EsopCentre

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it's our business

newspad of the Employee Share Ownership Centre

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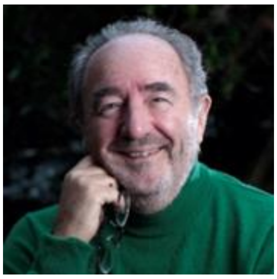
WELCOME

In this issue



From the life president

It is encouraging to see progress in employee share ownership both in India and in Germany as well as in more traditional countries such as USA, China and France. In India companies like Perfios are reporting making millionaires of their staff (roughly equivalent to £10,000) and others are making similar impressive use of share awards. Vestd owner Ifty Nasir has welcomed the progress in his country of interest.

The German situation is welcome but different. The German system to date has worked so well that employee share ownership has been unnecessary other than in companies with major international operations. The new legislation envisages an increase in the tax exemption from €360 to €5000 which is welcome even if the main aim is to encourage start-ups.

Meanwhile the autumn statement will reveal whether employee share ownership will receive a timely boost in the UK. We can help ourselves too by ensuring we take advantage of the high international ranking and strong jurisprudence of our crown dependencies.

Malcolm Hurlston CBE

Report: Esop Centre newspad online round-table

On Wednesday October 25 2023 the Centre hosted an online chat on current hot topics in employee share ownership.

The event was chaired by Centre chairman Robert Pay and the discussion led by Jennifer Rudman, member of the steering committee and industry director at Equiniti. They were joined by around 15 share plan enthusiasts.

Topics on the agenda included: Looking back at the Call for Evidence on SAYE and SIP; Thoughts on the consultation on taxation of Employee Ownership Trusts and Employee Benefit Trusts; SAYE bonus rate – how it's going, what's happening in practice; the drop in annual dividend allowance.

The discussion was run under the Chatham House Rule. Many thanks to all who took part.

Looking back at the Call for Evidence on SAYE and SIP

Jennifer told us that Equiniti canvassed over 120 people in preparation for its response. Its survey revealed that many clients wanted to keep SIP & SAYE, 70 percent saying that, although the plans were fulfilling their policy objectives, improvements were needed.

Equiniti's response had nine key recommendations, largely in line with the rest of the sector. Top asks for SIP were reducing the tax free holding period from five to two or three years and amending the tax treatment for dividends. For SAYE, top recommendations were to amend the good leaver rules so employees can exercise their options if they have resigned, and changing capital gains tax treatment of SAYE exercises.

Comments:

- ⇒ Reduction of the five-year tax free holding period: The ask was for reduction to two or three years, main reason being that three years would align with executive share schemes. The different treatment of an all-employee plan, as compared with a discretionary plan does not fit with government policy to encourage wider employee share ownership. The sector has been asking for this for many years and, even though it has been rejected in the past, times have changed and people expect to move jobs more frequently now.
- ⇒ Treasury reason for not shortening time periods is often "retention", possibly looking at retention too narrowly; having something that is attractive to people is much more likely to incentivise and retain employees than forcing a time period that seems unreasonable.
- ⇒ Companies put in SIP and SAYE schemes to provide employee benefit and financial underpinning. Providing something that can

Esop Centre newspad online round-table... *more*

help employees that way, does not have a massive impact on retention (only unusually huge gains e.g. some of the SAYE schemes now maturing, where shares were bought at low prices during Covid, where a substantial number of employees stayed longer to benefit from these gains).

⇒ Private companies see SIP as a tool for investment into the company, as, especially in a smaller business, employees can see that they have a direct impact on profitability and returns. So it is more about ownership and having a direct connection with the company's profitability. Retention is not driving the demand for SIPs, and all private companies surveyed said five years is too long.

⇒ Timing of government response: we can expect, at least an indication of Treasury thoughts, though probably not a full response, around the end of November. This would coincide with the autumn statement, so potentially any significant changes will be announced.

Thoughts on the consultation on taxation of Employee Ownership Trusts and Employee Benefit Trusts

Comments:

⇒ As it was heavily flagged as an EOT consultation, some were surprised by the extra questions on EBTs. This drew concerns that HMRC may be trying to put more difficulties in the way for private company EBTs. (Though this was an opportunity to make the point to HMRC that maybe it is time to have a safe harbour employee benefit trusts for private company shares).

⇒ The obvious concern for HMRC is that EOTs should not be used as tax avoidance vehicles. We can understand the concern and don't want to see EOTs being abused, but want use of them to be encourage for the right purposes.

⇒ Published data on why EO businesses outperform shows that the key element is a serious attempt to engage employees, especially with top-level endorsement.

Key points of the consultation:

⇒ Makeup of the EOT trust board – agreed it should not be made up of majority vendors; but want to ensure the rules around makeup of the trustee board are not *too* rigid, especially for smaller private companies. Guidance would be better than legislation. The position which currently exists for EOTs is that it is possible for the vendors to establish a majority, or even a totality of directorships of the

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trustee board, thereby taking total control of the EOT. The way to decouple the vendor shareholders from control of the EOT board is to establish independent trustees. But where is the expertise in this for the UK? – It is in the Channel Islands especially.

⇒ Whether EOTs should be based in the crown dependencies (mainly done to protect future CGT clawback) – Many providers don't set up EOTs off-shore, out of misplaced PR considerations. If we want to get away from vendor controlled EOT boards, the obvious way is to draw on the reservoir of expertise and jurispridence in Jersey and Guernsey.

Proposals put forward:

⇒ Definition of excluded participants (the 5% Rule) – i.e. someone who has five percent or more of any class of shares in the company. In private companies it is common to have an employee share scheme with a different set of shares, so it is easy for employees to hold five percent of the employee share class, making them an excluded participant. This goes entirely against the government's intention to create wider employee ownership especially in SMEs. The definition should be changed to five percent of the share capital overall, rather than five percent in any one class.

⇒ End game of the EOT: There should be a mechanism to prevent quick sale turn-around, e.g. a long stop date, of perhaps 10 years. This would give plenty of time to protect employees being affected by a quick sale which would not be in the interest of the EOT or in the spirit of the legislation. It is inevitable that the EOT company will be sold on at some point, but it seems harsh that employees and/or trustees should be on the hook for that more than 10 years after the original transaction. The intention should be that the EOT, if not for keeps indefinitely, should be for the long term.

⇒ Valuation-Trustees paying too much for the company: EOT valuation is currently dependent on the interaction between tax and trust law, such that the trustees would be in breach of trust should they agree a valuation that was in excess of market value, and there is always pressure, from the vendor shareholders, to have a handsome value position. A way round this would be to introduce an HMRC SAV type agreement such as we are able to have by way of clearance from HMRC SAV for SIP, EMI, SAYE and CSOP. This would ensure independent adjudication that is not being put under pressure to establish by the vendor shareholders. Another recommendation was to put in a sunset clause, e.g. if you

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have not paid off the debt within 10 years, you're 'off the hook'. (If you have not been able to pay to the value set at transaction date, then effectively the company was over-valued). This would offer some protection to the trustees and employees.

⇒ Increase the tax free bonus limit – if the bonus limit on SIP is increased, but not on EOTs, we are going to want to know a reason why.

Are employees benefiting appropriately?

⇒ They receive the tax free bonus, though there is a split between companies who pay the bonus immediately and those that wait till 'financial freedom day', when the debt has been paid off. Main concern is that we lose sight of the question: What is in it for employees, financially? The bonus, which should be increased, appears to be a substitute for capital gains and dividends, which seems to defeat the objective of an employee share scheme. Although the EOT falls within the definition of an employee share scheme under the Companies Act, in practice it is not possible to deliver a capital gain or dividend return. A solution is to introduce an EMI or SIP scheme to run alongside the EOT.

⇒ Other benefits for employees, which might be termed 'soft benefits', e.g. having employee councils, employee input, transparency and having a say in how the business is run. These are long term benefits, though businesses who want to set up an EOT, tend to be employee orientated anyway in providing a progressive approach to training and development, or have embraced a meaningful approach to delegating responsibility.

⇒ One major change would be to allow EOTs to appropriate shares from employees and to make introduction of an EOT dependent on the introduction of direct employee share ownership alongside.

SAYE bonus rate – how's it going, what's happening in practice?

The bonus rate was reintroduced on August 18 2023. Jennifer told the group that Equiniti has done around 40 launches since then, so is into the routine of bonuses being paid. Discussions now are around timetables, how they are now changing re base rate changes.

Points raised:

⇒ Paragraph seven of the prospectus and the three-month rule – If there is a change after you have sent the invitation, and either the bonus rate or the prospectus changes, you will need to have a contract start date within three months of that change.

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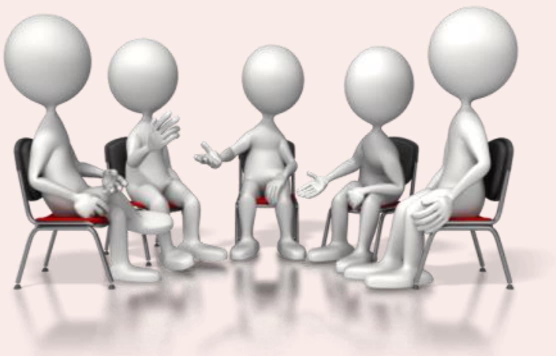
- ⇒ Headroom issues – Do the scheme rules allow you to exclude the bonus when you are doing the option calculation, whether you can exclude it at invitation, and whether you can exclude it if you then do a 'scale back'?
- ⇒ Notional bonus rates – Should they be given for international SAYE schemes?
- ⇒ Participants and companies have seen the reintroduction of the bonus rate as a positive but there are some, because of headroom issues, that are not including the bonus in the option calculation. However, this can still be a positive if it is given as a cash bonus.
- ⇒ It is positive that there are either cash or options being granted with that extra bonus. It is most usual though that the bonus is used to calculate shares under option. Only if there are headroom issues would you be excluding the bonus from that option calculation, since the objective is to maximise the employee benefit.

The drop in annual dividend allowance
The allowance dropped from £2000 to £1000 in this tax year and is set to drop further to £500 in April 2024.
Many more SIP participants will have to pay tax on their dividends.
Companies need to analyse the impact on employees and then decide whether to introduce dividend reinvestment within the plan, so that the drop in allowance does not have such a big impact; to look at where they are giving employees a choice between cash and dividend shares, what the percentage split is on that and whether employees need reminders of the benefits of dividend reinvestment.
There is no objection to people paying tax, but lower paid workers should not suddenly need to submit self-assessment tax returns or contact HMRC for a tax code change. Many employees will not be aware of dividend tax, so more help and support is needed.



EVENTS

British Isles Share Plans Symposium—April 25 2024

Under the heading: *Employee Share Plans – Beyond the 1%,* the theme of next year's symposium will focus on increasing productivity through an uplift in the percentage of total equity in employee ownership. If at least 10 percent of equity is in the hands of employees, as is frequent in France, this should give productivity a boost and benefit all investors.

The programme will include interactive panel sessions based on content accessible in advance online. The in-person session will be on the afternoon of Thursday April 25 2024, at the central London offices of **White & Case**. The *newspad* awards presentation will close the symposium, followed by a drinks reception.

Please contact the team at esop@esopcentre.com to express your interest in making a presentation, suggesting a talk topic or attending as a delegate.

AWARDS

Newspad awards 2023

The Centre is accepting submissions for the 2023 *newspad* all-employee share plan awards.

The *newspad* awards recognise the achievements of companies which offer employee share plans and hold up best practice models for other companies to follow.

If your company or client made a notable contribution to employee share ownership, issued an inspirational share plan or showed excellence in its communication and presentation; has been creative in using share plans to overcome significant changes or challenging situations, increasing participation or using technology; or maybe upped its game through the enthusiasm of the chairman or ceo; then why not tell the world about it?

Companies can nominate themselves or advisers can make submissions on clients' behalf. Entrants can apply for awards in more than one category.

Submitting nominations is free and simple. Required information is kept to a minimum. Clarity matters more than length. The deadline for nominations is 17:00 on **Friday January 12 2024**.

The awards present a great opportunity to celebrate your company's or clients' achievements.

The award categories this year are:

1. **Best all-employee share plan**
2. **Best share plan communications**
3. **Best use of technology, AI or behavioural science**
4. **Best share plan response to significant changes or challenging situations**

Category descriptions and rules of entry can be viewed on the Awards 2023 webpage:
esopcentre.com/awards

The winners will be decided by two impartial judges, experts in the use of employee equities, plus Malcolm Hurlston CBE, founder of the Esop Centre. **The finalists will be announced in *newspad* and award certificates will be presented during the Centre's British Isles Symposium 2024**.

If you have any questions, please contact us at esop@esopcentre.com or call +44 (0)20 7562 0586. We look forward to receiving your nominations.

UK CORNER

Labour urged to support Employee Share Schemes to boost UK

Business Leader reported that after Rachel Reeves pledged that Labour would fight the next election on the economy, experts are calling on Labour to pledge its support for widening employee share schemes to generate a £2.4bn boost to the UK economy.

Speaking at the Labour conference, the shadow chancellor said Labour would grow the economy from "the bottom up and the middle out" in the "interests of working people".

In response, business leaders have called for Labour MPs to support a campaign to encourage more businesses to start share schemes. Led by equity specialists, Vestd, the campaign aims to supercharge the growth of startups and SMEs.

Vestd's analysis shows that if 250,000 more businesses set up share schemes, it could generate a £2.4bn boost to the UK economy.

The Employee Share Ownership (Reform) Bill, introduced to parliament by Labour MP Sir George Howarth in November 2022, aims to open up employee ownership share schemes to lower-income workers and push businesses to be more transparent about their share ownership.

Ifty Nasir, founder and ceo of Vestd, said: "Giving people a genuine stake in the company they work for is a powerful motivator – and a large reason why employee share schemes are seeing a surge in popularity, up 90 percent over the last decade.

"If more businesses set up share schemes it could offer a huge boost for the UK economy, and if share schemes became the norm, the uplift would be like nothing we've ever seen before."

Stricter EOT regulations to nurture genuine employee ownership

"Rigorous" rules are required to prevent the exploitation of Employee Ownership Trust (EOT) tax benefits, says the Chartered Institute of Taxation (CIOT).

Responding to a government consultation, the CIOT said the tax benefits of the initiative should be used to promote and incentivise genuine employee ownership and engagement, whereas many employees are not currently seeing the benefits.

Christopher Thorpe, of CIOT, said: "As well as tackling potential abuse, our main concern is to ensure EOTs fulfil their original intention and sentiment.

"The main benefit, at the moment, lies with the former owner who may qualify for CGT relief on the creation of the settlement, whereas the only benefit for employees is the £3,600 income tax-free bonus.

"If employees receive any additional benefit from the company, often in the event of company shares being sold and the proceeds distributed, the trustees will pay CGT with employees being taxed on that same amount as earnings."

The CIOT also warned that if rules are too prescriptive, it could affect the day-to-day running of EOTs and EBTs, discouraging owners from setting them up.

Mr Thorpe added: "While we want to see a rigorous set of rules to allow the vendor of the company to enjoy the tax benefits, they should not be so prescriptive as to make the establishment and future running of an EOT unnecessarily onerous or commercially unviable.

"While we can see some merit in the introduction of criteria of minimum employee involvement, overly prescriptive rules on membership could discourage business owners from selling to an EOT, given the potential difficulty of finding people from specific groups.

"We are, however, pleased to see that many of the recommendations we put forward in our 2021 submission have appeared as proposals within this consultation and, as such, we broadly support them."

Say on Pay linked to Say on Seat by Vanguard

The *FT* reported recently that Netflix lost its 2022 Say on Pay agm vote for the second year in a row. Only 29 percent of shareholders voted in favour of the compensation report, one of the lowest figures in the S&P 500. And this followed only 51 percent support in 2020.

Vanguard, a leading institutional investor, says its funds will normally vote against compensation committee members if the Say on Pay vote is lost for two consecutive years. In other words, if the lost vote Say on Pay message does not impel change significant enough to win shareholder support the following year.

The lost Netflix vote in 2021 did trigger some 2022 compensation changes. Netflix added a "cap" on base pay of $3 million, for its co-ceos Reed Hastings and Ted Sandros, performance conditions to determine bonus, and a policy that 50 percent of total compensation will be delivered in stock options, now with an attaching vesting schedule.

But all this was done on packages of some $50 million each and against a backdrop of the six months strike by the Writers Guild of America, which urged Netflix shareholders to vote against the "egregious" pay of Netflix top management.

Say on Pay votes were introduced in the USA as part of the Dodd-Frank Act of 2010, framed as part of the regulatory response to the global monetary crisis of 2008.

But some investors and governance experts believe that Say on Pay does not work well, as it seems neither slow the rise in compensation quantum nor to strengthen the desired link between pay outcomes and delivered performance; which is a more critical issue for investors than the quantum itself.

Executive compensation has been in the public spotlight for decades with almost none of the attention favourable, the *FT* concludes.

Companies and compensation committees need to ensure that quantum, the pay structure and the incentive designs are robust, logical, and well communicated.

Damian Carnell of Centre member CORPGRO commented: "The ongoing concern with executive compensation does not automatically mean Say on Pay does not work. First, most companies are sensitive to shareholder views and are conscious of the fine balance between being strongly competitive in an unforgiving market for top talent; and the need to justify pay quantum and design to shareholders, employees and the wider public in the context of the wider scene.

"Indeed, in a world without a Say on Pay requirement, it would be an interesting thought experiment to conjecture where the market might now stand instead. But that said, extra requirements may form part of the developing landscape.

"For example, in the UK the Investment Association operates a "Bad List" (or "Sin Bin" as it is known to *newspad* readers) public register, where any agm vote receiving less than 80 percent support is publicly recorded and invokes downstream disclosure and action expectations.

"Australian rules are harsher still. A "Two Strikes" rule applies by law. If the compensation report receives less than 75 percent support for two years running, this triggers a simple majority vote requiring all directors to face re-election; a so called "Spill the Board" requirement.

"In Switzerland, listed companies have two annual binding votes on compensation, one for directors another for top management.

"Potentially too, Vanguard and other investors will increasingly look through the corporate veil and vote against re-election of individuals responsible for compensation decisions which are out of line with investor expectations.

"For Netflix, their 2022 compensation changes moved their stance from appalling to poor. Yes better, but still not good. A $3 million base salary is still significant, linking bonus to performance has long been common practice not an innovation, and delivering high-end ceo compensation skewed strongly to long term equity is also a global norm.

"Say on Pay leading to a Say on Seat vote might be a logical next step for many institutional shareholders, if the message of a lost advisory vote goes sufficiently unheard."

Netflix plans "substantial changes" to executive pay

In its Q3 earnings letter, Netflix says that it is planning "substantial changes for 2024" to its ceo and executive pay packages. The promise to investors comes after shareholders rejected the company's 2022 pay packages in a "Say on Pay" vote over the summer.

Tabcorp shareholders revolt against executive pay levels

On October 25, shareholders of Australian racing and wagering giant Tabcorp issued a strike against the company's executive pay on concerns pay and bonus amounts exceed recent performance levels.

While shareholders approved four of five resolutions put forward at

Tabcorp's annual general meeting, 34.08 percent voted against adopting the remuneration report. A strike is recorded any time more than 25 percent of shareholders vote against a resolution, and a second strike next year could result in a spill motion.

ISS ESG expands scoring system to include more on exec pay

ISS ESG (the responsible investment arm of Institutional Shareholder Services Inc) is introducing changes to its scoring system that will impact company ESG scores and decile rankings with immediate effect when implemented from December 1 2023.

The firm said that 14 factors are being expanded across new regions. Six of these cover board composition, including questions on tenure, independence and board diversity. A further seven are related to compensation, including a question on whether an issuer's most recent say-on-pay proposal received 'significant' shareholder opposition.

Scottish Water: 100s set for strike at executive pay row firm

Hundreds of staff at the Scotland's state-owned water supplier, which has been at the centre of a row over executive pay, are set to strike in December amid claims the organisation attempted to force through changes to pay and conditions without agreement.

Scottish Water says that its offer is "fair and reasonable" and would mean an eight percent rise in pay for every staff member alongside a pay and grading structure reform. But unions say the pay needs to be split from the reform which they believe will have long-term impact on workers' pay and should be subject to separate negotiations.

The development comes amid concern that Alex Plant, the new chief executive of Scottish Water, is being paid £295,000 a year – a salary that is £22,500 higher than his predecessor and £50,000 above the expectation in the Scottish government's public sector pay rules.

Corporate plastic purchasers failing to link sustainability targets to executive pay

Analysis published in September from *Planet Tracker* found that 39 leading producers and purchasers of plastics are not sufficiently aligning ESG performance across their organisations.

The research found that only 23 of the 39 companies analysed have aligned executive pay and compensation with ESG performance. However, most of these approaches are deemed "insufficient", lacking quantitative links, or only tie a minimal proportion of compensation to sustainability performance.

Companies analysed include ExxonMobil, Saudi Aramco, Costco and Mars. Of the 39 firms, more than half do not currently have science-based targets in place. Mars was one of the few commended for its clear sustainability targets and for linking emissions reductions to executive pay.

Planet Tracker's senior investment analyst Thalia Bofiliou said: "It's a positive sign that all plastic companies we analysed are committed to wider sustainability goals. However, without meaningfully tying executive pay with sustainability metrics, this is all wrapping and no substance.

"To reduce the significant risks the plastic industry faces, from CO2 emissions and microplastics to new regulations, investors can no longer afford to wave pay packages through that aren't linked to sustainability-related elements. It's also imperative that these are material and quantifiable, rather than minimal percentages of compensation or vague goals for the future".

FCA urges firms to link pay to consumer outcomes

The Financial Conduct Authority (FCA) has called for firms to link executive pay to consumer outcomes as the City prepares to lift the cap on bonuses. In a letter to the chairs of remuneration committees at banks, building societies and investment firms, it urged firms to consider customers in pay decisions. The letter even suggested staff pay could be docked if firms fail to make progress on implementing meaningful reforms, *City A.M* reported.

No simple solution to the executive pay problem

In an opinion piece for the South African publication *Financial Mail*, writer at large, Ann Cotty said that two things can be said about remuneration without fear of contradiction: the gap between what top executives and other employees are paid has grown in the past 20 years, and no member of a remuneration committee has been held to account for this, or for anything remuneration-related.

Perhaps it would be unfair to hold any individual to account, given the systemic nature of the problem. But it would be equally unfair not to suggest that the supine role of remuneration committee members has played a part in the widening gap.

A proposed amendment to the Companies Act is the best option to curb unintended generosity.

EOT model gaining traction in US

According to *Forbes*, though the popularity and awareness of the EOT model is still low in the US, it appears to be gaining traction. A number of states have passed or proposed legislation to support the EOT model in recent years. In the US the most common form of employee ownership is the employee stock option plan, which is often used as a type of retirement plan like a 401(k). As of 2020, there were approximately 6,467 Esops in the US, with assets totalling more than $1.6 trillion, and 225 new Esops were created just that year. In 2021, Australia recognised its first EOT business.

The Article's author, Sam Hurley co-founder of NOVOS, suggested that selling your business the traditional way is typically the more lucrative financial option in the short term. However, business owners often lean more towards the employee ownership route when they start to think about the future of their employees, the legacy of the business and their general commitment to the workforce, their firms and the local communities.

He describes his firm's 18-month journey so far, as an EOT owned business, stating "I have definitely noticed a stronger sense of connection between the staff and the business. Additionally, there is a greater level of trust as employees understand the factors that influence senior management's decision-making and their long-term goals. However, maintaining this connection and trust requires consistent communication, education and reminders about the employee ownership model and what it means for them."

Suite TV becomes first employee trust owned post house

Boutique facility Suite has changed hands from the original founder shareholders to Suite TV Employee Trust Ltd. The specialist in comedy, music, and long-form programming thus becomes the first employee-owned post-production house in the UK. Chairman and co-founder Julian Aston formally announced the transition at a packed staff meeting on October 25.

"We believe we have found the right succession strategy," commented Shelley Fox, co-founder and managing director. "The employee ownership means we have passed the baton on to our brilliant talented staff."

Other New EOTS

- Office refurbishment business Workspace Design and Build
- Birmingham technology consultancy Griffiths Waite
- Building facade design, fabrication and installation specialist MTW Architectural
- Refrigerated van conversion business Vantastec
- Software testing company Zoonou
- Classical music and performing arts talent agency, Harrison Parrott
- Horticultural nursery Majestic Trees

OECD/G20 convention brings Pillar One closer to implementation

If ratified by at least 30 jurisdictions, the joint convention will introduce a new mechanism for allocating taxing rights to market jurisdictions. It was released on October 11 2023 and relates specifically to ‘amount A’ of Pillar One. This co-ordinates a reallocation of taxing rights to market jurisdictions with respect to a share of the profits of the largest and most profitable multinational enterprises (MNEs), regardless of their physical presence. This will initially apply to MNEs with global revenue over €20bn and total profits greater than 10 percent of their global revenue.

Subject to certain adjustments, amount A reallocates 25 percent of the MNE’s excess profit (ie, group profit in excess of 10 percent of its revenue) to market jurisdictions.

The convention should also ensure the repeal and prevent the proliferation of digital services taxes, secure mechanisms to avoid double taxation, as well as enhance stability and certainty in the international tax system.

The convention notes that there remains a handful of specific items on which there are differing views and therefore continued conversations between OECD members.

Canada

Clear EOT legislation needed to keep Canadian businesses local

In an opinion piece for *The Province*, Tiara Letourneau describes how a 100-year-old major employer in the small town of Armstrong, was acquired by a major Canadian conglomerate in 2001. The factory was closed and staff were relocated or laid off, leaving the town in economic shock.

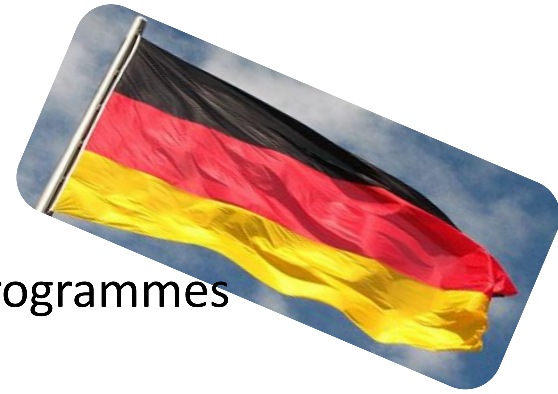
This story, which is common in communities across Canada, prompted her to call for tax incentives for the selling owners to be added to Canada’s new EOT legislation. She said “Selling owners are the only ones who can decide who to sell to, and selling to employees often doesn’t deliver the highest price or the fastest turnaround. Offering tax incentives for owners who sell to their employees offsets these challenges and encourages all sellers to consider the option.”

Cayman

Good news as Cayman comes off Grey List

Financial Services Minister André Ebanks hailed a “tremendous achievement” for the Cayman Islands following the news last month that the jurisdiction will be removed from the global Financial Action Task Force’s grey list.

Following a years-long effort across two governments, the decision was announced Friday October 27, following a three-day meeting of the FATF Plenary in Paris. By contrast BVI (British Virgins) has joined the red list.



Germany

Improved regulation for employee share programmes

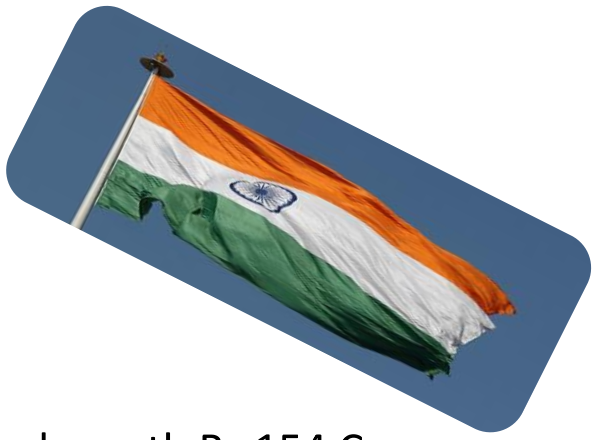
For years Germany has been at the bottom of the list internationally when it came to promoting employee participation. On August 16 2023 the Federal Cabinet decided to rectify this as part of the Future Financing Act (ZuFinG) Improvements. Tax support for employee participation programmes in Germany was limited to a tax exemption allowance of €360 until the 2021 assessment period. On July 1 2021, the exemption amount was increased to €1,440. At the same time, the possibility of downstream taxation for employee shareholdings was introduced under certain conditions as part of a new Section 19a EStG. Favourable taxation is an important lever for participation programmes as employers and employees can benefit equally.

The increase in the exemption amount to €5,000 from the 2024 assessment period, provided for in ZuFinG, is a step in the right direction. In particular, the all-employee share plans, which are offered by a large number of DAX40, MDAX and now also SDAX companies, should become more attractive thanks to the increasing the tax allowance. However, compared to the previous regulation, the ZuFinG also contains points that can have a negative impact on the attractiveness of the plans. For example, the planned introduction of a holding period will make the administration of these plans more complex and, if sold too early, the tax treatment less attractive.

The increase in the threshold values and the extension to group companies is fundamentally to be welcomed. However, it remains to be seen whether the planned increase in the relevant thresholds for the application of downstream taxation according to Section 19a EStG will increase the attractiveness of employee shareholdings in small and medium-sized companies; and it remains unclear to what extent the amended Section 19a of the EStG and in particular the taxation of the sales price for departing employees will change the current practice of cash payments in start-ups.

Eurozone economy shrinks

According to *the Guardian*, the Eurozone is teetering on the brink of a winter recession after the latest official figures showed its economy contracted by 0.1 percent in the third quarter of 2023. In a worse than forecast performance, the 20-nation single currency zone has now failed to grow in three of the past four quarters. Ireland and Austria posted the biggest declines, while Germany contracted by 0.1 percent and France grew by 0.1 percent.



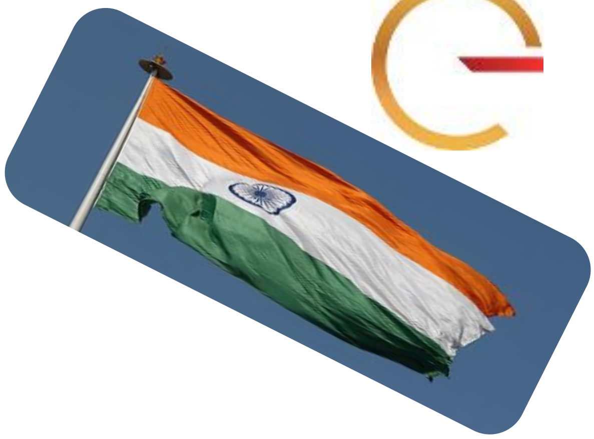
India

Perfios creates 62 millionaires with Esop buyback worth Rs 154 Cr

Fintech firm Perfios has implemented an employee stock ownership plan buyback of equity shares worth Rs154 crore from its 135 employees, resulting in 62 individuals becoming millionaires.
Sabyasachi Goswami, ceo of Perfios, said, in a statement, "It's truly gratifying to see the Perfios Millionaire Club grow and thrive along with the company's growth. The buyback reaffirms our dedication to fostering a work environment where everyone can excel."

Log9 to buy back Esops worth Rs 1.5 Cr

On October 26, EV battery startup Log9 Materials announced an employee stock ownership plan buyback plan worth R1.5Cr to reward its employees.
In a statement, Log9 said 17 employees are in line to benefit from this year's Esop pay-outs, many of whom have been instrumental in the battery startup's growth. Some of the beneficiaries are Log9's longest-serving employees from both core and non-core functions.
Indian start-up employees made $196.5m through Esop buyback programmes in 2022.



India

Tata Digital Esop gets delayed, company offers incentives to top brass

Tata Digital — the ecommerce arm of the Tata Group — has not allocated employee stock options to senior executives as per the company's plan when they were hired over the past two years, reported the *Economic Times*. The top leadership is in discussions to resolve the matter.

When these executives were hired over the past two years in the run-up to the launch of superapp Neu, there was an Esop component added to their overall compensation. But it has not yet materialised.

As a way to assuage senior executives, the group is looking at options like cash incentives. While a short-term solution like certain payouts is being offered to these executives, the company is still looking to have a pool of stock options for employees, sources close to the company said.

Home First allots 7,996 equity shares under Esop scheme

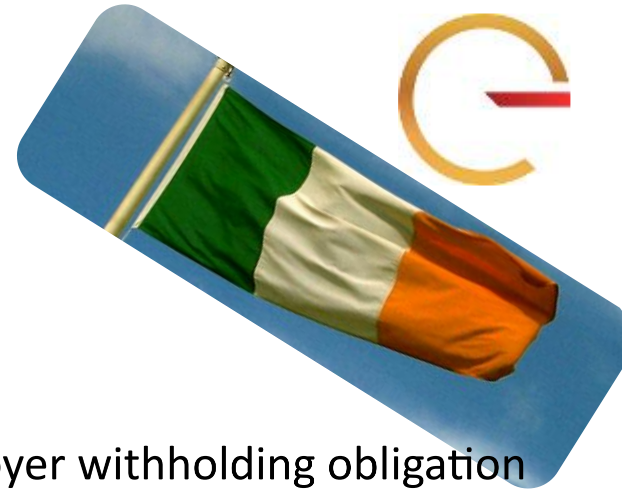
Following the allocation of 7996 shares under its esop scheme, the total issued shares of Home First Finance Company India now amount to 8,81,80,048 equity shares. Consequently, the total issued share capital has risen to Rs17,63,60,096.

Repro India allots equity shares as Esop

Repro India Limited has announced the distribution of 35,100 equity shares with a face value of Rs10 each to eligible employees. This allotment is the result of the exercise of employee options granted under the Repro India Limited - Employee Stock Option Scheme 2010, the company announced in an exchange filing. The decision was made by the Board Nomination and Remuneration Committee in a circular resolution dated October 24 2023.

As a result of this allotment, Repro India’s paid-up equity share capital has increased from Rs14,26,21,880, which is represented by 14,26,21,880 equity shares with a face value of Rs10 each, to Rs14,29,72,880, which is represented by 1,42,97,288 equity shares with a face value of Rs10 each.

In relation to this allotment, the company is currently applying for listing on the BSE and the National Stock Exchange of India. Repro’s shares closed at Rs709.80, up 0.25 percent, on Monday October 23.



Ireland

Ireland employee share options new employer withholding obligation

The way in which taxes arising on the exercise of employee share options are collected in Ireland is due to change from January 1 2024.

The Finance Bill published on October 19 2023 contains a previously unannounced change which will bring share options within employer payroll withholding obligations under the Pay As You Earn (PAYE) system for the first time.

Section 12 of the Finance (No. 2) Bill 2023 provides for a new employer withholding obligation in relation to income tax and the universal social charge payable on gains realised when an employee exercises a share option. This change will apply to all taxable share option exercises that occur on or after January 1 2024

Currently, the onus is on employees to navigate the relevant tax on a share option (RTSO) procedure to report any gain realised on the exercise of their share options and pay the income tax, USC and employee PRSI arising within 30 days of the date of exercise. Employees must also file a tax return for the year in which exercise occurs, under self-assessment rules. This has left employees exposed to both interest and penalty payments if they do not file and pay correctly and on time.

Employers will now have to ensure that their payroll function is fully integrated with their share option exercise procedures so that payroll providers receive details of all share option exercises in a timely manner. The timing of the tax charge (the exercise date) is largely at the choice of the employee rather than the employer, often over an exercise period which can be over many years, so companies will need to be flexible and ready to track and act on that data in real time.

Employers already have to report share option grant and exercise information annually to the Irish Revenue on Form RSS1, but the new payroll obligation means employers have a more active role to play in tax compliance.

While the change has been broadly welcomed by the share plan sector in Ireland, the Irish Proshare Association is seeking a deferral of the start date as employers may find it difficult to have the necessary payroll processes in place by the start of 2024.

Centre member Tapestry Compliance commented: “The move to bring share options into the PAYE regime is perhaps not surprising given that taxes on all other forms of share-based remuneration, such as restricted share units and free or discounted shares, are already dealt with via payroll. This will also align Ireland with practice in a number of other jurisdictions, including the USA and UK. However, there is a relatively short time frame between the date this bill is likely to become law and the effective date of the change, and it may catch some employers by surprise. Employers will need to ensure that processes and resources are in place to deal with their new compliance obligation.”