EsopCentre

Vol 41 No 6

July 2023

it's our business

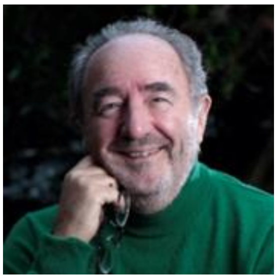
newspad of the Employee Share Ownership Centre

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

In this issue



From the life president

For the first time I remember – and that is when the Esop first impinged on the tax regime by way of the Profit Sharing Trust – HMRC has been unable to produce the annual stats on the appointed day. It has never been a day of flag-waving more a feast for nerd central: the stats appear bare of any ministerial announcement. That reflects the semi-independence of HMRC from the Treasury.

In a more ideal world the Chancellor would take this annual opportunity to nudge employers to make more use of the share scheme benefits provided to enhance the economy as well as the individual wealth and happiness of individual employees. This unusual pause coincides with wide -ranging consultation on share schemes and how they can be brought up to date.

Let us hope the government can seize the moment and blow the trumpet, and the opposition parties join in with supportive sounds, if nuanced. After all in the US where employee ownership has progressed farthest the parties work together to steer the government and that is one key reason for its continued success.

In complex times HMRC has been working helpfully with us despite being at full stretch. No blame attaches to the postponement. And let us hope that in this case in delay there will lie plenty.

Malcolm Hurlston CBE

Centre writes to the Chancellor

The Esop Centre has written to the Chancellor of the Exchequer drawing to his attention the significant, and possibly unintended, effects of his reductions in annual CGT exemptions on on employees in SAYE schemes.

In the letter, the Centre said, "Enabling employees to participate in the growth in value of shares in their employer companies to which they contribute through their labour has long been accepted by all political parties as a policy worthy of support. The call for evidence on non-discretionary tax-advantaged share schemes, launched on June 5, indicates that there is a continued interest in ensuring the attractiveness of these arrangements.

"Share Incentive Plans allow an independent company to enable all its qualifying employees to acquire shares, by purchase or gift, with favourable income tax treatment. For so long as the shares are held in the SIP, any growth in value is free of capital gains tax.

"SAYE share option schemes enable an independent company to offer to all its qualifying employees the opportunity to acquire shares on favourable terms by the exercise of options. Option gains are free of income tax ***but are not free of capital gains tax***. Nevertheless, as the average gains realised by employee participants has typically been below the annual CGT exempt amount, the fact that such gains are within the charge to capital gains tax has been of little consequence.

"The substantial reduction in the annual CGT amount, to £6,000 for the current tax year and to £3,000 for the next tax year (2024/25), will mean that a great many SAYE Share Option Scheme participants will become liable to pay CGT on gains on the sale of SAYE option shares.

"Further, many such employees, particularly those who are lower-paid and unfamiliar with the responsibilities of accounting for tax on non-PAYE earnings and gains, will now be required to submit a self-assessment tax return, or otherwise report gains via HMRC's 'real time' service, by reason only of having exercised an SAYE share option and sold the shares acquired.

"We envisage that many such employees will be at risk of penalties for failure to report or submit a return because they will not appreciate the need to do so by reason only of the sale of shares acquired on exercise of an SAYE share option. The cost of obtaining professional advice on reporting or completing a tax return will also impose a disproportionate financial burden on such employees.

"It was recognised by HM Treasury officials and Ministers, when the EMI and Share Incentive Plan regimes were introduced in 2000, that reliefs from charges to income tax were not sufficient to make those tax-advantaged employment-related share schemes of attraction and value (in terms of offering worthwhile incentives); some form of exemption or relief from CGT was also appropriate.

"In advance of the Call for Evidence on SIPs and SAYE share option schemes, the Esop Centre would call upon the Chancellor to include in the current Finance Bill a provision which exempts from CGT any amount of gain (or an amount of gain up to, say, £12,000 per year) realised upon the disposal of shares acquired pursuant to an SAYE share option.

"This would go a long way to restoring the former attractiveness of SAYE share options, for lower-paid employees in particular, and avoid what could become a significant compliance issue as a consequence of the need for employees to report chargeable gains on SAYE option share disposals."

Delay to release of the 2023 ESS stats

Last month (June 2023) HMRC announced that there would be a delay in the release of this year's Employee Share Scheme statistics.

The announcement said "Through HMRC's production and quality assurance processes, we have identified a potential data issue which could impact the Employee Shares Schemes Statistics. Therefore, while further quality assurance continues, we are announcing a delay to HMRC's Employee Share Schemes Statistics, and we will provide a confirmed date as soon as feasible.

"The confirmed date will be provided at least four weeks before publication."

The series contains statistics on the tax-advantaged employee share schemes, including the numbers of companies using schemes, numbers of employees receiving awards or numbers of awards, values awarded, numbers of employees exercising options and estimates of the value of the Income Tax and National Insurance relief received. The statistics are based on share scheme returns.

A bright future for the employee ownership sector

The future looks bright for the employee ownership sector. There is significant business interest in broad-based employee ownership and all three main political parties in the UK are generally supportive, if sometimes for different reasons.

In June, the UK government launched a Call for Evidence into the two broad-based tax-favoured direct employee share plans, SAYE and SIP. This follows the recent reviews into the CSOP and the EMI Scheme, which brought about relaxations to these plans' rules to encourage their usage, and in relation to the CSOP, increased eligibility.

The recently published "Share Schemes Evaluation – CSOP, SAYE and SIP", an independent study commissioned by HMRC, found that the most common reasons for companies to implement these plans included creating a feeling of ownership, supporting retention and recruitment as well as improving staff morale. Most employees cited the ability to save as a primary factor in encouraging them to take part.

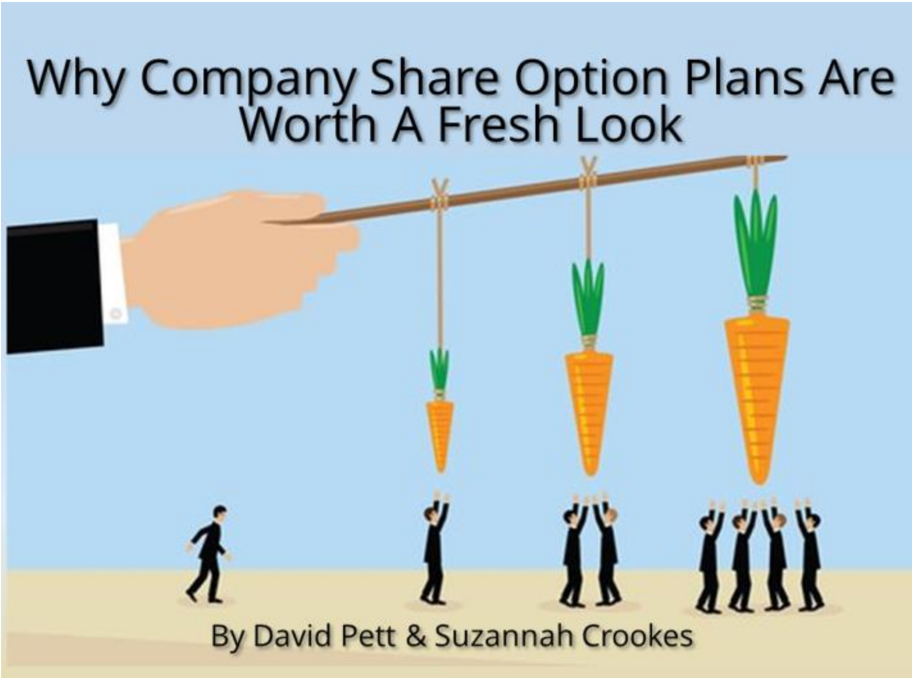
An important development in the US is the implementation of broad-based employee ownership programmes in portfolio companies which are majority held by private-equity firms. A ground-breaking example of the success of this approach was KKR's sale of C.H.I. Overhead Doors to Nucor Corp in June 2022. As part of the $3 billion-transaction, around 800 employees who had received equity at the time of KKR's investment into the company in 2015, received an average pay-out of $175,000 each. Similar initiatives are beginning to emerge in Europe. Last December, the private equity fund Ardian committed to expand shared ownership schemes in its portfolio companies. Both KKR and Ardian are partners in the US non-profit organisation Ownership Works, whose mission is to build employee wealth creation through shared ownership programmes, working with both private equity houses and corporates.

The growth of broad-based employee ownership in PE-held companies is welcome, particularly given the increasing number of take privates and the recent fall in UK stock market listings.

A fresh look at CSOPs

In a *Pamphleteers' Blog* paper, Esop Centre members David Pett and Suzannah Crookes examine "*why company share option plans are worth a fresh look*." They consider how the CSOP has been used from its introduction in 1984 till now; the consequences of the reduction of CGT annual personal exempt amount; changes that could have been made; and to what extent legislative changes affect the CSOP's attractiveness.

The Chancellor now has an opportunity to restore the annual exempt amount and increase significantly the attraction of CSOP options for companies unable to grant EMI share options. Many of them have used CSOP options to allow employees, including a large proportion of lower earners, to benefit from growth in value.



EVENTS

Webinar

Esop Sofa – newspad review webinar re-scheduled to Aug 1

Thank you to everyone who took part in April's discussion on possible responses to the government's call for ideas on SIP and SAYE. The Centre's next *Esop Sofa-newspad Review* will be at 11:00am on Tuesday August 1 (re-scheduled from June 21). Join our 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. Registration is open.

Forty percent of fines for late tax returns sent to the lowest-paid

The Times reports that 420,000 who are below the income tax threshold have been hit by penalties.

Four in ten of all fines issued by HM Revenue & Customs for late filing of tax returns are meted out to people who earn too little to owe any tax in the first place, according to an investigation by tax campaigners.

Between 2018 and 2022, 420,000 penalties for late filing were issued to people who earned less than the personal tax allowance and therefore owed no tax.

The research found that although the highest earners in the self-assessment regime were slightly more likely than average to incur a late filing penalty, by far the most common recipients of fines were some of the lowest paid people in the country. Many of those hit with penalties were paid less than the personal allowance, £12,570, meaning that they owed no tax at all.

“Astonishingly, 40 percent of all late-filing penalties charged by HMRC over these four years fall into this category,” said Dan Neidle, a former Clifford Chance tax partner, who has begun a crusade to expose fraud, improve understanding of tax and correct injustice through his think tank Tax Policy Associates. Neidle was behind the questions raised about the tax affairs of the former Tory chairman Nadhim Zahawi, who paid a settlement to HMRC.

The poorest tenth of people in the self-assessment regime — those paid less than £6,000 a year — were the most common target for fines, receiving 92,000 penalties in respect of 2020-21, but this fell to 60,000 on appeal.

The findings, extracted from HMRC using freedom of information requests, contradict any notion that it is mostly the better-off who receive late payment penalties, which start at £100.

Neidle said the circumstances of those fined were not clear but they were likely to have irregular incomes or were self-employed and had previously got into dispute with HMRC.

“People are falling into debt — and, in one case we’re aware of, actually becoming homeless — as a result of HMRC penalties,” Neidle said. “Even just the lowest penalty of £100 is a large proportion of the weekly income of someone on a low income, indeed over 100 percent of the weekly income for someone in the lowest income decile.”

He called for changes in the law and in HMRC’s processes: “Nobody filing late should be required to pay a penalty that exceeds the tax they owe.”

Of 32 million UK income taxpayers, about 11 million are required to submit a tax return, which must be filed by January 31 for the previous tax year ending April 5. Being late by a day incurs a £100 fine. After three months the fine can be raised by £10 a day for a maximum of 90 days, or £900. After six months an additional £300 penalty can be applied, followed by another £300 after 12 months. Total fines can therefore be £1,600.

The government plans to change the rules from April 2025 with no penalty for a first offence but £200 fines for the second. HMRC said: “The government has recognised that taxpayers who occasionally miss the filing deadline should not face financial penalties and has already announced reform of the system.”

Bank of England fails to win over investors on inflation fight

Investors are sweating over Britain's inflation problem running out of control and the Bank of England being unable to solve it any time soon, exclusive research for *City AM* has revealed.

More than a year of raging prices has eroded confidence in policymakers' ability to ease the cost of living crisis.

Some 56 percent of UK retail investors think scorching inflation is now entrenched in the economy, according to analysis by broker HYCM. The survey indicates traders are not yet convinced that Bank Governor Andrew Bailey and the rest of the Monetary Policy Committee's actions to bring down inflation will work.

In the week ending June 24, it raised borrowing costs 50 basis points to five percent, a move that blindsided City money managers who thought the MPC would opt for a smaller 25 basis point increase. It was the 13th straight increase to the UK's official interest rate and sent it to its steepest level since 2008. Despite the Bank's efforts, inflation has remained stubbornly high in the UK and is comfortably the highest in the rich world.

The rate of price increases held steady in May at 8.7 percent, while core inflation – which strips out volatile food and energy prices – climbed to 7.1 percent. Services prices are accelerating at more than seven percent.

Financial markets think the Bank is on course to hoist borrowing to costs to a peak of more than six percent. HYCM's research found market participants are worried about the value of their assets tumbling in such a scenario, with 43 percent of the 914 retail investors surveyed by the firm calling for the Bank to stop raising rates now.

"Investors are rightfully concerned about the impact of inflation on their assets and the wider economy. Confidence is evidently low, with most not believing inflation targets will be met," said Giles Coghlan, chief market analyst at HYCM.

The Department for Business and Trade names 202 employers for failing to pay their lowest paid staff the minimum wage

According to the DBT, workers were deprived of almost £5m in clear breaches of National Minimum Wage law, leaving around 63,000 people out of pocket. The companies range from major high street brands to small businesses and sole traders. Of them, 39 percent deducted pay from workers' wages, 39 percent underpaid for workers' time and 21 percent paid the incorrect apprenticeship rate.

UK pensions superfund could halt pensions decline

The UK's first "superfund" proposes to undo years of capital market decline through the creation of large pension funds.

Public and private sector pension plans could be pooled into "GB superfunds" with assets of up to £500bn in order to release tens of billions for UK business growth, according to "extremely radical" proposals.

If acted on, the suggestions, set out in a report from the Tony Blair Institute, would create the UK's first "superfund" designed to undo years of capital market decline, through the creation of large pension funds such as those in Canada and Australia.

The UK is the only major European country and major equity market whose current stock-market value is significantly lower than it was before the global financial crisis, falling from third place globally in early 2000 to 10th today, according to the report, entitled 'Investing in the Future: Boosting Savings and Prosperity for the UK'.

Impact of an IPO on remuneration and governance

Centre member MM&K reported that last year, there were 45 IPOs in the UK; 33 on the main market (a fall of about 43 percent from 2021) and 12 on AIM (a decline of about 82 percent from 2021). Of the 33 main market listings, only two were of what might be termed mainstream operating companies. The remaining 31 were SPACs, special purpose acquisition companies, established for the sole purpose of raising funds for acquisitions.

Declining numbers of IPOs are not, however, an exclusively UK phenomenon. Recent research indicates that in the US there were 181 IPOs in 2022 down from 1,035 in 2021, a reduction of about 82.5 percent.

Nonetheless, the decline in the number of London listings is concerning. The London Stock Exchange and regulators are taking steps to stem the tide. It has been suggested that executive pay should be increased to raise London's attractiveness as the IPO venue of choice. While it may be a factor, executive pay is not likely to be key to decisions about where to float a business. Several other factors will have greater significance.

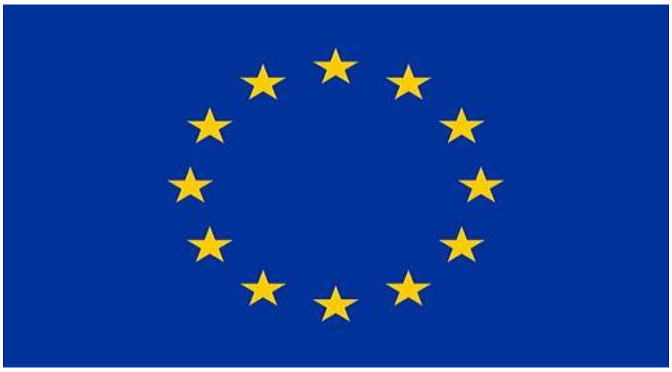
An IPO is exciting. It could take six to 12 months and brings about major changes, some expected, some which may not be expected. Post-IPO, the business and its remuneration policy will be subject to greater public scrutiny and regulation.

The pre-IPO period is an opportunity, probably the last opportunity, to review current remuneration policy and practice, without additional restrictions, to ensure it will be fit for purpose in the post-IPO period. It should be used to review current policy and prepare the post-IPO story.

UK EU FS pact

The UK has signed a pact with the EU to increase co-operation on financial services. It will set up a forum where the EU and UK can meet twice a year to discuss financial regulation and standards. The memorandum of understanding that is being signed was first outlined in the UK-EU Trade and Co-operation Agreement, the *BBC* reported.

The text was published last month, and the memorandum itself amounts to a list of broad shared objectives.



However, describing this as an "agreement" is misleading. It does not mean the UK is committing to align with the EU on regulation, nor conceding to any previous demands Brussels may have signalled, such as moving the processing of some euro-denominated financial instruments out of London.

What it means is that both sides are committing to a regular twice-yearly meeting to discuss "voluntary regulatory co-operation on financial services issues".

ICAEW response to tougher sanctions for tax avoidance promoters

HMRC has had the power since 2021 to issue stop notices to tax avoidance scheme promoters. These notices are designed to bring an immediate cessation of all promotional activity of the scheme covered by the notice. This makes it unlawful for a person subject to the notice to continue to promote the scheme in question.

Failure to comply with the obligations imposed by a stop notice can currently lead to substantial civil penalties. However, HMRC does not consider that this is a sufficient deterrent to some of the more egregious promoters who have continued to promote schemes despite a stop notice being issued. It has therefore been consulting on the introduction of a criminal offence for failure to comply with a stop notice.

In its response to the consultation, the Tax Faculty of the Institute of Chartered Accountants in England and Wales expressed a concern that persons could be found guilty of the proposed criminal offence even where the stop notice is subsequently overturned. It therefore suggested a safeguard designed to prevent this outcome. While a criminal offence case could be referred to the crown prosecution service when the person doesn't comply with the stop notice, if the person wins their appeal against the notice, the safeguard would be that the criminal case would not be taken to court.

The same consultation document included a proposal that individuals who control or exercise influence over a company involved in the promotion of tax avoidance could be disqualified from being a director of this or any other current or future company. The faculty's response suggests that a safeguard should be introduced to prevent directors from being disqualified where they can demonstrate:

- ⇒ that they had no knowledge of the promoter activities of the company concerned; and
- ⇒ that they have not been appointed to conceal the identity of individuals instrumental in promoting these activities who were acting as 'shadow directors'.

Parfetts awards 4% sales growth bonus to staff

Employee Benefits magazine reported that cash and carry business Parfetts has awarded its 1,000 employees a four percent sales growth bonus as part of its Employee Ownership Day (June 23) celebrations.

In 2022 employees received a two percent bonus along with a £500 cost-of-living bonus.

Employees at eight of Parfetts' depots enjoyed music, free pizza and fun activities to celebrate EO Day, which was introduced to celebrate and raise awareness of the benefits of employee ownership. Having been an employee-owned business since 2018, staff have a say in the direction of the business through an employee voice council in each depot; and receive a regular sales growth bonus paid in July and a profit share bonus paid in October, allowing everyone to share in the success of the organisation.

Guy Swindell, joint managing director, said: "EO Day provides a fantastic opportunity for everyone to come together and remind ourselves what makes Parfetts special. Employee ownership gives us the freedom to go the extra mile for our customers and be kind to each other. Everyone in the business has a say in the future of Parfetts, and we believe that it sets us apart from competitors."

In March, Parfetts announced a 7.5 percent pay rise for salaried staff to help them manage the rising cost of living, while weekly paid employees received a 9.6 percent increase to their hourly rates. They received an extra day of paid holiday, with full-time staff able to take additional unpaid holidays to a maximum allowance of 38 days.

New EOTs

- Timber buildings specialist Arctic Cabins
- Marketing agency Clean Digital
- Business technology and communications specialist Grapevine
- Real estate management firm MAPP
- Language service provider Sandberg Translation Partners
- Timber fencing, sheds, pallets and garden products producer Somerlap
- Earthmoving and material recycling equipment supplier WARWICK Ward (machinery) Ltd

AI wave of disruption

For a prolific art collector, Nicolai Tangen is remarkably relaxed about the prospect of masterpieces created by robots. The threat of AI-made paintings, impossible to distinguish from human brushstrokes, has sparked soul-searching and paranoia in the art world, but not with Tangen.

"Hey, if it creates better art that's fantastic," said the Norwegian philanthropist, art historian and boss of the world's biggest sovereign wealth fund. "If you create something which is even more aesthetically pleasing, what's wrong about that?"

But, according to *The Guardian*, Tangen is less relaxed about the impact artificial intelligence will have on the more than 9,000 companies that the £1.1tn Norwegian sovereign wealth fund – colloquially known as the oil fund – invests in. The wave of disruption has already started scything through the stock market: last month almost £1bn was wiped off the value of the educational publisher Pearson after a US rival warned of a significant spike in student interest in ChatGPT, the generative AI programme.

"AI is so unbelievably huge. Bill Gates says it is more important than the computer, internet and so on," Tangen said. "We will have a lot of stranded assets because of AI, because if you're on the wrong side of that you will be decimated quickly. So I think over the next couple of quarters we're going to start to see victims of this; share prices will be creamed. This is so fast."

Tangen is deploying AI across the fund, using predictive models to reduce the 36m trades that it does every year – central to his target of improving the fund's efficiency by 10 percent a year. He wants to see "proper, worldwide regulation" so that AI is developed ethically. "How can you make sure that it's not disadvantaging you because of race or those kinds of things?" he said.

EU regulators step up scrutiny on greenwashing

Increasing their scrutiny of greenwashing in the financial sector, the European Supervisory Authorities (ESAs) – European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and European Securities and Markets Authority (ESMA) – have published a common understanding of greenwashing – the act of marketing products and services to be more sustainable than they are.

The ESAs highlighted the risks of misleading sustainability-related claims – spread either intentionally or unintentionally – to organisations and products within or outside the remit of the EU regulatory framework.

EU regulators said cherry-picking, omission, ambiguity, empty claims including exaggeration, and misleading use of ESG terminology such as naming and irrelevance, are seen as the most widespread misleading qualities.

Australia

Pay rises for execs surge past inflation

Senior executives at some of the country's largest listed companies enjoyed average pay rises more than double the rate of inflation over the past year as most of their employees were hit with real wage cuts, according to a new report.

The Governance Institute's annual board and executive remuneration report, released on Wednesday June 14, found managing directors at ASX companies increased their fixed salaries by an average 14 percent last year and ceo salaries rose an average 15 percent.

For managing directors of the top 200 listed companies – earning an average fixed remuneration of $1.58 million a year – fixed pay increased by 19 percent.

The pay rises dwarfed executive increases during the pandemic and were revealed as the Reserve Bank and employers have been cautioning workers against inflation-matching increases out of concern they might spark a wage-price spiral.

The Consumer Price Index rose to 7.8 percent at the end of 2022 and fell to seven percent in the year to March. However, overall wage growth, as measured by the Wage Price Index, was just 3.4 percent and 3.7 percent over the same periods.

Canada

Canaccord explores ways to boost employee stock ownership

Canaccord Genuity Group Inc has cut bonuses as a result of a decline in dealmaking activity and is also looking into ways through which it could boost employee stock ownership, *Bloomberg* reported on June 19.

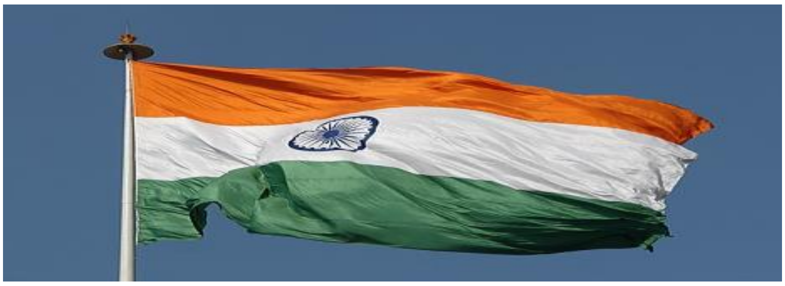
Expenses related to compensation have fallen 25 percent to C$936.9 million in the fiscal year ended March 31, according to the report. Total pay has declined 34 percent in Canaccord's capital markets division and 8.8 percent in the wealth-management unit, the report added.

Investment bankers working on mergers, acquisitions or equity offerings are also expected to have their bonuses cut by the biggest proportion on Wall Street this year, compensation consultants Johnson Associates said in a report in May.

Bonus conversations "were difficult," ceo Dan Daviau said in an interview with *Bloomberg*, adding that they were difficult throughout the street.

Earlier in June, Canaccord Genuity's board rejected the C$1.13 billion take-private offer from a group led by the company's management.

India



Funding winter to valuation drops - What it means for execs with Esops

In the midst of the ongoing funding winter, many highly valued startups are seeing a drop in their valuations. What does this mean for senior executives who joined the companies with Esops as a key component of their salaries, with the expectation of creating wealth as the company grows?

While the value of the Esop is notional till the company raises further money, lists on the bourses, participates in a merger or acquisition, or undergoes a similar value-creation event, many companies did buybacks of Esops during the funding highs of the past few years. This generated some wealth for employees.

A report by Nasscom and Zinnov quoted in *IndiaTimes* said that $400 million worth of Esops were bought back by Indian companies in 2021. The first half of 2022 also saw some large buybacks.

The real question today is were these values really sustainable?

The pace and the value of such buybacks have reduced in 2023 given that startups are looking to conserve cash more, even as they try to hit growth numbers amid valuation pressure. Though some firms such as Tredence, Sunstone and Sirona Hygiene have announced buybacks in 2023.

Pritha Jha, Partner, Pioneer Legal, agrees that while Esop values are derived from the valuation of companies, these values have dropped now due to the scarcity of VC funds and the general underperformance of companies.

How Esops contribute towards long-term sustainability

Food tech company Rebel Foods strongly believes that by granting employees ownership in the company, it can foster a sense of ownership, motivation, and commitment among the team.

To align with the vision, Rebel Foods has announced an Esop liquidation programme for existing holders and also distributing Esops.

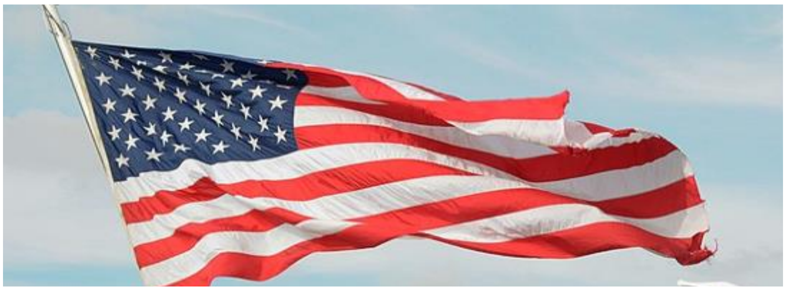
With this round of distribution, Rebel Foods has tapped over 5000 employees. The total Esop value held by Rebel employees now reaches USD65million (INR 550 crores). Ankur Sharma, co-founder at Rebel Foods claims that it will help in contributing towards long-term sustainability and success.

First P2P lending platform to enable Esop liquidity

LenDenClub, a Peer-to-Peer lending platform, announced its successful Employee Stock Ownership Plan liquidation.

Among the company's workforce consisting of 200 employees, approximately 30 percent of team members, spanning senior, mid-level, and junior positions, possess Esops. When considering the current liquidation event, it is notable that approximately 85 percent of eligible employees have opted to exercise their right to participate. A select number of individuals have made the decision to pursue partial liquidation rather than opting for complete liquidation.

USA



Senate panel considers bill targeting executive pay at failed banks

Reuters reported that the US Senate Banking Committee is considering a bill that would allow regulators to claw back compensation for executives at failed banks.

The measure, backed by committee Chairman Sherrod Brown and Senator Tim Scott, the panel's top Republican, would give regulators the ability to reclaim two years' worth of compensation paid out to executives after a bank failure, as well as strengthen their ability to assess civil penalties on executives who fail to adequately manage their banks.

The bill, which also would require banks to include in their bylaws standards around responsible bank management, comes in response to the abrupt failures of Silicon Valley Bank and other banks in recent months, which set off broader turmoil in the banking sector.

Given the backing of senior members on the panel from both parties, the legislation may be Congress's best chance to enact a new law in response to that crisis, which was met with broad criticism of the industry and bank supervisors by lawmakers.

"Americans have watched executives take their money, run banks into the ground, and get away with it too many times before. It's time for ceos to face consequences for their actions, just like everyone else," said Brown in a statement.

Shareholders approve exec pay plan despite WGA urging "no" vote

Comcast shareholders overwhelmingly supported the pay packages for top executives, including ceo Brian Roberts, by a vote of 343 million votes to 30 million. That was despite the Writers Guild of America (WGA) urging shareholders to vote against the plan, citing the ongoing writers strike.

On May 30, WGA West president Meredith Stiehm sent letters to top shareholders of Netflix and Comcast, urging them to reject their executive pay packages (so-called "Say on Pay" votes) at the annual meetings for those companies. (Other major entertainment companies — including Warner Bros, Discovery, Apple, Disney, Amazon and Paramount — had already held their annual meetings).

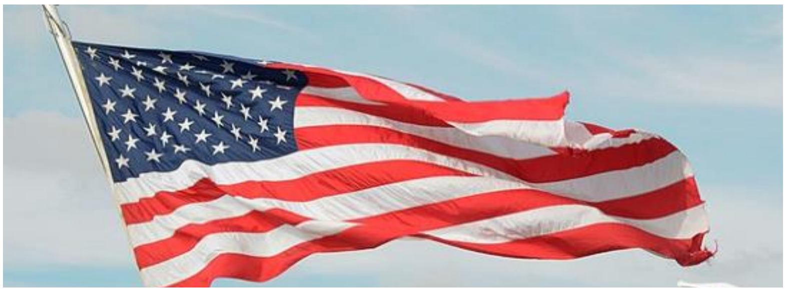
"Approval of this compensation package is inappropriate in light of the ongoing WGA writers' strike and the associated risks," Stiehm wrote, noting the picketing of productions and the difficult subscription environment.

Just a few days later, Netflix shareholders rejected that company's executive pay in a blowout vote, with 243 million shares voting no on pay packages for co-ceos Ted Sarandos and Reed Hastings, and then-coo Greg Peters, and only 98 million voting in favour.

While the Say on Pay vote is non-binding, no votes often lead to changes in future compensation practices at companies.

It also is not clear what effect, if any, the WGA letters had on shareholder votes, as they were sent after many institutional shareholders would have already voted.

USA



Companies must adopt a compensation recovery policy by December 1

Companies listed on the New York Stock Exchange and Nasdaq Stock Market have until December 1 2023 to adopt compliant clawback policies now that the SEC has approved listing standards the exchanges proposed. The SEC adopted clawback rules last year instructing securities exchanges to propose the standards. The standards require exchange-listed companies to develop and implement policies to recover erroneously awarded incentive-based compensation received by executive officers.

Relevant deadlines for NYSE- and Nasdaq-listed companies include:

⇒ Companies must adopt a compliant clawback policy by December 1 2023

⇒ All incentive-based compensation for executive officers must comply with the policy if "received" following October 1 2023

⇒ The required disclosures are mandatory following October 1 2023.

An NYSE-listed company that fails to meet the deadline would need to:

⇒ Notify the NYSE in writing within five days after December 1 2023

⇒ Discuss the status of the delayed policy with the NYSE

⇒ Issue a press release with details regarding the noncompliance, including the reason for it and, if known, the anticipated date of cure.

The NYSE may then provide a cure period for achieving compliance.

If Nasdaq determines that a listed company has not adopted a compliant clawback policy by the deadline, the company will receive a notification from Nasdaq and be required to submit a plan to regain compliance. The process for addressing such deficiencies will follow the standard process used for similar corporate governance issues by Nasdaq, which includes a public announcement of the deficiency by a *Form 8-K* and a cure period for achieving compliance.

Listed companies will need to file their adopted clawback policies as an exhibit with the first annual report filed following October 1 2023. For a calendar year-end company, this means the adopted policy will be filed with the annual report on *Form 10-K* for the year ended December 31 2023.