zepz had let go scores of employees to reduce its global employee numbers nearer to 1,000. Ceo Breon Corcoran, quit the company as hopes faded for a speedy exit. *Amount*, a banking software fintech that reached unicorn status (worth more than $1bn) last year, laid off almost one fifth of its 400+ workforce. Ninety-four founders and start-up operators shared their experiences with the FT supported website *Sifted*. The word of the day was caution: more than 80 percent thought it would get harder for their company to fundraise in the near future; 61 percent had cut or frozen hiring plans and 52 percent felt less secure in their jobs. Only 22 percent of respondents' start-ups had laid-off staff so far and those that were hiring predicted a surfeit of top tech talent becoming available.

Venture capital funding for heavily loss-making start-ups was collapsing, wrote *Telegraph* columnist James Titcomb. While Silicon Valley firm founders have become latter day Rockefellers and Carnegies, with many of their employees making enormous salaries and bonuses, plus big dividends for shareholders a generation ago, new on-line based companies are now forced to accept heavily discounted valuations while they struggle to keep enough cash in the bank to stay afloat, he added. The biggest shock, however, was the announcement by **Walgreens,** the major US retailer, that it had withdrawn the **Boots** high street pharmacy chain, which it owns, from a planned £5bn+ auction process for want of a bid at a sufficiently high level. The protracted auction of Boots, which employs 56,000 people, fell apart as debt markets seized up and buyers grew nervy amid a consumer downturn. There was speculation that Walgreens would try to float Boots in the UK next year.

Employee ownership boom

The UK's 50 largest employee-owned companies have combined annual sales of £21.7bn and more than 183,000 employees in total, announced Centre member **RM2 Partnership.** This year, the list, created by the late Centre stalwart **Nigel Mason**, gained four new entrants; Foster & Partners Group, Independence Matters CIC, Adventure Forest Group (Go Ape) and Buckingham Group Contracting, of which two are owned by EOTs. The biggest employee trust owned company in the UK remains the John Lewis Partnership, with almost £11bn in sales and 79,500 employees, while the runners-up are the Mott MacDonald and Arup groups, Greenwich Leisure, insurer Howden Group Holdings and logistics group Unipart. Of the newcomers, famous architects and designer group Foster & Partners was easily the largest, with £200m revenue and 1,200 employees. The total number of EOT owned companies on the Top 50 list is now 17. "*We expect that number to increase as EOTs continue to be a popular and flexible succession solution for owners of private companies,"* said RM2. *"We know from our parallel work on the EOT Survey that the number of EOTs is increasing at a rate of 45 percent per annum. There were around* ***800*** *confirmed EOT-owned companies by the middle of May 2022."* The largest of the EOTs in the Top 50 list is Shaw Healthcare (Group), via a transaction completed by RM2 in May 2020. Since then, Shaw has increased its employee numbers by nine percent. In this latest Top 50 list of EO companies, there has been an increase in *productivity,* defined as value added per employee, of 9.4 percent on a like -for-like-basis.

Tenth EO day celebrated: The UK is encouraging the growth of employee ownership internationally, including the possibility of a Danish EOT. June 24 was the UK's tenth EO Day, a day when thousands of employee owners, businesses and supporters stepped up to raise awareness of the benefits of employee ownership.

"The US) has added the EOT to its models of employee ownership. Australia has its first Australian headquartered EOT. Other countries are reviewing what they can do, with the Canadian government leading the way but Denmark is catching up," wrote **Fieldfisher** partner Graeme Nuttall OBE**.** He added: "*EO Day 2022's aim was to plant the seed of employee ownership in the minds of more people to grow EO like never before. Fieldfisher supports the GrowEO campaign and is working to plant the*

seed of employee ownership internationally, as well as across the UK." Propelled by the employee ownership trust (EOT) UK employee ownership has grown massively over the decade since the *Nuttall Review of Employee Ownership.* In *How the UK is encouraging employee ownership internationally* Graeme explained this multinational phenomenon and concluded that the next ten years could see EOT ownership, or its equivalent, established as the standard model of employee ownership internationally for business successions. He praised the Canadian government's Budget 2022, which proposes to create a new, dedicated type of trust under the Income Tax Act to support employee ownership. Canada was engaging with stakeholders to finalise the development of rules for this trust and to assess remaining barriers to the creation of these trusts. "*The Canadian EOT may be both an Esop and an EOT. It will represent another major step in promoting the employee trust model of employee ownership,"* added Mr Nuttall. "*As explained in EO v3.0 –* Employee ownership with added Gandhian purpose*, the ability for EOT owned companies to support wider corporate purpose and address environmental, social and governance issues should future-proof it as a mainstream business model."*

COMPANIES

*More than 1,150 **Babcock International** employees at the Plymouth Devonport dockyards secured pay rises of up to ***13 percent*** in order to help offset the cost-of-living crisis. The employees, who support the Navy in the refitting of its fleet, including frigates and nuclear-powered submarines, and range from craft apprentices to catering staff, accepted an offer of an across the board £1,500 per annum increase from the aerospace, defence and nuclear engineering services firm. The deal is worth 13 percent for the lowest paid staff. More than 5,000 members of staff work for Babcock at the Devonport site. The pay increase, which was backdated to April, has been paid six months ahead of the normal date pay settlement date in October.

*Online second-hand car retailer **Cazoo** plans to reduce staff by 15 percent - around 750 roles - and to freeze hiring for non-essential roles, as its share price fell back. It joined other well-known start-ups, such as **Getir** and **Klarna**, in planning drastic lay-offs as a response to economic uncertainty.

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.

⇒ 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.

*Centre member **Clifford Chance** appointed ex Aon executive Charles Alberts as its first *global well-being* officer. He will overhaul a range of in -house sectors, including interviews, promotions, training, plus bonuses and perks – to create a global well-being strategy. Even top legal groups face fierce competition for new talent, resulting in post qualifying salaries reaching £125,000 p.a. and louder staff complaints about an allegedly uncontrolled work culture in which corporate lawyers and others are expected to work regularly until 10:00 pm.

*Britain's biggest train operator **FirstGroup** rejected a £1.2bn takeover proposal from a US private equity firm, after the board determined the offer was too low. The bus and rail company said it had carefully reviewed the proposal from **I Squared Capital,** but concluded that the 118p a share cash offer "significantly undervalues FirstGroup's continuing operations and its future prospects". It said that another portion of the company's offer, which would see shareholders paid up to 45.6p a share on top of the 118p, dependent on certain outcomes, did not provide investors with sufficient certainty. I Squared Capital, which focuses on energy, utilities, telecom and transport in the Americas, Europe and Asia, had until 5pm on June 23 either to make a firm offer or walk away. FirstGroup, which employs 17,500 people, is the second major British transport firm targeted this year, with Stagecoach having backed a £595m offer from a pan-European infrastructure fund managed by Germany's DWS Infrastructure. It trumped a £1.9bn merger previously agreed with its rival **National Express**.

*Law firm *Mishcon de Reya* abandoned its plans for a £750m flotation, owing to uncertain and volatile market conditions. Mishcon was forced to close its '*VIP Russia'* initiative, advising wealthy Russian clients, following the hostilities in Ukraine.

***Clayton, Dubilier & Rice** (CD&R), the New York based private equity company finally achieved its £7bn takeover of supermarket chain **Morrisons** after the Competition and Markets Authority (CMA) announced that it had accepted CD&R's offer to sell 87 petrol stations to address concerns over higher fuel prices. About 31,000 employee shareholders lost their share schemes months ago after Morrisons' shares were delisted. Morrisons will pay its more than 80,000 store and manufacturing staff a minimum of £10.20 an hour from October this year. This equates to a minimum two percent increase on their base rate, making it, allegedly, the highest paying UK supermarket for store employees.

WHITE & CASE

*New **Nationwide** ceo Debbie Crosbie secured a potential £3.4m reward deal, comprising a basic salary of more than £1m from the building society and could receive as much as £3.4m in total, subject to performance targets.

*Luke Johnson, former chairman of the collapsed cake and coffee chain **Patisserie Valerie** is one of the leading creditors who will share up to £25m in compensation after the settlement of the case brought against the company's ex auditors, *Grant Thornton* which claimed it had been the victim of sustained and collusive fraud among several of the company's former senior employees.

Two-thirds* of **Pendragon shareholders voted against the car dealership's executive pay deals at a sulphurous agm. More than 65 percent of voting investors in the car dealership rejected its *remuneration report*. It was the third consecutive year the business faced a pay revolt by angry shareholders. A further 35 percent voted to oust ceo Bill Berman and 40 per cent supported ousting Dietmar Exler from the board, as a senior independent director. Anders Hedin, owner of Swedish car retailer Hedin Group, which has a 27 percent stake in Pendragon, said that the scale of top executive reward was "unwarranted", in an interview with the Sunday Times. He told the paper: "*I would like Pendragon to explain why the chief executive deserves an astonishing £3.4m in pay – the equivalent of four percent of Pendragon's profits – and more than three times the compensation awarded to ceos at Pendragon's competitors. This is unwarranted, wasteful and totally unacceptable*." The revolt was sparked by Pendragon's decision to pay bonuses to its top executives despite receiving £64m in taxpayer support throughout the pandemic. Shareholder advisory firm Glass Lewis said Pendragon's rewards for management were 'inappropriate' given the 'significant' support from the government – which Pendragon has not repaid. Berman received £3.4m in 2021, including an £825,000 bonus, while cfo Mark Willis was

paid £1.9m. Pendragon's overall three-year remuneration *policy* is to be presented to shareholders for renewal at next year's agm. Meanwhile, the remuneration committee intends to consult further with shareholders on the formulation of the new policy, including a three-year incentive plan.

*The ceo of the taxpayer supported **Rail Delivery Group** was accused of hypocrisy after Jacqueline Starr admitted that she commuted to her London office only twice weekly from her home 130 miles away, despite telling rail users to *get back on track* by abandoning WFH and getting back to their offices. The Association of British Commuters said that her example showed growing inequality in public transport, where those who could worked from home, while the rest were forced to pay ever more extortionate fares. Ms Starr earns £270,000 p.a.

*Those **Rolls-Royce** employees who are members of the *Unite* union rejected the company's pay offer, which included giving 14,000 staff a £2,000 one-off cash payment to help them cope with the big squeeze on incomes. The aero-engine maker told employees that the payment would be for 11,000 shop-floor staff, mostly in Bristol and Derby and 3,000 junior managers — about 70 percent of its UK employees. Shop-floor employees will get a four percent pay rise for the year back-dated to March. The lump sum will start to be rolled out to 3,000 staff in their August pay packets. The remaining 11,000 unionised employees will receive the payment only if their union approves the amount. Meanwhile, 3,000 other junior managers who are not represented by the union will receive the lump sum in their August pay cheque. Rolls Royce, which has a UK workforce of 20,000, said it was the first time it had ever paid a cash lump sum due to the economic climate rather than being linked to performance. It stated that there are ongoing discussions with unions about a pay settlement for 2022-2023, with cost of living likely to be a factor in these.

***Sainsbury's** ceo Simon Roberts received total reward of £3.7m pay and bonuses for the year ended March 31. He was awarded £2.8m in bonuses, of which £1.7m was his annual bonus, plus £1.1m more in LTIP shares. This came on top of his £875,000 basic pay and perks package. However, Mr Roberts did last year waive his annual bonus of £1m, owing to the pandemic and Sainsbury's dividend payouts rose 21 percent, compared to the previous year. A shareholder coalition, led by *ShareAction,* urged the board to pay the *real living wage* to all who work for it, including third party contract cleaners and security guards, as opposed to only those who work directly for Sainsbury's, as at present,

TRAVERS SMITH

*Around 21,000 **Smiths Group (SG)** pensioners were told that their inflation-linked pensions would increase by only five percent this year, despite at least nine percent annual price inflation. The group pension scheme is 108 percent funded with a £177m surplus, with the group taking a £12m contributions *holiday,* one SG pensioner complained.

***Sports Direct** owner **Frasers Group** bought **Missguided** for £20m, after the online fashion retailer collapsed into administration. Ceo Michael Murray said the group, which also owns House of Fraser, was "delighted to secure a long-term future" for the fast fashion company. Missguided, which had around 330 staff, sacked 80 of them immediately and appointed administrators. It suffered from supply chain problems, rising freight costs and increasing competition from rivals. Staff were made redundant on a pre-recorded conference call where employees lines were muted, according to reports. Security guards were brought in to stop axed staff returning to the HQ. Employees affected by the collapse of the company planned legal action, claiming that their redundancy processes were not properly managed. Missguided could face a legal challenge from angry suppliers too, who filed an official complaint with the Insolvency Service, that the retailer placed orders when it was close to collapse. The Manchester-based business was founded by Nitin Passi in 2009 and grew to become one of the UK's biggest online fashion players. Frasers Group confirmed it had bought the intellectual property of Missguided and its sister brand Mennace, which it said would be operated by administrators for a transition period of around eight weeks. It said it intended to run Missguided as a stand-alone business within the group. Mr Murray said: "Missguided's digital-first approach to the latest trends in women's fashion will bring additional expertise to the wider Frasers Group."

*Staff at City law firm *Stephenson Harwood* now have the option of working from home full time - but they'll have to take a 20 percent pay cut if they do so. Its lawyers and other employees are being given the option to WFH permanently in return for the financial sacrifice. A spokesman told *The Times* that the offer would be available to all London staff and most of its international offices, but not to its partners. To retain 100 percent of their salaries, they must work from their offices for at least 60 percent of the year (*a minimum of three office days per week).* Even those who choose to WFH must go into the office at least once a month. The firm employs 1100 staff in the UK and has eight offices worldwide. Stephenson Harwood said it expected only a few staff to choose WFH full time, because, *'For the vast majority of our people, our hybrid working policy works well*'. Currently staff on a hybrid working arrangement can WFH two days a week.

*__Tesco Ireland__ is giving its retail employees an overall ten percent pay rise, split across three years as part of a pay rates investment and benefits enhancement. The ten percent pay award covers 2021, 2022 and 2023, with 2.5 percent of the total backdated to April 2021. A six percent pay rise took effect from April this year and a four percent increase will kick in from April 1, next year. The pay award follows an investment in benefits, including paid maternity, paternity and adoptive leave, and the introduction of a new pension plan, which represents a total investment worth €40m (£34.2m). Up to 70 employees are now benefiting from paid maternity, paternity, and adoptive leave, and 1,000 more employees are now saving for their retirement, who were not previously doing so. The salary increase is in addition to two years of discretionary staff bonus payments of 2.5 percent for 2021 and two percent for 2022. The business has paid a further €10m (£8.5m) in bonus payments to its staff since the start of the pandemic, as well as offering new employees enhanced discounts, life assurance and earlier access to rewards.

***HM The Queen** authorised pay rises of up to five percent for her staff, after a two year pay freeze. The minimum pay rise was 2.5 percent, rising to five percent, subject to performance assessments. The Queen pays at least the living wage to all her employees and it is easily forgotten that many of them receive free board and lodging at one or other of her seven official UK residences.

*__Tube__ train drivers received an *8.4 percent* pay rise, as part of a deal agreed by the Mayor of

London, Sadiq Khan, who honoured a four-year agreement, which covers the period between 2019/20 and 2022/23. Tube drivers are one of the few groups of employees whose pay is rising in tandem with record price inflation. Transport for London (TfL) said the deal would see about 15,000 station staff and drivers be awarded a pay increase based on the annual Retail Price Index (RPI) increase, as well as an additional 0.2 percent. Tube drivers earn almost £59,000 a year and receive almost £5,000 a year more after the rise, which is likely to cost TfL £100m – but they joined the national rail strike after TfL said it would not refill posts on the underground as they became vacant.

*The Financial Conduct Authority (FCA) investigated the co-founder of payments company **Wise** after he failed to pay his taxes. Kristo Käärmann was included on HMRC's list of tax defaulters in September 2021, after failing to comply with his tax obligations. He failed to pay £720,495 for the 2017-18 tax year and received a fine of £366,000, the tax authority said. Wise said that the FCA had "*commenced an investigation regarding the regulatory obligations and standards to which Kristo is subject,"* after it shared details of its own investigation. Wise, formerly known as TransferWise, is one of London's prominent fintech firms, after its shares floated on the LSE in July 2021. Käärmann and his co-founder, Taavet Hinrikus, started Wise in 2011 after the former struggled to transfer money from a UK bank to an account in their native Estonia without paying extortionate fees. Käärmann and Hinrikus briefly became paper billionaires after the flotation, which valued the company at almost £9bn. Its value peaked at nearly £12bn last September, but has fallen back to £4bn, amid concerns over growing competition in cross-border payments and a move away from fast-growing tech businesses by global investors.

EOTs

North West law firm **Evolve Family Law** became an employee-owned business in order to preserve

its future independence. The business, established by Robin Charrot and Louise Halford, has offices in Holmes Chapel and Whitefield, is now 100 percent owned by an EOT. This will ensure that the interests of its 13 staff are protected. The founding directors will continue to play an active and long-term role as it pursues further growth. Charrot said: "*Over the past seven years, we've grown the firm sustainably while bringing new people into the fold to share in our success. Our priority has always been looking after our clients and co-workers rather than maximising profit and that sentiment has been at the core of our decision to become an employee-owned business, which will provide a platform for everyone to contribute and benefit as Evolve grows in the future. Louise and I could have sold the firm to an outside party, but we decided that this would not provide the best outcome for our clients or our staff.*"

Ultra Electronics sale to go through?

Business secretary Kwasi Kwarteng appeared to have accepted security assurances from Boston-based private equity firm **Advent International** over the £2.6bn sale of London headquartered **Ultra Electronics.** US officials had threatened to limit defence co-operation with the UK over a takeover of the technology supplier for nuclear submarines. Intelligence sources had claimed that Mr Kwarteng would jeopardise the future partnership between the two countries if he blocked the sale to Advent International, revealed the *Telegraph*. They accused Mr Kwarteng of unfairly discriminating against US companies after he ordered a national security investigation into a takeover of Ultra, which makes military communications equipment, including the highly classified Trident nuclear submarine kit. Apparently, Advent has offered to place Ultra's top secret divisions into two separate legal entities with government appointed directors to wave the red flag if UK security interests become threatened. The minister gave interested parties until July 3 to report to him whether Advent's plan to safeguard the UK's security concerns is acceptable.

Last autumn Ultra Electronics' SAYE-Sharesave participants were told that they needed to cash in their share options because Cobham Ultra Acquisitions, which is indirectly controlled by funds from Advent, had reached a deal to buy Ultra, which employs 4,500 people in the UK and the US. Ultra Electronics operates several popular and successful tax-advantaged Eso schemes, including both SAYE-Sharesave and the Share Incentive Plan (SIP). In its SIP, employee share dividends are automatically reinvested into the purchase of more SIP UE shares, which are held in trust for a minimum of three years. The future of these employee share schemes is now clouded in doubt. The Americans said that Congress had recently lifted restrictions on UK companies such as BAE Systems and Rolls Royce, allowing them to operate more freely across the Atlantic. A senior congressional intelligence source said: "*At a time when allies like the US and the UK are seeking to deepen defence cooperation, we need to remove obstacles, not create them. Congress has already taken action to ease some of the restrictions on British defence companies operating in the US. But instead of taking a similar approach, the British government appears to be intent on creating unnecessary headwinds that will make it harder for US defence firms to operate in the UK.*" Mr Kwarteng told the Competition and Markets Authority (CMA) to look into the takeover last August. He received an initial report on the deal and agreed to further talks with Advent last month to try and find a compromise so the deal could go ahead. The UK and US are committed to deepening defence cooperation to counter the threat from hostile powers such as Russia and China. US officials claimed the British government was abusing powers introduced in January to limit the ability of hostile powers like China to acquire companies with ties to British security services. They say these powers should not apply to close allies like the US, as the UK and America already enjoy intelligence-sharing agreements under the Five Eyes alliance.

Defence chiefs demanded that the takeover of Ultra Electronics should be stopped for national security reasons, as it supplies the Royal Navy with sonar systems for anti-submarine warfare and anti-torpedo decoys. In addition, it produces cyber warfare equipment. However, Ultra's board said it was "minded to recommend" Cobham's £35 per share cash offer, subject to satisfactory resolution of various issues, including safeguards for the interests of Ultra's wider stakeholders. When Cobham was bought out by Advent for £4bn two years ago, there was an inquiry into claims that the acquisition was against the UK national strategic defence interests, but it went through anyway and much of what Advent bought in Cobham was sold on, despite its promises to invest and protect jobs. Assuming the deal goes through, Advent plans to sell off Ultra's non-defence businesses, mostly based in Canada. US

investment houses now own 54 percent of BAE, 71 percent of Rolls Royce and 49 percent of shipbuilder Babcock, said *The Telegraph.*

Court of Appeal backs HMRC in IR35 rulings

Case refs: HMRC v Atholl House Productions Ltd [2022] EWCA Civ 501 and Kickabout Productions Ltd v HMRC [2022] EWCA Civ 502 (26 April 2022). In these joined cases, the Court of Appeal, for the first time, handed down decisions on the application of employment status tests in the context of IR35 and HMRC succeeded in both appeals, reported Centre member **Bird & Bird**. The Centre takes a keen interest in IR35 because dozens of small employee contracting companies set up employee benefit trusts (EBTs) through which employee 'loans' were organised, supposedly free of income tax and NICs charges. Some avoidance schemes use an umbrella company, which employs a temporary worker (an agency worker or contractor), often on behalf of an employment agency. The agency then provides the services of the worker to clients. HMRC classified such activity as *disguised employment* and is chasing down such arrangements relentlessly, presenting large tax bills to the contractor companies and, in some cases, to the end users too. From April last year, all UK public authorities and medium and large-sized clients outside the public sector became responsible for deciding if the rules apply.

When assessing employment status for tax purposes under the IR35 rules, HMRC is required to look at the relationship between the individual who provides the services and the end user and determine whether, if there were a direct contract between the end user and the individual, it would be a contract of employment or not. To determine whether the contract is one of employment, the factors established in the *Ready Mixed Concrete* case are applied, namely: (i) mutuality of obligation; (ii) control; and (iii) whether the other provisions of the contract are consistent with an employment contract rather than self-employment. Both the joined cases concerned radio presenters providing their services to an end user via their personal services companies (PSC). The decisions are both complex, but the following aspects are notable: •Control and mutuality of obligation are necessary, but not sufficient, indicators of employment status. Without them, there will be no employment contract, but where they are present it is still necessary to carry out a multifactorial assessment of the terms of the hypothetical contract to determine whether it is an employment contract. •When carrying out the multifactorial assessment, the express and implied terms of the contract are taken into account alongside the circumstances known to each party at the date the contract was entered into, but circumstances which were not known at that time but arise later should *not* be considered. •The Autoclenz principle, that when determining an individual's employment status an employment tribunal can disregard contractual terms which do not reflect the reality of what the parties had agreed, does not apply beyond cases relating to statutory employment or worker rights and therefore did not apply in these cases. The Appeal Court said that in both cases, the lower tribunals had made errors: in Atholl, the First Tier Tribunal and the Upper Tribunal had assessed the terms of the hypothetical contract between the contractor and the end user on the wrong basis, considering incorrect factors, while in *Kickabout*, the First Tier Tribunal had incorrectly concluded that there was insufficient mutuality of obligation to give rise to an employment contract.

The court decision underlines what a highly technical and complex area IR35 is, with many pitfalls and significant scope for HMRC to challenge a conclusion that a PSC contractor is not employed for tax purposes, warned Bird & Bird. Medium and large end users of PSC contractors, who must since April 6 2021 assess the employment status of those contractors and tax any fees paid to their PSCs accordingly, *are advised to exercise caution when making those assessments,* the law firm added.

ESG Corner

*The UK's biggest water company, **Thames Water**, dumped untreated effluent for more than *68,000* hours into the river systems around Oxford last year, campaigners revealed, arguing that the money the company plans to spend to improve the situation is woefully inadequate. The company discharged raw sewage into the River Thames and its tributaries 5,028 times in 2021, according to data analysed by the Oxford Rivers Improvement Campaign (ORIC). *Yet Thames Water's ceo, Sarah Bentley, who is paid a basic £750,000 a year, received a £3.1m golden hello, divided up in three annual payments, to compensate for loss of bonuses at Severn Trent, where she was chief customer services officer. A further £120,000 in pensions and perks could raise her potential package to £3.27m a year.* Thames Water said her package was

'*benchmarked against other water companies and other London and south-east utility companies*." In July 2020, it awarded its former ceo a £2.8m pay-off even though he was ousted by the board for failing to improve performance. Steve Robertson received a £2m payout for losing his job as well as £770,500 to cover his 12 -month notice period. Campaigners assessed that the ten large sewage treatment works operating in the upper Thames area were unable to treat the full capacity of sewage for the population of 1.1m. All ten works discharged sewage into the rivers in 2021 for an average of 11 hours a week. Thames Water is investing in the improvement of four of the large treatment works and 11 smaller works – just a third of the works that need to be expanded to stop sewage discharges into the rivers, claimed the ORIC. Only two major rivers in Britain have safe bathing water, compared to more than 500 in France, said England's chief medical officer, professor Sir Chris Whitty. Four of the 12 water companies in England & Wales had recently agreed to reduce their sewage overflows to an average of no more than 20 discharges per year by 2025, but this was by no means enough, added Prof Whitty.

*Half the smaller 252 companies listed on the London Stock Exchange have no female executive leaders such as chief executives and chief financial officers despite the push for boardroom diversity, research showed. Almost half of these SMEs were missing the target of having a third of their board roles occupied by women, and three-quarters of their boards are entirely white, reported *The Guardian.* Campaign group *Women on Boards UK* analysed diversity at listed companies on the LSE that are too small for the FTSE 350 All-Share index of the largest companies traded in London. Its second annual report found that 50 percent of these smaller firms have all-male leadership teams. That is down from 54 percent last year, but still "shockingly high" when compared with companies in the FTSE 350 (which includes the blue-chip FTSE 100) where only 4.6 percent have all-male executive leadership teams, the group said. Only 16 percent of board chairs at the smaller 252 companies are women, and even fewer chief executives, just seven percent, are female – signalling no change since 2021. This matters because companies with female ceos have significantly more women on their executive leadership teams than those run by men. Female ceos had an average of 55 percent representation of women on their executive leadership teams, versus 14 percent for the companies with male ceos. "Those women don't have a traditional view of what a leader looks like and are likely to be more inclusive and supportive," said Fiona Hathorn, ceo of Women on Boards. "*There remains a high number of firms yet to reach even the most minimal levels of diverse representation, at both executive and non-executive level. To these firms I say, catch up – and quickly.*"

Public sector bonus troughing

Tory MPs lashed out at 'grossly insulting' and 'outrageous' DVLA bonuses in the wake of the shambles over vehicle licences. Figures slipped out by the Department for Transport revealed that staff were handed nearly £2.2m in *'performance payments'* for the last financial year. The perks came despite fury at the massive backlogs and delays in issuing and renewing driving licences, which has been causing misery for thousands of Britons and adding to pressure on supply chains. Hundreds of DVLA staff were said to have been sent home on full pay during the pandemic without having to work at all. An undercover investigation found that employees joked about catching up on Netflix series. The disruption was made worse by dozens of strike days as unions complained the agency's offices were not Covid-secure. Ministers claim that workers being out of the office meant not all the 60,000 items of post that arrive at DVLA every day were opened - with the backlog in licence applications growing to 1.2m. It has been cut to 300,000 after more staff were drafted in. The DfT transparency disclosure revealed that £2,163,414 was paid in non-consolidated bonuses at DVLA - one of the department's executive agencies. Sources said that sum was the total for 2021-22, and stressed that most of the 11,000 staff are in lower-paid roles. However, there is no breakdown of what bonuses were received at different levels. Tory MP David Jones told *MailOnline* it was 'outrageous' that staff had been handed bonuses for 'staying at home and not dealing with applications'. *It's a close-run thing as to which is causing more complaints at the moment, the DVLA or the Passport Office,*' he said. *The public perception of the DVLA at the moment is at rock bottom. There are people across the country waiting for their driving licences who are being bitterly inconvenienced. The DVLA appears to be ahead of the rest of the field at staying at home to work.'* A DVLA spokesman said: 'These awards form part of a civil service-wide recognition scheme.' Our staff have worked incredibly hard to

help keep the country moving throughout the pandemic and despite a number of issues including coordinated industrial action, our services are operating within normal turnaround times as paper applications are being processed within three to four weeks.' *Throughout the pandemic, all staff whose role required them to be on site, were on site, opening and processing the 60,000 items of mail we receive daily.'*

*National Savings & Investments (NS&I) came under fire after its ceo received a performance-related bonus of £25,000, despite presiding over big cuts in savings deals and severe customer service failings. The payment was made to Ian Ackerley last September for his performance during the pandemic affected fiscal year ended April 6. Ackerley, who enjoys a base salary of £200,000 and £75,000 pension benefits, apologised to the Treasury Select Committee last year for failing savers, many of whom found it difficult to contact NS&I to withdraw their savings after it cut interest rate returns. In addition, it undershot its fund-raising target by more than £10bn. Anne Bowes of comparison website *Savings Champion,* said that savers who could not access their money during the pandemic would be "dismayed and furious" to hear about Mr Ackerley's bonus, she told *The Telegraph*.

*A row broke between some of Britain's biggest police forces after the **Met** began offering £5,000 golden hellos to poach officers from elsewhere in the country. In an unprecedented intervention, nine police chiefs from neighbouring forces have written to Sir Stephen House, acting Commissioner, criticising the offer. The Metropolitan Police is offering £5,000 to attract new police constables in a recruitment drive. The force said it was "taking bold steps" to recruit a record number of police officers in the next ten months. The Met said that, post pandemic, there were more job opportunities in London, fewer people looking for work and more officers choosing to retire. Through its National Police Uplift Programme, they hope to recruit another 4,000 new officers by March 2023. During a "time-limited period", the force was offering a one-off cash bonus of £5,000 to encourage more people to become a police constable as well as to retain experienced officers. The cash bonus would be added to its existing package of measures. As well as wanting to attract new officers, the force said it was removing pension abatement for more who had passed their usual point of retirement. This meant they would be able to receive their full pension and monthly salary, as they would have done, if they had retired and started working in another organisation.

*Senior **NHS** staff who agree to move to the seaside will be offered generous relocation packages as well as six figure salaries, the *Telegraph* revealed. The NHS already employs 2,700 senior managers, paid up to £310,000 p.a. and the plan is to overhaul the incentives and perks paid to such staff, especially those who move to socially deprived areas, like many of Britain's coastal towns and cities.

Change on the way for UK Prospectus regime

The government will replace the regime contained in the UK Prospectus Regulation and legislate *when parliamentary time allows*. There will be a separation of public offers of securities from the regulation of admissions of securities to trading, said a Treasury response to a consultation on the Prospectus Regime. The government will delegate a greater degree of responsibility to the Financial Conduct Authority (FCA) to set out the detail of the new regime through rules. The full suite of reforms will take full effect after the FCA has consulted and is ready to implement new rules under its expanded responsibilities. Changes to the prospectus regime include:

- Facilitating wider participation in the ownership of public companies, including for retail investors. This will allow a broader cross-section of society to benefit from companies' growth as well as increase market liquidity.
- Simplifying the regulation of prospectuses and removing unnecessary red tape.
- Improving the quality of information that investors receive.
- Ensuring that the regulation of prospectuses will be better able to respond to innovation and change. (UK Prospectus Regime Review Outcome).

Pensions

A new system is being introduced to make top-up payments directly to low-earning individuals saving in pension schemes using a Net Pay Arrangement from fiscal year 2024-25 onwards. The idea is to align outcomes for low-earning individuals saving in pension schemes, regardless of how their scheme administers pensions tax relief. The government will invest in HMRC to modernise the administration of *Relief at Source*,

and deliver a data driven tax administration system for RaS pension schemes, employers and members.

WORLD NEWSPAD

Obituary: Leonardo Del Vecchio, founder of eyewear manufacturer Luxottica and Italy's second richest person, died at the age of 87 in Milan. The entrepreneur, worth $27bn, had been in intensive care for several weeks. He was still president of the optical giant **EssilorLuxottica,** formed from the merger between his company Luxottica and the French Essilor. The group is the world's leading eyewear distributor with 180,000 employees and more than 7,000 points of sale. He was an influential shareholder in the financial group Mediobanca and the insurer Generali too. On his 80th birthday, Mr Del Vecchio offered 140,000 Luxottica shares, worth more than nine million euros, to his Italian employees. "*They are the true architects of the success of our company*," he explained. To this day, the company is a major advocate of all-employee share ownership. Born in Milan into a poor family, he grew up partly in an orphanage, worked from the age of 14 while continuing his studies, becoming an employee in a small factory manufacturing glasses. In 1961, he created Luxottica, an SME which produced components and accessories for the optical industry. Ten years later, the brand presented its first in-house collection and in 1974 launched into distribution and retail sales. In 1990, the company listed on the New York SE. He then made licensing agreements with fashion houses (Chanel, Prada & Versace) and acquired the *Ray-Ban* brand.

*The **EU** agreed that companies will face mandatory quotas to ensure women have at least 40 percent of seats on corporate boards. After a decade of stalemate over the proposals, EU lawmakers hailed a "landmark" deal for gender equality. As well as the legally binding target, companies could be fined for failing to recruit enough women to their non-executive boards and see board appointments cancelled for non-compliance with the law. From June 30 2026, big companies operating in the EU will have to ensure a share of 40 percent of the "under-represented sex" – among non-executive directors. The EU set a 33 percent target for women in *all* senior roles too, including non-executive directors and directors, such as ceo and coo. In 2021 women occupied 30.6 percent of boardroom positions across the EU, but this varied widely across the 27 member countries. France, which has a 40 percent women-on-boards quota, was the only EU country to exceed that threshold, followed by. Italy, the Netherlands, Sweden, Belgium and Germany, with between 36 percent and 38 percent female participation in the boardroom; while fewer than one in ten non-executive directors were women in Hungary, Estonia and Cyprus. "All data show that gender equality at the top of companies is not achieved by sheer luck," said Lara Wolters, the Dutch socialist MEP, who negotiated the law with EU governments. "*We know that more diversity in boardrooms contributes to better decision-making and results. This quota can be a push in the right direction for more equality and diversity in companies."* National authorities, who are responsible for enforcing the directive, are empowered to impose fines. National courts can annul boardroom selections if a company breaks the law. The measures will not apply to companies with fewer than 250 employees.

France: Pharma giant **Sanofi** launched Action 2022, its latest global employee share ownership plan, open to 86 000 employees in 59 countries. Sanofi ceo Paul Hudson said "*I strongly believe that a high employee shareholding contributes to develop a common spirit and unite our employees worldwide. This plan is a great opportunity for them to participate in the development of the company. Every year the record level of employee participation demonstrates how committed and supportive they are to Sanofi and its long-term strategy*." Its shares were offered at a subscription price of €80.21, which equated to a 20 percent discount from its recent average share price. In addition, for every five shares purchased, employees were able to receive one free share (up to a maximum of four free shares per employee). Employees could buy up to 1,500 Sanofi shares within the legal limit of a maximum payment limit of not more than 25 percent of their gross annual salaries, minus any voluntary deductions already made under employee savings schemes (*Group Savings Plan and/or Group Retirement Savings Plan)* during the year 2022. Last year, the employee share ownership plan was open to more than 90,000 employees in 73 countries with a growing overall uptake rate of 37.5 percent More than 34,000 Sanofi employees chose to invest in the company. Almost *75,000* current or former employees of the company are Sanofi shareholders and hold almost two percent of its capital via the employee savings plan (PEG) The maximum number of Sanofi shares that may be issued under this offer is 6.3m shares (corresponding to a capital increase of

€12,635,606 at nominal value, being 0.5 percent of share capital) The new shares, including the matching shares, were subscribed either directly or through the intermediary of employee mutual funds (FCPE), depending on the regulations and/or tax regime applicable in the various countries of residence of those eligible for the capital increase. The shares acquired dividend rights backdated to January 1. *The voting rights attached to the subscribed shares will be exercised directly by the employees*. Those taking up this offer were required to hold the shares or the corresponding FCPE units for five years, i.e. until May 31 2027, except when an early release event is triggered, as per the French Labour Code and authorised in the subscriber's country.

India: SG Analytics, the Indian research and analytics firm announced a profit share plan, whereby the company's full-time employees will be covered under either this or the employee stock option plan. Founder and ceo, Sushant Gupta said, "*SGA is a people-first company. In line with this philosophy, starting this year, we are initiating a company-wide profit share plan wherein, based on certain criteria, a share of profits of the company are going to be distributed evenly across all the employees. I am particularly excited about this plan because it helps the employees achieve the liquidity which an Esop does not do. The profits will be distributed evenly across employees, irrespective of seniority. The objective of this initiative is to empower and motivate every member of the SGA family to work towards taking the SGA success story to greater heights,"*

Norway: Oslo-based international debt management company, **Axactor** launched an employee share option plan for senior executives and key personnel. The plan involves the creation of 5.5m shares, which will be funded via holdings of treasury shares or by issuing new shares. Participants will receive share options, which, if performance criteria are met within a performance period, can be exercised by paying the predefined strike price, which was set at the average share price of the last 30 days prior to grant. There was no discount. The following criteria will determine the number of options issued during the three-year performance period: 1/3: employed when the performance period ends; 1/3: share price development equal to or better than peers and 1/3: return on equity meeting target set by the board of directors. The total gain from exercised options during one calendar year shall not exceed 200 percent of the participant's base salary at grant. The number of options will be adjusted in the event of a dividend payout to preserve, but not increase, the value of the share option allocation. The share options will vest after three years.

***Credit Suisse** was convicted by Switzerland's Federal Criminal Court of failing to prevent money -laundering by a Bulgarian cocaine trafficking gang in the country's first criminal trial of one of its major banks. A former Bulgarian tennis player, Elena Pampoulova-Bergomi, who had worked at the bank, was found guilty of money laundering and received a 20-month suspended prison sentence. The judge heard testimony on murders and cash stuffed into suitcases and it is seen as a test case for prosecutors taking a tougher line against the country's banks. The tennis player regularly collected bags "full of cash" - up to the equivalent of £400,000 - from people known to the Bulgarian former wrestler Evelin Banev. Credit Suisse was fined £1.7m and ordered to pay £15m to the Swiss government. The nation's second-biggest bank is reeling from billions in losses racked up via risk-management and compliance blunders. The case centred on relationships that Credit Suisse and its ex-employee had with the wrestler and multiple associates, two of whom were charged in the case. A third associate could not be charged, as he had been shot dead when leaving a restaurant. Federal prosecutor Alice de Chambrier welcomed the verdict as "good for transparency." Both Credit Suisse and the former employee had denied wrongdoing. Credit Suisse said it would appeal against the conviction.

***Credit Suisse (2)** removed one of its top bankers from his post after it was discovered that he was using WhatsApp type messaging services to communicate with clients. Anthony Kontoleon was head of Credit Suisse's global equity capital markets, based in New York. For months, US regulators have been cracking down on the use of WhatsApp equivalents by leading financiers to evade requirements for lenders to monitor and store employee communications. **HSBC** dismissed a trader over personal messages he sent to a client. Last December, **JP Morgan** was fined $200m by US regulators after several of its top executives were found to have used WhatsApp services during client communications, though these comms were not properly logged by the bank. **Deutsche Bank** told some staff to download *Movius,* a US mobile app which enables compliance staff to monitor the calls, messages and WhatsApp conversations made by employees.

US: More than 600 employees stand to collect on average $175,000 each after the sale by **KKR** of Illinois based CHI Overhead Doors for $3bn,

reported *The Financial Times.* For years, Centre member KKR has promoted an employee equity reward programme for ordinary employees at its industrial portfolio companies. Since taking over CHI, line employees have received a few thousand dollars in dividends. However, upon the recent sale, KKR said that about 625 CHI line workers, including those who drive trucks and stand on the assembly line, would net $175,000 in average profits. Cameras for a subsequent publicity blitz were rolling at CHI's rural plant when they were told of their windfalls, instantly changing their lives. KKR itself has helped start an entire non-profit group to evangelise employee ownership. Its ranks include the likes of McKinsey, Apollo and others not previously celebrated for their humanity. KKR insists share grants are not about charity but rather have boosted employee engagement and then ultimately profits and cash flow. The operating leverage in private equity has created an enormous pot of wealth to share with labour. KKR itself has cited widening wealth inequality as a reason to encourage labour to share in the bounty of ownership. KKR has a market cap of roughly $50bn but only about 3,000 employees. It reported 2021 median employee pay of $320,000, a figure twice that of median employee pay at Goldman Sachs. KKR paid an aggregate price of about $700mn for CHI in 2015. Its equity investment of $250mn is now worth an estimated $2.5bn. Of the more than $2bn in gross deal profits, $115m is flowing to 650 CHI hourly workers and drivers. Pete Stavros, the KKR executive responsible for the CHI investment, said "*It's a huge collection of a lot of little things the workforce did; again they did it, they earned it, they made this company more than triple, almost four times their profits, and so shouldn't everyone participate? That's the simple philosophy*."

*When **Tesla** awarded Elon Musk a multibillion-dollar pay package in 2018, the landmark deal helped to supercharge the potential compensation of ceos at many big US public companies, reported *The New York Times (NYT).* The entire package was a huge stock grant tied to the company's performance. As Tesla has sold enough electric vehicles to become the most valuable automaker on the planet, Musk has so far received shares worth nearly $60bn — helping to make him the world's richest person. Compensation experts say they see the influence of Musk's deal everywhere. "*There's a lot of companies out there that saw that award and its structure,"* said Brian Johnson, of ISS Corporate Solutions, which advises businesses on executive pay and other practices. "*They think it's a good way to incentivise performance."* A survey conducted for *NYT* by Equilar, a compensation consulting firm, showed that many of last year's highest-paid executives got packages that, like Musk's, could pay out sums that would have been unthinkable a few years ago. Even as the gap between what executives and workers earn continued to widen during the pandemic, companies opened the floodgates for what they paid ceos in 2021. All ten highest-paid executives in the US had compensation over $100m, a first. Their average compensation was $330m, the highest ever. But it's not just a few executives at the top enjoying the spoils. Last year, the median ceo made $US32m in 2021, up 27 percent from $25.3m in 2020 and far higher than in pre-pandemic years. Jeff Green, ceo of *The Trade Desk*, a digital advertising company, received compensation of ***$835m*** last year, making him the top-paid executive in the Equilar survey, which encompasses 200 companies, all of which have revenue over $1bn. Green's reward last year was the third-highest amount that Equilar found in its past five annual surveys, which are based on companies' pay disclosures; Musk's deal in 2018, which Tesla valued at $2.3bn, is still the biggest in those years. Zig Serafin, ceo of Qualtrics, a software company, was second last year, with compensation of $541m. Peter Kern, ceo of Expedia, the travel company, was third last year, with total reward worth $296m. Although those compensation totals are taken from the companies' financial filings, they are often estimates driven by the companies' attempts to value the stock their ceos might receive. So the executives may earn less than those totals, especially if the bear market persists and their companies' stock prices remain depressed, but they could take home far higher amounts when the stocks recover. Despite the growth in pay, shareholders, apparently believing that it is being tied to performance, have voted in favour of most packages. *Only three percent of "say on pay" votes got less than 50 percent support from shareholders in the year to June 3,* claimed an analysis of 1444 public companies by Willis Towers Watson, the executive reward and governance consulting firm.

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