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it's our business

newspad of the Employee Share Ownership Centre

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From the life president

Our chairman Michael Mainelli is to become Lord Mayor of London in November. In advance he is already going into purdah. The Centre will benefit directly as employee share ownership will be an international theme of office.

While Michael is not directly involved, Robert Pay will act as chairman. Robert was formerly with law firm Clifford Turner and worked with the co-founder of the Centre, David Reid, who also created the first bi-disciplinary partnership and Centre founding member New Bridge Street Consultants. He was also marketing director at the London Stock Exchange and was on the management board of AIM, so has experience of corporates, large and small.

I welcome Robert's joining us in this key role. He will have the title of Chairman. We are lucky to have somebody able to step in with such a powerful background and the capacity to take the Centre forward

Malcolm Hurlston CBE

Centre's response to HMT's Call for Evidence on SAYE & SIP

The Centre submitted its response to the government's call for evidence on non-discretionary tax advantaged share schemes on August 24.

The principal points of the response were:

a) Private-equity owned companies should be eligible to establish a SIP. There are many companies which have had a SIP but can no longer operate a SIP having come under the control of private equity – example above.

b) There should be a single (three-year) period governing relief from IT, rather than the 3/5 year periods, which serve only to obfuscate and confuse all parties.

c) There is a need for a better suite of pro forma documentation, including extracts from articles of a private company, to assist smaller companies to establish a SIP (compare the model documentation for companies with employee shareholders issued by Dept. for Business in 2013).

d) Companies should be able to offer a cash alternative to participation in SIP free share awards. What is the policy objection to this?

e) Eligibility should be extended to gig economy workers i.e. all those who provide personal services to the company/group, with liaison with other Departments to ensure that regulatory hurdles are overcome.

Other points (including those made in the course of the stakeholder meeting with officials on July 12 2023):

Re SIPs:

⇒ Few, if any companies take advantage of the ability to make performance-related free share awards – could that be simplified/removed?

⇒ The reduction in the number of companies operating a SIP can be partly explained by the trend for private equity to take control of UK PLC.

⇒ Any complexity in a SIP is more perceived than real as standard form documentation can be used and, in principle, a SIP for up to, say, 50 employees can be administered on a spreadsheet.

⇒ Small companies use individuals as trustees (despite the risks of unlimited personal liability).

⇒ The ongoing tax shelter afforded by a SIP for a participant's plan shares for so long as the participant remains an employee is attractive.

⇒ For those companies which have woken up to the benefits of a SIP, it has proved its worth – perhaps because of the margin for failure of share price growth in the case of unlisted companies for which a 75%+ discount on MV, coupled with the funds being out of pre-tax earnings, make it very attractive, particularly if the company is sold as a whole.

⇒ The fact that private company articles of association can provide for forfeiture of free shares if an employee leaves at any time for any reason, and for partnership shares to be offered back for sale on a no-gain basis if the participant leaves, means there is "no skin off the nose of the proprietors" in offering free and/or partnership shares under a SIP where the intention is for the shares to be held until the company is sold.

⇒ Allow good leavers to leave their SIP award shares in the custody of the plan trustee for a period of up to, say, three years during which time they remain sheltered from CGT. This allows for an orderly and planned disposal over time in circumstances in which, for reasons outside the control of the

Centre's response to HMT's Call for Evidence on SAYE & SIP—*more*

participant, the value of the shares may have temporarily fallen. This would enhance the attraction of SIPs as a vehicle for employee investment and participation.

Re SAYE options:

⇒ These are of interest to larger listed company employers only.

⇒ The costs of a savings provider make them unattractive to other employers.

⇒ There is a limited number of savings providers now that Yorkshire Building Society has withdrawn (apparently there are none in the Republic of Ireland, hence there being no new Irish SAYE schemes under their legislation).

⇒ To address the tendency towards shorter-term employments, allow voluntary resignation to be treated as if the participant is a "good leaver" enabling access to a tax-free sum.

⇒ Alternatively, enable a one-year savings contract linked to a one-year share option – on the basis that three or five years is too long given the tendency towards shorter-term employments.

⇒ Demergers: para 28(3), Sch 3 should be amended to allow appropriate adjustments to options to be made unilaterally in the event of a demerger (and see further below).

⇒ Internal reorganisations by the interposition of a new holding company: allow an automatic exchange of equivalent share options without the need for agreement to be obtained from optionholders (as presently required by para 38, Sch 3).

Re SAYE and SIPs

⇒ Takeovers: there is a need to revisit the rules allowing exemption from income tax on a takeover if participants are only entitled to receive cash and no other form of consideration for their SIP shares. Difficulties arise if, for example, the consideration is on a deferred or "earn-out" basis, or if the terms of the transaction are such that, regardless of the concerns for the tax treatment of the target company SIP and SAYE participants, the acquiring company allows participants (along with all other shareholders) to elect to take cash or shares/loan notes or other securities. Participants can be penalised through no fault or choice of themselves or their employer or plan company. This is unfair.

⇒ Demergers: the rules governing when demerged companies cease to be "associated" should be simplified so that for the purposes (only) of a SIP or SAYE scheme, listed and AIM companies are treated as ceasing to be associated upon completion of a demerger and not at such later time as when they cease to be under common control (a point in time which it is difficult, if not impossible, for listed/AIM companies to monitor and identify).

Follow the link to read our response in full.

The Centre is thankful to David Pett of Temple Tax Chambers, who represented the Centre at the stakeholder meeting with the Treasury, for his help in drafting the response, and to key Centre members for their input and comments.

TOP STORIES

Meeting John Lewis

The Centre was drawn to an article in August's edition of The Oldie magazine, where John de Bruyne recounts the day he and his father met John Spedan Lewis. A 12-year-old at the time, he recalled receiving a copy of Lewis' book "Fairer Shares". Much later, he learned that his father had been invited as, having read something he had written about starting his business, Mr Lewis sought his thoughts on the John Lewis partnership scheme, which Lewis explained as a scheme where all the employees are shareholders.

When asked if the employees could then sell their shares if they wanted, Lewis emphasised that they could not. Mr de Bruyne's response was "in which case, they are not shareholders. At best, they can look forward to a bonus."

The article went on to compare the fate of two shop workers (friends of the author), one who had left Waitrose after 10 years of service, with a bouquet of flowers and a bottle of wine; and one who had left Tesco after the same length of service, with a bouquet of flowers and a bottle of wine, plus, having joined the Tesco employee share plan, £35,000 on the sale of her shares.

AWARDS

Newspad awards 2023

Submissions are now open 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. Companies can nominate themselves or advisers can make submissions on behalf of their clients. The deadline for all nominations is 5:00pm on Friday January 12 2024.

The award categories this year are:

1. Best all-employee share plan

All-employee share plans help spread the wages of capital and boost company productivity and can be a particularly effective way for a large, or multinational, company to bring together a diverse workforce to help achieve key corporate goals. Employee engagement can be vital too to small or fledgling businesses: employee share plans give employees a stake in the company. Applications to this award category will be judged on how successfully the share plan meets the company's objectives, for example: in inclusivity within the company's workforce as a whole; or in the light of the complexities of cross-border arrangements; or in how the share scheme has been used to benefit employee and business alike.

2. Best share plan communications

Communication is key to the success or failure of an all-employee share scheme. This award category highlights the need for communications programmes that are sensitive to the circumstances of the company and the make up of its workforce.

3. Best use of technology, AI or behavioural science

Without effective technological solutions, all-employee share plans would be prohibitively expensive and time consuming for many companies. This award category recognises innovative uses of technology to manage, communicate and administer share schemes.

4. Best share plan response to significant changes or challenging situations

Since 2020, the pandemic, global crises, rising inflation and the cost of living has brought many challenges to business, not least of which is the change to working life and finances. All-employee share plans can play a key part in rising to such challenges by contributing to employees' savings, morale and engagement. This award is designed to recognise ingenuity in either adapting a share plan or in creating a special plan to fit the shifting landscape or alleviate some of the pressures that arise from extraordinary situations.

The awards present a great opportunity to celebrate your achievements. Clarity matters more than length.

Rules of entry can be viewed on the Awards 2023 webpage: https://esopcentre.com/metapages/awards/.

To submit an application for the *newspad* all-employee share plan awards, please complete both stages:

- ★ Online application form - complete all sections of the online form, providing as much detail as possible. (Alternatively, entries can be made by one or two explanatory documents)
- ★ Supporting documentation - where appropriate, back up your application with supporting documentation. Either upload the files at the end of the form, or email them to esop@esopcentre.com.

Please read the rules and terms of entry. 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*. Award certificates will be presented during the Centre's British Isles Symposium 2024. For queries, please contact esop@esopcentre.com or call +44 (0)20 7562 0586.

Hold the day – April 25 2024

The *newspad* awards presentation will close the next British Isles Employee Share Plan Symposium, on the afternoon of Thursday April 25 2024, at the central London offices of **White & Case**.
The programme will include interactive panel sessions based on content accessible in advance online. Please contact the team at esop@esopcentre.com to express your interest in taking part.

Esop Sofa – *newspad* review webinar October 11

The Centre's autumn Esop Sofa Review will be a return to a webinar format, at 11:00am on Wednesday October 11. Join our panel of share schemes experts for in depth discussion of their pick of articles featured in recent editions of newspad. Registration is open.

SHARE PLAN NEWS

New SAYE bonus rate

Following the Bank of England's base rate change on August 3, HMRC announced the new bonus rates for SAYE invitations issued from August 18 onwards:

⇒ the three-year option rate is 1.1 percent;

⇒ the five-year option rate is 3.2 percent; and

⇒ the early leaver rate is 1.42 percent.

As and when the Bank of England changes the base rate, the SAYE bonus rates will be automatically adjusted and appear on HMRC's guidance page.

Extension of deadlines for notifying EMI options

Following the Spring Budget announcement, the government is legislating to extend the deadline for notifying HMRC of the grant of EMI options. The new deadline, applying to grants from April 6 2024, will be July 6 following the end of the tax year in which the EMI option is granted. Under current legislation they must be notified within 92 days of grant. HMRC's 12-month period to launch an enquiry into the grant will also start from that date. The new deadline will align with the notification requirement for other tax qualified, as well as non-qualified awards.

Positive signs for the economy

Consumer confidence has grown again, with positive signs ahead for the UK economy, according to a survey by GfK. But the picture still remains negative, according to the ONS index of shopper sentiment.

Sky News reported that the figures suggest consumer demand has been resilient to the shocks of rising prices and more expensive borrowing.

The ONS index dropped in July at the same time as retail sales fell due to some of the heaviest rainfall ever recorded. It was the first fall since January. Before the fall in July, consumer confidence in June had been at its strongest in 17 months and had grown for five months in a row.

The future signs for the economy are good, despite inflation and high food price rises putting pressure on budgets, and 14 consecutive interest rate hikes making borrowing more expensive.

Changes in personal finances were viewed more positively as the index tracking those changes over the last year is up 10 points on August 2022.

GfK's forecast for personal finances over the next 12 months grew 28 points higher than August 2022 and four points up from July to minus three.

Government info on future UK sustainability disclosure standards

The UK government has published information on its framework to create sustainability disclosure standards for the UK (UK SDS).

UK SDS will set out disclosures on the sustainability- and climate change-related risks and opportunities that UK companies will, in due course, be required to make. They will be based on the IFRS Sustainability Disclosure Standards published by the International Sustainability Standards Board (ISSB) in June 2023.

The government has confirmed that it will consider endorsing the IFRS Sustainability Disclosure Standards so as to create UK SDS by July 2024 and will divert from the global baseline only if absolutely necessary for UK-specific matters.

The requirements are separate from the proposed reporting standards under the EU Corporate Sustainability Reporting Directive (CSRD), which may affect some UK companies in due course.

HMRC's debt levels remain high as interest rates increase

The increase in HMRC interest rates from August 22 2023 will make it harder for taxpayers to clear these debts.

HMRC is seeing more taxpayers getting into debt and the average value of those debts is increasing as the economic situation remains challenging. The majority of tax debt is owed by small and medium-sized businesses.

HMRC's debt balance at the end of June 2023 was £44.5bn, a reduction from £45.9bn at the end of March 2023, but higher than the £42.0bn figure in June 2022. HMRC forecasts that the figure will remain close to this level in 2023/24.

The pandemic-related peak debt figure hit £67bn in August 2020. For context, the balance just before the pandemic was £16bn (in January 2020).

At the end of March 2020, HMRC had £2bn worth of debt, spread across 647,000 taxpayers with time to pay arrangements. By the end of March 2023, HMRC had around £5.7bn split between 912,000 taxpayers with time to pay arrangements. This means that most debt is not included in a time to pay arrangement.

HMRC has indicated that while it is resolving debts at levels significantly above the pre-pandemic average, the volume of new debt exceeds the level that it is able to resolve. The value of new debt was over 50 percent higher in 2021/22 than the average for the period April 2017 to March 2020. The flow of new debt remained at this elevated level throughout 2022/23.

From August 22 2023 HMRC interest rates stood at 7.75 percent for late payments of tax (other than corporation tax instalments) and 4.25 percent for overpayments.

The higher interest rate on late payments will increase the balances owed by taxpayers and make it more difficult to clear them. Existing time to pay arrangements may be insufficient to clear the debt and need to be revisited.

The rate for repayments is now better than some rates offered by banks.

Subject to certain criteria, taxpayers can now make time to pay arrangements online for self assessment, employers' PAYE and VAT. While late payment interest is charged on balances in time to pay arrangements, late payment penalties can be avoided by setting up a time to pay arrangement before a penalty trigger date.

FCA impersonators abound

The UK's financial regulator has warned of an increasing number of scammers pretending to be the watchdog. The Financial Conduct Authority said its impersonators aim to get people to hand over money or sensitive information, such as bank account PINs and passwords.

The public has reported more than 7,700 instances of this type of scam to the FCA's contact centre so far this year. Reports of this type of scam have more than doubled since 2021, the FCA said.

Trend: Working from home 'is probably not going to work out'

Amazon chief executive Andy Jassy told workers "it's probably not going to work out for [them]" if they don't accept the company's three-days-in-the-office mandate.

"It's past the time to disagree and commit," Jassy reportedly said in a meeting last month, referred to internally as a 'fishbowl'.

Insider, who first reported the meeting, said the meeting was held in to reinforce the three-day-a-week policy and express his frustration that a significant number of staff were not following it since it commenced in May.

In July, reports emerged that Amazon was "tracking and targeting" staff who were refusing to meet the three days in the office protocol, the *Financial Times* reported.

"As a leadership team, we've decided that we will be better for customers and for our business being in the office," Jassy told employees.

He added that the senior leadership were unhappy with the company's results when the majority of its staff were working from home during the Covid-19 pandemic.

Jassy said he did speak with 80 other ceos before making the decision to advocate for an office-based policy saying "virtually all" of them preferred in-office work.

In a statement to *City A.M.*, a spokesperson for Amazon said it has never said that remote work would always be the norm, adding it had regularly communicated its position on working from home would evolve over time.

Jassey's reported comments come as many of the world's most influential businesses seem to be shifting away from working from home.

In April, American bank JP Morgan Chase halted remote working for its senior staff. Just last month, Goldman Sachs did the same. In the City, Lloyd's of London boss John Neal said workers needed to move away from working only on Tuesdays, Wednesdays and Thursdays.

Image: www.microbizmag.co.uk

Investors approve executive pay that incentivises global warming

According to lobby group, *ESG Clarity*, if shareholders are serious about pressing for net-zero alignment, they need to call for a reset.

Executive pay polarises opinion. In the face of the climate emergency, however, we have an opportunity to unite behind a simple proposition. Executives should be rewarded for creating value in a way that is aligned with a stable climate. This requires a fundamental reset in pay.

In 2022 Exxon's crude oil production rose by six percent. The ceo was rewarded with increases in bonuses and long-term incentive plans of 88 percent. In the airline industry, International Consolidated Airlines Group's (owner of British Airways among others) emissions rose 43 percent in 2022, and bonuses rose from nothing to £1.4m, pushing the ceo's total package up over 130 percent compared to the previous year. A review of 35 oil and gas companies' executive pay by Carbon Tracker in 2022 reaffirms the point. Not only is pay still normally tied to production growth, but many have increased incentives to grow production. This is even true for the companies that have explicitly pledged to align with the Paris Agreement goals. BP, for instance, has promised emissions reductions of 20-30 percent by 2030, but 30 percent of executive pay is tied to production growth. Only around 10 percent could be described as transition-positive.

Big firm bosses' pay rises 16% as workers are squeezed

Bosses at Britain's biggest companies saw their pay rise by almost 16 percent on average last year as most workers' wages were squeezed by rising prices. This is according to the *High Pay Centre.*

The median pay of a FTSE 100 chief executive was £3.91m in 2022, up from £3.38m in 2021; and the average earnings of a FTSE 100 boss was 118 times more than a typical UK worker on £33,000 a year. Critics called the earnings extreme, but some of the firms argued they were in line with competitors.

The highest paid boss last year was Sir Pascal Soriot, of the drugs giant AstraZeneca, with £15.3m. The British-Swedish company became a household name when it teamed up with Oxford University scientists to develop a Covid-19 vaccine.

Charles Woodburn of security and aerospace firm BAE Systems was the second highest earner with £10.7m, while Emma Walmsley, boss of GlaxoSmithKline, was the highest female earner with £8.45m.

Ben van Beurden, the former boss of energy giant Shell with £9.7m, and BP's Bernard Looney securing £10m featured in the top six biggest earners after both firms reported record profits on soaring energy prices.

The think tank, which analysed the pay of chief executives of all companies on the UK's blue chip company index through 2022 annual reports, reported median pay was more than £500,000 up on 2021, continuing its upward trend since it dropped to £2.46m in 2020 at the height of the pandemic.

The rise was in part owing to the economic recovery following lockdowns and through bosses having "strong incentive pay awards tied to profitability and share prices".

However, earnings are still not as high as they were in 2017 when they hit £3.97m. The *High Pay Centre* said the gap between company executives and other workers' pay had widened further last year.

Meanwhile, *HR Magazine* reported that in-work poverty has grown by 1.5 million since 2010, according to the Joseph Rowntree Foundation, with 5.7 million low-income households having to cut down or skip meals in May 2023.

Katherine Chapman, director of the Living Wage Foundation, said employers need to address pay disparities so all workers are able to live dignified lives, adding: "Everyone is feeling the pinch of the rising cost of living, but no one is struggling more than the 3.5 million low-paid workers, many of whom have had to go without food or fuel to get by.

“As well as setting pay for those at the top of the pay scale, employers and remuneration committees should consider how all staff can be paid enough to live a dignified life. FTSE 350 firms overall spent over a billion on executive pay, with £1.3 billion awarded to 570 executives.

Paul Nowak, general secretary of the Trades Union Congress, said employee representatives should play a part in pay decisions. He said: “While millions of families have seen their budgets shredded by the cost of living crisis, City directors have enjoyed bumper pay rises. As households across the country have struggled to put food on the table, sales of Porsches have hit record levels.

“This is why workers must be given seats on company boards to inject some much-needed common sense and restraint. We need an economy that delivers better living standards for all - not just those at the top.”

More Japan firms link ceo remuneration to long-term performance

The *Japan Times* reported that Japanese companies are increasingly introducing performance-linked stock compensation for their ceos, boosting what's been the lowest level of top executive pay among major advanced economies.

The median figure for Japan's ceo compensation rose 34 percent to ¥270 million ($1.8 million) in fiscal 2022 from a year earlier, according to a survey released last month by Willis Towers Watson. That's largely attributable to a rise in the ratio of long-term incentives, it said.

The trend shows Japanese corporations — who have historically relied more on fixed remuneration not linked to business performance — starting to catch up with western companies amid growing expectations that management will share further interests with shareholders, it said. Still, there's a way to go: the figure still lags significantly behind the median figure of ¥1.7 billion in the US and ¥780 million in the UK, according to the survey.

The ratios of basic remuneration, annual incentives and long-term incentives among Japanese executives were roughly equal in the 2022 fiscal year, while US executives made 71 percent of their pay through long-term incentives, the firm said.

Thank you to our previous hosts of the Esop Centre British Isles Employee Share Plan Symposium

Baker McKenzie.

MACFARLANES

TRAVERS SMITH

WHITE & CASE

European Commission adopts first sustainability reporting standards

The European Commission has formally adopted legislation setting out the first EU sustainability reporting standards (ESRS), along with a Q&A document.

The ESRS will apply to all undertakings that are subject to the EU Corporate Sustainability Reporting Directive (CSRD).

CSRD will come into effect in stages, beginning in 2024 for companies already subject to the EU's Non-Financial Reporting Directive (NFRD). From 2025, it will apply to large companies that are not currently subject to the NFRD and, from 2026, to listed small and medium-size enterprises (SMEs), small and non-complex credit institutions and captive insurance undertakings.

CSRD will not apply in the UK but will affect UK companies with securities listed on an EU-regulated market. In addition, from 2028, it will also affect UK companies that generate net turnover in the EU above €150m and have a large subsidiary or branch, or a listed subsidiary, in the EU.

The detailed content requirements are set out in two annexes to the legislation. Annex I contains general disclosures, alongside specific environmental, social and governance disclosures. Annex II contains a glossary of terms used within the ESRS.

The legislation, which is not yet final, will now pass to the European Parliament and Council to review.

Germany fails to pass tax relief

On August 16, Germany's ruling coalition passed legislation to foster the growth of start-ups but failed to agree on a second law offering wider corporate tax relief worth billions of euros aimed at reviving growth in Europe's largest economy.

At a cabinet meeting, Chancellor Olaf Scholz's government passed the Future of Financing Act, to make it easier for companies to access capital markets and also improve their ability to attract skilled workers.

According to a draft seen by *Reuters*, the law increases the tax allowance for employee share ownership to €5,000 from €1,440, to help start-ups attract talent when they are unable to offer high salaries.

But the cabinet failed to agree on passing the Growth Opportunities Act as wrangling in Scholz's three-way coalition, comprising his Social Democrats, the Greens and liberal Free Democrats (FDP), continued.

According to sources, the talks stumbled on demands by the Minister of Family Affairs Lisa Paus, of the Greens party, to raise spending on child support in tandem with giving more tax benefit to companies.

"Germany needs growth again," Finance Minister Christian Lindner wrote on social media. "It is therefore regrettable that a cabinet decision on the Growth Opportunities Act ... was not possible.

"Families with children also need good jobs," he added in apparent reference to the Greens' demand. The disagreement prompted Lindner to cancel a press conference to present the law.

"I take a dim view of setting economic support measures or higher defence spending against giving more resources to families threatened with poverty," Paus told *Die Welt* newspaper. According to the draft, the law envisages tax relief of €7.56 billion, €9.38 billion and €6.5 billion respectively in the years 2025, 2026 and 2027.

It also gives incentives to companies to make climate friendly investments, tax incentives for research and allows companies to offset more losses against profits than in previous financial years.

The law, designed to boost growth when the economy is struggling to regain momentum after falling into recession, would still be passed, Scholz said.

"We will pass a Growth Opportunities Act this month [August]," he told a meeting of a regional business association in Duesseldorf.

India

Startup employees make US$1.5billion through Esops in last 3 years

There are only a handful of Indian startups that have gone public, but thousands of startup employees have hit paydirt regardless.

OfficeChai reported that Indian startup employees have made $1.5 billion (Rs. 12,000 crore) through Esop liquidity events in the last three years alone, data from Qaptia shows. Nearly half of this value was created through Flipkart's recent $700 million Esop buyback from employees. Unlike in the past, when many startup Esops didn't end up creating much value, these amounts have landed in the bank accounts of Indian startup employees, helping them create real wealth from their stock options.

New Zealand

'We've suffered as much as you have'

"We've suffered pain as much as you have," My Food Bag chairman Tony Carter told shareholders who have seen the price of their investments drop more than 70 percent in the past year.

Despite a "tough" start to My Food Bag's current financial year, shareholders at the company's annual general meeting in Auckland were told they could soon start to receive dividends again.

Angry shareholders expressed their disappointment at the meeting, including one asking what the board was doing to reverse the share price falls.

"The board is obviously concerned about the share price," Carter said. "It's something we are not pleased with. We are all shareholders in our own right."

He said the company could not control the share price, but it could take steps to improve its performance. Investment in picking technology at its meal-kit assembly plants over the past year led to labour-savings, and less wastage, and the business also cut its workforce by around 10 percent.

Other cost savings included ending its employee share-ownership scheme, and delisting its shares from the Australian ASX sharemarket, leaving them trading on the New Zealand NZX sharemarket.

USA

Esops encouraged but do it right!

A *Lexology* alert discussing employee stock ownership plans with two specific focuses: (i) SECURE 2.0 rules affecting Esops; and (ii) an IRS news release announcing an expanded focus on Esop compliance, was published on August 17.

SECURE 2.0 included a number of provisions specific to Esops. These changes include (i) amending Section 1042 of the Internal Revenue Code of 1986, as amended ("Code") to allow limited application of tax deferral on a sale of stock to S corporation Esops; (ii) amending Code Section 401(a)(35) to change the definition of "publicly traded" for diversification requirements; (iii) directing the Department of Labor (DOL) to create an Employee Ownership Initiative; and (iv) directing the DOL to release formal guidance on Esop valuation standards.

- ⇒ The first change amends Code Section 1042 to expand its application.
- ⇒ The second change modifies diversification rules that apply to qualified plans holding "publicly traded employer securities.
- ⇒ The third change under SECURE 2.0 directs the DOL to establish an Employee Ownership Initiative to promote employee ownership at the state level.
- ⇒ The final change, which is also part of the WORK Act, requires the DOL to develop "acceptable standards and procedures to establish good faith fair market value for shares of a business to be acquired by an employee stock ownership plan.
- ⇒ On August 9 2023, the IRS issued a news release warning businesses and tax professionals to be aware of a range of compliance issues associated with Esops. (See page 18 of this issue of *newspad*). The announcement notes that the IRS is focusing on Esop transactions "as part of the effort to ensure our tax laws are applied fairly and high-income filers pay the taxes they owe" by "spotting aggressive tax claims as they emerge" and "alerting … taxpayers to compliance issues and aggressive schemes involving complex or questionable transactions, including those involving Esops."

Western Global stock plan row stays in court

Bloomberg reported that pilots for Western Global Airlines LLC can proceed in court with their challenge to the company's employee stock ownership plan, after the Third Circuit rejected an effort to send the dispute to arbitration.

The US Court of Appeals for the Third Circuit on Tuesday granted the pilots' request for summary affirmance, allowing the case to stay in court without hearing oral arguments or receiving full briefing.

The pilots had argued the dispute was governed by the Third Circuit's June 30 opinion in Henry v. Wilmington Trust NA, which declined to force arbitration in a similar employee stock ownership plan.

USA

Employee-owned companies put on notice of looming IRS crackdown

The IRS is cracking down on the methods employee-owned companies use to transfer assets to their workers, raising the stakes for an industry that says it's been plagued by years of US Labor Department investigations and lawsuits. It has expanded its focus on ensuring high-income taxpayers pay what they owe, warning businesses and tax professionals to be alert to a range of compliance issues that can be associated with employee stock ownership plans, the tax regulator announced last month.

Over the next year, the IRS will continue to use a range of compliance tools, including education, outreach and additional examinations, to address compliance by companies and individuals associated with Esops, according to the statement.

"This means spotting aggressive tax claims as they emerge and warning taxpayers," IRS Commissioner Danny Werfel said in a statement. "Businesses and individual taxpayers should seek advice from an independent and trusted tax professional instead of promoters focused on marketing questionable transactions that could lead to bigger trouble."

Werfel credits the IRS' renewed enforcement to a bolstered budget at the agency, including funding for agency enforcement included in the Inflation Reduction Act. Prior to the bill's passage, more than a decade of budget cuts had prevented the "IRS from keeping pace with the increasingly complicated set of tools that the wealthiest taxpayers may use to hide their income and evade paying their share," he stated.

Any company that has stock can sponsor an Esop for its employees, as long as the Esop invests primarily in the securities of the employer, the IRS explained.

Esops can be complex plan arrangements, because the stock ownership plan can borrow funds from the employer or a third party to purchase shares of that employer, the IRS stated.

"The IRS has seen promoted arrangements using Esops that are potentially abusive," the agency announced.

For example, the IRS is concerned about arrangements in which a business creates a 'management' S corporation, the stock of which is wholly owned by an Esop, for the sole purpose of diverting taxable business income to the Esop.

"The S corporation purports to provide loans to the business owners in the amount of the business income to avoid taxation of that income," the agency stated. "The IRS disagrees with how taxpayers interpret this transaction and emphasises that these purported loans should be taxable income to the business owners. These transactions also impact whether the Esop satisfies several tax law requirements, which could result in the management company losing its S corporation status."

The IRS has identified "numerous" issues in its compliance efforts, including validation issues with employee stock; prohibited allocation of shares to disqualified personnel; and failure to follow tax law requirements for Esop loans, resulting in prohibited transactions, the agency announced.

USA

Esop workers report higher retirement account balances

401KSpecialist reported that a recent survey by the National Center for Employee Ownership (NCEO) on the use of employee stock ownership plans in retirement planning suggested that utilisation of the feature may result in greater retirement security.

The NCEO surveyed 103 executives of Esop-owned companies, finding that since the benefit plan allows employees to own part of the company they work for, retention among these organisations is much higher than of other companies. According to the research, S Esop leaders reported voluntary quit rates of their employees at roughly one-third of the national average, at 10 percent year-to-date (YTD) and also reported lower layoff rates.

Seventy-nine percent of employers "feel they are able to do better than their non-Esop competitors when it comes to retaining and recruiting employees." Another 80 percent said they believe employee ownership helps them manage economic disruptions.

Respondents also estimated that the median account balance across their participants is $80,500, not including other retirement savings vehicles they provide like a 401(k). This compared to $30,000 for the average retirement planning investor with a workplace 401(k) plan.

"The evidence continues to show that employee-owned businesses and their employees are faring better than most, positioning them to better withstand the challenges of a volatile economy," said Stephanie Silverman, president and ceo of the Employee-Owned S Corporations of America (ESCA), which commissioned the survey. "As business leaders prepare for possible economic uncertainty ahead, Esop-owned private firms offer a compelling model for positioning workers and companies alike."

NCEO's study draws upon previous research by Ernst & Young (EY) that found employee owners of "S corporations" fared better in retirement savings and job security compared to the national public. According to EY, S Esop participants were found to have received an annual average of $5,900 from 2002 to 2019, while 401(k) plans distributed an annual average of $4,700.

The study's release also comes soon after the introduction of bipartisan legislation by US Senators Ben Cardin (D-MD) and Steve Daines (R-MT). Known as the "Promotion and Expansion of Private Employee Ownership Act of 2023," the bill would provide better incentives for employee ownership, offer technical assistance for employers wanting to offer Esops, ensure small businesses that become Esops retain their SBA certification; and create an advocate for employee ownership at the Department of Labor.

USA

When can I get my Esop money?

An *Investor Times* article explores this one common question and answers some other frequently asked questions about Esop distributions. These include:

Q: When can I withdraw my Esop money?

A: Esop distributions are typically allowed upon reaching retirement age, termination, disability, or death. However, the specific rules may vary depending on the plan's terms and conditions.

Q: Can I access my Esop money while still employed?

A: In most cases, you cannot access your Esop funds while you are still employed with the company. Esops are designed to provide long-term benefits and encourage employee retention.

Q: Are there any tax implications with Esop distributions?

A: Esop distributions are generally taxed as ordinary income. However, if you roll over your Esop money into an IRA or another qualified retirement plan, you can defer taxes until you withdraw the funds.

Esops are a valuable employee benefit that can provide financial security and a sense of ownership. Understanding the rules and regulations surrounding Esop distributions is crucial to make informed decisions about accessing Esop money. It is always recommended to consult your plan administrator or a financial adviser for personalised guidance based on your specific Esop plan.

USA

Large firm shakes up business model with Esop

BDO USA, citing a desire to strengthen its business model in part to retain and attract talent, is preparing to become the first large public accounting firm to establish an employee stock ownership plan.

The Esop was effective as of August 31, according to a news release, giving more than 10,000 participating employees an ownership stake.

Wayne Berson, ceo of BDO USA, called the decision a "game-changer."

"Amid the changing landscape of our profession, the Esop unlocks the value of our firm today and embodies our strategy to sustain a strong, caring, and resilient business for tomorrow," Berson said in the news release. "We are proud to establish this Esop to invest in each other, so everyone who contributes to our success has the opportunity to benefit from it."

Esop team on the move

RBC Wealth Management-US landed its largest hire yet last month with an Atlanta-based UBS Wealth Management USA team generating $22 million.

The team, which had managed approximately $5.5 billion in client assets at UBS, is led by advisers Leslie A Lauer, Rebecca T Glasgow and Wayne "Curt" Rubinas and includes seven client associates, a spokesperson for Minneapolis-based RBC confirmed.

Their practice is called the *ESOP Group*, a reference to the employee stock ownership plans that they craft for executives as part of a succession plan for privately held businesses. Other UBS advisers had also referred clients to the ESOP Group for help designing the plans, which typically involve selling shares to other employees.

The team was one of the top by production at UBS, but they came to believe the firm "no longer prioritised" their niche, according to Louis Diamond, an industry recruiter. The team will expect more support and attention at RBC, which has around 2,100 brokers.